# Planning and Infrastructure Bill
# Committee stage briefing

The Heritage Alliance

## About the Heritage Alliance

The Heritage Alliance is the umbrella body for the independent heritage sector in England, a charity bringing together over 200 organisations representing the breadth of heritage. The Heritage Alliance sits on the Government's Heritage Council and the heritage sector's Historic Environment Forum. Our Planning and Devolution Bills task & finish group has fed into this briefing.

## Summary


- **The Heritage Alliance welcomes many of the provisions in the Planning and Infrastructure Bill**, which should help the heritage sector support the streamlining of infrastructure and planning approvals.
- We believe heritage is an enabler of growth, not a blocker, and that **some of the reforms proposed could go further, allowing decision-making to be better informed and quicker, and growth to be accelerated**. For instance by:

    a. Implementing the provisions of the Levelling-Up and Regeneration Act 2023 which place a requirement on local authorities to provide a Historic Environment Record (HER) - the underpinning basis of a heritage service;

    b. Removing the inconsistency between heritage policy and legacy heritage legislation by consistently using the term 'conservation' rather than 'preservation';

    c. Implementing national Listed Building Consent Orders (LBCOs);

    d. Reviewing Permitted Development Rights, including the abolition of the PDR for demolition to encourage reuse over unnecessary waste.

- **There is significant concern amongst the heritage sector regarding Clause 37 – "disapplication of heritage regimes".** We urgently seek clarity from the Government to understand the provision's intended purpose and the perceived problems it is seeking to address.
- **We have proposed an amendment to Clause 50**

## Welcome Provisions

The Heritage Alliance welcomes many of the provisions of the Planning and Infrastructure Bill, which it believes should help the heritage sector support the streamlining of infrastructure and planning approvals while maintaining the essential safeguards that ensure development is sustainable.

As ever, the Alliance believes that heritage is an enabler of growth, and not a blocker. Indeed, the Alliance believes that some of the reforms proposed could go further, allowing decision-making to be better informed and quicker, and growth to be accelerated. At this stage the Alliance particularly welcomes:

- **Measures to improve planning performance, where deficiencies have created problems for heritage, including:**
    - the provisions enabling local authorities to set their own reasonable planning fees and ring-fence them for planning purposes
    - the measured delegation of powers to planning officers
    - the mandatory training of planning committee members (especially if it covers heritage matters, which can be interpreted incorrectly and unhelpfully by committees)
    - the duty for local authorities and statutory consultees to have regard for guidance

- **Measures to simplify the planning process** - providing that that is what they do, rather than overlaying alternative routes to consent on an already complex system. However, there are some related concerns set out below.

## Amendments and clarifications

Ahead of Committee stage, notable potential concerns of the Alliance relate to:

### Part 1: Infrastructure

#### Clause 32: duty to hold inquiry or hearing

The provisions in the Bill increase the Secretary of State's discretion to decide whether an objection is "serious enough" to warrant either an inquiry or for the matter to be referred for consideration by a person appointed by the Secretary of State. **The "serious enough" test is expansive and will be left to judgement and interpretation, which does not aid clarity in the system or expedite good decision making, and might not adequately protect significant designated and undesignated heritage assets.**

**We suggest that the Committee seeks clarification on what will be considered "serious enough".**

### Clause 37 – Disapplication of heritage regimes

An order made under the Transport and Works Act 1992 is the usual way of authorising schemes, such as new railways or tramways, in England and Wales. Applications for orders are made by (or on behalf of) promoters of the scheme to the relevant Secretary of State (e.g. the Transport Secretary if the scheme is for a transport purpose). The purpose of the procedure is to allow the Secretary of State to come to an informed view on whether it is in the public interest to make the order: they can make an order (with or without amendments) or reject them. A variety of matters can be authorised by an order, such as powers to construct or alter a transport system, with typical applicants including the likes of Network Rail and London Underground. *Sometimes a scheme requires another type of consent as well as a TWA order, such as a listed building consent or a conservation area consent. In this case, the organisation applying for the TWA order would apply for these additional consents at the same time.*

As stated in government's Delegated Powers Memorandum for the Bill, **the intention of Clause 37 is that a TWA order would become more of a 'one stop shop' encompassing the majority of approvals required to deliver a TWA project.** The clause would enable TWA orders to disapply the need to obtain authorisations under relevant heritage regimes, rather than an applicant having to apply separately to each relevant consenting authority. The clause will enable TWA orders to disapply the identified heritage authorisations on a case-by-case basis. The government also says that would be the same as the procedure applying to Development Consent Orders under sections 117 and 232 of the Planning Act 2008.

Whilst we can see some benefit in bringing heritage provisions under one system in certain circumstances to aid streamlining, we remain unclear as to the intention and scope of this provision. **Until greater clarity and detail is forthcoming from government, we continue to have significant concerns regarding its potential to cause confusion and misunderstanding and, ultimately, to cause unintended harm to heritage assets.**

At this stage, we therefore seek urgent clarification and reassurance from government around the following points:

- *Why does government feel this provision is needed, and what is the perceived problem that it is seeking to address?*
- *What is the intended scale and scope of this provision?*
- *Can government provide reassurance that there will not be a watering down of protections for heritage as a result of this provision, and that heritage considerations will be weighed appropriately when the relevant Secretary of State is considering whether it is in the public interest to make an order?*
- *Will guidance be forthcoming to aid clarification on this process for all relevant parties?*

## Part 2: Planning

### Clause 44 – Fees for planning applications etc

This welcome provision would allow the Secretary of State to subdelegate the ability to set fees for planning applications to Local Planning Authorities, allowing them to set their own fees to reflect the actual costs incurred in dealing with applications and other relevant planning functions.

We acknowledge that in a recent answer to a written parliamentary question, the Minister of State for Housing, Communities and Local Government clarified that government intends to consult on the details of localised fee setting later this year.

**Nonetheless, we would like clarity on whether this provision includes the potential for local authorities to introduce fees for Listed Building Consent, which would have a detrimental effect on heritage**. Listed status confers burdens with regard to preservation and maintenance that are in the public interest, and owners cannot opt out of their obligations. Ensuring this service remains free of charge is vital.

It is also worth noting that a high proportion of Listed Building Consent applications mirror corresponding full planning applications (which are charged for). Thus, fees for Listed Building Consent would in effect be a duplication of costs for applicants when the applications are handled as a pair by the Local Planning Authority.

### Clause 47 – Spatial Development Strategies

The Bill makes provision for strategic planning authorities to prepare a spatial development strategy. This strategy will, among other things, set out a statement of the authority's policies in relation to the development and use of land in their area which are of strategic importance to that area.

In particular, section 12H sets out the persons that strategic planning authorities are required to notify that the draft spatial development strategy has been published. As we understand it, whilst reference is made to a requirement for strategic planning authorities to notify 'specified persons', it does not provide a definition or list.

**It is crucial that further clarity is given on this point, including whether statutory consultees would need to request attendance at an Examination in Public (EiP) rather than rely on invitation only. What is more, it is vital that statutory consultees remain involved in the plan-making process, as is currently the case.**

### Clause 50: Environmental features, environmental impacts and conservation measures

Whilst the new system of Environmental Delivery Plans (EDPs) will primarily be established to deliver specific environmental obligations at a strategic scale, we believe the formation and adoption of these EDPs must account for the historic environment and seek to avoid unnecessary harm. This will help to safeguard the historic environment.

Many of our nation's most precious landscapes reside within our National Parks and National Landscapes. EDP's should also take account of the quality and character of these Protected Landscapes and seek to avoid unnecessary harm.

**We therefore propose the below amendment (or wording to a similar effect) which seeks to ensure that EDPs take the historic environment into account.**

*Clause 50, page 85, line 9, at end add:*

*"7A) An EDP must state any anticipated impact from conservation measures on:*

1. *A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing);*[1] *and*
2. *the character and quality of landscapes within National Parks and National Landscapes, and set out measures to prevent or limit harm to these features.*

This amendment would require Environmental Delivery Plans (EDPs) to take account of the historic environment and the character and quality of landscapes within National Parks and National Landscapes.

[1] NPPF p.73: https://assets.publishing.service.gov.uk/media/67aafe8f3b41f783cca46251/NPPF_December_2024.pdf

## Part 3: Development and nature recovery

### Nature Restoration Fund

The Nature Restoration Fund (NRF) establishes an alternative approach for developers to meet environmental obligations relating to protected sites and species. It will provide funding for Natural England to bring forward Environmental Delivery Plans (EDPs), that set out the strategic action to be taken to address the impact that development has on a protected site or species and how these actions go further than the current approach and support nature recovery.

**We have some concerns around this section as it appears to go against the mitigation hierarchy used in conservation and removes the presumption against harm.** There is also currently no indication as to how it will link into existing nature restoration opportunities from Biodiversity Net Gain (BNG) supported by Local Nature Recovery Strategies (LNRS).

**There is also a wider point here regarding the link between nature and heritage, and whether restoration of historic landscapes is included - on which we would welcome greater clarity.**

## Part 4: Development corporations

### Clause 80 – Duties to have regard to sustainable development and climate change

This clause provides for the standardisation of objectives on sustainable development, climate change, and good design across all development corporation types, with the intention being that it creates certainty for local communities that development corporations must consider sustainable development, climate change, and good design at the heart of delivery.

**We have some concerns that this might not retain the NPPF definition of sustainable development - essential wording that ensures that the significance of the historic environment is as much a consideration of sustainable development as that of the natural environment[2].**

[2] The NPPF describes the three objectives of sustainable development as:

a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with

## Missed opportunities and changes which should be added to the Bill

We believe the Bill could go further, allowing decision-making to be better informed and quicker, and growth to be accelerated – whilst also securing heritage protection – by:

### 1. Implementing the provisions of the Levelling up and Regeneration Act 2023 which place a requirement on local authorities to provide a Historic Environment Record (HER), which is the underpinning basis of a heritage service - to speed up informed planning decisions and enable effective implementation of this Bill

An Historic Environment Record (HER) is an information service with systematically organised information about the historic environment in a given area, for public benefit. HERs contain and signpost information about historic landscapes, buildings, archaeological sites and finds, as well as information from planning-led research such as archaeological intervention reports or historic building records.

They can help to inform and speed up planning decisions by:

- Providing information for developers that can provide clarity on what development in a location can expect;
- Holding spatial data about the historic environment, thus forming part of the evidence base needed to underpin strategic spatial planning;
- Evidencing past land use, which helps to play to the strengths of the land – a core principle of the Government's draft Land Use Framework;

Further, HERs help to advance understanding by providing information to the public and engaging them with their local heritage, whilst contributing to the realisation of social, economic, and environmental benefits including promoting local distinctiveness, pride and a sense of place.

accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

c) an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

The problem

There is currently variable availability of heritage information to clarify heritage and planning consent processes, with HER services vulnerable to cuts and closure, and with varying degrees of digital access.

What needs to be done

The Planning and Infrastructure Bill intends a faster, better informed process of granting planning permission and other consents. This aim will be hard to achieve before the provisions of section 230 of the Levelling-Up and Regeneration Act 2023 are implemented. These provisions set out the requirement on local authorities to provide a Historic Environment Record (HER), which underpins a heritage service, including the necessary supplementary regulations by the Secretary of State under 230 (5) and (6) on how HERs are to be kept up to date and made available to the public. Implementing this statutory provision, which is overdue for bringing into operation, would:

- Overcome most of the real or perceived obstacles to development from heritage, which tend to result from impaired process rather than flawed policy;
- Ensure high-quality data that provide greater certainty and support better decision-making;
- Enable effective implementation of this Bill.

**We would welcome a commitment from the Government on a speedy timescale for implementing the provisions relating to HERs outlined in section 230 of the LURA 2023.**

## 2. Promoting both heritage conservation and growth by removing the fundamental inconsistency between heritage policy and legacy heritage legislation.

National heritage policy is based on 'conservation', defined in the National Planning Policy Framework (NPPF) as "the process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance". This is comprehensively set out in the NPPF, its Planning Practice Guidance, Historic England's *Conservation Principles* and its policy of 'constructive conservation', and Historic England guidance.

This is longstanding conservation best practice (first codified in the Burra Charter in 1979 in Australia), adopted in England (and other UK countries) in the 2000s, after extensive public consultation, and incorporated into national planning policy in 2012 in the NPPF. This NPPF policy approach has been summed up by Historic England as follows:

> "Historic England has worked hard to remove the common misconception that listed buildings must be 'preserved' effectively just as they are. This is not the case. The goal is positive 'conservation' and managing change rather than 'preservation'. This approach will allow a listed building to change and adapt to new uses and circumstances in a way that keeps its heritage value intact."[3]

The problem

In contrast, the 35-year-old legislation[4] at the heart of the planning system, which out-ranks policy, retains a legal presumption in favour of 'preservation'. Every listed building consent (LBC) decision, every planning decision near any listed building, and every planning decision in England's 10,000 conservation areas, must explicitly give 'special regard' to 'preservation', not to 'conservation'. Heritage is not a peripheral issue: at least a third of planning applications involve heritage, and this legal discouragement of change to heritage, or near heritage, encourages the view that heritage is a 'blocker', deterring change and growth. It also discourages the sympathetic changes needed to allow heritage to (as above) "change and adapt to new uses and circumstances in a way that keeps its heritage value intact".

What needs to be done

This problem has long been recognised, but solving it requires primary legislation. **A clause in the Planning and Infrastructure Bill should amend other legislation affecting heritage to substitute the term 'conserve' in place of 'preserve'**.[5]

There is a clause (202) in the Levelling Up and Regeneration Act 2023, as yet unimplemented, which would change 'preserve' to 'preserve or enhance', which might mitigate the problem to an extent, but it would clearly be better to use the term used in policy, 'conserve', removing the doubt from the core of heritage policy which would continue for as long as the term 'preserve' remains in the legislation.

[3] *Heritage Works*, Historic England, 2017, section 1.1.
[4] Primarily the Planning (Listed Buildings & Conservation Areas) Act 1990, sections 16, 66, and 72.
[5] Primarily the P(LBCA) Act 1990, sections 16, 66, and 72 (and consequential amendments).

## 3. Removing barriers to Listed Building Consent Orders (LBCOs)

Planning resourcing in the local planning authorities (LPAs) which take most planning decisions is notoriously inadequate. This is especially true of LPA heritage services. Part of the reason for this is that listed building consent (LBC) has no equivalent of the 'permitted development' which greatly reduces workload in the planning system. Every change (major or minor) to any listed building which affects (positively or negatively) its 'special interest' requires a full LBC application. This helps to create a workload nationally of up to 30,000 applications a year.

A solution to this, developed by the heritage sector and Government and included in primary legislation[6] in 2013, following the 1997-2010 Labour Government's Penfold Review, is national Listed Building Consent Orders (LBCOs). These are designed to remove the need for slow and costly (for both applicant and LPA) applications for LBC for specific, carefully scoped and conditioned categories of routine and/or low-impact works, like repainting or repointing. The concept has been tested on a small scale using 'local LBCOs' in parallel legislation, but these require too much LPA resource to be widely used. One national LBCO (for work to canal lock gates etc, specific to the Canal & River Trust) has been 'oven-ready' since 2018, having been drafted and consulted on by HE and MHCLG.

The benefits of LBCOs include reducing consent and cost obstacles to desirable works; reducing LPA enquiry and application workload, freeing staff up to focus on the LBC applications which do require LPA staff time; reducing uncertainty for owners; and reducing the volume of harmful work (contractors would need to work to the written LBCO conditions, and enforcement would obviously remain in place).[7]

The problem

Although national LBCOs are already in the legislation, they require the 'affirmative resolution' procedure, requiring debate in both Houses of Parliament. This has been seen in practice as an insurmountable obstacle, the Canal & River Trust order has never been taken to Parliament for approval, and no further LBCOs have so far been developed or consulted on.

[6] Planning (Listed Buildings & Conservation Areas) Act 1990, section 26C.

[7] There is a detailed summary of national LBCOs in the Historic Environment Forum's HEPRG 2016 public consultation document here Web-HEPRG-summer-2016-consultation-21-7-16.pdf - Google Drive - see proposal D8 in chapter 8.

What needs to be done

**We would welcome a commitment from Government to look into this apparent obstacle to good practice as a matter of urgency, as its current operation (or non-operation) impedes growth.**

## 4. Reviewing Permitted Development Rights

Reaching net zero is partly about long-term sustainability and decarbonising our built environment. To achieve this we need to move to a circular approach which better acknowledges embodied carbon and does not treat buildings as disposable.

The problem

As noted by the Environmental Audit Committee,[8] the current tax regime incentivises demolition and rebuild over repair and reuse, contributing to the 126 million tonnes of waste produced by construction demolitions each year (RIBA). To encourage circular economy approaches and reduce waste, we support the removal of the Permitted Development Right (PDR) for demolition, and a review of the significant expansion of PDRs in general over the last 10 years which has facilitated poor quality and inefficient construction.

What needs to be done

**It is vital that the Permitted Development Right (PDR) for demolition is abolished to encourage reuse over unnecessary waste, and that the use of PDR in the planning system is reviewed.**

[8] https://committees.parliament.uk/committee/62/environmental-audit-committee/news/171103/emissions-must-be-reduced-in-the-construction-of-buildings-if-the-uk-is-to-meet-net-zero-mps-warn/

# Related issues

## Review of statutory consultees

**Additionally, we are concerned by the related review of statutory consultees recently announced by Government** and believe that two of our members, The Gardens Trust and Theatres Trust, have been unfairly included in the scope of these reforms. For example, in 2023/24 Theatres Trust responded to 238 Planning and Pre-Planning Applications that fell within their remit; 100% of these were dealt with in the allotted 21 days. Further, in the 2024-25 financial year, the Gardens Trust received 1,849 consultations (966 of these were for Grade II sites, 531 were for Grade II* sites, 345 were for Grade I sites). The Gardens Trust made 1,289 responses: 372 were bespoke, detailed responses of advice, and 96 of these were objections to the proposals – 7.4%.

We need to understand the rationale for this proposal and how planning authorities would be expected to compensate for the Trusts' expertise and so continue to make informed and sustainable determinations.

There is also a more general concern with the content of the Ministerial Statement about the Review of Statutory Consultees which notes 'It is essential that statutory consultees look to provide practical, pragmatic advice and expertise which is focussed on what is necessary to make development acceptable', which implies that objections to inappropriate development would not be welcome. This would serve to create ambiguity in the planning system and also cause problems for remaining statutory consultees in giving objective advice about harm. It is welcome that the Government has committed to a public consultation on the issue and we hope that these points will be taken on board.

For further information or queries, please contact The Heritage Alliance.

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