



House of Commons
Culture, Media and Sport
Committee

**Draft Heritage
Protection Bill**

Eleventh Report of Session 2007–08

*Report, together with formal minutes, oral and
written evidence*

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The Culture, Media and Sport Committee

The Culture, Media and Sport Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Culture, Media and Sport and its associated public bodies.

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Summary

In April 2008, the Department for Culture, Media and Sport (DCMS) published a Draft Heritage Protection Bill, and the Government has indicated that the Bill will be in next year's legislative programme. The Bill is designed to unify heritage protection regimes, allow greater public involvement in decisions, and place heritage at the heart of the planning system. The Committee has undertaken pre-legislative scrutiny of the Bill prior to its redrafting over the summer.

We welcome the provision of the new legislation and support the Government in its aim to reform, modernise, and streamline the present system. However, the effectiveness with which the Committee has been able to scrutinise the draft Bill has been undermined by the incomplete nature of the legislation. We find it deeply disappointing that we have not had the opportunity to review the draft Bill in its entirety. We recommend that a complete schedule of all further necessary legislation and guidance be published as soon as possible, together with a timetable and arrangements for appropriate consultation and implementation. The Government must prioritise the revision of Planning Policy Guidelines (PPGs) 15 and 16 to ensure that the new guidance on planning policy can be implemented at the same time as the Bill.

The cost of implementing the Bill, outlined in the accompanying Impact Assessment, is considered by much of the heritage sector to be a gross underestimate. A revised impact assessment is currently being drawn up and we strongly recommend that the Government ensures that this gives a more realistic estimate of costs. The Government must heed the warnings from the sector that an inadequately resourced Bill could be a backwards step for heritage protection. It should proceed with the Bill, but only if it is fully aware of, and willing to meet, its full cost. We recommend that the Government ensures that there are sufficient staff with the necessary skills, in particular conservation officers in local authorities, to successfully implement the Bill.

We recognise that Heritage Partnership Agreements (HPAs), a new system of management agreements for owners of large estates, have, in a limited number of cases, offered significant cost savings. However, we are not convinced that a robust business case for the widespread introduction of HPAs has yet been demonstrated. We therefore recommend that the number of HPAs is restricted until there is more consistent evidence to justify their wider implementation.

In maintaining an historic building, the onus is on the local authority to step in when serious neglect has occurred, not on the owner to keep it in a reasonable state of repair. Yet there are approximately 37,000 listed buildings "at risk" in England. We found no evidence that either DCMS or English Heritage had considered any amendments to the legislation which would improve the operation or effectiveness of the enforcement powers for local authorities. We recommend that a review of these powers be conducted as a matter of urgency and the results published with a view to improving the operation of the legislation.

The Committee has not been able to undertake scrutiny of all aspects of the legislation due to its existing commitments on other inquiries, coupled with the necessity to provide an

assessment for DCMS prior to the summer redrafting of the Bill. However, in the final chapter we outline a number of other issues raised in the submissions to this inquiry, and we recommend that the Government reviews these.

1 Introduction

1. In April 2008, the Department for Culture, Media and Sport (DCMS) published a Draft Heritage Protection Bill. If introduced into Parliament, the Bill would be the first legislation in this subject area for 30 years and it would be the culmination of the process begun in December 2001 with the publication by DCMS of the policy paper “The Historic Environment: A Force for our Future”.¹ The legislation now published in draft form is designed to “unify heritage protection regimes, allow greater public involvement in decisions, and place heritage at the heart of the planning system”.² The Government has indicated that the Bill will be in next year’s legislative programme.³ However, implementation of the legislation is not expected until 2010, and some of its provisions may not be fully realised until some years after that.

2. We have undertaken pre-legislative scrutiny of the Bill with the intention of publishing this report by the end of July 2008 in order for the Committee’s recommendations to be taken into account in any redrafting of the Bill over the summer. The Committee announced its inquiry on 1 May 2008, inviting evidence on:

- the overall aims and scope of the draft Bill;
- the estimates of costs and benefits set out in the Impact Assessment published alongside the draft Bill; and
- the staffing and skill levels needed for effective implementation of the provisions in the draft Bill.

3. The Committee received more than seventy written submissions, and it held two oral evidence sessions. The first of these included several witnesses representing local government interests, together with Heritage Link⁴ and the Archaeology Forum.⁵ In the second session we questioned the sponsor of the Bill—DCMS—and English Heritage, a non-departmental public body and the Government’s statutory adviser on the historic environment. English Heritage played a central role in developing the Bill alongside DCMS. The Committee had the assistance of a Specialist Adviser: Mr Bob Kindred, currently Conservation and Urban Design Operational Manager at Ipswich Borough Council and a founding Director of the Institute of Historic Building Conservation (IHBC).

4. The Committee has not been able to undertake scrutiny of all aspects of the legislation due to its existing commitments on other inquiries, coupled with the necessity to provide an assessment for DCMS prior to the summer redrafting of the Bill. In particular we regret

¹ *The Historic Environment: A Force for our Future*, December 2001

² DCMS press release, 2 April 2008

³ *Preparing Britain for the future: the Government's draft legislative programme 2008-09*, May 2008

⁴ An umbrella body for voluntary organisations concerned with heritage in England

⁵ A grouping of independent bodies concerned with the archaeological investigation, management and interpretation of the UK’s historic environment

that we were not able to examine in detail the provisions relating to the protection of marine heritage.

5. The heritage sector is consistent in its support in-principle for the Bill. For instance, Heritage Link views it as “a milestone in creating a more integrated, robust, streamlined and more transparent heritage protection system”.⁶ It is also supported at local authority level: the Local Government Association maintains that it will “create a more efficient and open system, giving local councils and English Heritage better tools to protect the environment”.⁷ However, the expressions of broad support for the general thrust of the Bill are countered by reservations concerning:

- The incomplete nature of the legislation at this stage;
- The resources available to implement the Bill in both the short term and longer term (especially resources within English Heritage and local government);
- Specific reforms contained within the Bill, notably the new provision for Heritage Partnership Agreements; and
- The enforcement of heritage protection.

These issues are considered in the subsequent chapters of this report.

6. DCMS has been keen to stress its commitment to put “heritage at the heart of planning”.⁸ A number of the respondents to our inquiry, including Heritage Link, the Campaign to Protect Rural England (CPRE) and the Institute of Historic Building Conservation (IHBC) expressed disquiet that the Department for Communities and Local Government (DCLG) is not a co-sponsor of the Bill. The Minister of State in DCMS, the Rt Hon Margaret Hodge MP, stated that “they are not co-sponsors because it is a heritage bill and therefore we [DCMS] have taken the lead on it”.⁹ However, she did contend that DCLG are “actively participating[...]and I will have a CLG Minister sitting with me when we discuss the clauses of the Bill in committee so that we can show ourselves to be joined up in that way”.¹⁰ Nevertheless, the National Trust reports that so far there has been “an absence of any visible interaction between the two departments within the Bill or the Heritage White Paper”.¹¹

7. We welcome the provision of the long-awaited heritage legislation and support the Government in its aim to reform, modernise, and streamline the present system. We particularly welcome the intention to put “heritage at the heart of planning”, yet see little evidence to suggest that the Department for Communities and Local Government (DCLG) has had any significant involvement with the draft Bill thus far. The success of the proposed reforms will depend a great deal on additional planning guidance and

⁶ Ev 24

⁷ Ev 1

⁸ DCMS press release, 2 April 2008

⁹ Q 61

¹⁰ *Ibid.*

¹¹ Ev 79

funding from DCLG. The Government must therefore maintain its commitment to DCLG being an active participant in the passage of the new legislation.

2 Incompleteness

8. The draft Bill was published with a number of significant omissions. Clauses relating to the management of conservation areas, the protection of buildings of local interest, and grant and loan-making powers of English Heritage and local authorities, were all absent, and English Heritage outlined in its written submission a number of other limitations.¹² English Heritage is confident that the remaining gaps can be filled before the Bill is introduced to Parliament.¹³ Nevertheless, the heritage sector is dissatisfied that its opportunity to comment in the Committee’s inquiry was undermined by its inability to assess the complete package of reforms.¹⁴ As the Association of Local Government Archaeological Officers told us, “it is difficult to take [a] rounded view of what we would like to see in terms of change and additions [to the Bill]”.¹⁵

9. Conservation Area clauses are an important aspect of the reforms that the sector has not yet had the opportunity to scrutinise adequately. DCMS issued these clauses on the eve of the Committee’s oral evidence session with the sector and none of the witnesses had had sufficient time to review the content to any meaningful extent. Similarly, the majority of the written submissions were unable to address the adequacy or otherwise of these clauses.

10. We asked the Minister why the draft Bill was still incomplete given that DCMS had initiated the process of heritage protection reform as far back as 2001. She accepted that the Department could have done better, but she insisted that “policy has been decided” and that “the key clauses are already out there”.¹⁶ She gave a commitment to consult on the newly published conservation area clauses, yet instead of the usual three months for consultation, a period of only six or eight weeks is likely.¹⁷ This would appear to run counter to the call by the Institute of Historic Building Conservation (IHBC) for “proper time for public consultation on those clauses before we all rush to a judgment”.¹⁸

11. The Committee values the opportunity to undertake pre-legislative scrutiny of the draft Bill, yet the effectiveness of this process has been undermined by the incomplete nature of the legislation. We find it deeply disappointing that we have not had the opportunity to review the draft Bill in its entirety. The sector has been denied the opportunity to examine thoroughly all aspects of the proposed legislation, in what amounts to a fundamental modernisation of the heritage protection system. We recommend that a complete schedule of all further necessary legislation and guidance

¹² Ev 38–39

¹³ Ev 38

¹⁴ E.g. Ev 26; Ev 61; Ev 105

¹⁵ Q 3

¹⁶ Q 58

¹⁷ Q 58

¹⁸ Q 3

be published as soon as possible, together with a timetable and arrangements for appropriate consultation and implementation.

12. Many of the submissions received by the Committee called for a review of Planning Policy Guidelines (PPGs) 15 and 16 which deal with the historic environment. According to the Standing Conference on London Archaeology, while other PPGs have been updated, PPGs 15 and 16 have lagged behind.¹⁹ For instance, PPG 16 Archaeology and Planning, is now 18 years old, and the Association of Local Government Archaeological Officers for England (ALGAO:England) maintains that it will need to be replaced once the provisions of the Bill are adopted.²⁰ The National Trust states that “many of the changes proposed within the Bill will not be effective without supportive planning guidance”.²¹

13. There was widespread concern on the part of witnesses²² and in the written submissions²³ that there appeared a lack of urgency by DCMS on the necessary revisions to PPGs 15 and 16 because, as planning guidance, this was a DCLG responsibility. English Heritage stated that “the revision of PPG 15 and 16 is absolutely fundamental[...]you cannot have the new Bill without that”.²⁴ The Minister assured the Committee that it was DCMS’s intention for the Bill and the revised planning guidance to come into operation simultaneously.²⁵

14. The Government must prioritise the revision of PPGs 15 and 16 to ensure that the new guidance on planning policy can be implemented at the same time as the Bill. It would be unsatisfactory for the heritage sector to be consulted on the draft Bill without also being consulted on a draft of the revised planning guidance. The sector must have the opportunity to reflect upon the complete package of reforms.

15. The importance of ensuring that all aspects of heritage are covered in the reforms is exemplified in the submission by the Theatres Trust.²⁶ The Trust is keen to ensure that it is formally considered a statutory consultee on heritage matters relating to theatres. Such matters include Heritage Asset Consents, the compiling and amending of Heritage Registers, and appeals on potential heritage structures and on “Certificates of no intention to register”.²⁷ **We recommend that the Government ensures that the role of statutory consultees such as the Theatres Trust is properly incorporated into the heritage protection reforms in addition to their existing role in the planning system.**

¹⁹ Ev 64

²⁰ Ev 7

²¹ Ev 80

²² Q 1; Q 2; Q 46; Q 55; Q 57

²³ E.g. Ev 64; Ev 7–8; Ev 78; Ev 128

²⁴ Q 63

²⁵ Q 67

²⁶ Ev 84

²⁷ Ev 84

3 Costs and resources

Impact Assessment

16. DCMS has published an Impact Assessment alongside the draft Bill. It concludes that the net cost of implementing the Bill will be £1.72 million over a period of five years. On this basis, the Minister called it “a pretty cost-neutral Bill”.²⁸ The main benefits of the reforms set out in the Bill are, according to DCMS, “non-monetisable”.²⁹ However, DCMS, English Heritage, LGA, IHBC and ALGAO:England, have all acknowledged that the figures in the impact assessment would “benefit from further scrutiny”.³⁰ A “rapid review of the cost implications” is currently being carried out by the LGA, DCMS, DCLG, ALGAO, IHBC and English Heritage and is expected to report at the end of July 2008.³¹ It is anticipated that it will result in “some improvement in the quality of analysis and, therefore, quite possibly in some revisions to the figures that are reflected in the assessment”.³²

17. Given the volume of evidence the Committee has received questioning the accuracy of the current quoted cost of £1.72 million, it is as well that this figure is being revisited. ALGAO:England, the Country Land and Business Association (CLBA), the National Trust, RESCUE³³ and others regard it as an underestimate.³⁴ The IHBC was particularly sceptical, asserting that the Bill “has not really been quantified in an effective way”.³⁵ The Country Land and Business Association suggested that to fully implement the reforms contained within the Bill, “perhaps £50 million to £100 million a year” would be needed. It recognises that funding of this magnitude will clearly not be provided and thus calls for “significant changes[...]to the proposals so that the system can work better without a lot of money being spent”.³⁶

18. The Impact Assessment states that “Government and English Heritage will incur the majority of costs through providing extra funding to enable local authorities to take on new responsibilities”.³⁷ The Government has committed itself to covering fully the cost of implementing the Bill for local authorities and English Heritage (even if the revised impact assessment indicates a higher cost than originally estimated).³⁸ The additional funding for local authorities will not be ring-fenced, in order to leave discretion for resource allocation to the local authorities themselves. The Minister acknowledged that inherent in this

²⁸ Q 70

²⁹ *Impact Assessment: Draft Heritage Protection Bill*, April 2008, page 4

³⁰ Q 7

³¹ Ev 2; Q 7

³² Q 7

³³ An independent body and registered charity which promotes archaeology in Britain

³⁴ Ev 7; Ev 82; Ev 88; Ev 117

³⁵ Q 7

³⁶ Letter to the Chairman of the Committee from the Country Land and Business Association, 25 June 2008

³⁷ *Impact Assessment: Draft Heritage Protection Bill*, April 2008, page 4

³⁸ Q 76

decision is the danger that the additional funding could simply disappear into the local government allocation, with little benefit for heritage protection.³⁹

19. The LGA pointed out that if you were to divide the current cost estimate between the 350 planning authorities, the costs come out at such small sums per authority that:

- a) The estimate looks implausibly low; and
- b) Were the figures to prove significantly wrong, the impact on an individual local authority, “really could be quite serious”. The LGA told us that “errors of ten or twenty thousand pounds have a significant impact on capacity and the ability to do the job in many planning authorities”.⁴⁰

20. The National Trust argues that because of the doubts surrounding the ability to resource the Bill, the introduction of the new legislation could prove counter-productive:

“We share fears, apparent throughout the heritage sector, that, without sufficient and appropriate resources, skills and capacity building amongst those responsible for delivering the new and more demanding and complex protection system, notably in local government, these reforms will unravel a regime which has allowed for the protection of our cultural inheritance over the last 60 years. We would rather have no legislation than a Bill which does not have the means for its effective delivery”.⁴¹

21. The Minister’s claim that the Bill will be “pretty cost neutral” is not borne out by the evidence we received from those who will ultimately implement it. The decision taken by DCMS amongst others to review the current cost estimate casts further doubt on this claim. We strongly recommend that the Government ensures that the revised impact assessment gives a more realistic estimate of costs. The Government must heed the warnings from the sector that an inadequately resourced Bill could be a backwards step for heritage protection. It should proceed with the Bill, but only if it is fully aware of, and willing to meet, its full cost.

Local authority skills and training

22. Our inquiry in 2006 into protecting and preserving heritage found that over 90% of the task of managing and improving the UK’s built and archaeological heritage is borne by local authorities.⁴² Most local authorities employ one or more conservation officers with specific responsibility for this task. However, our earlier inquiry found that not all local authorities do so, nor are all authorities able to draw upon specialist heritage skills. Indeed, there is a wide discrepancy between local authorities with large heritage teams such as Westminster and those with little or no core provision. The CLBA told us that “even where there are skilled and experienced conservation staff, they are usually overworked, often

³⁹ Q 77–78

⁴⁰ Q 7

⁴¹ Ev 77

⁴² Third Report from the Culture, Media and Sport Committee, Session 2005–06, *Protecting and Preserving our Heritage*, HC 912, para 92

demotivated because conservation has low status in most local planning authorities, and do not have the time needed to get properly involved in every case”.⁴³

23. The CLBA also argues that “there are few things more valuable to heritage (or its owners) than a really good conservation officer”.⁴⁴ They typically have responsibility for the day-to-day management of listed buildings, conservation areas, historic parks and gardens and other heritage assets within the local authority area. This leads the National Trust to conclude that the role of conservation officers in local authorities is “crucial to the success” of the new legislation.⁴⁵

24. The Bill would lead to new measures to train existing conservation officers in local authorities, a move welcomed by the sector. The Impact Assessment states that “English Heritage is in the process of planning its programme of training, support and capacity building for local authorities”.⁴⁶ However, the evidence from this inquiry, and our earlier heritage inquiry, indicates that there are grave concerns that there will not be sufficient conservation officers in place to implement the reforms that the Bill will introduce. Asked to comment on the provision for training made within the Bill, Mike Brown, a Trustee of IHBC, responded: “I think the question is: are the conservation officers there in the first place to train?”⁴⁷ The LGA reports that the recruitment and retention of conservation officers is a persistent problem.⁴⁸ John Preston, Historic Environment Manager for Cambridge City Council and Education Secretary for IHBC, goes as far as to say the current shortage has reached “near crisis proportions”.⁴⁹

25. Due to a skewed age profile, the LGA and IHBC expect a large number of conservation officers to retire in the next five years.⁵⁰ 55.4% of conservation officers affiliated with the IHBC are aged 50 and over, while 79.1% are aged 40 and over.⁵¹ Meanwhile, the stream of new officers is drying up: undergraduate courses on architectural/building conservation at the Universities of Derby, Huddersfield, Northumbria, Glamorgan and Preston have all recently been discontinued. The IHBC reports that “there are no longer any degree level courses in conservation left in the country”.⁵²

26. Despite this evidence, and the fact that the IHBC’s data came in part from research commissioned by English Heritage, DCMS and English Heritage denied that a problem exists. The Minister said that “it is not a bad age profile[...]it looks as if we will be alright for 20 years on the age profile we have got”.⁵³ The Chief Executive of English Heritage

⁴³ Ev 117

⁴⁴ *Ibid.*

⁴⁵ Ev 83

⁴⁶ *Impact Assessment: Draft Heritage Protection Bill*, April 2008, page 18

⁴⁷ Q 22

⁴⁸ Ev 2

⁴⁹ Ev 132

⁵⁰ Ev 2; Ev 6; Q 19

⁵¹ Ev 15–16. Calculation made from the data provided at the end of the submission. A total of 245 (or 67%) of authorities have an in house IHBC member on their staff

⁵² Q 22

⁵³ Q 73

insisted that “it does not look as if there is going to be a great exodus in the next few years”.⁵⁴

27. We find the comments by DCMS and English Heritage that there is unlikely to be a shortage of conservation officers in local government in future years astonishing. There is already a shortage of conservation officers in the country and, aside from English Heritage, the sector appears united in its recognition that there will be not be the staff with the necessary skills to replace existing conservation officers once they retire. The statistics provided by the IHBC would seem to support this finding. We urge the Government and English Heritage to reconsider their approach to this matter. Conservation officers, in sufficient numbers and with adequate training, will be critical to the successful implementation of the Bill. We recommend that the Government sets out a strategy for maintaining sufficient numbers of conservation officers with the necessary skills.

28. Proponents of the reforms, particularly English Heritage, have emphasised the need to treat the historic environment holistically.⁵⁵ Training needs will therefore extend well beyond the legislative reforms themselves, and beyond merely the specialists in the sector. In addition to training conservation officers, it will be necessary to train councillors, planning officers, administrators and other specialist professionals who have a role to play in the implementation of the legislation. It is unclear from the Impact Assessment whether allowance has been made for training of these non-specialists or whether the costs identified in the impact assessment extend only to the heritage protection reforms, rather than the identified needs of the full range of heritage services. **We recommend that the Impact Assessment is revised to provide greater clarity on who will receive training, and by whom, as part of the reforms to be introduced by the Bill.**

4 Heritage Partnership Agreements

29. Clauses 157–160 of the draft Bill provide a statutory framework for a new system of management agreements for owners of large estates or complex sites. These arrangements, which would be agreed by all interested parties involved in the management of a particular site, such as owners, local authorities and amenity societies, and which would be approved by English Heritage, would be known as Heritage Partnership Agreements (HPAs). HPAs would give an owner permission to carry out certain types of work on the site (usually repetitive and/or small-scale works) without needing to apply for specific consent for each individual piece of work. DCMS hopes that HPAs will remove the necessity for repetitive consent applications for similar works, “reducing bureaucratic and administrative burdens for owners and local authorities, and providing certainty on the long-term management of the site”.⁵⁶

⁵⁴ Q 74

⁵⁵ E.g. The then Chairman of English Heritage, Sir Neil Cossons, described in the introduction to *Power of Place*, a review of policies relating to the historic environment published in February 2000, that “the historic environment is seen by most people as a totality. What people care about is the whole of their environment”

⁵⁶ *Impact Assessment: Draft Heritage Protection Bill*, April 2008, page 19

30. In 2004-05, English Heritage undertook 24 HPA pilot schemes in order to assess the effectiveness of the proposal. However, English Heritage told us that “as some of them started it became apparent quite quickly that they either were not going to work or they were not going to be saving any time or money”.⁵⁷ Only nine of these pilots were ever completed.⁵⁸ Nonetheless, the University of East Anglia, which introduced a HPA pilot scheme in 2004, told us that the HPA pilot had led to “an enormous saving in resources, time and cost for all three stakeholders—UEA, the local planning authority and English Heritage”.⁵⁹ It estimated that the HPA had cost £70,000 to set up, but had already saved the University about £250,000 in statutory and professional fees, because works compliant with the HPA have been implemented without Listed Building Consent.⁶⁰

31. It is therefore no surprise that the UEA believes there is scope for the application of HPAs elsewhere. The concept is also supported by participants in some of the other pilot projects, such as Rochester Cathedral, London Underground, Cornwall County Council and British Waterways.⁶¹ However, the UEA was also keen to stress that HPAs should not be considered universally applicable. It pointed out that there is a big investment required to set up a HPA, and the long-term benefits will not always outweigh this initial expenditure.⁶² English Heritage agreed, cautioning that HPAs are only really useful where you are dealing with large estates where you have a single owner with multiple buildings.⁶³ Westminster City Council notes that this definition may include many of the urban estates in Central London, which comprise large numbers of historic buildings. It is concerned that “there could be considerable demand for HPAs from a significant number of property owners [that] would involve considerable local planning authority resources, especially at the initial stages”.⁶⁴ It requested that local authorities should have the option to refuse applications for HPAs.⁶⁵ In response the Chief Executive of English Heritage pointed out that “a HPA can only be put in place with the agreement of the local authority”.⁶⁶

32. The Impact Assessment published alongside the draft Bill states that it hopes the take-up of HPAs will be high among owners of sites that require repetitive applications each year. However, it also notes that only 250 listed building sites out of 500,000 in England have made six or more consent applications in the last three years.⁶⁷ Indeed, Westminster City Council indicated that in the case of Piccadilly Circus underground station (another of the HPA pilots), fewer than 50 listed building consent applications had been received in the last 24 years. This, it claimed, had not been an onerous burden. It therefore questioned

⁵⁷ Q 87

⁵⁸ Q 87

⁵⁹ Ev 20

⁶⁰ *Ibid.*

⁶¹ Ev 64; Ev 67; Ev 90; Ev 137

⁶² Q 24

⁶³ Q 91

⁶⁴ Ev 158

⁶⁵ Q 31

⁶⁶ Q 93

⁶⁷ *Impact Assessment: Draft Heritage Protection Bill*, April 2008, page 19

DCMS's suggestion that a rate of two applications per year would justify the work required in setting up a HPA.⁶⁸

33. The Impact Assessment makes a projection of the costs and savings of HPAs. The predicted initial cost to introduce a HPA of £571,391 is countered by annual savings of £327,424.⁶⁹ However, this projection is based on the findings of a single pilot scheme, for Cornish bridges. The Impact Assessment gives no justification of why the Cornwall pilot was chosen for this calculation and not the other pilot HPAs, other than that it provided “robust data in its evaluation”.⁷⁰ In fact, alongside the UEA and London Underground pilot schemes, the Cornwall HPA is considered the most successful.⁷¹ There are therefore justifiable concerns that the savings demonstrated in Cornwall (and the UEA) may not be repeated elsewhere.⁷²

34. We recognise that Heritage Partnership Agreements (HPAs) have, in a limited number of cases, offered significant cost savings. However, we are not convinced that a robust business case for the widespread introduction of HPAs has yet been demonstrated. We therefore recommend that the number of HPAs is restricted until there is more consistent evidence to justify their wider implementation. We welcome the statement from English Heritage that HPAs may only be introduced with the agreement of the relevant local authority. Nevertheless, the Government will need to define very tightly the type of estates which may be considered for HPAs to ensure that inappropriate applications are not an unnecessary drain on local authority resources.

5 Enforcement

35. English Heritage emphasises the benefits of positive management of the historic environment that will flow from the Bill. It refers to this as “constructive conservation”.⁷³ However, it became clear during the Committee’s inquiry in 2006 that not all stewardship of heritage assets is benign or altruistic. Disregard for the historic environment can take two forms:

- unauthorised work in the form of damaging alterations or demolitions without prior consideration of the merits of the building or the proposed works; and
- neglect of buildings and monuments which then become “at risk” of decay.

It is estimated that there are approximately 37,000 listed buildings “at risk” in England (about 8% of the total number of listed buildings).⁷⁴

⁶⁸ Ev 158

⁶⁹ *Impact Assessment: Draft Heritage Protection Bill*, April 2008, page 19

⁷⁰ *Ibid.*

⁷¹ Ev 37

⁷² Q 26; Ev 3; Ev 70; Ev 137

⁷³ Ev 37

⁷⁴ The figures in paragraph 160 of our 2006 report an estimated 7.3% at-risk based on a 1990–91 English Heritage sample of 43,000 buildings with another 14.6% as vulnerable; *Buildings at Risk 2005*, English Heritage

36. In maintaining an historic building, the onus is on the local authority to step in when serious neglect has occurred, not on the owner to keep it in a reasonable state of repair.⁷⁵ The absence from the Bill of a duty of care on owners is criticised by the Society for the Protection of Ancient Buildings and the Standing Conference on London Archaeology, both of which argue that it represents a missed opportunity to encourage or require preventative maintenance.⁷⁶

37. The Chief Executive of English Heritage told us that “enforcement is a planning issue and it is not a heritage issue” and “it is not part of heritage protection legislation”.⁷⁷ He insisted that the powers are all there and the difficulty was in persuading those who have the powers (the local authorities) to use them.⁷⁸ In the case of unauthorised works, current guidance in PPG15 encourages local authorities to prosecute where a good case can be made.⁷⁹ Furthermore, in 2006 DCLG published “Best Practice Guidance on Listed Building Prosecutions” to encourage local authorities to use their enforcement powers more frequently. However, Carrick District Council stressed the resource limitations under which local authorities operate, remarking that enforcement officers are already “incredibly pushed”.⁸⁰ The CLBA believed that “the real problem with heritage protection is not the law: it is implementation and enforcement”.⁸¹ Yet the Minister told us that she was “quite satisfied that we do exercise the enforcement powers pretty well at present”.⁸²

38. Neither DCMS nor English Heritage presented any evidence that they have reviewed the operation or effectiveness of current enforcement powers. Nor do they appear to have considered any amendments to the legislation which would improve the operation or effectiveness of these powers or reinforce the guidance published by DCLG. We consider that such a review should be conducted as a matter of urgency and the results published with a view to improving the operation of the legislation.

39. Clause 130 of the draft Bill proposes that a local planning authority may only issue a heritage asset enforcement notice after consultation with English Heritage (or, in Wales, Welsh Ministers). We received evidence from the ex-Head of Land-Use Planning at English Heritage that this will place a further burden on English Heritage resources.⁸³ It would also appear to run counter to the statements by the Chief Executive of English Heritage about encouraging local authority action and the Minister’s view about streamlining.

40. We take the view that this additional stage of consultation would be likely to render the enforcement powers even less effective than at present and recommend that this requirement be removed.

⁷⁵ Q 83

⁷⁶ Ev 64; Ev 124

⁷⁷ Q 81

⁷⁸ Q 80

⁷⁹ Planning Policy Guidance 15: Planning and the historic environment, para 3.47

⁸⁰ Q 8

⁸¹ Ev 116

⁸² Q 79

⁸³ Ev 143

6 Other issues raised

41. It was evident to us in our heritage inquiry in 2006 that one of the great strengths of the sector is its diversity. The same was apparent in this inquiry as we received a wide range of submissions concerning omissions from, or improvements to the draft Bill, the merits of which we were unable to assess in the limited time available to us.

42. The Committee is also conscious that a number of those who submitted evidence to us tailored their responses to the terms of reference of our inquiry. Many of these bodies also responded directly to DCMS in greater detail as part of the consultation on the draft Bill.

43. The Bill represents a significant opportunity for reform, but its incompleteness and the absence of the associated secondary legislation has left the Committee guessing about whether important issues may have been missed by DCMS and DCLG which might otherwise not be evaluated again for many years. We therefore recommend that the two departments review a number of issues brought to our attention in the submissions, but not referred to elsewhere in this report.

44. These are not in order of priority but are as follows:

- Examination of the potential to incorporate clauses within the Bill fostering the role of preventative maintenance of heritage assets before their condition requires statutory intervention to prompt repair;⁸⁴
- Establishment of a clearer context for the involvement of the national museums⁸⁵ and the voluntary sector (including local civic and amenity societies, historical and archaeological groups) by incorporating the word “organisations”—as well as individuals—into the category of those with special knowledge or interest to assist heritage authorities;⁸⁶
- In the absence of detail about local designation in the draft Bill; review of the case for a statutory duty upon local authorities to develop and maintain local lists of heritage assets;⁸⁷
- Review of the role of the National Amenity Societies to ensure they are notified about applications to demolish heritage structures, not just in cases of new designations;⁸⁸
- Greater clarity about the role of the National Amenity Societies in the scrutiny of Heritage Partnership Agreements;⁸⁹

⁸⁴ Ev 64; Ev 124

⁸⁵ Ev 133

⁸⁶ Ev 56, Ev 135

⁸⁷ Ev 114–115

⁸⁸ Ev 123

⁸⁹ Ev 123

- The incorporation of appropriate recognition (rather than the abolition of) Areas of Archaeological Importance (AAIs);⁹⁰
- Revocation of the current Class Consents Order⁹¹ as outlined in the Heritage White Paper for Class 1 consents relating to agricultural, horticultural and forestry operations on (former) scheduled ancient monuments;⁹²
- Consideration of a Class Consents procedure within the Bill’s provision for Heritage Partnership Agreements;⁹³
- Review of the registration of open spaces as heritage assets in England to accord with the wider definition in Wales;⁹⁴
- Review of the role of the DCMS National Historic Ships Unit in relation to the assignment of responsibility for designating marine assets to English Heritage;⁹⁵
- Greater clarity to statutory definitions including those related to “national importance” rather than “special archaeological importance”;⁹⁶ “fixtures and fittings” rather than definition by case law;⁹⁷ “special interest” for historic assets of both national and local interest;⁹⁸ and terminology relating to earthworks, archaeological remains and battlefields so that metal-detector users can better understand their legal obligations (e.g. under the Portable Antiquities Scheme);⁹⁹
- Review of appropriate buffer zones for World Heritage Sites in circumstances where conservation area designation is not appropriate or likely to be an ineffective means of planning control and where DCLG needs to provide context for this through Local Development Frameworks;¹⁰⁰
- Recognition under the criteria for justifying the designation heritage assets of the “technical interest” (of engineering structures) in the same way that “architectural interest” recognises the separate built-environment disciplines of architecture from engineering;¹⁰¹
- Further consideration of the designation of Ancient Trees as heritage assets as outlined by arboricultural organisations on the basis of their age and close association with

⁹⁰ Ev 8; Ev 58

⁹¹ Under the Ancient Monuments (Class Consents) Order 1994

⁹² Ev 57–58

⁹³ Ev 80

⁹⁴ Ev 64

⁹⁵ Written evidence from Wynford Davies [not printed]

⁹⁶ Ev 57

⁹⁷ Written evidence from the British Institute of Organ Studies [not printed]

⁹⁸ Ev 124; Ev 129

⁹⁹ Ev 65

¹⁰⁰ Ev 62, Ev 73, Ev 106–107, Ev 125

¹⁰¹ Written evidence from Richard Adam [not printed]

people and events; and identification of responsibility within central government for the establishment of a national record of these assets;¹⁰²

- Further review of marine designations in relation to the transfer of the registration of marine designations to English Heritage from the Secretary of State; the identification of appropriate expertise; the reforms of Salvage Law; the relationship to the Receiver of Wrecks; the protection of inter-tidal sites; the encouragement of reporting of marine discoveries to archaeologists; the introduction of Class Consents to obviate the provision for “unintrusive diving”; the introduction of better management through marine HPAs; and recognition of the Maritime Management Organisation as a “relevant” authority with a duty to have regard for registered assets.¹⁰³

¹⁰² Ev 150–151

¹⁰³ Ev 101; Written evidence from Wessex Archaeology [not printed]

Conclusions and recommendations

1. We welcome the provision of the long-awaited heritage legislation and support the Government in its aim to reform, modernise, and streamline the present system. We particularly welcome the intention to put “heritage at the heart of planning”, yet see little evidence to suggest that the Department for Communities and Local Government (DCLG) has had any significant involvement with the draft Bill thus far. The success of the proposed reforms will depend a great deal on additional planning guidance and funding from DCLG. The Government must therefore maintain its commitment to DCLG being an active participant in the passage of the new legislation. (Paragraph 7)
2. The Committee values the opportunity to undertake pre-legislative scrutiny of the draft Bill, yet the effectiveness of this process has been undermined by the incomplete nature of the legislation. We find it deeply disappointing that we have not had the opportunity to review the draft Bill in its entirety. The sector has been denied the opportunity to examine thoroughly all aspects of the proposed legislation, in what amounts to a fundamental modernisation of the heritage protection system. We recommend that a complete schedule of all further necessary legislation and guidance be published as soon as possible, together with a timetable and arrangements for appropriate consultation and implementation. (Paragraph 11)
3. The Government must prioritise the revision of PPGs 15 and 16 to ensure that the new guidance on planning policy can be implemented at the same time as the Bill. It would be unsatisfactory for the heritage sector to be consulted on the draft Bill without also being consulted on a draft of the revised planning guidance. The sector must have the opportunity to reflect upon the complete package of reforms. (Paragraph 14)
4. We recommend that the Government ensures that the role of statutory consultees such as the Theatres Trust is properly incorporated into the heritage protection reforms in addition to their existing role in the planning system. (Paragraph 15)
5. The Minister’s claim that the Bill will be “pretty cost neutral” is not borne out by the evidence we received from those who will ultimately implement it. The decision taken by DCMS amongst others to review the current cost estimate casts further doubt on this claim. We strongly recommend that the Government ensures that the revised impact assessment gives a more realistic estimate of costs. The Government must heed the warnings from the sector that an inadequately resourced Bill could be a backwards step for heritage protection. It should proceed with the Bill, but only if it is fully aware of, and willing to meet, its full cost. (Paragraph 21)
6. We find the comments by DCMS and English Heritage that there is unlikely to be a shortage of conservation officers in local government in future years astonishing. There is already a shortage of conservation officers in the country and, aside from English Heritage, the sector appears united in its recognition that there will be not be the staff with the necessary skills to replace existing conservation officers once they retire. The statistics provided by the IHBC would seem to support this finding. We

urge the Government and English Heritage to reconsider their approach to this matter. Conservation officers, in sufficient numbers and with adequate training, will be critical to the successful implementation of the Bill. We recommend that the Government sets out a strategy for maintaining sufficient numbers of conservation officers with the necessary skills. (Paragraph 27)

7. We recommend that the Impact Assessment is revised to provide greater clarity on who will receive training, and by whom, as part of the reforms to be introduced by the Bill. (Paragraph 28)
8. We recognise that Heritage Partnership Agreements (HPAs) have, in a limited number of cases, offered significant cost savings. However, we are not convinced that a robust business case for the widespread introduction of HPAs has yet been demonstrated. We therefore recommend that the number of HPAs is restricted until there is more consistent evidence to justify their wider implementation. We welcome the statement from English Heritage that HPAs may only be introduced with the agreement of the relevant local authority. Nevertheless, the Government will need to define very tightly the type of estates which may be considered for HPAs to ensure that inappropriate applications are not an unnecessary drain on local authority resources. (Paragraph 34)
9. Neither DCMS nor English Heritage presented any evidence that they have reviewed the operation or effectiveness of current enforcement powers. Nor do they appear to have considered any amendments to the legislation which would improve the operation or effectiveness of these powers or reinforce the guidance published by DCLG. We consider that such a review should be conducted as a matter of urgency and the results published with a view to improving the operation of the legislation. (Paragraph 38)
10. We take the view that this additional stage of consultation would be likely to render the enforcement powers even less effective than at present and recommend that this requirement be removed. (Paragraph 40)
11. The Bill represents a significant opportunity for reform, but its incompleteness and the absence of the associated secondary legislation has left the Committee guessing about whether important issues may have been missed by DCMS and DCLG which might otherwise not be evaluated again for many years. We therefore recommend that the two departments review a number of issues brought to our attention in the submissions, but not referred to elsewhere in this report. (Paragraph 43)

Formal Minutes

Tuesday 22 July 2008

Members present:

Mr John Whittingdale, in the Chair

Paul Farrelly
Alan Keen

Helen Southworth

Draft Report (*Draft Heritage Protection Bill*), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 44 read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Eleventh Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Written evidence was ordered to be reported to the House for printing with the Report.

Written evidence was ordered to be reported to the House for placing in the Library and Parliamentary Archives.

Ordered, That the Chairman do make the Report to the House.

[Adjourned till Tuesday 7 October at 10.15 a.m.]

Witnesses

Tuesday 1 July 2008

	<i>Page</i>
Paul Raynes , Programme Director, Local Government Association, Mike Brown , Trustee, Institute of Historic Building Conservation, Jan Wills , Executive Committee Member, Association of Local Government Archaeological Officers, and Dr Alyson Cooper , Conservation Team Leader, Carrick District Council	Ev 8
Robert Ayton , Head of Design and Development, Westminster City Council, and Joseph Saunders , Estate Development Director, University of East Anglia	Ev 21
Anthea Case CBE , Chairman, and Matthew Slocombe , Trustee, Heritage Link	Ev 28
Peter Hinton , and Dr Gill Chitty , Archaeology Forum	Ev 32

Wednesday 2 July 2008

Rt Hon Margaret Hodge MP , Minister of State, Department for Culture, Media and Sport, and Dr Simon Thurley , Chief Executive, English Heritage	Ev 45
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List of written evidence

1	Local Government Association (LGA)	Ev 1
2	Institute of Historic Building Conservation (IHBC)	Ev 4, Ev 15
3	Association of Local Government Archaeological Officers for England (ALGAO): England	Ev 7
4	Carrick District Council	Ev 16
5	Westminster City Council	Ev 17; Ev 157
6	University of East Anglia	Ev 18
7	Heritage Link	Ev 23
8	Archaeology Forum	Ev 29
9	English Heritage	Ev 36
10	Institute of Field Archaeologists (IFA)	Ev 54
11	Council for British Archaeology (CBA)	Ev 56
12	Wakefield Historical Society	Ev 59
13	Dr Philip Whitbourn OBE	Ev 61
14	Standing Conference on London Archaeology (SCOLA)	Ev 63
15	Rochester Cathedral	Ev 64
16	Portable Antiquities and Treasure Scheme, British Museum	Ev 64
17	Association of Chief Archivists in Local Government (ACALG)	Ev 65
18	Heritage Partnership Agreements	Ev 66
19	Cornwall County Council	Ev 66

20	Dr Hazel Conway	Ev 67
21	Association of Small Historic Towns and Villages (ASHTAV)	Ev 67
22	The Cambridge Colleges' Bursars' Environment and Planning	Ev 68
23	London Diocesan Advisory Committee (DAC)	Ev 71
24	Safer and Stronger Communities Select Committee, Surrey County Council	Ev 72
25	Local Authority World Heritage Forum (LAWHF)	Ev 73
26	English Historic Towns Forum (EHTF)	Ev 73
27	The Association of Gardens Trusts	Ev 75
28	National Trust	Ev 77
29	The Theatres Trust	Ev 84
30	Association of Local Government Archaeological Officers for Wales (ALGAO: Cymru)	Ev 86
31	RESCUE, The British Archaeological Trust	Ev 87
32	British Waterways	Ev 89
33	Wiltshire Archaeological and Natural History Society (WANHS) and Campaign to Protect Rural England (CPRE) Wiltshire Branch	Ev 90
34	Wiltshire County Council	Ev 93
35	British Property Federation (BPF)	Ev 94
36	Historic Environment Record Officer, Southampton City Council	Ev 96
37	Surrey County Council Heritage Conservation Team	Ev 96
38	Kent County Council Environment and Waste	Ev 98
39	Cathedral and Church Buildings Division of the Archbishops' Council of the Church of England	Ev 99
40	Joint Nautical Archaeology Policy Committee (JNAPC)	Ev 100
41	John Price	Ev 103
42	ICOMOS-UK	Ev 105
43	Garden History Society	Ev 109
44	Joint Committee of the National Amenity Societies	Ev 113
45	Country Land and Business Association	Ev 115
46	Society for the Protection of Ancient Buildings (SPAB)	Ev 122
47	London Fire Brigade (LFB)	Ev 126
48	Quarry Products Association (QPA)	Ev 127
49	Association of Greater Manchester Authorities (AGMA)	Ev 128
50	J K Preston	Ev 130
51	Teresa Kirk, Victoria and Albert Museum	Ev 133
52	Heritage Lottery Fund (HLF)	Ev 133
53	Campaign to Protect Rural England (CPRE)	Ev 134
54	Ministry of Defence (MOD)	Ev 135
55	London Underground	Ev 137
56	Historic Houses Association (HHA)	Ev 138: Ev 153
57	Michael J Coupe	Ev 143
58	City of York Council	Ev 146
59	The Tree Council, the Ancient Tree Forum (ATF) and the Woodland Trust	Ev 149
60	The Scole Committee	Ev 152

61	Greater London Authority (GLA)	Ev 152
62	Hugh Bayley MP	Ev 153
63	The Rollright Trust	Ev 154

List of unprinted evidence

The following memoranda have been reported to the House, but to save printing costs they have not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Parliamentary Archives, and are available to the public for inspection. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

Wynford Davies

The British Marine Aggregate Producers Association (BMAPA)

The British Institute of Organ Studies (BIOS)

Richard Adam

Wessex Archaeology

List of Reports from the Committee during the current Parliament

Session 2005–06

First Special Report	Maritime Heritage and Historic Ships: Replies to the Committee's Fourth Report of Session 2004-05	HC 358
First Report	Broadcasting Rights for Cricket	HC 720
Second Report	Analogue Switch-off	HC 650 I, II
Third Report	Preserving and Protecting our Heritage	HC 912 I, II, III
Fourth Report	Women's Football	HC 1357
Second Special Report	Women's Football: Replies to the Committee's Fourth Report of Session 2005–06	HC 1646

Session 2006–07

First Report	Work of the Committee in 2006	HC 234
Second Report	London 2012 Olympic Games and Paralympic Games: funding and legacy	HC 69 I, II
Third Report	Call TV quiz shows	HC 72
Fourth Report	Call TV quiz shows: Joint response from Ofcom and ICSTIS to the Committee's Third Report of Session 2006-07	HC 428
Fifth Report	New Media and the creative industries	HC 509 I, II
Sixth Report	Caring for our collections	HC 176 I, II
Seventh Report	Self-regulation of the press	HC 375
First Special Report	Self-regulation of the press: Replies to the Committee's Seventh Report of Session 2006–07	HC 1041

Session 2007–08

First Report	Public service content	HC 36 I, II
First Special Report	Public service content: Response from Ofcom to the Committee's First Report of Session 2007–08	HC 275
Second Report	Ticket touting	HC 202
Third Report	Work of the Committee in 2007	HC 234
Fourth Report	BBC Annual Report and Accounts 2006–07	HC 235
Fifth Report	On-course horserace betting	HC 37
Second Special Report	On course horserace betting: Government Response to the Committee's Fifth Report 2007–08	HC 549
Sixth Report	London 2012 Games: the next lap	HC 104 I, II
Seventh Report	European Commission White Paper on Sport	HC 347
Third Special Report	European Commission White Paper on Sport: Government Response to the Committee's Seventh Report 2007–08	HC 1029
Eighth Report	Tourism	HC 133 I, II
Ninth Report	Draft Cultural Property (Armed Conflicts) Bill	HC 693
Tenth Report	Harmful Content on the Internet and in Video Games	HC 353 I, II

Oral evidence

Taken before the Culture, Media and Sport Committee

on Tuesday 1 July 2008

Members present

Mr John Whittingdale, in the Chair

Mr Nigel Evans
Alan Keen

Rosemary McKenna
Mr Adrian Saunders

Memorandum submitted by the Local Government Association (LGA)

ABOUT US

The Local Government Association (LGA) promotes the interests of English and Welsh local authorities—a total of just under 500 authorities. These authorities represent over 50 million people and spend around £74 billion a year on local services.

FOCUS OF OUR SUBMISSION

This submission focuses on the three areas the Culture, Media and Sport Select Committee are seeking views on:

- (i) The overall aims and scope of the draft Bill;
- (ii) The estimates of costs and benefits set out in the Impact Assessment published alongside the draft Bill; and
- (iii) The staffing and skill levels needed for effective implementation of the provisions in the draft Bill

1. *The overall aims and scope of the draft Bill*

Building on the LGA response in June 2007 to the Heritage Protection White Paper, the LGA supports the key proposals in the Draft Bill which we feel represents a step change in heritage protection. The LGA believe the Bill will create a more efficient and open system, giving local councils and English Heritage better tools to protect the environment.

The LGA feels that links to planning in the current draft Bill are; weak and need strengthening as the Bill moves forward. It is vital that the relevant Government Departments (DCMS and CLG) work together to ensure that heritage is at the heart of the planning system—a key aim of the heritage protection reforms. There will need to be revisions to planning policy and guidance, in particular PPG 15 and PPG 16. A detailed look at these will be required and it would be helpful if the government could be more specific about the timing of this. It is difficult to understand the whole picture in relation to the reforms if documents relating to the legislation are revised and published in an ad hoc way.

The LGA believes it is important that English Heritage engages and connects with local authorities on Heritage Protection Reform and its implications—particularly as local authorities are a crucial delivery agent. The LGA is working closely with English Heritage on developing a joint conference to take place in early 2009 aimed at officers and members. The aim of the event is to outline the changes impacting on local authorities as a result of the Bill; share best practice on the how the historic environment can meet wider objectives such as climate change and economic prosperity; and update local authorities on capacity building, training and support from English Heritage to help implement key proposals in the Bill. This will be a key opportunity for English Heritage to engage with local authorities.

The LGA, working with advisers, welcome the opportunity to help shape the future of heritage protection by close engagement and working with English Heritage and DCMS on the detail of proposals in the Draft Bill.

2. *The estimates of costs and benefits set out in the impact Assessment published alongside the draft Bill*

The LGA would welcome assurances that English Heritage is equipped to deal with the resource implications of the new responsibilities and procedures (impacting on both English Heritage and local authorities) set out in the Draft Bill, particularly in the short term.

A figure of £7.2 million has been allocated in the CSR for heritage protection reform over three years to fund all activities. The bulk of this funding is in 2010–11 (the year the Act is due to commence). English Heritage had previously made it clear to the CMS Select Committee that there would be greater “up-front” costs before the long-term savings would be seen.

The LGA is concerned about the resourcing specifically in relation to local authority conservation which has been highlighted as an issue through our network of advisers. A number of local authorities face severe resource constraints (mainly due to the non-statutory nature of the service and the need to prioritise resource locally).

The statutory duty for some local authorities (top-tier) to maintain Historic Environment Records (HERs) and make them fully accessible is a new burden. Therefore English Heritage has advised the cost of getting all records to an adequate level and then year on year maintenance will be covered by English Heritage and DCMS. The statutory duty is broadly welcomed by local authorities who feel it will help make the case for investment in heritage services. More resources are likely to be required to make HERs statutory than are identified in the Impact Assessment, but such additional resources are unlikely to be substantial.

Following discussions between Sir Simon Milton, Chairman of the LGA and Simon Thurley, Chief Executive of English Heritage, we have agreed the scope of detailed work on costings which will involve English Heritage, DCMS, CLG and LGA advisers. The scoping document will be provided to the Select Committee for information. A working group has been established to deliver this involving the key players. It is hoped this work, which we are proposing to deliver to DCMS by the end of July, will also help inform the CMS Committee process.

3. *The staffing and skills levels needed for effective implementation of the provisions in the draft Bill*

The recruitment and retention of Conservation Officers is a persistent problem, including the skewed age profile of the profession which will see a large number retire in the next five years. This could impact on effective implementation of the provisions in the draft Bill if not carefully considered and measures put in place to address—measures that go beyond training existing Conservation Officers.

IMPLEMENTATION COSTS OF HERITAGE PROTECTION REFORM SCOPING PAPER ON FURTHER WORK

INTRODUCTION

The LGA has expressed concerns about the resourcing of the heritage protection reforms and has welcomed assurances that English Heritage is equipped to deal with the resource implications of the new responsibilities and procedures (impacting on both English Heritage and local authorities) set out in the Draft Bill, particularly in the short term.

Sir Simon Milton, Chairman of the LGA, recently met with Simon Thurley, Chief Executive of English Heritage. He expressed the LGA’s concerns about resourcing. A key outcome of this meeting was the need to undertake a rapid review of the cost implications for local authorities and English Heritage—involving English Heritage, DCMS, CLG and LGA advisers.

RATIONALE

It is in the best interests of central government, English Heritage and local government to test the costs highlighted in the Impact Assessment, published alongside the draft Bill. If the costs are found to be inadequate, it is important this is identified early in the draft Bill process and will ensure there is the opportunity to feed into discussions on the next spending review. It is vital that we do not end up in a position similar to where we find ourselves in relation to the Licensing Act 2003—where the costs of implementing were hugely underestimated by central government and not adequately funded for—resulting in a shortfall to councils at a time when budget pressures are high and in the context of a tight local government settlement.

This review will also be a useful contribution to the Culture, Media and Sport Select Committee. They have recently called for evidence on the estimates of costs and benefits set out in the Impact Assessment and

although this work won't be finalised in time for the 16 June submission deadline, it will send a positive signal and reassure the Committee that all players are taking the issue of resourcing seriously and can feed into the ongoing parliamentary scrutiny process.

KEY COMPONENTS/SCOPE

This piece of work should be about:

- challenging and testing the existing Impact Assessment and identifying what is missing and how it can be refined (note a new IA will be published when the draft Bill becomes a full Bill);
- the costs to English Heritage and local authorities in the run-up to implementation and any recurring costs (to help feed into the next CSR);
- examining the estimated savings and efficiencies brought about by a reformed system; and
- a discussion between relevant specialists (see delivery section page 3).

The work should focus on the costs in the following key areas:

1. *Heritage Partnership Agreements*

An evaluation was published by DCMS in 2007 which should be revisited. Cornwall is cited in the IA as an example of a successful HPA, but not all HPAs have been successful and further work is needed on the monetary aspects of a number of the pilots.

2. *Conservation services*

There is concern, particularly from IHBC, about the resourcing specifically in relation to local authority conservation. This issue should be investigated and further data and evidence needs to be collected and analysed by the group in order to estimate more accurately new burdens and other implementation issues. Areas which will be looked at specifically are local authority resources for historic environment services, and the recruitment, retention and age profile of Conservation Officers

3. *Historic Environment Records*

The statutory duty for some local authorities (top-tier) to maintain Historic Environment Records (HERs) and make them fully accessible is a new burden. DCMS is committed to meeting the cost of any ongoing new burdens placed on local authorities by the Bill in relation to HERs, and English Heritage will provide funding for any associated one-off transitional costs. The statutory duty is broadly welcomed by local authorities who feel it will help make the case for investment in heritage services. The current figures given in the IA will be re-evaluated as part of the work of this group.

4. *Devolving consent regimes*

A single "Historic Asset Consent" will replace separate Listed Building and Scheduled Monument Consent. Conservation Area Consent will be merged with Planning Permission.

Local authorities will be given the powers to grant all new Historic Asset Consents—abolishing the role of central government in granting Scheduled Monument Consent (around 2% of all applications).

This piece of work should test the current IA's costings in this area.

5. *Devolving the Management of Scheduled Monuments*

Scheduled monuments are currently managed by English Heritage. The role is however not mentioned in the bill or other documentation issued to date, nor in the Regulatory Impact Assessment. Will this role also be devolved to local authorities and if so, what will be the financial implications?

The group will identify further areas where work on costs and savings is needed. An area which has already been identified is local lists.

DELIVERY

Mechanism

A Steering Group has been established as follows:

Paul Raynes, LGA;
Bob Kindred, IHBC;
Stewart Bryant, ALGAO;
Representative tbc, POS;
Sarah Buckingham, EH;
Owain Lloyd-James, EH;
Dave Bachelor, EH;
Andrew Lewis, DCMS;
John Tallantyre, DCMS; and
Phil Weatherby, CLG.

A sub group involving LGA, POS, IHBC, ALGAO, DCMS, EH and CLG is to be established to deliver the work. This will meet regularly over the next month and half. Steering Group members are asked to notify the LGA of their representatives by midday Friday 13 June.

The sub group will report to the full Steering Group by mid July on how this work is progressing.

Timescales

It is proposed that the work is finalised for submission to DCMS by the end of the July.

June 2008

Memorandum submitted by the Institute of Historic Building Conservation (IHBC)

1. The IHBC: The Institute of Historic Building Conservation (IHBC) is the professional body of the United Kingdom representing conservation specialists and historic environment practitioners. The institute is a registered charity and exists to establish the highest standards of conservation practice, to support effective protection and enhancement of the historic environment, and to promote heritage-led regeneration and access to the historic environment for all.

2. Statement of support & core evidence: The draft Bill has had an extended gestation period, and the IHBC has been involved at many key stages, often as an informal “sounding board” or a formal consultee. The institute has always welcomed the opportunity to contribute to the evolution of the Bill, providing comments informed by our membership’s unique multi-disciplinary and cross-sector conservation experience.

2.1 Our responses to the issues raised by the committee build on previous and current representations (all available at www.ihbc.org.uk):

- Culture Media and Sport Committee Inquiry into “Protecting, preserving and making accessible our nation’s heritage”; Evidence of The Institute of Historic Building Conservation, (IHBC, 2006).
- The Heritage White Paper Membership Consultation (IHBC, 2007).
- Response to the Heritage White Paper, Heritage protection for the 21st century, incorporating views of the RTPI, IHBC and RICS (IHBC, RTPI, RICS 2007).
- (Draft) Joint response to the draft heritage bill, still to be lodged, supported (at this time) by IHBC, RTPI, RICS and others.

The evidence to this Inquiry relies largely on current joint response to the draft Bill, though the actual statements here are exclusively the responsibility of the IHBC.

2.2 The IHBC’s long-standing individual and collective support for the aspirations underpinning the draft Heritage Bill reflects our awareness that the historic environment, properly supported and managed, encourages the growth of successful communities and secures extensive sustainable benefits. Adopting conservation approaches in managing change in historic places can:

- address economic and fiscal aspirations across society, from supporting sustainable SMEs to enabling heritage led regeneration;
- mitigate environmental pressures, through promoting low-waste practices, conserving embodied energy in existing structures and encouraging traditional, low carbon-footprint materials; and
- resolve social pressures, through embracing diversity, inclusion, quality of life indicators and associated cultural values.

Proper implementation of the proposed legislation will represent a turning point in how we realise the potential of our historic places.

3. The overall aims and scope of the draft Bill: The incomplete nature of the current draft Bill means that any responses must be seriously qualified. We do recognise the challenging timetable adopted for the development of the Bill, but it is impossible to address substantially many of the issues raised due to the lack of information. Comments on the draft bill are provisional until further detail is brought forward, a process that we anticipate will involve extensive further consultations.

3.1 Integration: Integration of heritage protection into wider government initiatives and priorities has been a recurrent concern of the IHBC through the history of the Bill (eg CMS Inquiry response, IHBC, 2006). Heritage protection must be intimately integrated with wider planning and related environmental management systems, including fiscal incentives for promoting conservation, such as investment funding for essential market intervention and “flat VAT” etc.

There is little clarity on the crucial matter of how the new regime will integrate with, and be supported by, the planning system. We recognise that this is not necessarily solely a matter for the Bill, but in the absence of detail, we urge the establishment of a coherent cross-government strategy to address the needs of historic environment conservation.

The IHBC has previously identified as priorities initiatives to link planning, investment and heritage protection, that together would help respond to the aspirations of the Heritage White Paper (eg CMS Inquiry response, IHBC, 2006, paras 3.8, 3.18, and after). Thus, the Bill, its statutory guidance, and complementary initiatives, should and could encompass:

- detailed statutory and non-statutory definitions of duties on local authorities, including possibly a statutory duty of care and specific statutory services;
- detailed, up-dated guidance on historic environment planning policy;
- clarifying and tightening conservation area controls;
- fiscal and investment strategies (including tax relief, such as “Flat VAT”) to support in the built heritage resource; and
- how Historic Environment Records sit in the planning service, as the core new statutory duty actually arising from the legislation;

We recognise that the new legislation and supporting material has not (at least as yet) been able to address all these challenges, or could not address some areas through primary legislation. However we welcome the strong encouragement the Bill will provide for a significantly higher standard of service through simplification; clarification; standardisation; integration of systems and the requirement to secure and consider specialist advice (Clause 106). Altogether, this should provide an important enabling opportunity for a more comprehensive heritage conservation regime.

3.2 Area & local designations: The central importance of the Conservation Area in community-based heritage management (“local delivery”) was identified in the joint response of key heritage professional bodies—IHBC, RTPI & RICS—following the publication of the Heritage White Paper (2007). The Conservation Area is the historic “place” to which most people relate, in which they live, work and play and where they want to see clear, logical and easily understood controls. Conservation area grant schemes have delivered substantial social and economic benefits, especially in under-performing areas. However, the draft Bill does not cover this area substantially. We are especially concerned that departmental responsibilities in government may ultimately be responsible for creating a new heritage protection system that, by failing to integrate Conservation Area protection, does not meet its aims and aspirations.

Clearly, as a tool in local designation, conservation area reform should also be examined in parallel with local listing. Both are recognitions of the importance to communities of the local and regional heritage, which is often held in greater affection and regard by the public than some nationally protected.

3.3 Local government responsibilities: Recent research recognises the current low priority given to conservation in local government, and the equally damaging failure there to integrate conservation services with wider corporate programmes.¹ At the same time, the draft Heritage Bill gives local authorities more direct ownership and greater strategic responsibility in the management of their historic environment. This is an important initiative. However given the parlous state of local government resources, and the myriad wider pressures there, a corresponding statutory duty that consists simply of having access to a Historic Environment Record does not, in our view, constitute a duty commensurate with the new responsibilities.

In the absence of more substantial duties, we are especially pleased to see that the Bill goes some way towards ensuring that adequate specialist direction is integrated into the management process by requiring expert advice to be received and to be taken into account (Clause 106). Though the clause needs some refinement, this is an important step forward.

¹ Historic Environment Local Delivery Project, Consolidated Report, (Atkins, April 2006), http://www.ihbc.org.uk/recent_papers/docs/Local%20Delivery%20Report%20by%20Atkins%202006.pdf

4. The estimates of costs and benefits set out in the Impact Assessment published alongside the draft Bill: The institute is convinced that the wider benefits accruing from properly implemented Heritage Protection Reform should bring about significant savings to government and society overall. At the very least the new processes presaged by the Bill should help streamline the planning and consent process and thereby play a role in reducing development and related costs (CMS Inquiry response, IHBC, 2006, paras 7–7.13). However we are less clear about the precise details of the immediate costs, in particular costs attached to transitional arrangements, or capacity pressures that may arise from varied or new areas of responsibility.

Both the Heritage White Paper and the draft Bill recognise that local planning authorities are the primary vehicle for managing historic environment conservation, and are central to the successful implementation of the new regime. In our opinion it is impossible to quantify precisely the impact of the proposed legislative changes on planning processes as they currently operate, a point supported in the Impact Assessment.

However we do warmly welcome the formal commitment by DCMS to underwrite capacity needs arising from any changes (Impact Assessment paras. 8 & 43). In the context of significant and potentially competing CMS capital and revenue commitments, it is critical that this commitment is maintained. For our part, and supported by the partners in our response to the Heritage Bill, we will help monitor the developing impact of the changes. We are keen to have positive and pro-active dialogue with the relevant departmental interests—DCLG in particular, as well as DCMS and the national heritage bodies—about the evolving needs under the new system, especially as we get a better understanding of its impacts.

We understand that all informed responses to the draft Bill will raise concerns about capacity in local authorities under the current and/or future legislative regimes. In this context, and given the huge pressures under which the current system operates—a matter on which the IHBC hopes to report further in the near future, as information becomes available—we call for resources to be dedicated urgently to improve the current situation. Research by the IHBC, funded by English Heritage, shows that in 2006 more than 10% of local planning authorities (excluding counties) have no internal conservation service of any type, and about 2% take no conservation advice of any form². Clearly we cannot refine a historic environment conservation service in line with the current proposals if that service does not actually exist!

So, even before the matter of the specific costs of the implementation are identified, at the very least there is an urgent need for immediate capacity building in local authority conservation services. This would ensure that, by the time the reforms begin, there is a baseline capacity in each local planning authority. Of course the IHBC is committed to providing guidance and advice to secure best value from such investment.

5. The staffing and skill levels needed for effective implementation of the provisions in the draft Bill: This matter is intimately tied to the issue of resource impacts.

The wide-ranging skills needs and activities in Historic Environment Conservation Services are outlined in the IHBC's consultation document on skills and services, "Caring for Places and People: Towards a common standard in historic environment conservation services and skills"³, itself a consolidation of recent practice-based research. We urge the committee to review the paper for its specification of a base-line conservation resource or service. The paper also supports the principle that conservation benefits arise when expert conservation advice and skills are properly integrated within the planning service.

Given the urgent need to focus on service definition and standards, we are especially pleased to see that the Bill goes some way towards ensuring that adequate specialist direction is integrated into the management process by requiring expert advice to be received and to be taken into account (Clause 106). However, while we strongly welcome a comprehensive training strategy from English Heritage to support the implementation of the new legislation, on its own it will not be able to address core limitations in the local authority services.

The poor salary structures offered to conservation staff significantly affect recruitment and retention—not least given the skills needs attached to the service, as noted in our consultation above—and will continue to do so in the future. The IHBC has built up an evidence base for salary trends in local authority which has shown a steady rise in advertised local authority conservation posts until 2004–05 and a steady decline since. Should this represent a long-term trend it will have significant impact on the implementation of the reforms. Coupled with this is the ageing profile at the upper end of the conservation profession that will see large numbers of experienced officers retiring just as the reforms come into place. We are concerned that, when there is a clear and worsening downward trend in core conservation staffing, the Impact Assessment states "the number of people working within . . . the heritage protection system in the future will not deviate from current trends".

Without specific targeted investment in the short term, conservation services will continue to be cut through corporate priority budgeting irrespective of the heritage reforms proposed. Going back to our earlier remarks about integrated delivery, this is not simply a matter for one department with a cultural or even a planning remit. Historic environment conservation capacity is an issue that must be addressed across government, just as government as a whole will benefit from the proper implementation of the proposed new legislation.

² "Quantifying local planning authority conservation staffing", IHBC 2006, http://www.ihbc.org.uk/recent_papers/docs/quantifying_lpa_conservation_staffing.pdf

³ See http://www.ihbc.org.uk/news/docs/people_place_consult.pdf

The institute does hope that you find this useful and would be very happy to explore any of the initiatives in further detail.

June 2008

**Memorandum submitted by the Association of Local Government Archaeological Officers for England
(ALGAO:England)**

1. THE ROLE OF ALGAO:ENGLAND

The Association of Local Government Archaeological Officers for England (ALGAO:England) is the national body representing local government archaeology services at County, District, Metropolitan, Unitary and National Park level in England. ALGAO:England co-ordinates the views of its member authorities (93 in total) and presents them to government and to other national organisations.

The range of interests of our members embraces all aspects of the historic environment including archaeology, buildings and the historic landscape. Of particular relevance to the draft Heritage Bill, ALGAO:England members are responsible for the management of all Historic Environment Records (HERs) and for the management of the 95% of the archaeological heritage which is not designated.

2. GENERAL COMMENT

ALGAO:England welcomes and supports the draft Heritage Bill and its proposals to unify the system of heritage designations and consents and to make the system more open and accountable. The evidence presented here relates to key issues of principle and policy which we wish to draw to the Committee's attention in order to strengthen the implementation and benefits of the reforms. In particular, ALGAO:England commends the submission made by The Archaeology Forum (TAF).

3. HISTORIC ENVIRONMENT RECORDS

We particularly welcome the proposals to make the maintenance of Historic Environment Records a new statutory responsibility of higher tier local government and national park authorities, a measure we feel will be of benefit to the new heritage protection system and also of benefit to the wider public who are interested in their local heritage. We also support the draft Guidance on Historic Environment Records, published by DCMS on 2 May.

ALGAO:England would request that the Committee supports the provision to make the creation and maintenance of Historic Environment Records a new statutory duty of higher-tier local authorities and national park authorities.

4. RESOURCE IMPLICATIONS FOR ALGAO:ENGLAND MEMBER AUTHORITIES AND ENGLISH HERITAGE

We note the figures provided in the Impact Assessment which was published with the draft Heritage Bill. Whilst we do not challenge the figures provided, we feel that they are likely to underestimate the true cost of implementation. We also would like assurance that English Heritage has sufficient resources to implement the Bill, and also to undertake the necessary preparatory work before the Bill becomes law.

ALGAO:England would therefore request that the Committee supports a review of the additional cost to local government, to be undertaken by DCMS and English Heritage in conjunction with the Local Government Association and its heritage advisors, which include ALGAO:England.

5. NEW PLANNING POLICY STATEMENT FOR THE HISTORIC ENVIRONMENT

ALGAO:England strongly supports the provisions in the draft Heritage Bill that move the management of the historic environment closer to the heart of the planning system. However, in order that the protection of the historic environment under the new heritage protection system continues to be a key material consideration in planning policy, we consider it essential that the current PPGs 15 and 16 are replaced by new secondary legislation and guidance including a Planning Policy Statement for the Historic Environment. In particular, PPG 16: Archaeology and Planning, is now 18 years old and will need to be replaced once the provisions of the draft Bill become law.

We also consider that the successful reform of PPG 16 will require the active engagement of ALGAO:England. This is because ALGAO:England members are currently responsible for the protection of the archaeological heritage via the planning system. Much of the relevant knowledge and understanding of the planning system with respect to archaeology therefore resides with ALGAO:England members and their teams and the utilisation of this expertise will be essential to ensure that the key protection that PPG 16 provides for the archaeological heritage is not reduced.

ALGAO:England urges the Committee to support, as a matter of high priority, joint work by DCMS, DCLG and the historic environment sector to develop new planning secondary legislation and guidance including a Planning Policy Statement for the Historic Environment, to be published in conjunction with the implementation of the new legislation.

6. ABOLITION OF AREAS OF ARCHAEOLOGICAL IMPORTANCE (AAIs)

AAIs (Part II of the 1979 Act) are not included in the draft Heritage Bill. While many of the objectives of AAIs were superseded by policies and practices introduced by PPG16, the designation is still regarded as having some value in the five historic urban cities that are designated AAIs. This is particularly in view of the control they provide over permitted development such as utilities works which can be extremely damaging to complex urban archaeological deposits. Unless some provision of this type is provided by the Heritage Bill or associated guidance there will be some loss of protection for archaeological deposits within the AAIs.

ALGAO:England requests that the Committee inquire into the steps taken by English Heritage and DCMS to assess the possible impacts of removing AAI designation and the alternative mechanisms that might be introduced to ensure there is no reduction in protection in those important historic city centres.

7. REFORM OF CLASS CONSENTS (THE ANCIENT MONUMENTS (CLASS CONSENTS) ORDER 1994)

The present Class Consents Order permits the continuing cultivation of Scheduled Monuments, a process that cumulatively destroys the monument itself. The White Paper preceding the draft Heritage Bill indicated that this practice would no longer be permitted. We therefore consider that a class consent for cultivation (and other works included in the current Class Consent no 1) should not be included in any class consents order that may be published under new legislation.

ALGAO:England requests that the Committee considers asking for a withdrawal of Class I Consents for agricultural activities.

8. EXPERT ADVICE TO LOCAL PLANNING AUTHORITIES

We welcome the reference (106 5, a) in the draft Heritage Bill to the need for local planning authorities to take expert advice. We would however strongly suggest that the nature of the expert advice is more clearly defined in the Bill or relevant statutory guidance to ensure that it is from appropriately qualified or accredited professionals within or otherwise advising the local planning authority.

ALGAO:England emphasises to the Committee the importance of provisions in the Bill or in supporting Guidance to ensure that local authorities have access to appropriate professional advice and expertise on the historic environment in discharging their duties under the new system for heritage protection.

June 2008

Witnesses: **Mr Paul Raynes**, Programme Director, Local Government Association, **Mr Mike Brown**, Trustee, Institute of Historic Building Conservation, **Ms Jan Wills**, Executive Committee Member, Association of Local Government Archaeological Officers, and **Dr Alyson Cooper**, Conservation Team Leader, Carrick District Council, gave evidence.

Chairman: Good morning everybody. This morning the Committee is holding the first of two sessions in which we are undertaking pre-legislative scrutiny of the Draft Heritage Protection Bill. We have four parts to this morning's hearing, but to start can I welcome Paul Raynes, the Programme Director of the Local Government Association, Mike Brown, Trustee of the Institute of Historic Building Conservation, Jan Wills, County Archaeologist from the Association of Local Government Archaeological Officers, and Dr Alyson Cooper, the Conservation Team Leader of Carrick District Council. Thank you for coming. Can I invite Rosemary McKenna to start?

Q1 Rosemary McKenna: Good morning. What do you think are the main benefits of the Bill and what are its drawbacks?

Mr Brown: I think we all welcome the integration and the unified consent regime. We think it is going to be a huge improvement and certainly add greatly to the transparency of the system and the ability of the public to use the system, and so we welcome that. We certainly welcome the clause 106 requirements, but we feel that as a drawback it is not strong enough. The IHBC are all of the view that this needs to be rephrased to make the provision of these services a statutory duty, because we feel that that is the key that will unlock the necessary resources that can be directed to front-line services.

Ms Wills: I think ALGAO would endorse that. We welcome the Bill. We feel that it will enhance the role of local authorities, particularly our existing role as advisers on the historic environment in the planning system, and also our very important role at the moment in managing historic environment records

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and, because of the latter, we are very, very pleased to see in the Bill the proposal that historic environment records will become the statutory duty of local authorities. Lastly, we also very much welcome the Government's statement that in the course of the change in legislation there will be no weakening of the protection offered to the historic environment, and we feel that is of the greatest importance.

Dr Cooper: With regard to the benefits, I fully concur with my other two colleagues. With regard to drawbacks, our understanding is the objective of the Bill is to support sustainable communities by putting historic environment at the heart of an effective planning system at local level. We are concerned that the remit of our work as Conservation Officers at the coal face has expanded over the last ten years. In addition to the work associated with Develop Management we are heavily involved in Heritage-led regeneration working closely with local communities and we play an active role in developing policy to ensure that the historic environment is at the centre of the local development framework. What we are concerned about is that in order to address the additional provisions of the draft bill it will mean that our work will become narrower and less holistic.

Mr Raynes: Maybe just to complete the set, simplification and greater transparency, bringing the regimes together is obviously an enormous benefit to the public, to developers and to people attempting to run the system, and it creates an opportunity for us, which is precisely to put the historic environment right at the centre of the planning system. That is an opportunity at this stage and maybe we will come back to this later in the discussion, but there is still a number of questions about the wider planning system and how this is going to be integrated into it, and we will need to address those as the Bill goes forward.

Mr Brown: Can I elaborate on that point? I have to say that there is confusion and a need for clarity about how the unified system might affect what are presently scheduled ancient monuments in migrating them into the planning system, where the presumption is in favour of development unless policies dictate otherwise. They will lose the current status, as I understand it, within the (Scheduled Ancient Monuments) Act, where the presumption is against development, and that may carry the danger of there being a weakening of controls over them. So I think that needs further work.

Ms Wills: Following that up, I think that is a very important point regarding scheduled monuments and underlines our feeling that there is a need to follow the draft Bill with a redrafting of the Planning Policy Guidance notes for the historic environment for archaeology and listed buildings and conservation areas, because it is in PPG16 that this very important current presumption in favour of the protection and preservation of ancient monuments resides. I think unless the new concepts and the strong protection are carried through into the planning system, we will not see the benefits of the draft legislation as is currently envisaged.

Q2 Rosemary McKenna: Given that it is in draft stage at the moment, what would you like to see changed or added to the Bill?

Mr Raynes: Regarding that, we would particularly like to see a timetable for the revision of PPG15 and 16, and actually it would be quite nice to begin to see some of the substance of what the new PPG15 and 16 might look like emerging really quite rapidly. Obviously, the Department for Communities and Local Government have a lot on their plate with a new planning bill that is going to require a pretty wholesale change to the system of planning policy guidance, which is supposed to migrate into planning policy statements and so on, but as this Bill goes forward it will be quite difficult to take a rounded view of the effect of this Bill without seeing what the Department for Communities and Local Government is planning to do with those planning policy guidance revisions.

Q3 Rosemary McKenna: Is there a change in the Bill?

Mr Brown: I think the point should be taken back to the department's lawyers and ask them to bottom it out, though I completely concur with the points made that it is important that proper planning policy guidance is issued as early as possible in order to aid practitioners in interpreting the Act.

Ms Wills: I think the points that have just been made touch on a difficulty we all have, which is that, although we have a draft Bill, there are many additions to that draft legislation which are coming forward now. Conservation areas, for example was issued yesterday. We were also awaiting various other pieces of statutory guidance. So it is difficult to take that rounded view of what we would like to see in terms of change and additions. As an example, one of the fundamental changes that is proposed in the new legislation is the move, in the case of archaeology, from the designation of archaeological sites of national importance to sites which are of special archaeological interest. That is a new concept. The change is a very significant one, but at the moment we do not have a definition of "special archaeological interest", so it is difficult to take a view on whether that is a positive change or not. I think we would like to emphasise that there needs to be debate and some robust discussion as soon as possible about those terms to make sure that it is a change for the better, that the terms are robust and are capable of defence and it does not lead to any weakening of the protection for that part of the historic environment.

Mr Brown: I would have to agree with that, and I would have to add that I feel that there is a sense that the Bill is following a timetable that cannot be properly resourced. I too received the conservation area clauses only yesterday. Conservation areas are often matters of utmost local significance and importance to my customers, as I think we are encouraged to call them these days. I received those yesterday afternoon at half past five; yet here we are. I would ask the committee to consider the benefits of asking for proper time for public consultation on those clauses before we all rush to a judgment. I think there is a sense that the Bill rather tails off at

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the end as well. There is little, if any, mention of local lists, and, again, these are of enormous importance to local people. We are all local people in one sense or another, and it is what is important to us as a community that often exercises people the most, and yet, as we are all aware, I trust, they (local lists) have next to no protection under the current regime. Here we are, halfway through a process with a major Bill in this area, and yet we have no details at all on how the departments will embrace them and give them proper protection: certainly the protection that the public rather expects us to give.

Q4 Chairman: When we took evidence on our Heritage Review inquiry, we took evidence both from DCMS and DCLG. A lot of this Bill is actually going to be about DCLG, and some concern was expressed to us that DCLG does not seem to feature very much in the Bill and is not a sponsor of the Bill. You expressed your concern about how ancient monuments were going to be moved into the planning system and, therefore, really outside DCMS. Do you worry that DCLG is perhaps not fully brought into the system as much as DCMS is?

Mr Brown: It has to be a concern, given the evidence.

Mr Raynes: My sense is that those within government have heard the points that have been made around this and that some progress is being made in bringing DCLG within the conversation, but we would encourage them to make further progress.

Q5 Chairman: You said you had only just got the conservation area clauses. Has everybody had a chance to see those now? No.

Ms Wills: They were issued yesterday, I believe, so we have only had a very short, rapid summary.

Mr Brown: I read them on the train here.

Q6 Chairman: Did you utter a squawk on the train when you came across anything, or were you relatively content with what you read?

Mr Brown: I would like to withhold my judgment on that, but, as you have pressed me, there are margin notes scribbled against virtually every clause, and I think it needs full investigation. I can understand the intent and the direction of travel, but I am not too certain that the wording actually will press the right buttons.

Ms Wills: I think I was pleased to see, on my equally rapid reading, that it will be possible to designate conservation areas on archaeological grounds. This offers up the possibility of an area designation. I am not sure, again because I have only just seen the document, but it may offer some possibilities for designation in urban areas, where archaeology is of considerable importance and where, for example, the provisions under the 1979 Act for the designation of areas of archaeological importance will not be continued under the new legislation. So I think this is an area that we would like to consider in more detail and comment on in due course.

Q7 Chairman: I think we would say to all of you that, given that they have only just been published, should you wish to make further submissions once you have had a chance to look at them, we would be interested to hear them. Can we move on to what is possibly the area of greatest concern that has been expressed about the Bill, which is not the content of the Bill itself but how it is going to be resourced. The National Trust told us, "We would rather have no legislation than a Bill which does not have the means for its effective delivery." The Government said that their estimate of the net cost of implementation is £1.72 million. There appears to be a degree of scepticism as to whether or not that is actually a sufficient figure. What is your view as to how much this is going to cost?

Mr Raynes: It might be helpful, Chairman, if I said something to frame this part of the discussion before we get into numbers. There have been conversations over recent weeks between the Department, English Heritage, the Local Government Association and the two professional bodies represented here, the result of which is that we have all acknowledged that the numbers in the impact assessment would benefit from further scrutiny and more work. We have set up, in a very collaborative and open way, without any resistance on the part of any of the players, an arrangement whereby we will do that further work, and it is being done collectively between the departments, the professional bodies and the LGA. The working group had a meeting yesterday afternoon, for example, and it is making progress. We are hoping to report that work back by the end of July, and my expectation is that it will result in some improvement in the quality of analysis and, therefore, quite possibly in some revisions to the figures that are reflected in the assessment that you have just mentioned.

Mr Brown: I read the impact assessment with a great deal of scepticism. I come from a building surveying background, and there they train you to specify what your objective is but then to quantify what is needed to get actually there so that you can feed in the necessary resources. I think that the issue for the whole impact of the Bill is that it has not really been quantified in an effective way. The impact assessment has some figures in it which, I have to say, I find rather difficult to appreciate and understand, but clearly we have an existing system of conservation controls that is unquantified and it does seem to me that a great deal of work needs to be done in order to be able to solve that problem, let alone the issue of the extra burdens which the Bill will bring onto the various agencies who are involved.

Mr Raynes: There are a number of parameters here, Chairman, one of which is that we inevitably find that the costs of things vary enormously between different local authorities, and, in particular, if you are looking at this area, the case load, the nature of work is going to vary enormously between different places, so it will be necessary to build in some stress-testing of the impact assessment to work out whether maybe it is built on some assumptions about places where things are easy and cheap which do not bear

generalising. Secondly, many of the planning authorities we are talking about are small district councils. The numbers reflected in the impact assessment, were you to divide them by 350-odd planning authorities, come out at such small sums per authority that (a) that looks a bit implausible, but (b) were the numbers to be significantly wrong, the impact on an individual local authority really could be quite serious. Errors of ten or twenty thousand pounds actually do have a significant impact on capacity and ability to do the job in many planning authorities, and so it really is necessary to bottom these numbers out.

Ms Wills: Despite all of those very legitimate and serious concerns which must be tackled, I think ALGAO would not concur with the National Trust's view in these circumstances, in the sense that we are very keen to see the provisions of the Bill go forward, and some of them relating to local authorities, for example, in respect of historic environment records will formalise an existing situation. So, although it will be very important to make sure that historic environment records are fit for purpose and deliver the needs of all of the professionals in the historic environment as well as the wider community, we do feel that we would be building on an existing system and, therefore, although there will be costs, we do not feel that these will be completely out of order. We also feel that from the local authority perspective, if historic environment records are a statutory duty, then we will have a better basis for making the case for resources within our individual local authorities. We do see that as quite a positive element, albeit the continuing concern that my colleagues have expressed.

Mr Brown: I think what we can say with a great deal of certainty, though, is that the current situation is pretty parlous in that there simply are not the skilled professionals out there to discharge the current work loads let alone the added burden that the Bill will bring. There are some statistics within our written submission from the IHBC, and I would invite you to consider them. Indeed, we have done a recent survey on local authority conservation officer provision and, if the Committee so wished, I could arrange for a copy of that report to be placed with you.

Q8 Chairman: We are going to come on to skills very shortly. Before we do, Dr Cooper you are a front-line practitioner. Are you going to be able to cope in your district council?

Dr Cooper: Perhaps I can explain. As part of local government reorganisation within Cornwall, I have been doing work not only as a team leader within my district but also looking at the resources across the country, and I think what is clear is that there is a tremendous difference across small district councils as to the provisions. Within my district council I have the equivalent to 2.6 full time equivalent conservation staff, which is seen as being pretty high, despite the fact that our work covers a wide remit, as I have mentioned previously. With local government reorganisation there will be ten conservation

officers, or full-time equivalents, to serve what is now six districts. Currently, out of those ten full-time equivalents, 55% of their time is actually spent on development management—so the system is already creaking. We are all passionately keen about what we do, but there is a limit, and it is so important with this legislation and this work, that we do it right. We are also concerned about the wider picture. We work as teams within the planning authority, working closely with enforcement officers and with planning officers, and the impact will not only be on the conservation officers but it will also be on those wider skills. It will be vital that enforcement officers are able to carry out their duties as well. Their resources already are incredibly pushed.

Q9 Chairman: What happens, Paul, if you come back at the end of your conversations and agree that actually the cost is going to be much greater than the Government is projecting?

Mr Raynes: As the Committee will no doubt have noticed, last December the Government collectively signed a concordat with the LGA, one provision of which is that new burdens imposed by government legislation on local government will be fully funded, and that, to be fair, is a principle that is absolutely reflected in the wording of the impact assessment, but clearly the trick is not just to commit to fully funding new burdens, it is actually to get the numbers right so that the money is made available. There is a question we have, which again we will be exploring in further conversations with the Government, which is exactly what the mechanism for funding the new burden might be, which is not made explicit in the impact assessment. It is not entirely clear to me whether there is a proposal here that the Department and English Heritage should, in perpetuity, pay a stream of grant allocated to this activity. It is much more likely, I suspect, that this will be reflected in the overall local government settlement, which again underlines the fact that we need to get the numbers right because that overall settlement then will knock-on into the council tax in a whole series of individual local authorities where, again, as you may have noticed, one particular local authority has just been capped for disagreeing with the Government about two places of rounding on a percentage point of increase on its council tax. So the pressure on local authorities is quite acute.

Mr Brown: I think the experience on the ground is that it is impossible to recruit. I work and practise in London for one of the London boroughs. I am team leader of one, so we are trying to run an entire London borough with myself and one other, and I have been trying for six months to recruit in order to be able to spend approximately three-quarters of a million pounds worth of regeneration money targeted in one of our deprivation wards and yet cannot find any staff in order to be able to do the work.

Q10 Mr Evans: That is fascinating: because really what you are saying is that none of you have got any faith in the figure that has been mentioned, the 1.7 million, but that through negotiation, irrespective of

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what that figure is, you think it will be fully funded but, even if it is fully funded, you may not be able to recruit the staff to implement the Bill.

Mr Brown: Welcome to our world.

Q11 Mr Evans: As long as we know where we are.

Mr Raynes: There is an issue there, obviously, about the scope of the question the Committee is asking. We are here to talk about the Bill and the impact of the Bill, and we are engaged in what look like very optimistic conversations with the Government about the costs that are associated with the Bill. It would, of course, be possible to get into wider conversations on which the professional bodies, undoubtedly, will have very strong views about the resourcing of particular professions.

Q12 Alan Keen: We are talking about costs, obviously, and local authority representatives always have a punished look on their face when they come before us, and I sympathise. Are there direct links between the costs that you incur, because there are benefits from tourism and attractions to London and other places? Are the costs linked with cost benefits or are you just isolated and there are no direct links?

Dr Cooper: May I come in there? Can I ask whether that is with work generally? Within the work I do with 2.8 or 2.6 staff, over the last seven years, by using £200,000 of district council money, I have bid for, managed and financially managed two heritage initiative grant schemes. That £200,000 has brought in £4.2 million worth of investment in the historic environment, it has generated 70 direct jobs, it has provided 70 full-time temporary jobs for work within the construction trade and has generated nearly three million pounds worth of sales.

Q13 Alan Keen: Yes, that was my guess. Is that always the case across the grain? There must be some cases where it is not costs, it is a duty to preserve but it does not have any benefits of income?

Ms Wills: The vast majority of the work we do is, at its heart, about protecting, understanding, recording the resource that is the historic environment, whether that is archaeological sites, historic buildings or the general historic character of the rural and urban environment. So that is at its core. Sometimes people do not actually see the link between that and what one might call the exploitation of that resource. So people go to visit sites, income is generated, people are employed; there is a very, very real element, a strong element, of income generation which results from the work that we do. Sometimes the links are close and obvious, and you have demonstrated those well; sometimes they are much more tenuous, because, obviously, if the historic environment, the archaeological sites, the historic buildings are not there, they are not there to provide the basis for economic development or to act as the focus for tourist attractions, visitors, et cetera.

Q14 Alan Keen: I guess there were not always links. I can understand that Cornwall, because it is a tourist area, gets great benefit from what you and your staff do, but some London boroughs, for instance, have little in the way of heritage—I do not mean to insult them—and others are very rich. The costs should not fall on individual councils, I would not have thought. Is this something which you feel yourselves, or am I completely wrong?

Ms Wills: I think one of the distinguishing features of the historic environment is that it is everywhere. You could say that all local authorities will have some element of their heritage, historic environment, which needs protection, conservation, which may act as the focus for regeneration. A good example outside of what is an obvious tourist area would be work, for example, that I am currently engaged on in Gloucester, which in many ways is quite a deprived urban area but where heritage is one of the stimuli, one of the focuses of the current programme of regeneration, spearheaded by the Gloucester Heritage Urban Regeneration Company, and I think there is a very real recognition there of the importance that the historic environment can play in stimulating not only interest in tourists and visitors but being used to enhance people's sense of place, the understanding by the community of where they live, enhancing community cohesion, and so on. I think it has a very, very widespread application, much wider than tourism.

Mr Brown: It is very much the pleasure in the job now. Twenty years ago conservation was focused on building techniques, lime and timbers and things like that, but in the last ten years or so it really has moved on. It seems to me the case is very much proven that investment in the historic built environment rapidly transmits itself into major wins about sustaining communities, creating jobs, making places much more pleasant to live in and for people to invest their businesses into, and it seems to me that the areas that have been able to focus on that are the ones that have weathered the various economic storms the best.

Q15 Alan Keen: Yes, that is why I raised the point, but I am looking at costs. Education owes you an awful lot, or there is a lot to gain which maybe is not being exploited in every area. Are there enough links across counties and boroughs and district councils or is it fractured?

Mr Raynes: I rather think this takes us back to the discussion earlier on about the place of the historic environment in the wider planning process. What we would very much hope the Bill helps to continue with, because it is a trend that, as Mike says, has been going on for some time, is the way in which the historic environment has its proper place at the top table, as it were, through the holistic local development framework in a particular place, its sustainable community strategy, and so on. There are a legion examples of places that are doing this. They are taking a long-term view of their future and defining it with their historic environment as one of

the major determinants of their identity and their attraction to incomers, and tourists, and businesses, and so on.

Q16 Alan Keen: It is our job to help you.

Mr Brown: Indeed.

Q17 Alan Keen: We have got a special interest. This committee cares about heritage.

Mr Brown: I feel that whatever the net cost turns out to be, I would invite you to see it not as a cost but as an investment in local communities.

Q18 Alan Keen: We understand that, but we want to produce a report which reflects the concern that you have got. I am not looking at you as costs. I am saying: is that how other people look at you, and they should not, and what would you like us to say that is going to help?

Ms Wills: I think, in a way, this comes back to a point we were discussing earlier about the need to ensure that other government departments are fully engaged in his process, not only DCLG but also Defra, because the historic environment is truly a cross-cutting issue and I think we need to ensure that its relevance and its benefits are fully recognised across local and national government and, as you just said, Mike, that the money invested truly is an investment that can deliver wide benefits for other departments locally and nationally.

Q19 Mr Sanders: Going back to the Bill and the reform that the Bill proposes, do you think local authorities have enough staff with the right skills and expertise to cope with it?

Mr Brown: In our written submission we have provided some evidence of the fact that there is a surprising percentage of local authorities that have no in-house professional advisors, and, indeed, there is a minority—I think it is 2%—who take no advice at all on the historic built environment when making planning decisions. I am very pleased that the Act is going to address this. To reiterate my earlier points, I do feel that this should be made a statutory duty to ensure that it is properly implemented. I am concerned that there are other clauses beyond 106 that rather fudge the issue and perhaps invite local authorities to try and relocate that burden on local and national amenity societies. I think that is very much a point that needs to be addressed. I have made the case anecdotally about the near impossibility of recruiting at the moment; it is a profession that has been allowed to decline. There is some evidence about the age profile of the profession, indicating that there is going to be a hole of 30 and 40-year-olds not able to step in in ten years' time when people like my generation, perhaps, are approaching retirement. So there are long-term trends that need to be addressed, and they will clearly need, therefore, to consider the career structures, the job security and the pay that is on offer to people in this profession.

Ms Wills: In the draft Bill there is, as you mention, Mike, a requirement that local authorities take expert advice in determining development

proposals, applications, affecting the historic environment. I think we would like to see more detail about that, more detailed guidance, to ensure that local authorities really do have the expert staff to come to an informed judgment about applications.

Q20 Mr Sanders: Do they have to be local authority staff or do the local authority just buy in that expertise from the private sector?

Ms Wills: Of course local authorities do source expert advice from a variety of places. I think we would argue that to undertake the full range of strategic as well as development focused advice, it would be of great benefit for local authorities to have in-house expertise. They could, of course, choose to source some of that from the private sector, if they so wished, but it is of critical importance that that advice is on hand.

Q21 Mr Sanders: I can imagine the situation in Cornwall as it stands at the moment is probably replicated right across the country, where you have districts and counties. The great benefit of Cornwall becoming a unitary is that you can then have equal expertise cover across the whole county, and is that not an advert for having unitary government elsewhere in the country?

Dr Cooper: We have been looking at what we thought the provisions of the Bill would produce over the last three or four years as a group of conservation officers and also with our historic environment colleagues at the county council. So, yes, we have been looking at opportunities of improving the service, but, just going back to your point about buying-in advice, for the Heritage Bill consultation one of the questions was the importance of pre-application advice. If you are buying in advice, it is very difficult to actually have the experienced professionals readily available when someone comes into a planning office and asks for pre-application advice. You really want, as a team, to provide a proper service, to actually have conservation and archaeological advice at pre-application stage running through the determination of the application and also monitoring work on site. We have done an awful lot of work over previous years looking at the quality of applications that are submitted. It is vital that the applications are of a proper standard in order to assess proposed work. That is the sort of work that is not desperately well done by external consultants. It really needs to be done within the authority.

Q22 Mr Sanders: Can I come back to Mike Brown, who has mentioned the skills gap. Both English Heritage and the department have made an assessment of the level of training required for conservation officers. Is that realistic?

Mr Brown: I think the question is: are there conservation officers there in the first place to train? We need some seed-corn investments to get a virtuous circle going whereby you are training people who are there, who are interested and committed in their careers and in the field of

1 July 2008 Mr Paul Raynes, Mr Mike Brown, Ms Jan Wills and Dr Alyson Cooper

conservation, who can see a clear career path, know that their jobs are relatively secure and that they are not going to be subject to *ad hoc* service cuts, which is currently certainly the situation in London. The training that has been suggested is fantastically welcome. There is a huge skills gap. Going back to your earlier point, yes, local authorities, in theory, could buy in heritage professional advice, but, of course, there is not the private sector there to support it. There really is a major skills shortage across all three sectors at the moment, it seems to me, and that does rather prevent us properly using the HERs. Archaeologists are very fortunate in that PPG16, in recognition of the fact that there is so much archaeology the public purse could never properly explore all of it, placed the responsibility for this with developers. It seems to me that perhaps there is a model with staff within the public sector and staff within the private sector to use HERs to properly inform applications. There is a problem at the moment about the quality of applications that are received, and the vehicle for that is conservation plans, whereby an applicant who owns or is an agent for an owner of a listed building who wanted to do work would turn to the HER to draw out the information that would give a proper assessment of the special interest of the asset but then would use that information to properly inform the nature of their application, but to get there we need to put a bit of resource in both sectors, and we are a long, long way from that.

Mr Raynes: The very welcome offer from English Heritage around training is one of the things that we are now discussing in this conversation about general resourcing, and we will see where that comes out; but I think the last couple of comments take us into an interesting area where this is partly a question about skills within the system and I am not sure from an LGA point of view we would have a

view on the balance between employed and bought services, but it is clear that you need the capacity within the system and, if a local authority does choose to go down a buying-in provision route, they need the capacity to buy in to be an intelligent customer, which is itself a specific skills issue.

Ms Wills: And resource needs are not likely to be any less whichever procurement route is actually chosen.

Mr Brown: I think it is worth noting, my information is that there are no longer any degree level courses in conservation left in the country. There is one left in Wales. So entry into conservation as a profession is only available at postgraduate level, and I do not see how you can hope to get 18 year olds who may have an interest in historic buildings, regeneration, community work to flow into this without providing the necessary training infrastructure.

Q23 Chairman: You do appear to be painting a pretty apocalyptic picture. Here we have a bill which everybody has been asking for, for a long time, which most people agree is worthy, but you are suggesting there is not going to be anybody, to implement it once it is passed.

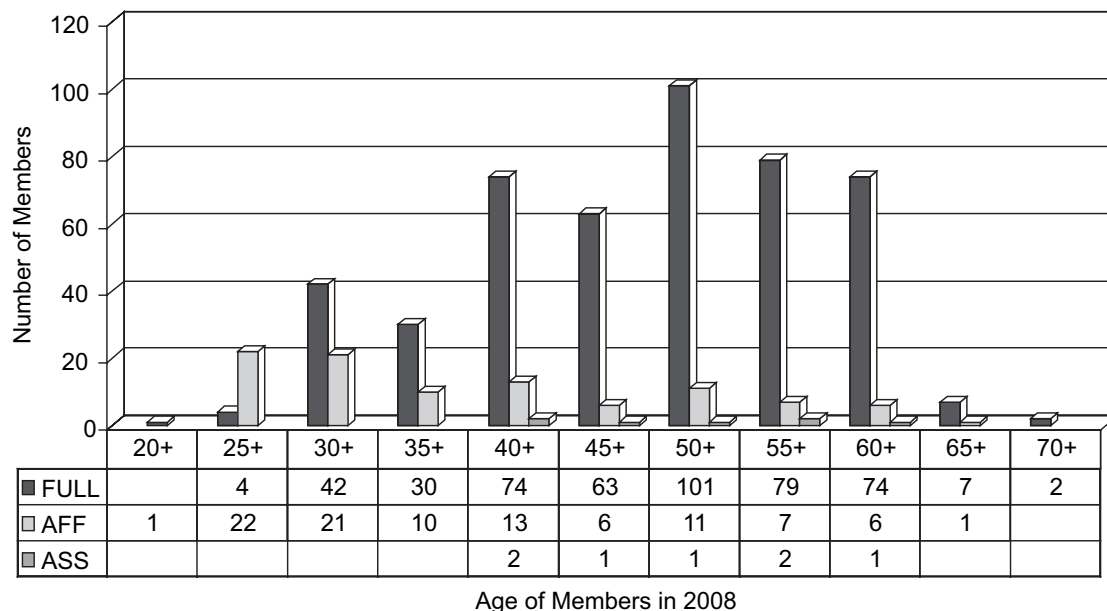
Mr Brown: Do not get me wrong, I wake up every morning with a song in my heart, bursting with enthusiasm for my work, such is the vocational nature of it. I think the Bill needs a little polishing, but fundamentally it is sound. I think what we have largely been discussing this morning is its implications, and it is those implications that need backfilling in terms of guidance and further work on the resources that are necessary to make the Bill work. I very much want it to happen. I think it is a key to really making this a high quality country to live in.

Chairman: On that more positive note can I thank the four of you very much.

Supplementary memorandum submitted by the Institute of Historic Building Conservation (IHBC)

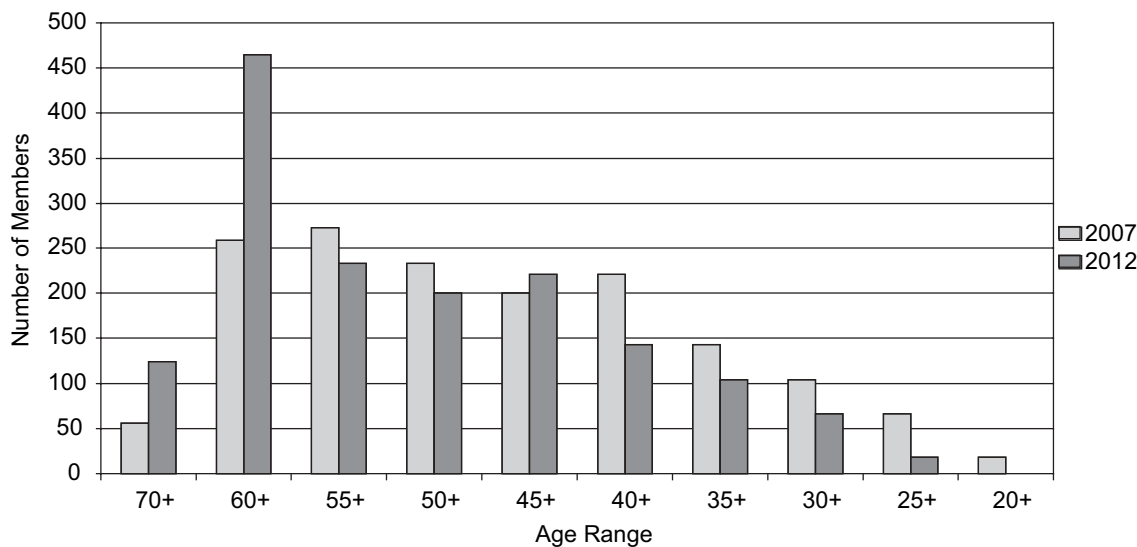
ALL FIGURES COURTESY IHBC 2007 AND ARE PROVISIONAL AND UNADJUSTED FROM CORE DATA : IHBC 4 DECEMBER 2007

IHBC Members Employed in LGE



Age of IHBC Members, Local Government, England, 2008 (estimated)

Age Range: Current and Projected



Age range across IHBC UK, based on current membership without adjusting for new members (estimated)

- 7 Full members and 1 Affiliate member did not give their (correct) birthdates
- 6 Full members will be 80 and over in 2008
- 29 Full members will be 75 and over in 2008
- 64 Full and Affiliate members will be 70 and over in 2008
- 143 Full and Affiliate Members will be 65 and over in 2008
- 374 Full and Affiliate members will be 60 and over in 2008

653	Full and Affiliate members will be 55 years and over in 2008
870	Full and Affiliate members will be 50 years old and over in 2008
700	Full and Affiliate members will be under 50 in 2008
328	Full and Affiliate members will be 40 and under in 2008
81	Full and Affiliate members will be 30 and under in 2008
15	Full and Affiliate members will be 25 years old in 2008

July 2008

Supplementary memorandum submitted by Carrick District Council

IMPLICATION ON RESOURCES AND THE SETTING UP OF A NEW COMBINED REGISTER

The proposal to set up a new combined register is heartily welcomed and the provision of an online register of heritage assets, accessible by the public, will substantially reduce the number of enquiries received by Local Authorities. However if the legislation is to be changed, so that in cases of prosecution for unauthorised work (section 90 (2)), it will be a defence for the defendant if he can prove that he did not know that the structure was registered and had taken all reasonable steps to ascertain whether or not it was registered, it is vital that the information on these registers is accurate. Over the last three years I have been working with Cornwall County Council's Historic Environment Service who have been plotting the District Council's Listed Building GIS data on the County Historic Environment Record. By overlaying English Heritage's records it has demonstrated that in my own district, there is a 70% discrepancy resulting in over 800 listed building records being wrongly plotted on the English Heritage database. Further a large proportion of addresses are either incorrect or have changed. I spent three months checking our data. However few other local authorities have had the resources to make such checks and anecdotally many rely on the owners of listed buildings to inform them of inaccuracies in their mapping. The resource implication in the provision of a new combined register and also improved Historic Environment Register has got to include resources for checking accuracy of data which can only be done at the local level.

REVISED CLAUSES FOR CONSERVATION AREA

- The proposal for wider consultation on the designation, variation and cancellation of Conservation Area is noted and is currently undertaken as good practice. The publication of management plans for Conservation Areas is also good practice (following English Heritage's guidance). However even when they were included as local BVPIs it has been difficult to persuade all local planning authorities to invest in resources to commission appraisals and management plans. In Cornwall there are 146 Conservation Areas and over the last five years the district councils have commissioned 34 appraisals and management plans. In my own authority it has cost £76,000 over the last two years pay for five appraisals and management plans. I have obtained funding for these through grant schemes and as part of Growth Points funding and have allocated 0.8 full time staff resources over the last two years to manage this work, to produce sustainability appraisals and work with the local plans team to ensure that the recommendations are embedded within the Local Development Framework process. I will not have funding opportunities for further management plans. A sensible timetable and additional resources will be required to meet provisions of the proposed clause.
- Re combining Conservation Area Consent and Planning Consent. As a result of Shimizu the number of Conservation Area Consent has dropped significantly. In Cornwall during 2007 there were 79 applications most of which were accompanied by Planning Applications. Therefore the perception that the change in procedure will make massive savings is, in my opinion, flawed.
- The proposed change as part of clause 9 of the revised clauses on Conservation Areas is welcomed and will increase management of change and will restore an element of pre-Shimizu protection. It will however substantially increase the number of applications requiring specialist advice. In 2009 it is anticipated that the new Cornish unitary authority will be responsible for determining 18,000 applications. Approximately a third will either affect a listed building or conservation area. This does not include applications affecting the World Heritage Site which fall outside a conservation area/are not listed.

July 2008

Memorandum submitted by Westminster City Council

I refer to the new inquiry into the draft Heritage Protection Bill, published by the Department for Culture, Media and Sport on 2 April 2008 (Command Paper 7349).

The City Council would like to make the following comments with respect to Heritage Partnership Agreements and the implications for the staffing and skill levels needed for effective implementation of the relevant provisions in the draft Bill.

The City Council will be preparing a full response to the Draft Heritage Protection Bill to the Department of Culture Media and Sport in the next few days.

THE WESTMINSTER CONTEXT

The City of Westminster contains elements that make London one of the most successful world cities. It is the home of Government and the monarchy. It has a range of internationally important businesses and corporate headquarters and an unrivalled range of professional services and world renowned cultural and entertainment facilities.

Westminster has one of the highest levels of heritage assets in the country. The city has more than 11,000 listed buildings, more than any other local authority. Over 75% of Westminster is covered by its 55 Conservation Areas. Westminster is also home to the Palace of Westminster and Westminster Abbey, including St Margaret's Church, World Heritage Site.

It also has a rich heritage of historic parks and gardens. Within the City are five Royal Parks—Hyde Park, Regent's Park, Green Park, St. James's Park and part of Kensington Gardens—and over 70 garden squares, as well as many other gardens and churchyards of historic interest. Eighteen of these are included in the English Heritage Register of Historic Parks and Gardens, many at grade 1.

As the principal cultural and administrative centre of this country for many centuries, much of Westminster's archaeological heritage is of national importance, and not just the area around the Houses of Parliament and Westminster Abbey. The City's present-day boundaries contain other sites of great importance. These include: Lundenwic, probably the single most important Lower Thames Valley settlement of the middle-Saxon era, the Tyburn settlement, and the Saxon and Medieval villages of Paddington, Ebury, Lillistone and Marylebone.

The City Council has the busiest planning department in the country, handling more planning applications than any others. The success of the City of Westminster demonstrates how a vibrant, dynamic economy can be maintained in an area of very high heritage value.

HERITAGE PARTNERSHIP AGREEMENTS

Whilst not opposed in principle to the ideas of Heritage Partnership Agreements, the City Council is concerned that they take much time and resources to produce, and the benefits may not be that great.

There is much that is unclear about how this system will operate. For example:

- Will formal applications be required to be submitted to the local planning authority by building owners seeking an HPA?
- If so, will a fee be payable?
- How easy will it be for a local planning authority to refuse entering into an HPA if it thinks it undesirable?

There may be a significant demand for HPAs from a wide range of building owners. They may be sought for individual buildings or for large London Estates, such as the Grosvenor and Howard de Walden in London. They may also be sought by property companies for their, perhaps, dispersed land holdings. The local planning authority must have the ability to say no to proposals for HPAs if it thinks they are unnecessary or if they will require too much officer time as there no resources attached to their production.

Our experience of HPAs in Westminster so far has been limited to the underground stations at Piccadilly Circus and Baker Street. In both these cases it was apparent that much time and effort was required to:

- Research and agree the historic evolution of the buildings.
- Evaluate the extent of the special architectural and historic interest.
- Identify the full range of works which may be proposed over a period of several years.
- Define precisely which works would and would not require consent.

Once in place the HPA could result in less work for the local planning authority, in theory, because certain works will have been agreed to not require consent. All other works identified in the Heritage Partnership Agreement will still require consent.

At present owners may ask the City Council (verbally or in writing) whether or not listed building consent is required for certain works, on an ad hoc basis. The City Council often then confirms their view in writing. This is not normally a time consuming process.

However, there is little evidence what the reduction in the number of applications of consent will be. It assumes that a number of applications are submitted every year which need not have been, because the works did not require consent. It is doubtful whether or not this would amount to a large number.

In 2006 the City Council received 1973 applications for listed building consent and in only 35 cases (1.8 %) did the City Council determine that listed building consent was not necessary. In the case of 31 of these listed building consent was not required because the building was not listed. Only in four cases was listed building consent not required because the works did not affect the special architectural and historic interest of the building.

The danger is that in introducing a widespread, uncontrolled system of Heritage Partnership Agreements, it will promote work for local planning authorities, and English Heritage and other parties, which may not need to be carried out. Whilst HPAs will undoubtedly have some benefits in some exceptional cases, their widespread use should be discouraged.

APPLICATIONS FOR LISTED BUILDING / HERITAGE ASSET CONSENT

The handling of heritage applications by local planning authorities is unresourced at present, in that no fees are payable for application for listed building consent and conservation area consent.

The City Council considers that such applications should require a fee, to pay for their processing by the local planning authority. They constitute a considerable workload. For example, in Westminster applications for listed building consent constitute about 24% of applications submitted each year. The number of listed building applications has been rising in recent years. 2192 applications were received in 2007; an 11% increase on 2006, which was a 13% increase on 2005.

We recommend a scale of fees should be set nationally but local planning authorities should be able to waive them if they consider it desirable to do so. Local planning authorities receiving large numbers of applications may wish to receive fees, but those receiving low numbers may not consider it necessary. Some authorities may consider that fees should be set aside in areas to promote conservation of historic buildings in areas of regeneration.

June 2008

Memorandum submitted by University of East Anglia (UEA)

1.00 EXECUTIVE SUMMARY

1.01 The University of East Anglia at Norwich (UEA) was one of six New Universities founded by the British Government around 1960. They were probably the most prestigious architectural commissions of the entire post-war Welfare State building programme.

1.02 Denys Lasdun designed UEA's master plan and first buildings. About one-third of the master plan was completed by 1972. Although no further Lasdun buildings were added and the master plan was significantly altered in later developments, Lasdun's work at UEA still forms an exceptionally powerful architectural and landscape statement. In 2003 most of the Lasdun designs were Listed as historic buildings, causing the University considerable anxiety. To minimise the risk of conflict between Listing and the need for change, at the invitation of English Heritage the University commissioned a Conservation Development Strategy (CDS) from Cambridge Architectural Research Ltd (which, as their name implies, is a firm of professional advisers engaged in applied research directed at best practice in design and architectural procurement).

1.03 The University's CDS became a case study in a Government review of the Listing process. Proposals for Listing reform were published in 2007 and the Government has announced its intention to introduce new legislation in 2008 of which Heritage Partnership Agreements (HPA) are to be a part. If the new legislation is enacted, the CDS will be converted to an HPA.

The CDS illustrates many aspects of conservation for important modern buildings that are still in active use. This CDS highlights four issues:

- Esteem: The listed UEA buildings were built of concrete on tight budgets, and are not highly esteemed by the general public. A CDS survey indicated that younger people respond more positively, an encouraging trend. The CDS itself helped make the case for conservation within the University community.
- Original vision: Lasdun's master plan was unfinished, and unbuilt areas of the campus have become familiar as open space. The CDS makes the case for reconsidering the original vision for the campus and landscape.
- Refurbishment: After forty years of use the striking Ziggurats of residential accommodation were in need of thorough refurbishment. The CDS indicated how they could be sympathetically modified to meet current expectations and regulations.

- Evolving needs—The original teaching space was in a long, multi-disciplinary Teaching Wall that was designed to be flexible. Using the CDS, the University has established a working relationship with the local planning authority to facilitate on-going change that respects the original design intentions.

1.04 The CDS for UEA illustrates a successful approach to conservation management for a complex of modern buildings, where recognised architectural significance must be reconciled with evolving user needs. With the backing of new legislation, this approach could be widely adopted in the UK.

2.00 BRIEF INTRODUCTION

2.01 Consistently ranked within the top 20 UK Universities, UEA's research and teaching is recognised throughout the world. Particularly distinguished is its research into Climate Change and the effects of global warming on social, political, economic, and ecological infrastructures. Not infrequently is it quoted on the world stage in this regard. Equally distinguished are its Schools of Chemistry, Pharmacy, Biological Sciences, and Medicine. Its reputation for Creative Writing is outstanding.

2.02 With a turn-over of around £170 million it is one of the largest contributors to the local economy. A single campus university, it is located on the outskirts of Norwich. It has around 15,000 students and 2,500 academic and support staff. It is the responsibility of the support staff in the Estates and Buildings Division to ensure facilities are fit for purpose in relation to the strategic objectives of the University, maintaining existing facilities and procuring new buildings and refurbishments.

2.03 Aware of the architectural significance of its Campus (which has won in the region of 30 Architectural, Civic Trust and other design awards), since its foundation the University has traditionally appointed an architect on a retained basis to advise it on development—the list includes Sir Denys Lasdun, Sir Bernard Feilden, Lord Foster, and Rick Mather. More recently (over the last 12 years) it has appointed an Estate Development Director instead of a retained architect.

2.03 The submitter of this memorandum is the current and first appointee to the post of Estate Development Director—Joseph Saunders B.Arch (Hons), RIBA, MAPM. Joseph Saunders is a Chartered Architect and Member of the Association of Project Managers. In support of the HPA, Joseph Saunders presented UEA's Conservation Development Strategy to the All-Party Parliamentary Built Environment Group at Westminster in February 2008. He has also presented at a number of seminars targeted at Local Authority Chief Planning Officers and Conservation Officers—typically, Historic Environment Local Management (HELM).

3.00 FACTUAL INFORMATION

3.01 In October 2003 most of the Lasdun designs were Listed as historic buildings, causing the University considerable anxiety. Notwithstanding the University's recognition of the architectural importance of the buildings (which were demonstrably well looked after and under no threat), it regarded Listed status as an impediment to its core business of teaching and research and a threat to its pre-eminent position on the world stage in a highly competitive market place (paragraph 2.01 refers). For example, the need for a rapid response to research initiatives and teaching opportunities (which often require the refurbishment of say, laboratories to match specific protocols and bespoke environmental conditions) is key to winning grant funding.

3.02 In November 2003 UEA accepted English Heritage's invitation to take part in its pilot project to create a prototype HPA. In April 2004 the University appointed Cambridge Architectural Research and embarked on the production of the CDS. In August 2006 the finished CDS received the support of Norwich City Council Planning Committee and has been in constant use ever since.

3.03 Possibly as a consequence of it being a prototype, the process took in excess of two years from implementation to endorsement and involved archival research, interviews with all the architectural firms and key design personnel who had been involved with the University since its foundation, an opinion survey amongst the current staff and students of the University, consultation with informed organisations including English Heritage, the Norwich City Council, the Twentieth Century Society, and the Norwich Society and the pressure group, the Yare Valley Society. The key stakeholders—English Heritage, Norwich City Council and the University were all keen to see wide consultation and transparency built into the process so that universal ownership of the outcome could be achieved.

3.04 Additionally, the University insisted the CDS recognise the long term (a minimum of 50 years) expansion needs of UEA. As a consequence, the CDS covers the whole of the University Campus, not just those parts that are Listed. Whilst this might at first appear extravagant, the fact is the importance of the

Listed buildings is preserved in the context of future development. Subject to Planning Consent, development at the University is assured. It is the difference between a Conservation Management Plan that maintains the status quo and a Conservation Development Strategy that recognises dynamic change.

3.05 In the opinion of the University, current heritage legislation does not adequately accommodate the need for dynamic change, nor does it address the issues of accessibility, practicability, affordability, and adjustability. The University insisted the CDS should do so, thus:

- *Accessibility*: The “Brutalist” architectural language of UEA is difficult. Although the opinion survey amongst students suggests the buildings are coming of age, appreciation is by no means universal. Accordingly, the CDS is far more informative about the buildings and campus than the insert in the Statutory List. As a consequence the HPA approach to conservation, characterised by the CDS, has the potential to widen interest in heritage and thus heritage protection.
- *Practicability*: A measure of the success of any management plan is its usability. In this regard the CDS has shown its worth. It is used internally by the University, externally by consultants appointed to carry out project procurement on behalf of the University, and by the Local Planning Authority and English Heritage in assessing proposals the University brings forward for implementation.
- *Affordability*: With the exception of the income the University wins from grant funding, it is entirely dependent upon the Higher Education Funding Council of England (HEFCE). Accordingly, affordability is a key issue. The CDS recognises this limitation and provides “space” for the University to plan maintenance, carry out refurbishment and pursue new development. Until funding becomes available, some projects will remain aspirational for the longer term, some will be approached opportunistically and others incrementally.
- *Adjustability*: Clearly, as a consequence of the pursuit of projects, the CDS has a propensity to date. Continuing relevance is everything to its success. Accordingly, the CDS is to be reviewed on a five year cycle in line with the University’s Corporate Plan; corporate plans are a HEFCE requirement for all English universities. As a consequence, the CDS will be adjusted so that past achievements are acknowledged and future proposals reflected in its text.

3.07 Whilst the CDS cost about £70,000 to produce, it is important to recognise it is a prototype. Notwithstanding its novelty, its successful application can be demonstrated. It is estimated to have saved the University about £250,000 in statutory and professional fees, because works compliant with the CDS have been implemented without Listed Building Consent. By-passing the resource-hungry bureaucracy of the current approval system has also meant that the core business of research and teaching has not been threatened; it has continued without disruption and overcome one of the principle anxieties of the University with respect to Listing.

3.08 In practice, on a project-by-project basis UEA maintains close contact with the Local Planning Authority, regularly forwarding it a schedule of alterations and refurbishments to the Listed buildings. The schedule is held in electronic form and is continually updated. It describes UEA’s intentions at proposal stage; it contains photographs and drawings that record building works both before and after they are carried out; it cross-references the works to the relevant sections of the CDS; and it records the consent process by which the works were permitted. Although the vast majority of the works to the Listed buildings are covered by the principles and policies set out in the CDS, some are more radical and require an application for Listed Building Consent and the involvement of English Heritage. Of the 90 projects procured since Listing, only 10 have required Listed Building Consent and input from English Heritage. This represents an enormous saving in resources, time and cost for all three stake holders—UEA, the Local Planning Authority and English Heritage. 90 Listed Building Consent applications would have been a nightmare!

3.09 In the longer term, the regularly updated schedule of alterations creates a living record of UEA’s on-going development—an invaluable archive when future generations take over responsibility for the conservation of UEA’s architectural heritage.

4.00 RECOMMENDATIONS

4.01 Initial experience during the short period of use of the CDS has been extremely encouraging. Support from the Local Planning Authority in the current usage of the CDS is voluntary, but the fact that the Authority has chosen to support it, is a demonstration of its confidence in the pending HPA. All parties’ benefit—UEA as the keeper of these important buildings, the Local Planning Authority with its administrative responsibility for monitoring their proper care, and English Heritage which is assured that architectural significance is understood and respected.

4.02 UEA’s Conservation Development Strategy is a successful example of a constructive and collaborative approach to the conservation of complex modern buildings, where the desire to retain architectural significance must be reconciled with the need to maintain effective economic use. If new

legislation is enacted, UEA intends to transform the voluntary CDS into a statutory HPA, to ensure that the University's plans for future refurbishment, development and expansion are formally recognised in the planning process. Quite simply statutory backing for the CDS will give UEA confidence that its future is assured.

June 2008

Witnesses: **Mr Robert Ayton**, Head of Design and Development, Westminster City Council, and **Mr Joseph Saunders**, Estate Development Director, University of East Anglia, gave evidence.

Chairman: In this next session we are looking specifically at heritage partnership agreements. Can I welcome Robert Ayton, the Head of Design and Conservation at Westminster City Council, and Joseph Saunders, Estate Development Director at the University of East Anglia. Adrian Sanders will start.

Q24 Mr Saunders: What was your experience of the pilot heritage partnership agreements and would you suggest their widespread introduction?

Mr Saunders: I think perhaps I should start by saying that, because we were engaged in something of a prototype, it was a process of adventure and finding out. Having said that and been engaged in very wide consultation, not only within the university but also exploring the scope that the HPA at the university should cover, my overriding opinion is that there is scope for the application of HPAs elsewhere for the listed heritage of the country but that it is one that needs to be developed very closely with a selection. What do I mean by that? I do not think HPAs are universally applicable; I do not think it is a panacea. I think university estates, for example, are ones where it can apply very well, and I think that there may be opportunities within the NHS estate and the MoD estate and maybe large country estates which have villages attached to them, like Mentmore and Woburn Abbey, where there is a range of issues which are in many ways interlinked that can be dealt with very successfully by HPAs.

Mr Ayton: Our involvement was with Piccadilly Circus, where English Heritage produced the heritage partnership agreement and consulted us on it. It is a very thorough document, produced by consultants, and it essentially sets out what works do not require listed building consent, what works might require listed building consent and what works will require listed building consent. We think that it can be made to work, as my colleague said, in particular areas, but we do not think it should be used very widespread, partly because it involves quite a lot of work up front. There needs to be a full understanding of the heritage asset and there needs to be a full assessment of what potential works might be proposed and what their impact on the building is. So there is this big investment at the beginning and we are not entirely convinced that the benefits over the long-term necessarily outweigh the input at the beginning.

Mr Saunders: Could I take up a point from my colleague there? It took us something in the order of about two and a half years to bring our HPA to maturity, and that certainly sounds a very long time. I had expected and programmed with the university

about 18 months. The level of consultation that we engaged in was very much wider than I was expecting, but I think that is part of the nature, it being a prototype. So far as the benefits for the university are concerned, it opens up a measure of security that was not otherwise available to the university, given the nature of the core business of the university to push knowledge forward either in research or to spread it by knowledge transfer, and when one is engaged in an activity of that sort what was most anxious for the university in respect of listing was that it might be frustrated in its core business. So the HPA for the university gave it a freedom that it would not otherwise have been able to enjoy. It cost us, we think, in the order of about £70,000, but, more importantly, it has, to my certain knowledge at the present time, saved us something in the order of a quarter of a million pounds in bringing projects forward since listing. I say since listing, because what we were doing all the time whilst we were working on our HPA was to test it with work that we needed to do at the university in order to keep the university at the forefront of research. My experience at the present time, and I think it will be an on-going experience, unlike my colleague here, is that it will continue always to bring benefit to the university because of the freedom it provides for the university to continue its core business. That does not mean to say that the university can in any sense be cavalier with what it has as an enormous asset, and it is significant to me that before the HPA was in place, or rather before we were listed, the university buildings were under no threat; we were looking after them. We knew they were important, and they were important on a different level just from their heritage level, if I can put that way. They provide the university with an enormously attractive and stimulating environment, they are dynamic buildings, and if you are going to be working in an environment where you are constantly having to push forward through research, new information, new knowledge, you need the right environment to do it. I believe the University of East Anglia is precisely that because of its architectural heritage.

Q25 Rosemary McKenna: The heritage partnership agreements that you have been involved in, are they genuine partnerships? Is there an imbalance of power between the various parties or does that matter?

Mr Saunders: My experience of it was that there was not an imbalance. I said it took longer for us to do it than I was expecting and I think that was largely because, for the first six months or so of when we were working with English Heritage, we were both finding our way about what the scope of the HPA

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ought to be, what we call the 'Conservation Development Strategy', and I would like to develop that particular aspect with you in a moment. We argued very firmly with English Heritage that we were not in it for creating what was at that time being described as a 'conservation management plan' because we saw that as nothing more than managing the status quo, and that would inevitably, over a period of time, have brought stagnation to the university. We needed to have a way in which we could both nurture our heritage, but also move forward, and we developed the idea of what we have called the 'Conservation Development Strategy'. It does have, as indeed my colleague mentioned a moment ago, three levels of control, one which is recognised as being maintenance and the straightforward looking after of the buildings on a day-to-day basis, those which are little bit more adventurous, but are still, nevertheless, within the terms of the Conservation Development Strategy and those which are clearly matters which are pushing the bounds and need to have further intellect and scholarship to examine them and possibly be worked on through a Listed Building consent or, under the new legislation, Listed Asset consent, but I do not think we should be afraid of that. Insofar as we were able to develop these ideas with English Heritage, it was a development of ideas that was on an equal partnership. However, I would just add a word of caution, and this is going to sound terribly patronising and I do not wish to be patronising in the least, that we were at an advantage where we are a university in that we had a measure of scholarship at our fingertips anyway, so we were able to match an intellectual debate with English Heritage with confidence, and we also took on board a firm of architectural researchers, Cambridge Architectural Research, whose work is directed at research into best practice and design and architecture, so we were supported very well. Interestingly enough, I do not think, once we had gotten into understanding the scope, that we found English Heritage in the least bit resistant. Where the resistance came from was not so much from them, but from the Twentieth Century Society who were very anxious about this new and rather adventurous way of looking after our heritage.

Mr Ayton: There are obviously a number of parties that are required to reach the agreement, not just the local planning authority, English Heritage and the landowner, but also the consultees, the national amenity societies, so the Twentieth Century Society, and local amenity societies as well. Our other experience more recently has been in Baker Street Station where English Heritage have not produced a draft agreement and I think we are sort of starting from scratch really, and there we have a problem even at the initial level of deciding what constitutes the heritage asset, where the Listed building begins and ends, and that is just right at the beginning. Unless there is a clear statement already from English Heritage or, as part of the List description, unless there is a clear statement of what the extent of the interest is, you then spend a lot of time trying to

define the extent of the building, where the curtilage of the building begins and ends and then, within that curtilage, what is of importance. This is not necessarily an area that you can reach easy agreement on and there is a lot of work that goes into just that stage. In terms of imbalance of power, from our limited experience, I do not think there is an imbalance of power. The local planning authorities have already decided what requires consent and what does not and this is just a different way, a formal way, of encoding that process.

Q26 Chairman: Mr Saunders, you indicated really quite significant cost savings as a result of entering the HPA and you talked about £¼ million. Mr Ayton, you seem slightly less enthusiastic about this concept. Did you not detect any significant long-term cost savings through this process?

Mr Ayton: I think it will save money in the long term if it results in fewer Listed building applications being made because then there is less work for officers to do in terms of processing those applications, but I am not sure that that will necessarily result. As the Piccadilly Circus agreement is set out, there is a lot of consultation involved and, when work is proposed, LUL will still send us, well, not for the green works which do not require consent, but the amber or the red works, they still either have to make an application to us or send us the proposals for us to assess anyway just to make sure that they are either acceptable or, in the case of the amber proposals, whether they actually require consent or not, so ongoing there is still quite a lot of work involved. Where it does potentially save work is in clearly setting out what work does not require consent and, if that work just carries on without our being involved, then we have saved some time. I would say generally that I looked at our statistics and we do not actually get many applications for Listed building consent for works that do not require it. Mostly, people know what requires consent and they apply for it anyway.

Q27 Mr Evans: As far as the cost implications are concerned of the Heritage Partnership Agreement, is it all going to be contingent on how many there are going to be?

Mr Saunders: Sorry, could you repeat that?

Q28 Mr Evans: The costs, particularly for local authorities and for English Heritage, it could be quite considerable if a lot of HPAs occur.

Mr Saunders: I think the capital needed to set them up would certainly have to be expended, but I think thereafter the savings that would accrue are, well, for me, clear. Perhaps if I went into how we resourced this, that might be helpful. So far as the university was concerned, the resource was me and me only. Having said that, I engaged others within the university on a consultative basis and of course we carried out a survey of esteem amongst the university community, but the expectation of pro-

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vice-chancellors and other individuals across the university is that they expect to engage in this sort of work on behalf of the university, having put aside for a period of time their teaching research, and that is the way in which universities work, so it was not as if there was going to be anything extra on top of what the university would have had to have done in that regard. The £70,000 that I mentioned was in respect of money that the university had to expend outside of the university on consultants' fees, on printing, on travel, on expenses and all of that sort of thing. What I cannot tell you is how much it cost English Heritage or the local authority. However, what I can tell you is that the Conservation Development Strategy, which we drew up, we drew up almost entirely at our own expense, consulting with English Heritage intensely only in the first few months when we were, as I mentioned earlier, agreeing the scope of it. Thereafter, what we did is we sent English Heritage early drafts, later drafts and then the final draft for their comment and so on and so forth, and we worked with the local authority very much on that basis as well. We seem to have gained the trust of the principal stakeholders in this, ourselves as the keepers, the local authority as the administrators and English Heritage as the intellect and, having won that respect, I think that they were able very substantially to leave us alone to develop this HPA ourselves. I am not suggesting that that will always be the case with everybody and I mentioned earlier on to one of your colleagues that we are in perhaps a rather privileged position being a university, and I am not suggesting that it would be the same for everybody, but insofar as there are consultancies out there who do have an ability to be able to carry out the appropriate research and convert that into a practical, in our case, Conservation Development Strategy, I think when an institution decides whether or not it is going to enter into a Heritage Partnership Agreement, it needs to do itself a little business case and I think that is a perfectly reasonable thing to expect.

Q29 Mr Evans: It is clearly benefiting you then. Robert, Westminster City Council have spoken about the fact that the HPA on the Piccadilly Line Underground scheme had a lot of consultation and a lot of time involved in it and they say that, "The danger is that, in introducing a widespread, uncontrolled system of HPAs, it will promote work for local planning authorities, English Heritage and other parties, which may not need to be carried out.

Whilst HPAs will undoubtedly have some benefits and some exceptional circumstances, their widespread use should be discouraged".

Mr Ayton: Well, on the issue of cost, the trouble with the system at the moment is that Listed building application work is totally unfunded by application fees, so it has to be paid for out of the general planning budget, and we feel, not only in the case of HPAs, but also with Listed building consent applications, that local authorities ought to be given the power to charge for those because of the amount of work and officer time that goes into processing them.

Q30 Mr Evans: So what are we looking at when you say that they should be able to charge for them?

Mr Ayton: A fee. Like you have to pay a fee for a planning application, you should pay a fee for a Listed building application.

Q31 Mr Evans: You also want to be able to say no to an HPA?

Mr Ayton: Yes, absolutely. We would be very worried if anyone could propose them and we had no choice over whether we had to accept them or not because we think that potentially, and maybe we are over-anxious about this, but we think that there could be a lot of demand for them perhaps by major landowners. My area is the West End and the big estates might think of a way in which they could use these and, if they did and they came to us, that would involve us in a lot of work, unpaid work or unfinanced work, I should say.

Mr Saunders: Can I concur with my colleague's comments about applications. We went through a sort of quasi-application process in order to get our Conservation Development Strategy before the Norwich City Council Planning Committee and that did involve the conservation officer and his senior in work as if it had been any planning application, so I think planning authorities should be able to charge for hearing presentations of HPAs.

Q32 Mr Evans: Otherwise, it could be a ticking time-bomb then for local authorities where particularly they have got large estates, which could have huge implications?

Mr Saunders: Yes.

Q33 Mr Evans: Uncontrolled and uncharged.

Mr Saunders: Yes, and the university's estate is not a small one.

Chairman: On that note, thank you both very much.

Memorandum submitted by Heritage Link

1. SUMMARY

Heritage Link brings together 86 voluntary organisations concerned with heritage in England representing interests from specialist advisers, practitioners and managers, volunteers and owners, to national funding bodies and local building preservation trusts. Much of the historic environment is cared for—supported, managed or owned—by these organisations and thus they and their own members—from

the eight national amenity societies with statutory functions to the hundreds of local civic societies—have firsthand and longstanding experience of the heritage protection system as well as advisory and educational roles.

For the detail, we are encouraging our specialist members to comment to your Committee and to DCMS. Their casework experience make them an outstanding independent resource and we hope you will find their responses valuable.

We welcome the Draft Heritage Bill as a milestone in creating a more integrated, robust, streamlined and more transparent heritage protection system. This submission:

- sets out Heritage Link’s positive support for the objectives of the Draft Bill;
- identifies a number of points where clarification or improvements could be made, particularly over costings and transitional arrangements;
- expresses concern that National Amenity Societies must meet the increased costs of their expanded role;
- recommends areas where the level of public involvement in the heritage protection system could be improved; and
- reflects widespread lack of confidence in Local Authority capacity to deliver historic environment services of the quality envisaged in the Draft Bill.

2. OVERALL AIMS AND SCOPE OF THE DRAFT BILL

This Draft Bill, the first step in creating a heritage protection system fit for the 21st century, recognises the positive role the historic environment plays in society. As well as drawing together disparate legislation, we particularly welcome new elements—Heritage Protection Agreements, provisional registration, the requirement for local authorities to maintain or have access to Historic Environment Records and bringing protection in Conservation Areas back to pre-Shimizu levels.

2.1 *Commitment to protection levels*

Government has assured us throughout the process that the new regime will not lessen the level of heritage protection. The Bill as drafted extends and enhances protection in a number of areas and we appreciate DCMS and English Heritage effort in achieving this. We expect that this level of protection will not be diminished in the final Heritage Protection Bill or the secondary legislation:

- The Committee might seek the same assurance from the present Culture Minister.

2.2. *Core principles*

While we welcome the level of protection set out in the Draft Bill, there are areas where the Bill, or the spirit of the Bill does not match up to the three core principles in the Heritage White Paper. These were:

- developing a unified approach to the historic environment;
- maximising opportunities for inclusion and involvement; and
- supporting sustainable communities by putting the historic environment at the heart of an effective planning system.

2.2.1 Developing a unified approach to the historic environment

The combined Register, the revised and new categories of Heritage Assets and the new Historic Asset Consent will give a more co-ordinated framework. There are also measures to achieve more joined up management in the Local Authorities. However this unified approach is still not reflected in central government.

In our response to the Heritage White Paper we hoped that cross Government support would be made more evident in the Bill itself. But the Draft Bill makes no mention of CLG, the Department responsible for planning, building and the environment, local government and for neighbourhoods and communities.

We still consider that combined sponsorship of the Bill would give a far stronger message of cross government commitment.

- We recommend that the Committee looks into the relationship between DCMS and CLG over the Bill.

2.2.2 Maximising opportunities for inclusion and involvement

This is the area which concerns Heritage Link most but could be enhanced before the Bill is formally introduced. Measures like the online Register and the new duty to maintain or have access to Historic Environment Records have enormous potential for public engagement.

However the Draft Bill does not deliver expectations of the Heritage White Paper in developing the scope for public consultation. The National Amenity Societies will be consulted on an extended range of registration issues which could be burdensome if not properly resourced and we comment on this under the Impact Assessment.

With the White Paper's intention to maximise opportunities for inclusion and involvement we are surprised that the consultation with the wider voluntary heritage sector is so limited. The expertise and commitment of the voluntary sector makes it a key player in the heritage protection system.

As currently drafted, Clause 9e includes the National Amenity Societies in the list of those to be consulted and "any other person the heritage authority considers appropriate in view of that person's special knowledge or interest [. . .]".

But it excludes organisations such as local civic and amenity societies, historical and archaeological groups. These have specialist local knowledge and are willing to contribute many man-hours often on a voluntary basis. Community groups to whom the assets may be important as part of the local environment should also have a role. One of the intended non-monetisable benefits of the new system is "greater inclusivity through involving more groups in the decision making process and also improving the quality of decision making through consideration of a range of expert opinion" (para 26 Impact Assessment), yet this is not borne out in the Draft Bill at it stands.

- Heritage Link recommends that all clauses in the final Bill (including sections on Conservation Areas) relating to consultation and representation, should be amended to:
 - “any other person or organisation the heritage authority considers appropriate in view of that person or organisation's special knowledge or interest in [. . .]”.

2.2.3 Supporting sustainable communities by putting the historic environment at the heart of an effective planning system

The Impact Assessment says the Bill "will support sustainable communities by putting the historic environment at the heart of an effective planning system operating at local level".

At central government level this principle is less evident. The Explanatory Notes scarcely refer to its place in the wider context of the Planning Bill or the future of PPGs 15 and 16. The range of legislation repealed through this Draft Heritage Protection Bill indicates how the historic environment permeates a huge range of public life. Until we know what form the new Planning Guidance will take, we are not convinced that the historic environment is at the heart of an effective planning system.

We recommend that the historic environment, cutting across so many Departments, should have its own Planning Policy Statement which would put the historic environment at the heart of an effective planning system at the highest level.

- Heritage Link advises the Committee to seek clarification on the progress CLG and DCMS have made in the developing a Historic Environment National Policy Statement.

2.3 Scope

The Draft Bill sets out primary legislation necessary to bring together separate sources of information, legislative procedures and working practice but is a small part of the whole package of secondary legislation, planning policy and guidance—some 96 different pieces in all, we understand.

Even with the Explanatory Notes and the Commentary published by English Heritage, we cannot judge how well the new heritage protection regime will operate on the basis of the Draft Bill alone. The guidance and consultations issued so far are encouraging but the Implementation programme and Transitional arrangements are also critical. We and our members would be better able to take up opportunities for consultation, "maximising opportunities for inclusion and involvement" if we could plan further ahead.

- It would be helpful to have an indication of what and when related material will be published.

2.4 Omissions

We particularly regret the omission of Clauses on Conservation Areas. Paragraphs 278 and 279 in the Explanatory Notes outline positive changes proposed in designation and protection levels but until the final Bill is published, we do not have information on public involvement in the designation of Conservation Areas, rights of appeal or enforcement. The 10,000 or so Conservation Areas are the main planks of heritage protection and involve thousands of people who care for their local environment. They are an extremely

valuable way of maintaining and enhancing the local environment, sustaining the identity of our cities, towns and villages and a means of involving the public in discussion about what should be protected and why.

Similarly, local listing has huge potential to engage new audiences in protecting what they value. Lack of detail implies a lower value is being given to the local scene and to local participation which was not in the spirit of the White Paper. Given that one of the core principles of the Heritage White Paper was “maximising opportunity for inclusion and involvement” we very much regret the omission of fuller details on Conservation Areas and local designation.

Finally the section on English Heritage grant and loan making powers is also important to the heritage sector and its omission from this pre-legislative scrutiny part of the Bill process is regrettable.

It is regrettable that these significant sections are not given the same degree of pre-legislative scrutiny and public consultation as the other sections.

- We recommend that the omitted sections are published by DCMS with some form of public consultation before the Bill is finalised.

3. ESTIMATE OF COSTS AND BENEFITS SET OUT IN THE IMPACT ASSESSMENT

The new system will not work if stakeholders, English Heritage, Local Authorities, the private and voluntary sectors are unable to fulfil their part in implementing it effectively and within a reasonable, defined period. The costs and benefits set out in the Impact Assessment are part of a much bigger picture.

3.1 *Central and local government*

Additional responsibilities transferred to English Heritage and to local authorities must be properly funded together with capacity building for other stakeholders if the new regime is to work. Joint lobbying in support of English Heritage improved the last CSR settlement but, next time round, the Treasury should build the costs of implementing the Heritage Bill and other measures into its early plans rather than respond to eleventh hour pressures.

We are not in a position to question the costs set out in the Impact Assessment, but suggest the following points should be clarified:

- How the “savings” of £4.80 million over five years will fall back to DCMS, English Heritage and local authorities to give the “net” figure of £1.7 million?
- How the shortfall between EH estimated needs and its CSR settlement will be managed and what impact this will have on other English Heritage operations and public profile?
- What other costs arising from transition and implementation have been explored and when these will be made public?

We welcome DCMS commitment to meeting the costs of new burdens placed on local authorities by the Draft Heritage Protection Bill, provided this does not impinge upon the future funding of English Heritage. We are also concerned how funding is safeguarded in Local Authority budgets to secure the new heritage protection system when CLG has confirmed to Heritage Link that “it is for local authorities to decide on their local priorities”.

- How will CLG and/or DCMS ensure that an appropriate level of funding to support the Heritage Protection Bill at local level—for transitional, implementation, operating or training costs—is not diverted elsewhere?

3.2 *Non government heritage sector*

It is remarkable that the impact on the non government sector and in particular our own members has been so lightly dismissed given the core principle for maximising opportunities for inclusion and involvement.

We welcome the continuing statutory role of the national amenity societies in heritage asset consent but increasing or extending their involvement to registration and allied procedures such as appeals, CNIRs and Heritage Partnership Agreements is not resource neutral. The Impact Assessment does not ascribe any costs to the expanded role:

“Amenity societies may also incur costs in providing advice on all designations. However while they will be statutory consultees, they are not statutorily obliged to respond and are therefore free to fulfil this role in the light of their resources and priorities.” Para 14

The new statutory duty for local authorities to receive and take into account expert advice on heritage asset consent is welcome. Where in-house expertise is not available, this can only fall to the voluntary sector in the majority of cases.

As expert advice is the key to the whole protection system, it seems extraordinary to recognise the knowledge and expertise available through the voluntary sector but deem it optional. Apart from the national amenity societies' statutory role we expected the contribution of civic societies, local history and archaeological societies and other representatives from the local communities would be recognised. They have a major contribution to make in raising awareness of the new regime, its operation and implications not only to local groups but also to the wider public.

We hope that in the development of guidance there will be more emphasis on the opportunities in the whole process of protection for amenity and stakeholder groups to contribute their views at an appropriate stage rather than at the end when they can make little difference and their views are more likely to be considered obstructive.

- What steps is English Heritage taking to understand the impact of the new regime on the voluntary heritage sector and its contribution?
- What steps is English Heritage taking to provide support in enabling the voluntary heritage sector to play an effective role?

Heritage Partnership Agreements could be a valuable means of managing historic assets in a range of different ownerships, bringing efficiency savings and long term benefits. However the pilots demonstrate that they are resource heavy in the early stages.

- We recommend that further work is carried out to provide a better understanding of the resources needed to support setting up HPAs effectively.

4. STAFFING AND SKILLS LEVELS NEEDED FOR EFFECTIVE IMPLEMENTATION OF THE PROVISIONS IN THE DRAFT BILL

We are glad that the Committee is addressing the delivery side of the new heritage protection regime. We understand that English Heritage is currently developing an implementation programme:

- English Heritage should consult key stakeholders in the sector at an early stage in drawing up implementation programmes in order to achieve the best possible partnerships in training and capacity building.

Understanding the special interest in a heritage asset stands at the centre of the system, making the new standard of designation descriptions the key to the real benefits of the new regime. English Heritage staffing capacity is such that the half a million existing descriptions will take years to upgrade. Piecemeal updating, through strategic programmes of national designation or in response to risks is not going to resolve the backlog.

Proposals for “transitional arrangements” are yet to be published, but we are concerned that present funding plans could leave little opportunity for an accelerated revision of current descriptions. Without these new descriptions within a reasonable period, the old and new systems will, in effect, operate in parallel. This could cause much confusion, undermining the simplification and clarity that the new system sets out to deliver.

- Additional staff resources for English Heritage are needed to bring the “legacy” designation descriptions up to the standard required to achieve the benefits of the new protection regime.

The Committee is already aware of the dearth of staff and skills levels to resource heritage protection in Local Authorities so they will also be aware that the DCMS commitment to fund the Local Authorities' additional administrative burdens, though welcome does not resolve the existing crisis in staffing and skills in Local Authorities' historic environment services.

- What measures are DCMS and CLG taking to strengthen public confidence in the capacity of local authorities to deliver efficient and effective historic environment services?

We hope that the complete and revised text of the Bill will include much more scope for national and local voluntary heritage organisations to engage formally with heritage protection. Their experience of the heritage protection system, their advisory and educational services as well as their ties with the local community gives them a role in facilitating the transition not only for local groups but also for the general public. As well as bringing their extensive knowledge and expertise to bear, participation increases levels of civic involvement and responsibility. Even limited additional capacity building will lever in additional funding and expertise.

- Voluntary heritage bodies should be supported to maximise opportunities for public participation and civic involvement in the Heritage Protection Bill and to spread understanding and appreciation of the new system.

May 2008

Witnesses: **Ms Anthea Case CBE**, Chairman, and **Mr Matthew Slocombe**, Trustee, Heritage Link, gave evidence.

Chairman: For this next session, can I welcome Anthea Case, the Chairman of Heritage Link, and Matthew Slocombe, who is a Trustee and also Deputy Secretary of the Society for the Protection of Ancient Buildings.

Q34 Rosemary McKenna: What do you think the heritage sector would see as the main benefits of the Bill?

Ms Case: I think that the whole sector, rather as you heard from your first set of witnesses this morning, very much welcomes the simplification which the Bill provides and the opportunity, as it were, to look at the whole system which has grown piecemeal and put it together in a more logical and coherent way. I think we all welcome too the commitment to as much protection as there currently is in the new system and would want to see that carried out. We also welcomed in the White Paper the emphasis on heritage protection being more open and inclusive because it is the inclusive element, as it were, which particularly attracts the voluntary sector who want to play a part and have an important part to play in heritage protection, but it is, I think, one of the question marks we have over the Bill

Q35 Rosemary McKenna: Would you like to add something, Matthew?

Mr Slocombe: Yes, could I just simply say that the system of control that we have is long-evolved, but hard-fought-for by heritage bodies of all kinds and generally much-respected, but it is a complex business and there is a general feeling from all sides that simplification, bringing together the built heritage and archaeology too into a single register arrangement, would be generally beneficial. It is also valuable to have a new concept of special interest and to try and define that more precisely. At the moment, particularly among owners, there is a great deal of uncertainty about what makes buildings and sites of interest and trying to pin that down more precisely through new designation descriptions would be extremely useful.

Q36 Rosemary McKenna: What practical benefits would there be, as has been suggested, for the heritage sector if the Bill were co-sponsored by DCMS and the Department for Local Government?

Ms Case: I think it is not so much a matter of, as it were, practical consequences from co-sponsorship, I think co-sponsorship would be symbolic, in some senses, in that I think we would have seen it as symbolic of a real wish and attempt by DCLG and the DCMS to work together on heritage protection and its links with the planning system. We too, I think, have concerns that DCLG are going down one route and DCMS are going down another route and the two are not necessarily well-articulated together, and the absence of DCLG sponsorship, I think, was something which made us concerned rather than it in itself having a practical value; it is what goes on underneath it, what it means, which would have a practical value.

Mr Slocombe: Can I add that at a detailed level we have Conservation Area control of course going into general planning which is DCLG's area, and the feeling that there was a joint working on this arrangement would be very reassuring. Similarly, with ecclesiastical exemption, this is not of course an exemption from planning permission, so the feeling that DCLG was in there thinking about the planning implications for the slight extension of the exemption, which the Bill proposes, would be useful. Beyond that, for local voluntary heritage bodies, there are very important roles, say, for things like electronic planning and the accessing of information which is within the system, so the joining up of the advertising side with the heritage applications from DCMS would assist local engagement and help bring local knowledge and local skills into the whole process.

Q37 Rosemary McKenna: You do not think it would have been more helpful than obviously what they will have to do, which is bringing in planning guidelines, that it would have been better if they were working on them at the same time?

Mr Slocombe: I think working in tandem at this early stage would provide greater reassurance for the system which at the end of the process would be beneficial to all.

Q38 Mr Sanders: Is ecclesiastical exemption the opposite of divine intervention! What do you think the implication will be if the Bill proves more expensive to implement than expected?

Ms Case: I think at a general level we could have a situation which, in some senses, was worse than what we have now because, leaving aside sort of pure costs, in terms of the work being done there will be stresses on the system as we move from one side to another and those have to be properly handled and those will require additional resource and additional effort, I think, particularly from local authority staff, but also from English Heritage. If one takes designation, if we run a system whereby new designations take account of the new legislation, but the old list still exists, we could have almost a two-tier system, I think, leaving owners of historic properties in greater confusion than they are in now. You heard earlier what pressures the conservation system is under in local authorities and I think it would add to the delays in the system and perhaps not as good decisions being taken. I think there are real risks there of it not being properly funded.

Mr Slocombe: I would echo that completely. I have mentioned already that defining special interest in lengthier designation descriptions, I think, is going to be appreciated by all, but, for funding reasons, it seems that English Heritage cannot offer a timetable at the moment for completing this full reassessment process of things already designated in one way or another, and there is a really significant risk that the public will end up very confused as well as perhaps local planning authorities who are trying to deal with old-style list descriptions alongside new-style designations, looking at the old ones in the way they

1 July 2008 Ms Anthea Case CBE and Mr Matthew Slocombe

probably always have done, but trying to apply new issues of special interest to the fresh descriptions. May I add too that, from the point of the national amenity societies, we see an increasing amount of work arising from the Bill's proposals which in many ways is very welcome. Things like the requirement to seek expert advice, which is in the Bill, may well fall on the voluntary sector to a quite significant degree and yet the impact assessment assumes that all of this will be done at the voluntary sector's own expense and there is absolutely no provision in there for increased funding. We are all working at capacity at the moment and it seems a missed opportunity not to lever in the expertise through voluntary help that the national and local amenity societies offer through a certain amount of more grant assistance to aid our administrative work; this would be an investment.

Q39 Chairman: You wrote an article which had the rather colourful headline, "Heritage Protection Bill fine but, without cash, chaos", and the National Trust, as we quoted earlier, suggest that, without the resources, they would rather not have the Bill at all, and they presumably are part of your umbrella organisation. Generally, the sector appeared to be quite supportive and welcoming of this Bill, but is there a real fear that actually we could end up with a much worse situation than we have at present if the resource is not there to support it?

Ms Case: We have always had that worry. From the early days of discussing the White Paper with the DCMS, I think one of the points that we consistently made was that the resources to implement a new system will make the new system work and that, without them, there would be difficulties, whether "chaos" is the right word, I am not sure. The National Trust have made their position clear and I think, for most of the sector, we still feel slightly in the dark about the judgment we ought to make because we have only got the draft Bill, some of the important sections in the draft Bill are still missing and I certainly have not seen the Conservation Area—

Q40 Chairman: You have not yet seen it?

Ms Case: No, not yet. We are expecting a whole raft of secondary guidance. We do not have a new PPG from DCLG on the historic environment. We have our concerns about the costs, some of which you heard again earlier this morning, so I think that,

without all that evidence being brought together, it is difficult to make a judgment, but I think we still stick by our position of welcoming the Bill and very much wanting it to be implemented, but having concerns about whether actually the wherewithal to do it and to do it well will be there. I think I would add one other thing too which is that I was very pleased to hear that the Local Government Association were having further conversations with DCMS, but the thing, I think, that I have in the back of my mind from conversations with individual local authorities is that they say, "Well, unless the money is ring-fenced, whatever extra money we get may not necessarily go to the purposes for which it was intended", and at the same time DCLG write me letters saying, "Of course it's up to local authorities where they spend their money".

Q41 Chairman: Well, that is the story of local government finance!

Ms Case: Of course it is.

Q42 Chairman: We have the Minister and English Heritage appearing before us tomorrow afternoon and obviously we will wish to press them on this particular point, but are there any other points you would draw to our attention which we might raise with them?

Ms Case: Well, I think we have one other point of disappointment, I suppose I would call it, which perhaps is not entirely a matter for the Bill, but may actually be a matter for some of the subsidiary guidance, which is that I think we were very excited by what the White Paper said about the opportunities for the voluntary sector and the involvement of the voluntary sector, yet on the face of the Bill, other than the mention of the national amenity societies, in a sense that public engagement element does not really come through, and I think that is something that we all want to think about further and discuss.

Q43 Chairman: It is quite hard to legislate for public engagement. Are you suggesting that there should be specific requirements imposed through the legislation?

Ms Case: There is now a requirement on local authorities to take expert advice. You could define that expert advice in a way which specifically brought in local amenity societies or others with a local interest.

Memorandum submitted by the Archaeology Forum

1. The Archaeology Forum (TAF) is a grouping of the key, non-governmental organisations concerned with archaeology in the UK. Its members include the Association of Local Government Archaeological Officers UK, the Council for British Archaeology, the Institute of Conservation, the Institute of Field Archaeologists, the Institute of Historic Building Conservation, the National Trust, the National Trust for Scotland, Rescue, the Society of Antiquaries of London, the Society of Antiquaries of Scotland, the Standing Conference of Archaeological Unit Managers, and the Society of Museum Archaeologists UK.

2. This evidence is based on contributions from member organisations with an overview of archaeological policy and practice in England and Wales. We note that there are a number of key areas where secondary legislation and statutory guidance has yet to be drafted and look forward to the opportunity to comment on these in detail in due course.

Forum members warmly welcome the draft Bill and its proposals which we believe will create a more effective, coherent and open system for heritage protection. The Archaeology Forum is planning a seminar on the proposals in the autumn at the Society of Antiquaries, Burlington House. This will be an opportunity for the archaeological community to discuss the details of the draft Bill and to consider the implications of its implementation.

The memorandum presented here addresses key issues of principle and policy which we wish to draw to the Committee's attention in order to strengthen the implementation and benefits of the reforms. In particular the Forum commends the submissions made by the Association of Local Government Archaeological Officers: England (ALGAO:E), by the Council for British Archaeology (CBA) and by the Institute of Field Archaeologists (IFA).

3. SUMMARY OF EVIDENCE TO COMMITTEE

3.1 Overall aims and scope of the draft Bill:

- need for a Planning Policy Statement for the Historic Environment;
- clarification on provision for Heritage Protection in Wales; and
- Priority Reform of Class Consents.

3.2 ESTIMATE OF COSTS AND BENEFITS SET OUT IN THE IMPACT ASSESSMENT

- resources for implementation in local authorities; and
- resources for implementation in English Heritage.

3.3 Staffing and skill levels needed for effective implementation:

- importance of expert advice and professional standards.

4. OVERALL AIMS AND SCOPE OF THE DRAFT BILL

4.1 The Archaeology Forum is pleased to have the opportunity to comment on the ambitious programme of reforms set out in the draft Heritage Protection Bill. Our organisations strongly welcome these as significant new measures for the protection and enhancement of the historic environment. In particular, we welcome the commitment made by successive ministers to ensuring there will be no reduction in the overall protection for the historic environment as a result of this process.

New Planning Policy Statement for the Historic Environment in England

4.2 One of the aims of the reform process has been to support sustainable communities by putting the historic environment at the heart of an effective planning system. Protection of the historic environment should be a key material consideration in planning policy and TAF members consider that the preparation of a Planning Policy Statement for the Historic Environment to accompany the new legislation will be of the highest importance. This will be essential to bring together the range of primary and secondary legislation and statutory instruments that will result from the reforms and to provide a coherent re-statement of the changes of policy, approach, criteria and terminology that will be integrated in the unified system for heritage protection. A new PPS will also be important as a signal of cross Departmental endorsement by DCLG of the measures introduced by DCMS, and would replace the existing Planning Policy Guidance—PPG16 (1990) and PPG 15 (1992)—both of which are overdue for revision.

4.3 TAF urges the Committee to voice its support, as a matter of high priority, for joint work by DCMS and DCLG on development of a new Planning Policy Statement for the Historic Environment to be published in conjunction with the implementation of the new legislation

Heritage Protection in Wales

4.4 The arrangements proposed for Wales appear to perpetuate some fragmentation of consent procedures between Welsh Assembly Government (WAG)/Cadw and local authorities, unlike the fully integrated system proposed in England. Similarly clarification is still required on the relationships between local planning authorities, the Welsh Archaeological Trusts and Cadw/WAG on provision and maintenance of historic environment services including Historic Environment Records (HERs); and on the resources that will be available to deliver proposed reforms. No Draft Guidance has been issued for HERs in Wales, as it has been for England. While DCMS has undertaken to address the costs of implementing new duties for local authorities in England, no equivalent undertakings have been made in Wales. As in England, new planning policy guidance for the historic environment in Wales will be essential.

4.5 TAF requests that the Committee inquire into the parity of arrangements for England and Wales set out in the Bill and seek a statement from WAG /Cadw about their assessment of resource needs and proposals for secondary legislation and guidance.

Reform of Class Consents (Ancient Monuments (Class Consents) Order 1994)

4.6 In the Heritage White Paper, DCMS undertook to revoke the section of Class 1 Consent relating to agriculture and to “reform the current system on a management agreement approach”. The Forum has argued strongly for some years for priority to be given to removing designated sites from the damaging effects of continuing cultivation where this impacts on buried archaeological remains. DCMS has considered the evidence for this and finds the argument for reform convincing but the mechanisms by which this will be achieved remain unclear. We wish to draw the Committee’s attention to the need for an urgent resolution to this situation where some of the most sensitive protected archaeological sites are still subject to a level of unnecessary damage on a regular basis.

4.7 The Forum recommends that the Committee ask for details of how it is envisaged that the “management agreement” approach would be introduced and resourced to overcome the obstacles that have previously hampered revocation of Class 1 Consent; and that urgent attention be given to preparation for withdrawal of Class 1 Consents for agricultural activities.

Areas of Archaeological Importance (AAIs)

4.8 The controls of Part II of the 1979 Ancient Monuments and Archaeological Areas Act have not been included in the draft Bill. In the five historic centres which are currently designated, the operation of current planning guidance provides an alternative mechanism to ensure that the historic environment is considered in the development control process. However, loss of the AAI designation is still viewed as likely to reduce the level of protection from some potentially damaging aspects of permitted development, such as utilities and communications infrastructure and residential microgeneration schemes. There has been no assessment, as far as Forum members are aware, of the potential reduction in protection that would result or discussion of its possible effect with the relevant local authorities.

4.9 The Forum recommends that the Committee inquire into the steps taken by English Heritage and DCMS to assess the possible impacts of removing AAI designation and the alternative mechanisms that might be introduced to ensure there is no reduction in protection in those important historic city centres.

5. ESTIMATE OF COSTS AND BENEFITS SET OUT IN THE IMPACT ASSESSMENT

Resources for implementation in local authorities

5.1 TAF commends to the Committee the submissions made by ALGAO England, CBA and IFA which outline concerns that we have as an archaeological community about the resourcing of new integrated historic environment services in local authorities.

5.2 While we agree that the costs of devolving consent procedures for scheduled ancient monuments to local authorities may not have a significant effect on resources, there are other important areas that should be considered more closely. We believe that the estimates for HER services in the Impact Assessment may underestimate the real costs of meeting the requirements of the recently published DCMS Draft Guidance on HERS. It would be valuable if the basis on which these estimates were prepared could be publicly available. As the impact assessment recognises, there will also be a significant short-term need for investment in new skills and to embed the new procedures in local authority e-planning systems. The Forum welcomes DCMS commitment to fund local authorities’ additional administrative needs and the undertakings that English Heritage has given to support necessary capacity building in the sector but believes this should be based on a clearer understanding of the requirements for implementation and establishing the new system.

Resources for implementation in English Heritage

5.3 English Heritage has stated that it has secured an appropriate level of resources for preparation to implement the new system in the period up to the end of 2010-11. Once the new system of designation is introduced, however, it is anticipated that there will continue to be greater ‘up front’ costs before efficiency savings start to flow from the new system. These will include investment in developing new Heritage Partnership Agreements; in dealing with the issues that will inevitably arise in dealing with the half million “legacy designations” that will be transferred to the new Register; and potentially a flood of new applications for designation, with a much higher level of general public engagement and interest, under the new criteria for registration of heritage assets.

- 5.4 The Forum suggests the Committee inquire whether DCMS and English Heritage are satisfied that
- the resources available for HER services and for capacity building in local authority services are sufficient for the purpose of preparing for implementation of the new system and on what basis that need has been assessed; and
 - the resources likely to be required by English Heritage for effective implementation and upfront costs after 2010–11 have been quantified, and those longer term needs considered with DCMS.

6. STAFFING AND SKILL LEVELS NEEDED FOR EFFECTIVE IMPLEMENTATION

6.1 The need for local authorities to obtain and take into account expert advice in considering heritage asset consent applications is explicitly recognised in the draft Bill. The Forum wishes to emphasise the importance of this advice being provided by appropriately qualified professionals with relevant expertise working to agreed standards. This requirement should be included formally in the Bill or in relevant statutory guidance.

6.2 The Forum emphasises to the Committee the importance of provisions in the Bill or in supporting Guidance to ensure that local authorities have access to appropriate professional advice and expertise on the historic environment in discharging their duties under the new system for heritage protection.

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Witnesses: Mr Peter Hinton, and Dr Gill Chitty, Secretary, Archaeology Forum, gave evidence.

Q44 Chairman: For our last session this morning, we turn to archaeology and can I welcome Peter Hinton of the Archaeology Forum and Dr Gill Chitty. Can I ask you, what impact do you think the Bill is going to have on how we protect archaeology and do you generally support the provisions within it?

Mr Hinton: Thank you very much, that is an excellent question. Answering on behalf of the Archaeology Forum, perhaps I should just explain that we are an informal grouping of independent non-central government bodies who try to get together to try and give fairly clear and consistent signals on issues of advocacy from a sector that is perhaps famous for its diversity, perhaps reflecting the range of skills and activities in the sector. One thing which has come through very clearly from all of our members is the wholehearted support of the principles that underpin the draft Bill. We realise that the Bill really recognises the role that heritage has in terms of sustainable communities, in making, as a previous witness said, the world a better place to live in terms of place-shaping and in terms of economic, social and cultural regeneration. It is a very good thing that it brings together a very disparate, complex and obscure set of existing legislation and practices that have served to cause a great deal of confusion over the years, not just to the general public, but to heritage professionals as well which often leads to an appearance of arbitrariness in the decision-making by heritage professionals, arbitrary verging on the contrary from time to time, and I think that making a more effective, open system will make it much clearer that the heritage community is not opposed to change, it is not trying to fossilise a historic environment in aspic, but, as archaeologists, we quite like change actually; it is rather our business. Better integration with the planning process you have heard a lot about, and that is certainly something that we wish to see more work done on, but we are very pleased to hear that the intention is to put the historic environment at the heart of the planning process, and we have welcomed the commitment from successive ministers not to weaken protection. In terms of the big wins that we see in the Bill, we are very pleased to see the commitment to improving the clarity and indeed parity for marine archaeological assets. The requirement for local authorities to have a historic environment record is something that our forum has campaigned for for many a year and we are delighted to see that, as we have campaigned for the

expansion of protection to cover sites without structures, palaeo-environmental deposits, artefact scatters and things like that, which can slip through the net of current legislation. I too have not yet had the privilege of seeing the section on Conservation Areas, but the commitments published in the guidance to the Bill to restore protection back to its former levels is extremely welcome, as is the move to give greater protection to heritage and open spaces, so very positive feelings about it.

Dr Chitty: I think it would be fair to say that there are ways in which, we think, it could be even better, and we would like the opportunity just to mention a few of those. It is in the nature of being towards the end of the session that some of what we say will be a reprise of what people have said already, but perhaps you can forgive that. We think it is absolutely fundamental that we have a new PPS to embed what is a very new approach, a lot of new language, some very new concepts in the Bill, in national policy, and to ensure that there is clarity and consistency across the whole spectrum of the planning system to deliver those principles because this Bill of course only addresses designation, protection of the specific assets, and clearly the historic environment is a lot bigger than that. A new PPS would serve a number of valuable purposes, the first of which, as many other colleagues have mentioned, would be to have a very public imprimatur from DCLG of the value of this within the whole system of planning for sustainable communities, and a very practical purpose of it could be to bring together what is a whole raft of secondary legislation, supplementary guidance and amendment of other legislation; there is a great portfolio of other tasks to be accomplished alongside the primary legislation. Thirdly, we think it will be very valuable to recapture something of the vision of "The Power of Place" and "A Force for our Future". A Bill is necessarily a very practical piece of apparatus with process and procedure, but a new Policy Planning Statement would be a very valuable way of restating that vision that we all have for why we need this change and what it is going to do in the bigger picture.

Q45 Chairman: Obviously the setting up a statutory requirement on local authorities to maintain heritage environmental records you have referred to as something you welcome and have called for, but you will have heard from all of our previous

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witnesses the considerable concerns that are being expressed that local authorities may not have either the resources or the skills required to meet these new responsibilities. Is this a concern you share?

Dr Chitty: On HERs themselves, as our colleague Jan Wills has already said, these exist or Sites and Monuments Records, at any rate, have existed for many decades and local authorities and indeed English Heritage have invested very heavily in them, so, in terms of resourcing for HERs, what we are talking about is bringing them up to a new benchmark standard and at the moment the compliance standard, whatever it may be, has not been published, so it is quite hard to look at the figures in the impact assessment and say whether they are fair or not. I think it is true to say that, intuitively, we feel they may be a bit light, but we are very reassured to hear that the LGA is taking the lead with the Department and English Heritage in looking closely at some of those estimates and monitoring how it goes in the early period because I think that will give us a much better feel. HERs are very variable, they are very diverse, some of them are absolutely excellent, others have been the victim of little investment, so clearly the funding needs are going to be proportionate to the situation in different authorities and I think that is the case with other areas of resourcing too which is why it needs looking at in detail. On the broader issue, Peter, would you like to comment?

Mr Hinton: I absolutely would agree that we do not feel that we are in a position to dispute the impact assessment in terms of the amount of resources that will be required to bring historic environment records up to that baseline. What our ambition would be of course would be to have historic environment services that go beyond the baseline of providing that historic environment record. You heard earlier on from our local government colleagues of the important range of activities that local authorities carry out with regard to the historic environment, and clearly what we are looking at here is resourcing one of their tools which is the record. We would like to see greater investment in local authorities so that they can actually play to their best, play to their strengths, and clearly, as has been raised with you before, there are a number of skills issues which we could expand upon.

Chairman: It is worth saying also, as I said to the previous witnesses, given you have not yet had a chance to have a look at the additional clauses which have been made available, if you wished to come back to us with any further observations, we would be keen to hear them.

Q46 Rosemary McKenna: What will be the effect of the devolution of responsibility from DCMS to English Heritage for the designation of land-based assets in England?

Mr Hinton: I think we are very comfortable with this proposal in the Bill. We recognise that there will be a need for English Heritage to invest over some considerable period of time in getting the list descriptions and other existing documentation up to a fit standard for the future and that will need a

strategic and staged approach, but the principle of devolution is something that we are very comfortable with and we feel that that is a form of accountability that fits well in the modern world.

Dr Chitty: I think there are two specific areas actually where it would perhaps be useful just to unpack some of the issues that might relate to urban areas and to rural ones. One of the responsibilities, as we understand it, that will come from English Heritage to local authorities is that for managing the class consent system. Now, we have not seen the details of what is proposed there and it is another area where we are waiting for details, but we do have a very welcome assurance in the White Paper that the Class 1 consent for continued cultivation of designated sites would be revoked. The implications of that are not straightforward and there is certainly an area there for the Department and for English Heritage to explore with local authorities as to the implications of developing the management agreements to take the place of that class consent, agri-environment schemes which might take its place or indeed compensation issues which might arise for local authorities in inheriting that responsibility, so that is certainly something, we feel, which needs to be pushed forward now. Clearly, any reformed system cannot really support the continuation of this aberration whereby some of our most vulnerable and important sites, such as Verulamium Roman town, for example, continue to be ploughed and damaged year on year, despite the fact that they are actually designated. The other area of possible interest in terms of local authority resources relates to the repeal of the second part of the 1979 Act, which one of my colleagues mentioned earlier, where Areas of Archaeological Importance will no longer exist under the new provisions, and I think we all accept that the provisions of the PPG have largely superseded the need for that and it was never a very effective additional layer of protection, but it did offer some extra controls, particularly over permitted development and the operations of utility companies. I have not seen the Conservation Area drafting either, but we do hope that the new Conservation Areas, which can apply as Areas of Special Archaeological Interest, might well take the place of those AAI designations and indeed many other historic town centres that deserve them to have that extra level of control over activity in urban centres.

Q47 Mr Evans: When you look at this Bill and at conservation and heritage generally in this country and when you look abroad, are you envious of another country which, you think, does it far better than we do it here or are about to do it here?

Mr Hinton: I think my answer to that question would be that there is considerably less legislation covering the historic environment in this country. Most other European countries have much tougher legislation. Whether that legislation is actually effectively enforced varies a lot, and certainly there are a number of European countries where one gets the impression of very powerful legislation that is just not taken seriously by law enforcement

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authorities or indeed the bodies responsible for the heritage. There are a couple of things that we would like to see additionally that are not here and perhaps I might just pull a couple of things out. You may be aware from the written evidence that you have received that there is a degree of disquiet amongst the maritime archaeology community that one of the big things on our wish-list is not addressed through this Bill and that is the removal of the cultural heritage from the salvage regime; the salvage regime does not seem an appropriate way of looking after part of our cultural heritage. I recognise that this may not be the Bill to deal with that, but that is a bit of unfinished business that should be flagged up. I think another thing that concerns the practising archaeologists very greatly is that in nearly all other European countries there is a system of archaeological licensing which we do not have in England and in Wales, nor indeed in Scotland, and we do feel there is a need to bring forward some competence-based right to practise archaeology, particularly through the commercial world where there is likely to be damage, where there will be definite damage, as part of the project design and as part of the archaeological process, to important monuments because we need to ensure that there is proper public benefit from that process.

Q48 Mr Evans: Are you saying that there are too many cowboys in the field at the moment?

Mr Hinton: There are certainly cowboy tendencies that have the potential to grow. You will understand that at present anyone can provide commercial archaeological services, regardless of their background and competence. Our calculations indicate that, for England, approximately £135 million is invested every year into the planning process, into the historic environment, which may affect something like £20 billion worth of development, and the asymmetry of information that there is between the service provider and the people who are buying the services, and there was reference earlier on to the need for informed and intelligent clients, can encourage the less competent and the less ethical to provide poor services. Other organisations, for example, registered organisations with the Institute of Field Archaeologists, do provide good archaeology for the public and a reformed market where we can break out of the market failure that we find ourselves in could actually give much better public benefit.

Q49 Mr Evans: If you are brave enough, Peter, I would love to hear some examples where you think money has gone in and it has been a bit of a shambles because people have not been properly trained to do the job that they said they were doing.

Mr Hinton: Well, perhaps, rather than risk the specifics, I could deal with the generalities. Our feeling is that one of the things that a move towards accredited practice could give us is an encouragement for archaeological service providers, who are capable of doing brilliant work, we know that, that they do that on all of their projects rather than on occasional projects, the problem being of an

intensely competitive market where anyone who seeks to add value to their project is in danger of pricing themselves out of the opportunity to win the project. That is something that I think the Bill, or particularly the guidance that underpins the Bill, could address, as too could reform to the planning guidance. The commitment that we heard on Friday from Baroness Andrews to bring forward revisions to planning guidance is encouraging. It has been mentioned that it is a very tight timescale and we would wish to get into those discussions very soon, just as we would wish to get into discussions with DCMS and the Welsh Assembly Government and its advisers about these issues as soon as possible because they are urgent and they are troubling the sector.

Q50 Mr Evans: Gill, do you have anything to add to that?

Dr Chitty: No, I do not, except that I think that having that very valuable clause about a duty to take expert advice is exactly the hook that we need in the Bill for supporting that.

Q51 Alan Keen: You heard Anthea Case be critical that, although national amenity groups were included in the draft Bill for consultation, local civic groups and, as she mentions in her submission, archaeological groups were not. Did you feel the same as Anthea, that that should be specified that local archaeological groups should be involved officially in the consultation?

Dr Chitty: I think there are a whole range of local specialist groups and amenity groups, including archaeological ones, that could make a really valuable contribution in local authority consultations, and I think it is fair to say that, already in statements of community involvement, many local authorities are very inclusive, but it would be very helpful to have that spelled out in some way in the Bill, yes.

Q52 Alan Keen: Unfortunately, our archaeological expert we have on the Committee is on another committee this morning, so I am doing my best to fill in for her without any help from her. I guess that the archaeological groups and volunteer groups do play a massive part in what you can do and presumably you would not be able to do very much without them.

Dr Chitty: They do indeed as individuals and as organisations. We have a network, and I am speaking now for the Council of British Archaeology, of volunteer groups and organisations who support us, for example in our current statutory role as a consultee on Listed Building Consent applications, and we depend entirely on that national network of volunteers to make our input into the process, and they are our eyes and ears on the ground and they are often able to operate in lots of ways to support our interests at the local level in a powerful way as a local voice, so yes, a very important part of the network.

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Q53 Alan Keen: So you would like us to mention that when we put our Report together?

Dr Chitty: Yes.

Q54 Mr Evans: Peter, when you were talking about accredited businesses being the leaders, you are not talking about their not being able to access the enormous number of volunteers that come in and get involved, particularly in digs?

Mr Hinton: Absolutely not, no. What I was talking about was the opportunity to add a little extra layer of regulation to some of the commercial service providers. One of the things that we sometimes see, but, sadly, not often enough, is commercial archaeological excavations going ahead with opportunities for public participation and public involvement and that is extremely valuable. We want the public to be much more involved in its archaeology, it is not ours. There are about just under 7,000 of us and we want to share it with the rest of the world. Our concern is just to make sure really that the environment is right so that we can get the proper articulation between the paid professionals and the voluntary sector from which so many of the paid professionals originated.

Q55 Chairman: Finally, your overriding concern, understandably, is that this Bill should not result in any reduction in the level of protection that exists for archaeological sites. There have been a couple of areas where, it has been suggested, that might be a risk, such as the abolition of areas of archaeological importance, but also the change in the definition from 'national importance' to 'special archaeological interest'. Do you think that there is a risk that, perhaps inadvertently, it might lead to a reduction in the overall level of protection?

Dr Chitty: I think we have already touched on AAIs and that extra level of control which they offered and the fact that we hope that, with those five authorities that currently enjoy the AAI designation, there can be conversations with English Heritage and the Department to discuss what, they think, the impact might be of the reduction in that protection and whether we can look at Conservation Areas of archaeological interest as an opportunity to build on the existing system and make it even better, so certainly that is an area that we believe local authorities should be very actively engaged in developing. I do not think that means necessarily adding content to the Bill, but it is all of these additional bits of supporting work that need to be carried out. In terms of 'national importance' and 'special interest', national importance is the criterion by which the Secretary of State selects sites for designation at the moment and that is embedded in PPG16 and has been for the last 18 years as the benchmark for the principle of preservation of sites, whether they are scheduled or not, and that is quite an important principle. That wording from PPG16 is embedded in Local Plan policies and documents throughout the country now. It is very clear and it is very unambiguous and it has served archaeology extremely well. I think that, if we are going to move

from the concept of national importance to a concept of special interest, then there does need to be a very close scrutiny of the selection criteria and of the possible pitfalls of that transition. I am actually looking at my notes because it is quite a difficult concept to get across, but, as we understand it, modernising the system moves the concept from a need to demonstrate national importance, which is what we have at the moment, to the need to demonstrate that an archaeological site might contain evidence of human activity that is of special historic interest, so, in other words, special archaeological interest is predicated on the evidence for the existence of special historic interest. Now, I am not sure if I have explained that very clearly and, if I have not, that demonstrates really the fragility of the concepts at the moment, which is not to say that we do not believe that an overarching concept of special interest of the historic environment is not the right one to go for, it is.

Q56 Mr Evans: So are you saying that, if we do understand that, we were not listening carefully enough?

Dr Chitty: I am not sure I understand it myself! However, I think what we want is something that is robust, as robust as what we have got and even better, if we can get it, that is reasonable, as it has to be, within the planning system and which is defensible and which all of us who work in the historic environment sector can go out and work with with a degree of confidence, and I think that, in order to achieve that, we need a very direct engagement with the people who are working on developing these principles and this new language.

Q57 Chairman: Is the key to it going to be the new Planning Policy Statement?

Dr Chitty: That will be a big part of it, yes. The principles of selection in the new PPS will be critical and getting those articulated with the criteria that we have at the moment, yes.

Mr Hinton: Once again, it shows how important the guidance, which is still evolving, will actually be. The devil will be in the detail and we really hope that it will be more angelic than diabolic, but again we would hope to be involved much more in that than we have been to date. That is not a criticism of the process so far. We do recognise that during the drafting stage DCMS and its advisers would necessarily be very circumspect in releasing information and had to conduct their business with a great deal of confidentiality. As we move beyond that process, we have had assurances that there will be a greater level of involvement with the sector and I am sure that that will be essential when you hear issues of the kind of complexity that Gill has just described; it is going to need a great many minds coming from different directions to try and untangle that one.

Dr Chitty: And we are very committed to getting it right.

Chairman: Well, hopefully we can perhaps help at least to contribute in some small way to that objective. Can I thank you both very much.

Wednesday 2 July 2008

Members present

Mr John Whittingdale, in the Chair

Janet Anderson
Philip Davies
Mr Nigel Evans

Rosemary McKenna
Helen Southworth

Memorandum submitted by English Heritage

SUMMARY

This submission highlights the main benefits of the Heritage Protection Bill, the areas where English Heritage believes further work is necessary and the resource implications.

MAIN BENEFITS

- A single accessible list of designated sites, abolishing the confusing and often overlapping regimes of listing, scheduling and registration.
- A single test of “special interest” which reflects the modern understanding of the historic environment as a joined-up entity rather than a disparate number of components managed by different regimes.
- A clear separation of roles between English Heritage and government. Instead of the current duplication English Heritage would have responsibility for designation with a new right of appeal to the Secretary of State.
- Formal consultation with owners which together with the new appeal process would result in the opening up of a system often regarded as closed and secretive.
- Heritage Partnership Agreements between owners, local authorities and English Heritage for large or complex sites which will encourage long-term strategic management and remove unnecessary repetitive regulation.
- Strengthening local authority management of the historic environment through devolving responsibility for all Historic Asset Consents, requiring local authorities to maintain or have access to a Historic Environment Record and reinforcing the regulation of Conservation Areas and locally designated buildings.

AREAS WHERE FURTHER WORK IS NECESSARY

- raising the threshold for interim protection;
- protection of buildings of special local interest;
- translation of the current offence to demolish without consent in a Conservation area into a new offence;
- Government commitment to a new Planning Policy Statement for the historic environment to replace PPGs 15 and 16 and reflect the Bill’s joined-up approach to the historic environment and help define concepts such as “special interest.”;
- the Retention of the familiar terms “List” and “Listing”; and
- ensuring that the protection of World Heritage Sites is harmonised with the protection of other heritage sites.

RESOURCES

- English Heritage resources—English Heritage has earmarked sufficient resources over the next three years to support the first phase of implementation. The major elements of this will be training and capacity building, setting up the new Register and a new strategic designation programme. As implementation proceeds beyond 2010 English Heritage will need additional resources to begin to revise the designations carried over from the existing regimes.

- Local authority resources—We expect the level of work created by the new processes to be broadly similar to the current arrangements, save for the delegation of consent for work to nationally designated archaeological assets to local planning authorities. English Heritage is working with DCMS, the Local Government Association and others to refine the cost estimates in this area. Our view is that these will not be substantial and that there will be longer term savings.

INTRODUCTION

1. EH welcomes the government's draft Heritage Protection Bill. We believe the reforms it proposes are essential for the protection and management of the historic environment in the 21st century and would over time reinforce current best practice to become standard practice. In so doing, it would help change the culture of the heritage sector towards an approach based on constructive conservation, including wider public engagement and partnership.

2. The comprehensive overhaul of current heritage protection legislation that the Bill represents is vital if the historic environment is to fulfil its potential in managing environmental change in England, as part of the reformed planning system and other environmental management regimes for the natural and marine environments. Because the Bill repeals much of the existing legislative framework under which the sector operates, a whole raft of changes are necessary to streamline the current system. We welcome the whole reform package, the high level components of which are summarised in Appendix A. Some of the major reforms are, however, especially important and deserve particular emphasis. They are set out below.

MAIN BENEFITS

3. *The Unified Legislative Framework and the Register*: Fundamental to the reform package is the Bill's provision for a new unified legislative framework through a single system of national designation and consents. The new Register of terrestrial and marine heritage assets is the key building block of the new system. It will include the currently listed buildings, scheduled monuments, registered parks, gardens and battlefields, World Heritage Sites and historic marine assets. The new Register would enable us to offer a simpler, comprehensive, and accessible database for the management of the historic environment at national level, to be linked to locally held datasets.

4. *The Single Test of "Special Interest"*: The other foundation of the new system is the introduction of a single test of "special interest" for both the designation and consent regimes for all assets in the new Register. This single test reflects the contemporary understanding of the historic environment as a joined-up entity rather than a disparate number of components managed by different regimes. It will effectively rid us of the artificial distinctions that are increasingly anachronistic and inhibit integrated management of the historic environment. For example, in future it will not be necessary to try to decide where the archaeology of a site ends and where architectural or building history begins. Again, it is a question of enabling best practice to become the norm.

5. *Clear Separation of roles Between English Heritage and Government*: We welcome the proposal to transfer statutory responsibility for designation for terrestrial historic assets from the Secretary of State to English Heritage. As well as an indication of the government's confidence in our competence and status as the lead body for the sector, this will provide much needed clarity about the distinct roles of the Secretary of State and EH. The new appeal process, whereby EH's designation decisions can be formally challenged by appeal to the Secretary of State, will reinforce this.

6. *The Introduction of Formal Consultation*: From our experience of administering the listing system since its handover to us from DCMS in 2005, we are convinced that the introduction of formal consultation will allow much more effective engagement in the designation process by owners and managers of historic assets, local authorities and community groups. Together with the new appeal process for designation already mentioned above, this will result in the effective opening-up of a national designation system often regarded as too closed to allow proper public scrutiny and enable us to prove that the representations of interested parties have been given due consideration in the statutory process.

7. *Heritage Partnership Agreements*: The Bill's proposal to establish Heritage Partnership Agreements (HPAs) has the most potential of all the reforms to deliver a change of culture in the way the historic environment is managed over the medium to long term. These HPAs, based on a formal partnership between owners and managers of historic assets, local authorities and EH, will allow strategic management of complex sites such as a university campus, or similar types of assets under single ownership such as historic bridges or the British Waterways canal network. They will also strip out unnecessary repetitive regulation and thus improve efficiency. EH has, at government's request, undertaken extensive testing of HPAs on a wide variety of sites and the results have been very positive. Three of the most successful have been at the University of East Anglia; the bridges, wayside crosses and milestones of the Highway Authority in Cornwall; and the London Underground. A list of HPA pilot projects is attached as Appendix B.

8. *Strengthening Local Authority Management of the Historic Environment*: It is vital that the Bill strengthens local authority management of the historic environment. The reformed system is not just about national designation and consents, it is about the system at national and local level and its inter-dependence. The Bill's provisions improve this relationship in several vital ways by:

- Devolving to local planning authorities the responsibility for the operation of the new Historic Asset Consent system that replaces the current Scheduled Monument Consent and Listed Building Consent regimes. This means that, for the first time, local authorities have statutory responsibility for the regulation of nationally designated archaeological sites, with appropriate support from EH.
- Requiring local authorities to establish and maintain, or have access to, an Historic Environment Record (HER). This will be a new statutory duty but is not a new concept. HERs will include national designated assets, Conservation Areas and local designations and undesignated assets of special local interest, and will be linked through the Heritage Gateway to other related data management systems such as the NMR and Images of England.
- Reinforcing the regulation of Conservation Areas and locally designated buildings. The Bill is incomplete in this respect, but we strongly endorse government's intention, set out in the Explanatory Notes at the back of the draft Bill, to widen the scope of Conservation Area designation to include special archaeological and artistic interest, restore the pre-Shimizu position to give local authorities control over partial demolition of unlisted buildings in Conservation Areas, and reverse the South Lakeland decision to ensure change benefits Conservation Areas.

ASPECTS OF THE BILL WHICH NEED FURTHER WORK

9. We have some residual concerns with the Draft Bill at this stage, as set out below, but we believe it is possible to resolve these before introduction into the House.

- If English Heritage decides that an application for registration should proceed to consultation, interim registration and consequent protection will follow. That is an important and significant step for the owner. To be justified, the application ought to have a reasonable prospect of success. At the moment the Draft Bill refers to applications only needing more than a “negligible” prospect of success to proceed to the next stage. We believe that this will let through this initial sift too many applications that do not deserve such consideration and attendant (and potentially disruptive) interim protection.
- Protection of buildings of special local interest was not covered in the Draft Bill. It is promised in the White Paper. In our view demolition of locally designated buildings should require planning permission at the option of the local planning authority and without any compensation consequences. This would bring protection up to the level afforded to buildings within conservation areas.
- Within Conservation Areas it is currently an offence to demolish without consent and it is vital this deterrent remains. Unifying conservation area consent with planning permission is a sound efficiency, but planning enforcement procedures only create an offence of failing to respond to an enforcement notice if and when one is served. A new offence of failing to obtain advance planning permission for demolition of a building in a conservation area or a locally listed building (if required) should be introduced.

10. Alongside the Act and the related regulations, a range of policy and guidance will need to be produced to assist in their detailed interpretation. English Heritage envisages a hierarchy of such policy and guidance, with the key document being a new Planning Policy Statement (PPS) for the historic environment. This will replace the existing PPG15 and 16.

11. English Heritage supports CLG's drive to simplify procedures and guidance wherever possible and understands why consideration is being given to reducing the number of PPGs/PPSs. However, we believe that with a new Act there will be more need than ever for clear guidance covering the whole of the historic environment in a single document which could be significantly shorter than the existing two PPGs together. There are a number of important concepts that are not appropriate to include in the Act or the Regulations but which need to be set out clearly to ensure the smooth running of the new heritage protection system, for example the presumption in favour of preservation, and helping to define what “special interest” actually is.

12. English Heritage urges the Committee to request CLG to commit to delivering a new PPS for the historic environment. This would reinforce the Government's commitment to the historic environment and assuage any concerns in the sector, particularly in local authorities, that the changes being brought in as part of the Heritage Protection Bill will not be backed up by supporting guidance in a new heritage PPS.

13. English Heritage is fully committed to working with CLG and DCMS to prepare the new PPS. We have also identified a range of other guidance, to underpin the key elements in the draft Act, such as Historic Environment Records, the selection criteria for designation of heritage assets etc.

14. *Terminology:* The terminology of the Bill is unnecessarily confusing in one fundamental respect, the use of the word “Register” as the base of the new system. While Register is a neutral word, avoiding identification with either “scheduling” or “listing”, “listing” has such universal broad recognition among the general public as well as owners and managers that it is by far the best term that could be used as the core of the new system. All but 25,000 of the 500,000 existing designations carried over to the new system

will be “listings”, and we are very concerned that “Registration” will only necessarily confuse what is already crystal-clear. We therefore strongly urge the substitution of the words “List” and “Listing” for the Bill’s terms “Register” and “Registration”.

15. *World Heritage Sites*: Improving protection of World Heritage Sites remains urgent because of continued UNESCO interest not just in the Tower of London, Westminster and Liverpool but in others including Bath (likely to get a mission this autumn). Because of these issues, focused mainly on the impact of development on urban World Heritage sites but also beginning to emerge with regard to wind energy (cf Blaenavon, Hadrian’s Wall, Orkney), ministers agreed to include new measures in the Heritage Protection White Paper in March 2007. These were:

- (i) Changing the Call-In regulations to make it easier to call in cases affecting the Outstanding Universal Value (OUV) of World Heritage Sites. Government is considering responses to the public consultation on a new Call-In Regulation which inter alia will require local authorities to refer to the Secretary of State planning applications:

“where English Heritage have objected on the grounds that a proposed development could have an adverse impact on the outstanding universal value and significance of a World Heritage Site or its setting, and has been unable to withdraw that objection after discussions with the local planning authority and the applicant. The Secretary of State will take into account the views of English Heritage in deciding whether or not to call in any applications referred for this reason.”

- (ii) Including World Heritage Sites in Article 1(5) (where they are not already included by virtue of other designations) to impose more control on small-scale changes which incrementally could damage OUV. Consultation on this change started on 27 May along with that on the planning circular. The sites principally affected will be Bath and Cornish Mining which have large areas not covered by conservation areas, National Parks or AONBs. Issuing a planning circular “which will further recognise in national policy the need to protect World Heritage Sites as sites of outstanding universal value, and will make more prominent the need to create a management plan for each WHS, including, where needed, the delineation of a buffer zone around it”. The draft planning circular was published for public consultation on 27 May, along with a draft English Heritage Guidance Note which supports and supplements it.

16. The Heritage Protection Bill provides for inclusion of World Heritage Sites in the new Register but expressly says that this does not mean any extra protection for World Heritage Sites. It would be helpful if World Heritage Sites could be added to Section 155. At the moment this covers only Heritage Structures and Heritage Open Spaces and their respective settings, and not World Heritage Sites. Including WHS would mean that, in considering planning applications, local authorities “must have special regard to the desirability of preserving” the World Heritage Site, its setting and any features of special interest that it may contain. This would strengthen their protection in statute rather than just in secondary guidance.

RESOURCES

17. *English Heritage’s Strategy for Implementing Heritage Protection Reform (HPR)*: English Heritage has long believed that the reform process is incremental and can only be fully achieved over time. Reform has already started with the first stage package introduced in 2005 when DCMS handed over the administration of the listing system to English Heritage. Working to the current legislative timetable, we see the most intensive and critical implementation phase to be from now till 2015: the next two years of 2008-10 when we are preparing for the start of implementation currently assumed to be late 2010 and the subsequent quinquennium 2010 to 2015 when the impact of the new system will be worked through.

18. *The Role of English Heritage in Implementing HPR*: We are committed to working in partnership with government and the sector to see this strategy through. We shall do so through our continued advocacy of the new system, in leading by example, and in setting up the core components of the new system. We shall also support the operation of the system through new guidance. We shall focus especially on training and capacity building to foster the new culture and skills needed for practitioners and others involved with the historic environment. Our grant in aid settlement for 2008–11 has given us a core of resources to engage in this work and this will be complemented by the refocusing of some of our existing resources to achieve the necessary progress of reform.

19. *Unified Designation and the New Register*: One of the cornerstones of the new system. English Heritage is currently developing the IT system to support the provision of the new Register, and to support designation work contributing to it. The Register is to be publicly available on the internet, via Heritage Gateway, as a repository of information on statutory heritage designations. It is due to go live when the new system comes into force, in 2010, and will provide the means for public access to the designation base and the designation process. The funding to achieve this—a total of £1.05 million—is available from the GIA settlement.

20. *Strategic Designation Programme*: This is another key English Heritage priority for implementing reform, with the objectives of:

- meeting the White Paper commitment to develop a new strategic programme of national designation;

- securing real and widespread public consultation and engagement with designation activity; and
- making the designation base fit for purpose for the new Register.

21. As a key part of securing wider public engagement in national designation activity, which the government is promoting, English Heritage will be undertaking a major consultation on priorities for a new national designation programme later this year. The results of this consultation will be used to shape our new strategic designation programme for the years ahead.

22. This will require considerable input across English Heritage, necessitating the re-direction of existing resources as part of the shift to a more strategic approach. A total of £3.2 million, including funds from the GIA settlement and redirected EH resource, is available for 2008–11. We are currently discussing with DCMS how the current flow of applications for designation, almost all for the listing of buildings, can be re-focussed to release resources for agreed designation priorities.

23. Such a programme will also, however, require significant new funding. Our current resources for designation in 2008–11 will allow us to make a good start on new designations to the standards of the new Register but not to make a significant impact on the half million “legacy designations” carried over to the new Register from the current regimes. Priorities for revised designations are as important as new designations in building confidence about the new system and will become an increasingly important issue as implementation proceeds after 2010 when the contrast between old and new designations will be ever more obvious. We are flagging this up now because we need to persuade government that increased resources will have to be found beyond 2010 for at least the next quinquennium to 2015.

24. *Skilling the Sector:* English Heritage believes that effective reform demands a major investment by consolidating and expanding the skills base of all who work in managing the historic environment. Our training and capacity building therefore constitutes a major strand of English Heritage’s Implementation Programme, and will have over £2.2 million devoted over the first three years of the programme to the following objectives;

- to ensure that everyone whose work or decision-making affects the historic environment is aware of the reforms before the Act comes into force;
- to provide heritage professionals with the necessary technical knowledge to be able to implement the changes with confidence as soon as the Act comes into force; and
- to provide a balanced programme of capacity building and training activity to ensure that everyone has access to an appropriate level of information whether by training events, e-learning or publications.

25. *The Role of Local Authorities:* For local planning authorities there will be two major new statutory duties;

- to take responsibility for the new Heritage Asset Consents across the range of assets; and
- to provide an Historic Environment Record.

26. Our working assumption is that we expect the level of work created by the new processes to be broadly similar to the current arrangements, save for the delegation of consent for work to nationally designated archaeological assets to local planning authorities. In general we expect that EH will continue to be consulted on all applications for Historic Asset Consent affecting Grade I and II* assets (ie including currently scheduled ancient monuments) and Grade II assets in respect of demolition. For the new Heritage Partnership Agreements the general power in the Bill requires EH to sign-off all such agreements. In practice and over time we expect that this will be delegated in respect of Grade II assets to local planning authorities. However this would be subject to a Direction.

27. *Heritage Asset Consent:* Under S88 of the draft bill, the local planning authority will normally have responsibility for granting conditional Heritage Asset Consent. English Heritage believes that this new duty will not place a substantial new burden on local authorities in terms of numbers of new applications to be dealt with; in global terms current Scheduled Ancient Monument Consent applications make up a very small proportion of the total of heritage related applications.

28. The Impact Assessment published by DCMS to accompany the draft Bill assesses the additional administration costs to local authorities arising from this new responsibility as £400,000 per annum. DCMS are committed to meeting the new administrative costs, and make this clear in the Impact Assessment. English Heritage is now working with DCMS, the Local Government Association and others to refine the cost estimates for this and identify monitoring measures for its operation over time. One-off costs such as transferring the records of previous consents, and providing training to local authority conservation and planning staff will be met by English Heritage, supported by CSR funding.

29. The draft Bill re-iterates the principle contained in PPG15 (para 3.25) emphasising the importance of expert advice being brought to bear on proposed works to listed buildings. English Heritage considers that this will have the effect of reinforcing best practice for local planning authorities in relation to HAC applications by ensuring that they have access directly or indirectly to appropriate advice for any given application, including through their own conservation staff or through archaeological staff based at the same or a different tier.

30. English Heritage believes that there is not so much a need of substantive new resources to meet this responsibility as a need to ensure that existing resources are redeployed effectively. Local planning authorities are already expert in dealing with archaeological issues in the context of planning applications, with in-house archaeological advice in unitary authorities or from another layer of local government in other cases. Local planning authorities will need to find new or adjusted ways to make the necessary integration between available expertise and those managing individual consent cases. It is again a case of best practice becoming the norm.

31. English Heritage support for local authorities in this new duty will come in a number of forms; English Heritage will provide training courses for local authority staff taking on new areas under the reformed system, while continuing to advise on all applications where former scheduled monuments are concerned.

32. In the medium to long term, we see an ever more integrated approach to the management of the historic environment emerging strongly through the working out of the joined-up approach the Bill espouses.

33. Historic Environment Records: Section 210 of the draft Bill sets out the new statutory duty for local authorities to create and keep up to date a Historic Environment Record, a dynamic information system containing information on the historic environment, to include buildings, sites and archaeology, and covering statutory and local designations, and non-designated assets.

34. This is a new statutory duty, but not a new concept—there is already full coverage of England by HERs, mostly maintained at County level or Unitary level. The intention is to maintain the status quo in this respect—districts and boroughs will need to access rather than create and maintain a HER. The required information is largely there, although they do need upgrading to meet the standards that will be required of them. The figures for doing so are set out in the Impact Assessment, where DCMS have confirmed their commitment to meet these costs. In addition, English Heritage is developing the Heritage Gateway to help HERs achieve interoperability and consistent standards, as well as being a vehicle for internet access for the HERs. Detailed practical guidance on upgrading existing HERs to meet the new standards will be published to support local authorities.

35. The costs of upgrading existing HERs to meet the requirements of the Bill have been costed in detail, at annual costs of £240, 346 in the first year, rising to £565, 095 in the third year and remaining constant thereafter. There will also be one-off costs of around £400K to make the necessary structural changes and to develop interoperability. These cost will be met by English Heritage from our CSR settlement for implementation of the new system.

June 2008

APPENDIX A

A SUMMARY OF THE REFORMS

HERITAGE STRUCTURES

1. Current listed buildings and scheduled monuments will all be combined onto one register of “heritage structures”. Nothing will drop off the current lists in the transfer to the new register.

2. One of the great advantages of the single register is the potential of creating a seamless protected environment within which sits quite different elements that previously would have been separately registered.

3. Buildings within the curtilage of what are currently listed buildings will remain protected. New additions to the register will not include curtilage buildings. The designation process will decide what buildings within the curtilage merit registration on the grounds of special interest and define them. Nothing else within the curtilage will be protected. This will bring much needed clarity.

SPECIAL INTEREST

4. A heritage structure can only be registered if and to the extent that it holds special architectural, historic, archaeological or artistic interest.

5. There is no definition within the Draft Bill of what “special” means. Special interest will be defined by the Principles of Selection contained within national policy, as is currently the case for architectural and historic special interest, set out in PPG15. Revised Principles will be consulted upon.

6. Special archaeological and artistic interests are new concepts. Artistic interest has a simple justification: whilst architectural interest covers all design interest in buildings and structures, including what could be more purely described as engineering or industrial design, it does not so comfortably encompass the pure artistry of statues and other works of art.

7. Including artistic interest will not bring general cultural objects within the ambit of registration. The physical definition of what can be registered is not altered. So domestic scale works of art are quite unlikely to be registerable unless they form part of the building.

8. Special archaeological interest is an important new concept. There are two aspects worthy of close attention: What is archaeological interest *per se* and when is it sufficiently special to justify registration?

9. The definition of archaeological interest does not appear in the Draft Bill, but the intention is to define it in policy and guidance as “an interest in carrying out an expert investigation at some point in the future into what evidence the site or structure may contain of previous human activity”, or words to that effect. Whilst the principle is clear, the exact words used in the definition will be the subject of consultation on the new Principles of Selection.

10. For a site to be registerable on the grounds of “special archaeological interest” there must be good reason for believing that the site may contain evidence of previous human activity that is of special historic interest, or perhaps even of special architectural or artistic interest.

REGISTRATION PROCEDURES FOR HERITAGE STRUCTURES

11. All current listed buildings and scheduled monuments will be placed on the new register as registered heritage structures, without any amendment of their physical extent and without any formal process.

12. From there on, anyone, including English Heritage, can seek to add or remove an entry or amend it.

13. If the application is valid and has a prospect of successfully meeting the special interest test, then English Heritage will provisionally register the site and consult relevant parties before deciding the matter. English Heritage is concerned that only applications with a reasonable prospect of success pass this first filter since the immediate consequence is significant—full blown protection, albeit possibly temporary.

14. English Heritage welcomes the approach taken to appeals. Being on paper only and not requiring consultation when the Secretary of State believes the decision made by English Heritage already looks perfectly sound, will ensure that the possibility for mischief by using the appeal process as a delaying tactic will be minimised. It is right, of course, that an appeal lies with an elected minister.

15. The system for deciding what will go on the register, what will come off and whether something on it should be amended will thus be open, democratic and easy to use. That is an important and very welcome change. It allows the public to be a part of deciding what of our heritage deserves recognition and management.

16. It does not of itself, though, fundamentally change what type of assets will and will not be registered. The test of special interest as set out in the Principles of Selection will apply, whoever makes the decision. The Secretary of State is currently the only arbiter. He will become the final arbiter. Only in so far as there is a change in the Principles of Selection will there be any change in what should and should not be registered. Any claims that the Draft Bill will naturally lead to an enlargement of the stock of registered assets are misguided.

CERTIFICATES OF NO INTENTION TO REGISTER

17. This is similar to the current system of issuing certificates of immunity, but the new certificate can be applied for at any time. This will be significantly helpful to developers who can remove uncertainty before committing taking a scheme to the planning application stage.

CLASS CONSENTS

18. The Secretary of State can direct that certain types of activity are permitted without consent being required. This is identical in operation to the Class consent system under the Scheduled Monument legislation. That said, although there is no draft of such class consents yet available, it is clear that many of the current class consents will not survive. Several of them were only necessary because otherwise consent would have to have been sought for day-to-day activities that did not affect the special interest. This will no longer be necessary and there will be a consequent reduction in complexity.

HERITAGE ASSET CONSENT

19. Before making a decision the local planning authority must see if there is anything relevant in the local historic environment record. It must also take expert advice. This requirement is key for all stakeholders as inexpert and ill-informed assessment of special interest can lead to wrong refusal of consent, inappropriate alteration and serious loss of historic fabric. An expert view of the special interest and the impact can be obtained from several sources. There will obviously need to be guidance on this issue so that local planning authorities know how to fulfil this aim.

20. Only requiring consent where works affect the special interest relieves the onerous requirements for consent under the current scheduled monument consent regime, whilst ensuring the proper management of those matters that do affect the special interest. This should reduce the number of applications concerning currently scheduled monuments.

21. Failure to obtain consent is rightly an offence. This is currently a strict liability offence in relation to listed buildings. The Draft Bill proposes a defence of not knowing that the asset was designated, subject to the defendant showing that they took all reasonable steps to ascertain whether it was a registered structure. With the up-to-date register available online at all times, this appears to strike the right balance.

ENFORCEMENT

22. Enforcement notices and injunctions are available to prevent damage and in some circumstances seek reinstatement. The effective extension of the damage reinstatement powers to currently scheduled monument is a significant benefit.

ECCLESIASTICAL EXEMPTION FROM THE CONSENT REGIME

23. The exemption will apply to all heritage asset types provided they are in ecclesiastical use. So for the first time the churchyard and church can be managed under the same regime covering all special interests.

HERITAGE OPEN SPACES

24. All of the currently registered parks, gardens and battlefields will be moved onto the new register as registered heritage open spaces. The consistency of approach to designation between this category and heritage structures, both in justification and process, is obviously sensible.

25. The Draft Bill gives these open spaces the best possible positioning in planning terms by putting the list on a statutory basis and making it clear in law that their special interest and their setting is a high priority, not just a material consideration. That does not mean, of course, that such considerations trump others automatically, but their importance is very clearly indicated by Government.

WORLD HERITAGE SITES

26. World Heritage Sites will all be shown on the central register. This is the first time World Heritage Site have been given statutory recognition. Of course their outstanding universal value as recognised by UNESCO demands separate recognition on the register. The protection systems for Heritage Structures, Open Spaces and conservation areas will provide the backbone of the World Heritage Site protection, alongside consideration of the Outstanding Universal Value and the relevant World Heritage Site management plan in planning applications.

MARINE HERITAGE SITES

27. The most important development within the sea environment is the ability to designate not just vessels and their contents, but also all types of heritage structures that are partly or wholly below the high water mark.

28. Using the touchstone of special interest for designation and management decisions provides an appropriate consistency with the land-based system. Given the complications of jurisdiction ownership in the marine environment and the thin scatter of the current marine designations, it is right that the Secretary of State retains the designation decision and that English Heritage centrally administer licence applications (with a right of appeal to the Secretary of State).

HERITAGE PARTNERSHIP AGREEMENTS

29. In using a protection regime that only requires consent for works that affect special interest, the Draft Bill strikes the right balance between protection and burdensome regulation. The effectiveness of that approach does depend, though, on the owner and the local planning authority understanding what that special interest is and how it might be affected by works.

30. All new designations and revisions to existing designations will provide an extensive (although not exhaustive) description of special interest.

31. To further the understanding of special interest and ensure that heritage asset consent is not sought unnecessarily, any owner will in future be able to agree with the local planning authority what works can and cannot be carried out without consent. This agreement will be called a heritage partnership agreement. It will effectively confirm what works can be carried out without consent, provided they are carried out in accordance with the terms of the agreement.

32. The Secretary of State may limit what works can be covered by a heritage partnership agreement. A class consent will be issued in due course to clarify the operation of this important innovation.

33. These agreements may encompass other matters to provide a core plan as to the future management of a site or several sites. This has a significant potential to reduce the burden on owners whilst improving the protection and management of the assets.

HISTORIC ENVIRONMENT RECORDS

34. It is clearly advantageous to set out the core contents of the local historic environment record as it will provide a consistency of approach across England. Understanding what in the locale is valued and critically why it is valued aids better protection, better design of development and reduces the potential for conflict and delay in the planning process.

LOCAL DESIGNATION

35. The regime for locally designated buildings is unfinished in the Draft Bill. English Heritage in general terms supports the approach suggested in the White Paper: the local authority is given the ability to require that planning permission be sought for the demolition of a locally designated building. [English Heritage believes it should be an offence to fail to obtain such permission (see comments below on failure to obtain demolition planning permission in conservation areas).]

CONSERVATION AREAS

36. Although not in the Draft Bill, very important provisions concerning conservation areas will be introduced into the Bill, as trailed in the explanatory notes to the Draft Bill.

37. Reducing the number of separate consent regimes by removing conservation area consent is very welcome. Demolition of buildings within a conservation area will require planning permission instead. English Heritage would be very concerned to ensure that failure to get such planning permission would be an offence. Demolition is usually irreversible, unlike construction, and so enforcement notices used to police main-stream planning are an inadequate deterrent.

38. English Heritage very much welcomes the reversal of the unintended interpretation of the current law thrown up by the South Lakeland and Shimizu decisions reversed. Many more of us live and work in conservation areas than in listed buildings. These two decisions have seriously hampered the proper and intended effect of conservation area designation.

COMPULSORY REPAIRS AND ACQUISITION

39. These powers of last resort where there is a risk of losing a Registered Asset will be available for all asset types, not just listed buildings, as is the case now.

40. Currently the local authority cannot carry out works to a property in use. Under the Draft Bill works can be carried out to any property in use or out of use, save to the extent that works would interfere with any residential use.

41. On compulsory acquisition, the local authority will have the option of paying only minimum compensation. This is currently only payable where the owner has shown deliberate neglect for the purpose of seeing the building's demolition. This is designed to prevent owners who refuse to carry out works of preservation from profiting from the development potential of their site. Given the owner has every opportunity to respond positively by carrying out essential repairs and thereby avoid the process of acquisition, this is a fair and appropriate measure.

ENGLISH HERITAGE GRANT MAKING POWERS

42. English Heritage very much welcomes the revised grant making powers trailed in the explanatory notes to the Draft Bill. These will be greater flexibility in the way that we are able to support the sector.

Areas of Archaeological Interest

43. These have not survived the reforms. There were very few of them and their limited benefit for non-designated archaeology has been outclassed by the effective operation of the PPG 16 system that will continue.

APPENDIX B

LIST OF PILOT PROJECTS

1ST WAVE (2004–07) HPD LED

Territory Pilot North Langdale Darnall Steelworks York West Kenilworth Cornish Bridges Godolphin Taunton Diocese Arnos Grove Cemetery The Weld Estate, Dorset The Fursdon Estate, Devon South Hampshire Water Meadows London Underground Centre Point Rochester Cathedral Canterbury Cathedral East Holkham Hall RAF Scampton MoD Shoeburyness (Foulness) Foxton Locks UEA.

2ND WAVE (2008–10) A&G TEAMS LEAD

Territory Pilot North Belsay Hall, Northumberland Roche Abbey, Yorkshire Byker Estate, Newcastle Pocklington Canal, East Yorkshire Goodshaw Chapel, Lancashire (EH) West Old Sarum (EH) Guildhall, Bath Wroxeter, Shropshire (EH) Birmingham Civic Buildings tbc South Porchester Castle, Kent (EH) Canterbury Cathedral, Kent London Fire Brigades East Burgh Castle, (EH) Orfordness, Suffolk Bolsover Castle, Derbyshire (EH) Lincoln Castle.

Witnesses: **Rt Hon Margaret Hodge MP**, Minister of State, Department for Culture, Media and Sport; and **Dr Simon Thurley**, Chief Executive, English Heritage, gave evidence.

Chairman: Good afternoon everybody. This is the second session of the Committee's examination of the Heritage Protection Bill. We are delighted to welcome this afternoon the Minister, Margaret Hodge, and the Chief Executive of English Heritage, Dr Simon Thurley. Before I begin, Helen Southworth would like to make a brief statement.

Helen Southworth: If I could remind people that my husband is the Head of the Museum Service for Lancashire County Council.

Mr Evans: And a jolly good job he does too!

Q58 Chairman: So if I could begin, Minister, this Bill, which has been largely welcomed by the heritage sector, first began to be discussed in July 2003. We are now three years later and we obviously welcome very much the fact that this Committee has the opportunity to carry out pre-legislative scrutiny, but we have received a number of criticisms that it is difficult to undertake that when there are still parts of the Bill which have not been published. Can you say why it is that after three years there are still bits of the Bill which have not yet come out in their final form? Is there going to be an opportunity for the sector to be consulted on those parts that we are still awaiting?

Margaret Hodge: We could always have done better, but you are considering a draft version of the Bill, and therefore we are working towards getting all the clauses actually written in time, hopefully, for the next session of Parliament. You will know that Parliamentary Counsel only gets engaged when it is pretty clear that you will get a slot in the legislation, so what we did was draft those clauses which implied some policy change or were more important first so that in your consideration of the Bill you could see those. The ones that still need to be drafted are on the whole those where we are just transferring existing legislation into the new legislation. On the whole policy has been determined, but you never quite know in these last few months what might

emerge, and we will consult. To be fair, it is only really the wording and clearly we will try and consult as best we can. I know the conservation area clauses are the ones that are causing particular concern. We have now published those and we will consult on the draft clauses. It is not quite as long a period of consultation as we would have liked. Instead of the usual three months it will probably be six or eight weeks. Policy has been decided. There are one or two other little bits such as the receiver of wreck duties where there are new duties on him or her to collect data, where there have been some problems over devolution issues so we have had to sort that out before we could give it to Parliamentary Counsel to draft, but there will be full consultation, and I think the key clauses are already out there. I suppose the last thing I would say is that we have already started publishing draft guidance so there we are ahead of the game. We have done that around the ecclesiastical issues and the Historic Environment Records, which are two new areas, and again that is in an attempt to be as consultative and as open as we can be.

Q59 Chairman: So when do you think we are going to see the full Bill?

Margaret Hodge: I hope for next session.

Q60 Chairman: But in advance of the next session, will the rest of the Bill be published over the course of the next few weeks?

Margaret Hodge: It really depends on Parliamentary Counsel. I have had this before, you think you have got your policy ready but as Parliamentary Counsel are always overworked you cannot engage them in the actual drafting of clauses until you are pretty close up to the wire, so they are now engaged. On the conservation area clauses we have got to get it to them by September. It is in a fit state, I do not think there are problems with it, and I am confident we will have it ready for the next session of Parliament.

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Q61 Helen Southworth: There has been a lot of positive response to the Bill and the concepts behind the Bill, but one of the serious concerns that is being expressed is around the relationship with Communities and Local Government and the importance of having Communities and Local Government completely engaged with the Bill in order to achieve the outcomes. Can you explain to us why they are not co-sponsors and why they are not actively participating in this process?

Margaret Hodge: They are actively participating. They are not co-sponsors because it is a heritage bill and therefore we have taken the lead on it, although I will have a CLG minister sitting with me when we discuss the clauses of the Bill in committee so that we can show ourselves to be joined up in that way. Planning is absolutely vital as a tool for ensuring that we provide proper protection to our heritage assets. The two go hand-in-hand and it is the planning tools which enable you not just to protect the asset itself but protect the environment around the asset, so they are absolutely key. We also think from the planners' point of view that heritage is hugely important in what we today call the place-making agenda. There are endless examples. I always use the example of the very first adjournment debate I did with this particular set of ministerial responsibilities which was around an Iron Age fort in Berwick in Elmet. It is awful but I cannot remember who the MP was but nevertheless what was really interesting—

Chairman: Alan Beith?

Q62 Philip Davies: No, it is not that one. It is in West Yorkshire.

Margaret Hodge: The interesting thing was that for this Iron Age fort in this small village getting the archaeological digs right and protecting the heritage was absolutely central to creating a sense of place, a sense of belonging, a sense of community, and a sense of the cohesion in the village. It is absolutely central to what we are doing and we are working closely with them. There are a lot of features and clauses in the Bill where we reflect that integrated approach. What we are doing about, for example, merging conservation area consent with planning permission, I think demonstrates the inter-linking and the imperative of the two working together. The new duty to ensure that local authorities keep Historic Environment Records is another way of trying to bring heritage into the mainstream of planning. I am feeling pretty confident about that. The other thing to say to you is I think DCLG are equally engaged. I have talked to Baroness Andrews a lot about these issues. She recently gave a speech in which she talked about her commitment to revising the two planning circulars that we need to ensure are updated. They are currently doing two bits of consultation around World Heritage Sites to see how planning could be incorporated into World Heritage Site sponsorship and improvement. They are also doing one around consents for World Heritage. We are as one. They just are not co-sponsoring it because we think it is ours, but we want to work with them.

Q63 Helen Southworth: Are we going to look forward to having some more direct evidence of Community and Local Government involvement? There is a very strong body of opinion that says they need to take some fairly urgent action in terms of reviewing, for example, Planning Policy Statements 15 and 16.

Margaret Hodge: Simon may want to add to this. English Heritage, DCMS and DCLG are working together on revising both those pieces of guidance, PPG15 and PPG16. I think you have been working quite closely with them, have you not?

Dr Thurley: English Heritage feels, together with most of the people I think you have taken evidence from, that the revision of PPG15 and 16 is absolutely fundamental to this; you cannot have the new Bill without that. Baroness Andrews has recently given a commitment that that is going to go ahead, as far as I understand it, at a speech that she gave recently.

Q64 Helen Southworth: Do we have a timetable for that?

Dr Thurley: You would have to ask the Government that but what I can say is—

Margaret Hodge: They are going to publish the drafts of those, they have said, before Christmas.

Dr Thurley: English Heritage is committed and is already working with DCMS to try and get a draft of that together. In fact the statutory English Heritage committee this very morning considered a paper which would feed into that paper. Work is actively underway on that and I think that it is extremely important that the Government keeps the pace up to retain confidence in the sector that this new planning guidance will come out on the same time-frame as the Bill, otherwise I think there would be a lack of confidence in it.

Q65 Helen Southworth: Particularly in regard to the need to disseminate the guidance across a very wide area and amongst a very disparate group of people in order to ensure that it is effective.

Margaret Hodge: This is clearly a key component of ensuring that we get the Bill working in practice. I have had several conversations with Kay Andrews who is the Minister I deal with on these issues. She is signed up to it. My understanding is that English Heritage, our officials and CLG officials are working closely together and she has given this commitment that the draft will be out before Christmas. I would have thought given the time-frame we are not likely really to get introduction until probably the New Year. The Queen's Speech is quite late this year. I do not know.

Q66 Helen Southworth: If we are talking of the draft before Christmas when are we talking of the actual planning guidance being a requirement on authorities?

Margaret Hodge: Assuming we get legislative time next session, it will not be enacted until July, September, whenever, and then there is a little bit of time that is taken. English Heritage already has the money for training and they will be doing the training of local authority officials so that they know

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how to work within the context of the new Bill/Act. I think we are probably talking about 2010 for implementation. If we get the draft planning guidance out by Christmas that is in plenty of time to get everything ready.

Q67 Helen Southworth: So the intention is to have the Bill and the planning guidance going live simultaneously?

Margaret Hodge: Yes.

Q68 Chairman: So your expectation is that Bill is going to be later on in the next session?

Margaret Hodge: To be honest, I do not know, it depends on Government priorities. Those sorts of discussions have not taken place yet.

Q69 Chairman: I merely leave with you that the evidence we received yesterday was absolutely clear that the planning policy guidance is fundamental to this and therefore it is difficult to consider the Bill without it, so if you could make that point to your DCLG colleague I think it will be appreciated.

Margaret Hodge: Indeed.

Q70 Rosemary McKenna: There have been some expressions of concern about the resourcing of the Bill. We understand that the predicted net cost of implementing the Bill of £1.72 million is already under review. Do you expect the figure to rise considerably?

Margaret Hodge: On the whole, we think that it is a pretty cost-neutral Bill because it is a Bill which has a lot of streamlining of processes in it. For example, at the moment we have this rather cumbersome system where a request to list a particular building goes first to English Heritage for consideration and then comes to the Department. English Heritage will have full responsibility for that. We are merging things like the conservation area consents and planning permission. There are quite a lot of ways in which we think there will be savings in the Bill. However, we have taken the best methodology we can to get to the costings that you have in the impact assessment. We will keep them constantly under review to ensure that they work. We have funded English Heritage through this Comprehensive Spending Review period to deal with a lot of the set-up costs, but we recognise that there will probably be additional costs falling to them which will have to form part of the consideration for the next Spending Review. On local authorities we have guaranteed that if there are new duties which create a funding pressure, they will be met. At present it is a bit swings and roundabouts for local authorities because they have savings in the proposals as well as new duties but we will keep it under review. The final thing to say to you, Rosemary, is that we will also consult. We are not doing this as DCMS working on its own; we are working with the Local Government Association and we are working with English Heritage and other partners, so we are trying to be as open and as transparent as we can on any costs that could be incurred.

Q71 Rosemary McKenna: So you are quite confident then that the local authorities should not be too concerned about the proposals if they raise real concerns on funding?

Margaret Hodge: Local authorities will always say they need more money and local authorities will always say that they are not funded sufficiently to carry on their duties, but you could turn round and say their funding settlement over this Spending Review period has been above inflation, so they have not done badly. We have also taken away the ring-fencing of about £5 billion-worth of expenditure for local authorities, so that gives them much more discretion as to how they do it. So far we think a fair additional cost to local authorities out of the proposals is about £400,000, and we have put that in, but they will save £500,000 simply by the merging of the two consents, the conservation area consent and the planning permission consent, and we will keep it under review. Let me just give you one fact which is interesting because there will be new duties on local authorities, there will be new assets which will be eligible for being considered as heritage assets, but actually if you put all those new assets together they will only represent about 0.5% of the total heritage asset base, so it is not a massive increase, and the purpose behind many of the propositions was to enhance heritage within our communities but also streamline present procedures, and that is money-saving.

Q72 Rosemary McKenna: Thank you. On to something quite different, the National Trust have told us that they would “rather have no legislation than a Bill which does not have the means for its effective delivery”. Do you think that is an overreaction?

Margaret Hodge: I did not know they had said that. In the discussions I have had most people have welcomed it for all sorts of features that it has got: the single unified system is better; we can have much better consultation processes; we are bringing many more assets together. It is the first modernisation for goodness knows how long, half a century or something, of the way in which we protect and promote our heritage environment. I hope the National Trust supports that. I am pretty confident, because of the open and consultative way in which we have drawn up the Bill and the fact that you are having this consideration of it here in the Select Committee, that we are going ahead with something which we think is affordable. There will always be people who say, “We need more money,” and always people who say, “We have not got enough professionals working in this part of the system or that part of the system,” but we do not do badly now and I think under the new regime we will serve Britain better in terms of its heritage assets.

Q73 Chairman: You said we do not do badly now. Let me put to you one submission we have from the Country Land and Business Association who say that whilst they welcome the Bill in general terms “[. . .] it is not the answer to the current crisis in the heritage protection system”. They say that there are

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few things more valuable to heritage than a really good conservation officer. We know that in large numbers of local authorities there are no conservation officers. Even where there are, they go on to say, they are usually overworked, often demotivated because conservation has low status in most local planning authorities, and they get little time. This leads to unnecessary costs and delays and diverts spending from maintenance. It discourages people from owning heritage at all. There is a perception that the system is unreasonable and inconsistent. Buildings are decaying and losing value because their owners think they cannot get consent. They conclude that what it really needs is perhaps £50 million to £100 million extra devoted to heritage by local authorities. The £1.72 million, which is the predicated cost of this Bill, which you are saying will be met, is clearly going to be nothing like sufficient to meet that.

Margaret Hodge: Let us just say that at present local authorities appear to be coping pretty well with 32,000 applications each year for listed building consent (under the old terminology). I have looked at the figures of officials in local government and on the conservation side between 2002 and 2006, which is the period I looked at, there have been 84 more building conservation staff in local authorities. If you look at the archaeology side of it, there has been a 5% increase in the number of staff employed. Again, we are back to this of course we could do with more money and of course we could improve the speed at which we have consideration of applications, but I do not think we are doing badly. Again, Simon can say a bit more about the age profile of the people but it is not a bad age profile. It is not as bad as other professional sectors that I have to deal with. It looks as if we will be all right for 20 years on the age profile that we have got. There is a job to be done to encourage every local authority to really value its heritage. We have got some excellent local authorities and we have got some less effective local authorities and that is part of the devolution of power. One of the mechanisms that we have tried to employ to encourage more local authority commitment to this is to have a member in each local authority who is called the "historic environment champion". We have got to the point now where 70% of local authorities enjoy those people. Again, that is trying to lift it up. Both English Heritage and the Heritage Lottery Fund put money into training. English Heritage have a professional placement scheme and the Heritage Lottery Fund have a bursary scheme. I do not think we are doing badly. Interestingly enough, Chairman, where I do think we could do with much more money is investment in the heritage assets themselves. There we are always running to keep still to try and maintain the structures of our invaluable heritage assets.

Q74 Chairman: You say that the age profile is not too bad but we have received direct evidence from both the Local Government Association and the Institute of Historic Building Conservation that due to a skewed age profile a large number of conservation officers are due to retire in the next five

years. Meanwhile the stream of new officers is drying up with undergraduate courses at the Universities of Derby, Huddersfield, Northumbria, Glamorgan and Preston all having recently been discontinued. Yesterday we heard from the IHBC who said to us: "I have made the case anecdotally about the near impossibility of recruiting at the moment; it is a profession that has been allowed to decline." You do not agree with that?

Margaret Hodge: I do not. Can I ask Simon because English Heritage have done some work around these figures.

Dr Thurley: I can either answer now in detail or later in writing about the age profile of conservation officers. Of course the IHBC do not have a total monopoly on all conservation officers. Not all of them are actually members of it. I think if you look at the figures, it does not look as if there is going to be a great exodus in the next few years. I think there is a slightly wider point, and perhaps it is a more strategic point to make about it, which is I think the CLBA are right to be concerned because there are problems and I do not think anyone is pretending that the Bill is going to answer all the problems. The Bill is one of what I would describe as three things that need to happen in order to deal with the problems that the CLBA and others are highlighting. The Bill is one; training is the second and the Minister has already said that the Government has been keen to support our training efforts and I could give you quite a lot of information about what that is; and the third thing is dealing with some of the philosophical issues around conservation, trying to combat the old idea that conservation is about stopping change, about stopping things from happening, and trying to help, particularly people who have that particular approach, to adopt an approach that says this is about managing change and about trying to find good solutions which are going to be beneficial to society. My answer to your question would be that the Bill is part of a three-legged stool. You take any one of those away, you take the training away, it does not work; if you take the efforts to get people to think differently about conservation away, it does not work; and you if you take away the improvements which the Bill offers, it does not work. With all three together I think that the CLBA and others will find that those problems are being tackled in a really quite effective and strategic way.

Q75 Helen Southworth: Could I ask you following what you have just said about the role of DCMS as the champion of heritage, the Bill is providing a very significant opportunity for building on that role. Could you describe to us what you are going to be doing in terms of roadshows around the country, profiling, and working with DCLG for example to demonstrate good practice using heritage as a driver of regeneration? What are we going to see over the next 18 months to get the profile up and to get people enthusiastic to use this change opportunity?

Margaret Hodge: One of the things I have tried to do since I have had this job is to strengthen the links between culture and heritage and regional

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development agencies and the local authorities because I think probably we have not punched up to our legitimate weight in all sorts of ways—the importance of heritage in place-making, the importance of heritage for tourism, and the importance of creativity and culture and the creative industries in regional and local economies—and I think there is a big job to be done to work on those authorities that do not get it, building on the excellent practices of those that do. Interestingly enough, I am going from giving evidence this afternoon to a meeting with all the RDA chairs just to talk there about how we can strengthen the links in recognising place-making and those sorts of issues. We are trying to get local authorities in their local area agreements to push this up as one of the issues on which they want to be measured. Indeed, one of things we have announced today is we are not going to use the regional culture consortia as a mechanism for trying to impact on both local authorities and regional development agencies, but we are going to task English Heritage and our other big NDPBs—the Arts Council, Sport England and the MLA—to work together to get a much better hold of all our agendas in all the regional strategies and in the local area agreements. There is a task to be done. Have I got a programme for roadshows? To be honest, not yet, but it is a good idea and I will take that away and I will think about it.

Q76 Chairman: Just before I move on, this is a resourcing question: we understood yesterday that there are discussions taking place between the LGA, English Heritage and DCMS to revise the estimate about the cost to local authorities of implementing the measures in the Bill. Can you give us an undertaking that whatever figure emerges from that discussion that is the figure which will be funded by the Government to local authorities?

Margaret Hodge: Yes.

Q77 Chairman: And will it be ring-fenced or will it just be part of local government funding?

Margaret Hodge: No, we will not ring-fence because we leave discretion to local government now as to how they choose to spend it. I think local government would be furious if we attempted to ring-fence those resources.

Q78 Chairman: So there must be a real danger that it will just disappear into the local government pot and actually heritage will not see the benefit of this?

Margaret Hodge: There is always that danger if you do not ring-fence money but you have to balance that against the discretion of local authorities to respond to different priorities as they see them within their local communities. That also has to be balanced against the fact that they will have new duties in the Bill and they will have to fulfil those duties, so a mixture of persuasion, showing good example, and a regulatory framework as proposed in the Bill I think probably is a better way forward than trying to ring-fence money.

Q79 Philip Davies: There are an estimated 37,000 listed buildings at risk in England and there is already statutory action that can be taken to prevent demolition of buildings without consent or unauthorised work. I was just wondering, rather than adding more duties and regulation and rules, whether any review had taken place of whether the existing regulations that were there were being properly implemented and enforced at the moment?

Margaret Hodge: Part of the purpose of the Bill is to streamline procedures. I have mentioned a couple of examples of that already, the fact that we are not going to have this duplication of effort by English Heritage in considering whether or not a building should go on the register and then DCMS considering that. We are also merging the conservation area consent—and I think it is going to be quite a big change—and procedures for planning to put planning at the heart of conservation, so we have, we believe, undertaken in the preparation of this Bill an exercise which cuts out unnecessary duplication. If the Committee have other ideas which we should consider that is entirely within the purposes of this pre-legislative scrutiny of the draft Bill. Beyond that I am quite satisfied that we do exercise the enforcement powers pretty well at present. In an odd way there is a negative to prove that in that there are no judicial reviews, as I can see at present, of most of the actions we take, and where we do have enforcement action, it tends to be on listed buildings where perhaps a developer has done something without proper permissions or against conserving the special interest of particular buildings. The third thing I would say to you in response to that is that there are plenty of powers there. What you need to get is what Simon talked about which is local authorities signed up to it, to get the will to make this a priority within the authorities. You need to deal with a fear that could emerge in the Bill that they might be involved in compensation claims if they get it wrong. You just need to help them through training to get on with it. I suppose the very final thing I would want to say to you is that enforcement ought to be the very last tool we employ. What I hope we will get out of the new culture that emerges, particularly in local authorities in the context of the Bill, will be much greater support for those who have responsibility for heritage assets so that through support they can conserve them and look after them properly rather than us or any of the public agencies having to take action through enforcement.

Q80 Philip Davies: I am quite happy to bring Simon in because I think the feeling seems to be that enforcement very rarely takes place when things go wrong. It is no good having anything in place if it is not going to be enforced. I wondered whether the Bill was perhaps slightly lacking on the enforcement side of things?

Dr Thurley: Our view is the same as the Government's on this which is that the powers are all there; the difficulty is persuading those who have the powers to use them. The fear very often is, particularly with the powers that local authorities

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have (which are actually quite extensive) that they will exercise those powers and then be left with the responsibility for dealing with a building which has huge liabilities attached to it. One of the things that English Heritage is exploring is whether on those occasions where there is a real need for enforcement and where a local authority is very anxious about doing it because of the financial liabilities, in some way, whether we can underwrite that to try and make it less frightening, if you like, for a local authority to take action. I think the issue is not about new powers; it is about helping local authorities to have the confidence to use those powers, and I do see that certainly in the cases of Grade I and II* listed buildings that is a role for English Heritage; it is a role for the national agency.

Q81 Philip Davies: In that sense it seems to me that makes a mockery of the projected cost of £1.72 million of the Bill because if the Bill is actually to mean anything, and it is going to be properly enforced, and the thing that you have described is required for it to be properly enforced, ie some underwritten cost to help local authorities persuade them to take the action, £1.72 million is neither here nor there. That seems to me like a massive potential cost for one body or another.

Dr Thurley: Of course the enforcement issue is a planning issue and it is not a heritage protection issue. By the time enforcement takes place it is part of the planning system that needs to be operated. I do not think the intention was—and it is not my purpose to speak for the Government—that that cost should be swept up in the Bill. This is really for budgets elsewhere to be considered. It is not part of the heritage protection legislation.

Margaret Hodge: Can I just come back. On the whole the enforcement powers are being replicated in this Bill. There are some new assets which will come into the register but the actual powers are the same as they are now. On the whole we think this Bill actually will save money because of the changes we are making in streamlining procedures, so I think the assertion that because it is a new piece of legislation that inevitably will require new resources for enforcement is slightly misplaced. I think we are hoping that the Bill will help people work smarter. Let me take another example—Heritage Partnership Agreements—if we get those off the ground that is a way in which we can work in partnership and save money. I think you had evidence yesterday from UEA, I understand, who have used that as a mechanism effectively. You work in partnership, you save money and enforcement becomes less necessary. If we can get more of that sort of approach and more of that sort of culture going in the system, enforcement should not be the one that costs a lot of money.

Q82 Janet Anderson: I just wanted to ask you something about where the onus was to step in when serious neglect is involved. I understand that in maintaining an historic building the onus is

currently on the local authority to step in when serious neglect has occurred, not on the owner. Will that change under this Bill?

Dr Thurley: The onus remains on the local authority although there are powers *in extremis* for English Heritage or the Secretary of State to step in. English Heritage would require the consent of the Secretary of State to do that. There are new powers but I do not think that either the Secretary of State or English Heritage intends them to be powers that are regularly used.

Q83 Janet Anderson: It is just I have a case in my own constituency of someone who has a listed barn next to her home. She cannot afford to repair it, she simply does not have the means to repair it, so in fact at the moment the onus will be on the local authority, and that will stay the same?

Dr Thurley: The onus is on the owner to repair their barn. It would be on the local authority if the barn gets into a dilapidated and dangerous state and risks the integrity of the heritage structure.

Q84 Janet Anderson: And she cannot afford to repair it herself.

Dr Thurley: There are grants available from both local authorities and from national government but they are pretty heavily circumscribed.

Chairman: I think we will suspend for ten minutes whilst we go and vote.

The Committee suspended from 3.01 pm to 3.12 pm for a division in the House.

Chairman: We seem to have dropped two who may or may not re-emerge but I think we will resume in which case can I invite Nigel Evans to ask the next question.

Q85 Mr Evans: Minister, Peter Hinton, who is Chief Executive of the Institute of Field Archaeologists, who I am sure you know, said to us yesterday that in nearly all other European countries there is a system of archaeological licensing which we do not have in England and Wales or Scotland and basically he thought that would be a good idea. The main thrust of it was that it would prevent some of the cowboys coming in or other people coming in and undercutting what proper professional archaeologists would do and therefore help to ensure the maintenance and preservation of our heritage sites. What do you think about that?

Margaret Hodge: I know the archaeologists want to insert some sort of provision in the Bill to ensure that only accredited archaeologists can fulfil some of the new duties that will be put upon them. I do not think it is the place of this Bill to do that. Our understanding, and we touched on this earlier on in the evidence I gave, is that there is not a current shortage, there is not a market failure, so we are not convinced that we ought to intervene at this point. The third thing I would say is I do not think that anywhere in the planning system is there an accreditation regime which constrains those who would be eligible to fulfil the tasks and functions of that particular regime, and I would be hugely

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reluctant in what is supposed to be a deregulatory measure to try and introduce regulations around the accreditation of a particular group of professionals.

Q86 Mr Evans: They have not made their case sufficiently strongly enough for you so they had better have more representations to you? Is that what you are saying?

Margaret Hodge: They can always make representations, my door is always open, but I am certainly not convinced.

Q87 Mr Evans: Dr Thurley, can I ask you about Heritage Partnership Agreement pilot schemes. There were supposed to be 24 but only nine were completed. How come only nine?

Dr Thurley: Of course they were pilots and the point about a pilot is that you are doing something that is experimental and that in fact has never been done before so. We had quite a wide range of pilots and as some of them started it became apparent quite quickly that they either were not going to work or they were not going to be saving any time or money. We ended up focusing on the nine core ones which were working, and in fact in the end we focused them down even further on to a relatively small number which we spent a lot of time analysing very carefully, as you probably know Cornish Bridges being one of the most important of those, in order to really extract the maximum amount of detail and benefit out of it. As a result of that, we have now commissioned a whole series of new pilots and we will probably pursue most of them because we have learnt so much from the other ones. In a way it is a sign of strength of the process that we said that is not working, let us get rid of it and focus on the ones that are really going to tell us something worth knowing.

Q88 Mr Evans: How many new pilots have you asked to be set up?

Dr Thurley: About two dozen.

Q89 Mr Evans: So the Cornish project was the one that you looked very seriously at and as far as costs and savings are concerned, the other 24 projects now are going to be looked at very seriously to ensure that the Cornish project is basically something that can give us lessons about the proper costs and savings?

Dr Thurley: Yes, I think so, and as I think you heard yesterday from the UEA, an investment of £70,000 delivered £250,000 worth of savings for them. I would not imagine that the Cornish Bridges were a fluke lucky savings pilot. I think that many of the other pilots, certainly the one with London Underground, we know generated significant savings. There are all sorts of other minor but significant gremlins in the system which we want to work through with these pilots because the aim really is to have the system in a really good condition when the Bill is passed, when it becomes law, so that we can get up and go and say we have done these, we know what the problems are, and we can put the whole lot into action as quickly as possible.

Q90 Mr Evans: You are right that the University of East Anglia was very pleased with the regime and the savings that it made whereas Westminster City Council had more concerns about the number of HPAs that might come through and the impact that would have on them. Do you share their concerns at all?

Dr Thurley: I was not here yesterday but I did receive a report and I was very disappointed with the evidence that Westminster gave because certainly what we know is that the pilot that they were principally referring to, which is the Piccadilly Line pilot, was hugely welcomed by London Underground themselves. It saved them a huge amount of work so I think we might want to go back and have a conversation with our colleagues in Westminster.

Q91 Mr Evans: I just think it is the number because they were looking at the estate that they look after and, as you can imagine, there are a lot of historic sites that are involved there and I think it is the number that they were concerned about. Indeed, they wanted the ability to say, "No, we will not have an HPA because we just do not think it is worthwhile." Do you think they ought to be given that power?

Dr Thurley: The important thing about Heritage Partnership Agreements is that they are only really useful where you are dealing with large estates where you have a single owner with multiple buildings. Westminster, I think I am right in saying, has the highest number of listed buildings of any borough in England and so I can understand that there might be some concern there but it does not have lots of estates of the sort of nature that we are thinking of. A very, very obvious example is we would very much like to have a Heritage Partnership Agreement with the National Trust who have a very large estate, they have 375 sites across the country, almost all of them I should think are listed, a because a Heritage Partnership Agreement will reduce the amount of work we do, the Trust does and the local authorities do.

Q92 Mr Evans: During the pilots that you had were you happy that they were properly resourced or did you find some difficulties with that?

Dr Thurley: The aim in future will be to try and get the applicant who wants to have a Heritage Partnership Agreement to do a lot of the work themselves. They will obviously need advice and guidance and one of the things that we will be doing, and coming out of the pilots, will be producing guidance for owners to do that. A lot of the cost advantage will fall to the owner and therefore we would expect some of the cost of putting that together to also fall to the owner. Going back to the UEA example, it cost them £70,000 but over three years it has netted them £275,000 in savings.

Q93 Mr Evans: So you think that there is likely to be a licensing fee arrangement on behalf of, let us say, Westminster City Council to be able to charge somebody what are likely to be their costs at least?

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Dr Thurley: I do not think it would work quite like that. I think an owner would employ consultants, architects and maybe other types of consultants also to draw up the drafts of the agreements. I do not think that a local authority or English Heritage would be doing that themselves but we would be responsible for giving them advice.

Margaret Hodge: We are not introducing a system of charging anywhere because it is our view that that could have a detrimental effect on people's willingness to protect their heritage assets. Nowhere in the system are we charging but it is the costs that fall to them.

Dr Thurley: The only other point I would make is that a Heritage Partnership Agreement can only be put in place with the agreement of the local authority, so if there were a local authority who was deluged by these things, they could say, "Look, I am terribly sorry, we cannot cope with the capacity at the moment, come back next year." I must say I do think that it is unlikely and I think that as the word gets around and as we go on the road and explain to local authorities the significant benefits there can be from this, more and more local authorities will encourage the big estate owners who make multiple, repetitious, slightly pointless sometimes, listed building consent applications to get on and make an agreement.

Q94 Mr Evans: Can I move on to Heritage Environment Records. The Association of Local Government Archaeological Officers suggested to us that the costs of maintaining Heritage Environment Records are likely to have been underestimated, what is your view on that?

Margaret Hodge: I think we have estimated them appropriately for this spending round. Where they may be right is when they are completely developed, the costs of maintaining them may be higher. All these things have a set-up cost and then a running cost. We have given them the funding for the set-up cost, we have given them running costs of just under a quarter of a million, but I think as we move into the next spending round it may well be that cost will increase and we will look at it. We are not trying to hide anything.

Q95 Mr Evans: Can I look at the Draft Cultural Property (Armed Conflicts) section which deals with cultural property unlawfully exported from occupied territories and that will become an offence under the Bill. Are you putting pressure on the Foreign Office to draw up a list of territories deemed to have been occupied at some stage since 1954?

Margaret Hodge: This is an incredibly complex bit of legislation where we are trying to incorporate the Hague Convention on this issue into UK legislation. We are working with the Foreign Office. I know it is an issue of concern which has been raised by the British Art Market Federation, but we have not got that far yet. This is a UNESCO driven bit of action. UNESCO have not yet put out conditions under which you can define the various categories of heritage protected assets in relation to armed conflict, so we have got a long, long way to go and

it is hugely complex. When I started to get my brain around this one, I thought it really is a complicated bit of enactment, well intentioned but we have got to make sure it works practically as well.

Q96 Mr Evans: It is the aspirational part of the Bill, is it?

Margaret Hodge: We have committed to incorporating it into UK legislation and we will do so. We have to wait for the rules to be set by UNESCO. I think it is very, very difficult, it is a difficult bit of legislation but it is important. Iraq has been the latest example of where without these sorts of protections you have enormous damage to the heritage assets of a country, but getting something that really works is going to be very, very difficult. I suppose just having it on the statute book of itself will make people very much more careful when they are engaged in armed conflict. I hope that again would be an appropriate expectation out of this particular bit.

Q97 Mr Evans: I am not familiar with many of the conditions involved, but I suspect in some cases for its own protection it might be useful to remove, clearly that would be legally, some artefacts for protection, which then would be returned afterwards. Is that generally accepted?

Margaret Hodge: It could be. There is an argument as well that if you define too many, they then become targets because who signs up to the Convention and who actually incorporates it into their national legislation. It is a really difficult area and removal and looking after artefacts is right where that is appropriate. What you would do about sites and buildings is much more difficult.

Q98 Mr Evans: Particularly as we saw in Afghanistan where they go out of their way to destroy heritage sites.

Margaret Hodge: That is the problem. The more you list, is that a good thing or a bad thing, and there is an argument to be had over that.

Q99 Chairman: Can I put to you the general concern which has been expressed about this particular Bill. I will give you an opportunity to reassure people. Our Armed Forces are currently deployed in some pretty unpleasant and dangerous parts of the world, sadly we have seen casualties. There is a concern that this Bill will mean that if our Armed Forces come under attack from insurgents and defend themselves and in the course of defending themselves find that they shoot off a bit of the local heritage, they might find they are liable to prosecution. Can you give an absolute assurance that this is not going to in any way restrain the ability of our Armed Forces to defend themselves?

Margaret Hodge: I think you raise a very pertinent point and I hope you will bear with me if I say to you, can I write to you to ensure that I do not give you a wrong answer on what is a very complicated issue but I think it is a very, very pertinent point you raise.

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Q100 Chairman: I can tell you that when we spoke to the Ministry of Defence they seemed relatively happy, but I do know there are a number of people who are very worried about this Bill. I hope you can provide that reassurance because if the Bill is to achieve the universal support, which I am sure you wish to see, I think it is important that is available

Margaret Hodge: It is just I do not want to give you a wrong answer.

Chairman: We would much rather have a considered and right answer.

Q101 Philip Davies: I want to pin you down a bit more on this “enhanced protection” for the list for UNESCO. I take on board the point you have made about the dilemma between making it too wide and having it too narrow, but there seems to be two specific categories which I want to flag up to you in terms of what should be included for “enhanced protection”. There are many of them which everybody agrees about, such as world heritage sites obviously, but the two in particular are the historic urban centres which are not world heritage sites, for example Oxford and York, and also the Grade II* listed buildings which it seems you are not currently minded to include on the list but where other people think they are so important that they should be included. I wonder where your thoughts are at the moment on those two specific categories.

Margaret Hodge: We have not come to a view on that and the reason we have not come to a view is we have not got the rules from UNESCO. When those are publicly available, we will have to consider the issues. As I have said to you, there are pros and cons

in making that list larger or smaller. Again, I do not think this is going to be a process we will want to go through in a hidden way, we would want to be as open as we can through it. Let us wait for the rules from UNESCO and then let us try and make a judgment on where it is in the interest of protecting our heritage to have them in that “enhanced” category rather than in the “general protection” category.

Q102 Philip Davies: Simon, can I press you as to what your view is on these two categories in particular?

Dr Thurley: I understand that DCMS has listed a number of areas that it feels, in a preliminary sense in absence of the guidance from UNESCO, should be on the list and they are world heritage sites, designated museums, copyright libraries and national archives. It does currently, as you state, not include Grade II* listed buildings, it just includes Grade I, which are about 9,000 buildings. I think English Heritage’s view would probably be that Grade II* should be included also but that would include another 20,000 buildings. Our view would also be that certain collections which are not currently nationally designated, private collections like the Royal Collection, the Chatsworth Collection or Holkham are also significant collections, but I think the Minister is right, it is quite difficult at the moment in the absence of really clear guidance to know whether that is a strongly held position I have just articulated or whether it is a preference and we just have to wait.

Chairman: I think we have come to the end of our questions. Thank you very much.

Written evidence

Memorandum submitted by the Institute of Field Archaeologists (IFA)

1. SUMMARY

1.1 This submission sets out the IFA's strong support for the objectives of the draft Bill. It sets out a number of areas where enhancements would be beneficial.

1.2 More critically, it identifies a lack of statements on quality standards to cover the organisations and individuals undertaking work required by Heritage Asset Consent or the planning system, the procedures they are to follow and the products that should ensue. The submission advises on how the omission of a quality assurance dimension could be readily rectified, as should be expected of a Department charged with "nurturing excellence". The submission warns that if not corrected effective delivery of the draft Bill's intentions is not possible: the IFA's continued confidence in the draft Bill is conditional on these improvements, and the Committee is advised to make a strong recommendation.

1.3 The submission finds no areas of substantial disagreement with the impact assessment with regard to the particular reforms set out in the draft Bill, but nevertheless identifies areas of investment required to bring historic environment services to a desirable standard.

2. INTRODUCTION

2.1 The Institute of Field Archaeologists (IFA) is the professional body for archaeologists and related professions concerned with the study and care of the historic environment. It promotes best practice in archaeology and provides a self-regulatory quality assurance framework for the sector and those it serves.

2.2 The IFA has over 2,600 members and more than 60 registered practices across the United Kingdom and abroad. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

3. OVERALL AIMS AND SCOPE OF THE DRAFT BILL

3.1 The Institute welcomes the draft Bill as the foundation of a comprehensive and much-needed package of reforms that:

- brings clarity, accountability and transparency to heritage protection;
- emphasises the positive contribution of the historic environment to economic and community regeneration and increases the opportunities for realising that potential;
- helps the sector dispel the myth that the historic environment is an obstacle to economic development;
- integrates the various regimes for different types of heritage asset and promotes convergence of the sector's multi-disciplinary professional family;
- brings management regimes for the whole historic environment sector in line with those for the natural environment;
- plugs loopholes that have emerged over the years (eg the damaging effects of class consents under the 1979 Ancient Monuments and Archaeological Areas Act and the Shimizu decision under General Permitted Development Orders); and
- promotes increased community involvement, thus encouraging greater public understanding and care through greater public participation.

3.2 In particular we welcome:

- the requirement for local authorities to maintain or have access to Historic Environment Records;
- the provisions for replacing the existing multiple designations with a single register of assets, designated by the same criteria and subject to a unified consent regime;
- the potential to designate sites without structures;
- bringing protection of buildings in Conservation Areas back to pre-Shimizu levels (removing a loophole permits "partial demolition" without Conservation Area Consent);
- the potential to revoke the class consents that permit ploughing of many (presently scheduled) archaeological sites; and
- interim legal protection for assets being considered for designation.

3.3 While we support these elements, we believe the aims and scope of the draft Bill should be enhanced:

- to define "special" interest;

- to address the obstacles in practice to revocation of class consents permitting damage to archaeological sites through ploughing (the issue of compensation);
- to provide clear guidance on the full range of functions that a local HER service should provide;
- to ensure provision of Historic Environment Records for the marine zone;
- to ensure that statutory undertakers deal with the historic environment as responsibly as other developers (in five English towns this loop-hole was plugged through a rather contrived exploitation of the provisions of part 2 of the 1979 Act, which will be repealed); and
- to encourage the specification of accepted professional quality standards.

3.4 It is this last point the Institute considers most important. Government has rightly recognised that the vulnerability and public value of our heritage assets require them to have protection through designation, but it must also that they should be managed in accordance with recognised standards by competent and ethical practitioners—whether paid or voluntary sector. This need is explored in more detail in section 5 where the Institute considers the staffing and skill levels required for effective implementation.

4. ESTIMATES OF COSTS AND BENEFITS SET OUT IN THE IMPACT ASSESSMENT

4.1 The IFA broadly agrees with the assumptions, sensitivities and evidence base set out in impact assessment and therefore has no reason to believe that the costs and benefits presented are inaccurate.

4.2 We do not believe that the transfer to local authorities of responsibility for issuing consents for designated archaeological sites (representing less than 2% of the assets on Historic Environment Records) will present a substantial additional burden. Archaeology is already well integrated into the planning process in all but a few authorities, and the vast majority of development projects to which archaeological planning conditions are applied affect non-designated sites.

4.3 Access to Historic Environment Records will be a new responsibility for local authorities. It is, however, one that most unitary and higher tier authorities have shouldered voluntarily, though frequently with financial pump-priming from English Heritage and Cadw.

4.4 Nevertheless some important financial considerations should not be ignored.

4.5 There is, as the impact assessment recognises, a considerable cost in the shorter term in training and capacity building in the sector. While many local authority staff, particularly more recent recruits, take a multidisciplinary view and see the historic environment as a holistic entity, many will need training in order to become “front-line heritage GPs”, capable of handling routine cases and knowing to which specialist consultants to refer more complicated matters.

4.6 While the new responsibilities for local authorities are not a significant new financial burden, irrespective of the draft Bill there is an urgent need to upgrade many Historic Environment Records and to ensure adequate provision of conservation officer staff. It should be noted that many local authority historic environment staff are under-graded for their skills and responsibilities and that there will be modest financial implications in rectifying this position.

4.7 English Heritage has already indicated that it intends to undertake a strategic programme of designation to ensure that the right assets are registered. This is highly desirable, but there will be challenges to this initiative from the high volume of threat-led (and NIMBY-led) requests for designation arising outside EH or Welsh Assembly Government. This volume may be increased if it is perceived that archaeological sites, previously not scheduled under the 1979 Act’s criteria, meet the new criteria. In addition, we fear the assumption of the projected continuing low number of future marine designations may reflect the predicted level of resources available for this activity rather than need, which maritime archaeologists assess to require a significant increase.

5. STAFFING AND SKILL LEVELS NEEDED FOR EFFECTIVE IMPLEMENTATION

5.1 The building and maintenance of professional capacity in the sector is essential for Heritage Protection Reform and the effective management of the historic environment. Guidance should be given on the professional accreditation to be expected of those advising local authorities and others, indicating that membership of the Institute of Field Archaeologists or of the Institute of Historic Building Conservation demonstrates proven necessary competence and understanding.

5.2 It is sometimes perceived that all funding for heritage comes from the public sector. Significantly the development industry (primarily private sector) invested c £135 million in archaeology and the planning process last year as a result of guidance in Planning Policy Statements 15 and 16. This part of the sector is experiencing market failure, the public is not best served, and there is an urgent need for government to step in to ensure effective regulation.

5.3 The IFA seeks to regulate the practice of its members and registered practices through a self-regulatory system of an ethical code, standards and guidance backed up with complaint and disciplinary procedures where necessary. Regrettably anyone can call themselves an archaeologist and undertake all areas of practice, including the destruction of archaeological remains. Many authorities would like to have

the capacity to ensure that work on sensitive and complex heritage assets (whether designated or not) is undertaken by competent professionals, but choose not to require this for fear of challenges on grounds of reasonableness. We believe that it is essential that DCMS, in keeping with its Departmental Strategic Objective of “nurturing excellence”, should include a clause stating that “It is reasonable and advisable for a local authority or government agency, as a condition of planning permission, heritage asset consent, grant aid or commissioned work, to require [where appropriate] certain works to be undertaken by a professionally accredited archaeological organisation or individual”.

5.4 Such a clause would give teeth to clause 110 (1) (e) and would encourage local authorities to comply with Article 3 of the Valletta Convention (the European Convention on the Protection of the Archaeological Heritage (revised)). It would also more convincingly demonstrate government’s own commitment to compliance with the Convention in line with its ratification in 2000.

5.5 Similar statements should be made in revisions to, or preferably a combined replacement of, PPGs 15 and 16—which will need to be addressed in the light of the Bill. It should be emphasised that in large part the content of the PPGs should remain, but there are additional minor amendments that would have considerable public benefit.

5.6 This provision is needed to enable the heritage sector to regulate commercial work. It would not affect the voluntary sector (many of whom work to professional standards and are valued as members of the professional institute). The Institute is determined to make clear that it wishes to increase, not reduce opportunities for non-commercial voluntary sector participation in archaeological practice.

5.7 We fear that without such a provision local authorities will find themselves unable to ensure adequate standards of work commissioned by developers as a condition of planning permission or heritage consent, and that government’s intention to place the historic environment at the heart of the planning process will fail in all but name, with consequent loss of public benefit. The IFA’s support for the much needed provisions of the draft Bill is therefore necessarily dependent on this critical addition to it.

6. RECOMMENDATIONS

6.1 The IFA advises that the Committee offers its support to the intentions of the draft Bill for the reasons cited in paragraph 3.1.

6.2 The IFA advises that the Committee strongly recommends government, in the interests of public benefit and client protection, to include clauses in the Bill and guidance indicating to relevant authorities the reasonableness and advisability of specifying compliance with accepted professional quality standards. These standards should cover person (requiring certain commercial works to be undertaken by accredited organisations or individuals), process and product (IFA standards for various types of archaeological work), as set out in paragraph 5.3.

6.3 The IFA also advises that the Committee recommends government to ensure that the resources allocated to training in local authorities are delivered in practice. Government should be aware that there will be a need for future investment to raise the capacity of above the baseline level set out in the impact assessment, so that planning services can satisfy the demands of the public’s love of its heritage and the development sector’s operational need for speedy and reasonable decision-making.

May 2008

Memorandum submitted by the Council for British Archaeology (CBA)

The Council for British Archaeology is an educational charity working throughout the UK to involve people in archaeology and to promote appreciation and care of the historic environment for the benefit of present and future generations. We have a statutory role as one of the national amenity societies consulted on listed building proposals.

CBA has a membership of 620 heritage organisations and c.10,000 directly subscribing individuals of all ages. Our institutional members represent national, regional and local bodies encompassing state, local government, professional, academic, museum and voluntary sectors. We work with a network of CBA Groups at the regional level in England, and with their national counterparts in Scotland and Wales, CBA Cymru and Archaeology Scotland. Our role as a statutory consultee is supported by a network of c150 volunteers in England and Wales who visit and advise on local proposals that include demolition of listed buildings.

1. In this evidence we focus on the CBA’s core purpose—to promote active public involvement in archaeology and appreciation and care of the historic environment—and our national role as an amenity society in England and Wales. There are other important issues for the archaeological community and the historic environment in general, which will be covered in the evidence being submitted to the Committee by The Archaeology Forum, by Heritage Link and by the Joint Committee of National Amenity Societies. CBA has also contributed to their submissions.

SUMMARY OF EVIDENCE TO COMMITTEE

2. CBA has welcomed the publication of the draft Bill. It introduces much-needed reform of the present, complex arrangements for managing change in the historic environment, strengthening protection for inherited assets of special value and their settings. We are pleased to see the provisions for a statutory duty for local authorities to create and maintain Historic Environment Records, and the proposals for wider consultation, opportunities for public involvement and greater transparency of process.

3. Overall therefore CBA strongly supports the new legislation. In this evidence we draw the Committee's attention to five key areas where we believe that further scrutiny of arrangements and resources are essential to support the effectiveness and robustness of the legislative change.

4. These key areas are:

- A new Planning Policy Statement for the historic environment.
- Reform of the existing Class Consents Order.
- Assessment of full implications of repealing of Part 2 of 1979 Act.
- Additional costs to local authorities for the new Historic Environment Record duty.
- Resources and capacity for implementation in local authorities and English Heritage (in relation to transitional arrangements) and in the national amenity societies.

In addition, there are a number of areas of detail where we will be seeking clarification and assurances but we are satisfied that these can be resolved effectively through consultation over the coming months with the Department for Culture, Media and Sport.

OVERALL AIMS AND SCOPE OF THE DRAFT BILL

5. CBA strongly supports the overall aims and scope of the draft Bill. Clarification is still being sought on proposed arrangements for Conservation Areas, local designations and protection of marine heritage assets. We expect these aspects to be addressed in supplementary drafting, guidance and statutory instruments and recognise that the reform of legislation of this complexity will necessarily be delivered in stages. The enhancement of some areas of protection in the draft Bill has been particularly welcome and we look forward to seeing further details of other areas where there will be benefits from the coherence of a comprehensive system of protection.

6. Government has given assurances that the new system will not reduce the overall level of protection for the heritage, and we hope the Committee will seek a confirmation of this from the Minister. We are concerned that for archaeology there should be a rigorous scrutiny of the new arrangements to ensure that this intention is followed through in the interpretation of the new legislation and guidance.

7. The presumption in favour of preservation of nationally important archaeological remains and their setting, whether scheduled or not (as set out in PPG 16), has been the benchmark for protection of archaeological sites since 1990 based on the provisions of the 1979 Act. This principle is embedded in current PPGs and other government guidance and in local and national planning policies. In place of "national importance", the new Bill introduces the new concept of "special archaeological interest" which will be the criterion for selecting sites and structures for archaeological protection. CBA believes it is imperative this new definition, and its application in practice, is the subject of detailed assessment and full consultation with the sector. This will be crucial to ensure that there is no net loss of overall protection in the new heritage protection system. It is most important that these fundamental changes, as well as the overarching principles of a unified approach to protecting the historic environment, are brought together in statutory guidance.

8. CBA considers it is essential therefore that there is a new statement of integrated principles and policy to bring together the criteria and concepts that will flow from the primary legislation and to consolidate the raft of related legislative change and new statutory instruments. We also believe that it is important the Department of Communities and Local Government should be actively engaged with, and endorse, the heritage reforms which cross over into many areas of that department's portfolio. CBA believes it imperative that the new legislation is supported by a new Planning Policy Statement for the Historic Environment to replace PPGs 15 and 16.

CBA urges that new legislation is accompanied and supported by a new Planning Policy Statement for the Historic Environment to replace PPGs 15 and 16, to be published alongside the new legislation.

9. CBA also urges the Committee to seek specific assurances that the reform of the current Class Consents Order will,¹ as outlined in the White Paper, include the revocation of Class I consent relating to agricultural, horticultural and forestry operations on (former) scheduled ancient monuments. CBA has advocated this reform for many years: the evidence for the damaging impacts of cultivation on archaeological sites is incontrovertible and a reformed heritage protection system should not allow this to continue. We believe it is reasonable, and entirely in conformity with the principles of national planning guidance for archaeology, that there should be a presumption against continued cultivation on designated archaeological sites because of cumulative damaging effects. Research carried out for DEFRA and English

¹ Ancient Monuments (Class Consents) Order 1994.

Heritage has shown that so-called “same depth” ploughing does represent a risk to monuments under cultivation. We urge that the new Class Consents arrangement should not include consent for continuing agricultural and horticultural operations on designated heritage assets and that there is clarification about resources for and implementation of the “management agreement” approach referred to in the White Paper.

CBA asks the Committee to seek assurances about the mechanisms for reform of the Class Consents to protect designated archaeological sites from the damaging impacts of cultivation.

ESTIMATE OF COSTS AND BENEFITS SET OUT IN THE IMPACT ASSESSMENT

10. The Impact Assessment (IA) does not consider the possible adverse effects of the proposed legislative changes on the five Areas of Archaeological Importance (AAI) formerly protected under Part II of the 1979 Act. No equivalent provisions are proposed to replace AAI designation. CBA believes that special consideration should be given to ensure that there is no diminution of protection for these important historic city centres and that the new system will deliver equivalent benefits in place of the protection being repealed, particularly in relation to permitted development such as utility company works. It appears that the operational as well as the archaeological impact of removing the controls which formerly operated in AAIs has not been assessed in detail. This could for example include a flood of speculative applications for Certificates of No Intention to Register (CNIR), as well as new designation requests, as the controls of the previous system are lifted.

CBA recommends that DCMS and English Heritage conduct a rapid review of potential impact of the reforms with the local authorities in the historic centres formerly protected as AAIs (Canterbury, Chester, Exeter, Hereford, York).

11. CBA is pleased to see the undertakings from DCMS in the IA to meet additional costs to local authorities of the new duty to maintain and enable public access to Historic Environment Records (HERs). Costs have been presented for the work necessary for HERs to meet the new guidelines and for local authorities to fulfil their new duty but the basis for these estimates is not available in the IA document. We are concerned, with our colleagues in the Association for Local Government Archaeological Officers, that these costs may have been underestimated and that for Wales there appears to be little evidence to support the suggestion that there will be no significant cost implications, as stated (IA p 21).

CBA recommends that the Committee request that the basis for estimated HER costs is publicly available in order that they may be properly scrutinised and reassessed accordingly.

12. The costs of compiling and maintaining data on intertidal and marine heritage assets (which many HERs do not currently include) will be an additional new task for local authorities and/or for English Heritage. Clarification is needed on where this responsibility lies and, in view of the importance of this data for marine spatial planning, we respectfully suggest the Committee inquire whether DEFRA has been approached to share the financial burden of this new area of responsibility.

CBA suggests the Committee request clarification on where the responsibility will lie for compiling and maintaining data on inter-tidal and marine heritage assets, and whether DEFRA has been engaged in discussion of the resourcing of the information base required for managing the marine environment.

STAFFING AND SKILL LEVELS NEEDED FOR EFFECTIVE IMPLEMENTATION

13. Realistic assessment is needed of the costs of transitional arrangements and implementation for local authorities and English Heritage. This should include the impact of training local authority staff in the new arrangements and introducing new procedures for the heritage asset consent regime into established local authority back-office systems, only recently reconfigured to meet the requirements of e-government and the standard application form. Costs for this have not been estimated (IA p 18) and £400,000/year for nearly 400 local authorities appears to be a minimal estimate of annual recurring costs. CBA believes this area should be scrutinised more closely.

14. The effect of devolving consent procedures for former scheduled monuments is unlikely, we agree, to have a major impact on local capacity in itself but the management and monitoring role that English Heritage currently undertakes in conjunction with advising on consents is not explicitly addressed and would have an impact if devolved.

15. CBA welcomes the introduction of new Heritage Protection Agreements which should bring long-term benefits and efficiency savings. However, initial negotiation and setting up costs will demand disproportionate resources in the early years, as the indicative results of the HPA pilots conducted in 2006–07 have shown, and will have a high potential impact initially on local authority capacity. Much better understanding of the resources required to implement HPA is required to assess the initial investment that will be required to achieve longer term savings.

16. English Heritage has stated that it has a reasonable level of staff resources to make a good start in the immediate period of preparation for implementation. Once the new system of designation is introduced, however, the expectation is that there will be a need for a significant uplift in the next CSR round to accommodate both the new designation process and the issues that will inevitably arise in dealing with the half million “legacy designations” that will be transferred to the new Register.

17. There is a realistic expectation of severe resource pressures on English Heritage in two areas. Firstly, a sharp increase in speculative requests for designation from interested parties can be expected under the new criteria for registration of heritage assets, particularly given the greater public engagement with the process which the new system introduces. Secondly, there will be a demand for detailed clarification over the shortcomings of outdated and inadequate (“legacy”) designation descriptions which do not meet the requirements of the new registration system. Potentially any application for heritage asset consent dependent on a “legacy” designation description could result in a request for revision. With over 30,000 applications for consent per year, such requests together with new designation applications could severely hamper the progress of the strategic programme for new designation that English Heritage plans to initiate unless they have appropriate resources to handle the increased demand.

CBA recommends that closer scrutiny be given to the resource needs of:

- local authorities implementing the new consent and agreement procedures; and
- English Heritage for handling the potential sharp increase in new designation applications and revision of “legacy” designation descriptions to meet the standard of the new system.

18. The CBA also has serious concerns about the capacity of the national amenity societies, of which CBA is one, to sustain the new roles proposed in the draft Bill. In general, the opportunity for the amenity societies to take an active part in the selection and designation process is a positive one and welcomed. However, additional roles for us would include scrutiny of all new applications for registration, amendments, appeals against registration decisions, Heritage Partnership Agreements, and Certificates of No Intention to Register, in addition to the amenity societies’ present role as a consultee on a significant proportion of applications for listed building consent (c4,000 per year). We are concerned to safeguard the core role that the amenity societies have established in advising local authorities on historic buildings.

19. Detailed evidence on this aspect will be provided through the Joint Committee of National Amenity Societies but we wish to comment here on the observation published in DCMS Impact Statement:

“Amenity societies may also incur costs in providing advice on all designations. However, while they will be statutory consultees, they are not statutorily obliged to respond so are therefore free to fulfil this role in the light of their resources and priorities” (IA, p 10).

20. This statement does not reflect the spirit of “opening up” the system which we believe the reforms intend through encouraging public and voluntary sector participation. It displays only a superficial understanding of the work that the amenity societies undertake and the substantial contribution that they make in their statutory role in offering specialist advice to owners, managers and local authorities.

21. CBA does not consider it is responsible to include a new statutory requirement for consultation in the Bill without an assessment of whether there is a realistic prospect of the organisations concerned being able to undertake this important role or identifying measures for enabling them to be able to do so. This is in contrast with the proposed provisions in the Planning Bill which aims to achieve better outcomes through building capacity for public and community engagement through the involvement of Planning Aid and positive recognition of the need to build and facilitate capacity. CBA is undertaking its own impact assessment of the potential effect on its work but believes that the impact in this area deserves to be considered properly across the board, as it has been for local authority, English Heritage and DCMS capacity.

CBA urges the Committee to inquire whether DCMS and English Heritage have assessed the impact of the new protection system on the amenity societies and other voluntary sector organisations and what measures they consider are needed to build capacity there.

June 2008

Memorandum submitted by Wakefield Historical Society

PREAMBLE

The Wakefield Historical Society was founded in 1924 and has been responsible for several major excavations, for the publication of over forty substantial academic works, and has acted as a regional provider of information, historical courses, guided historical walks and printed trails, lectures and a journal. Its Council has a variety of professional-historical members. Its current president has made representations on many occasions at meetings of the Local Authority’s Planning Board, and she and one of the vice-presidents have given evidence at a number of Planning Inquiries.

Matters we welcome:

1. The continuing recognition of the value of heritage assets and of the need to protect them.
2. The openness in accepting that anyone may propose a building, or site etc, for inclusion in the schedule of heritage assets.
3. The emphasis on consultation at all levels.
4. The recognition that local authorities maintain informal registers of buildings etc which are of local interest although not formally registered as heritage assets.

Matters of concern:

1. The lack of sufficient professional expertise to provide quality staff either for English Heritage or for Local Authority planning departments. (In terms of the former, we have noted in the past (a) a somewhat random selection of items for inclusion on the formal lists and (b) the capacity of different representatives from English Heritage to provide conflicting advice.) Local Authorities will clearly need teams drawn from varied academic disciplines, whose members should be accorded a high status, and who can cope authoritatively with both the diversity of assets and the necessary on-site and documentary research.

2. The absence of funding for Local Authorities to retain sufficient, well qualified staff to fulfil the obligations under the Act.

3. The absence of any provision for appealing against planning consent. Local Authority planning boards can be quite capricious in their decisions, not infrequently rejecting the advice of their officers and seemingly having no criteria for their decisions other than ignorance or whim.

4. The absence of any obligation to compel owners to maintain heritage assets adequately. Whilst the Local Authority may serve a repairs notice, it does not, under the terms of the bill, have to. In practice Local Authorities shy away from serving such notices because of the possible consequence of having to buy the asset themselves. Hence heritage assets are not adequately protected in the provisions of the bill against neglect. We have, over the years, seen scheduled properties in our own District simply decay beyond any reasonable point of rescue. We suggest that there should be a requirement for owners to contribute towards repairs but that there should also be adequate provision for grant aid.

5. The problem of “policing” the care of heritage assets. The bill makes no provision for rights of entry to properties which the Local Authority officers may consider at risk.

6. The absence of reference to inland waterways and lakes which may well hold heritage assets in the form, for example, of sunken vessels.

7. The absence of any enforceable protection of buildings etc which are of real local interest but are only on a local register and not on the formal heritage register.

8. The lack of any indication of the “National Amenity” societies which are to be consulted by statute

9. The lack of recognition of the expertise of regional and local historical or archaeological societies and the absence of any formal provision for consultation with them.

10. The absence of any clarification of what criteria should be invoked in regard to determining whether a building etc is to be listed as a heritage asset and what criteria are to be invoked in determining planning applications.

11. The lack of a definition of what exactly is embraced by the term “curtilage”.

12. The lack of detail as to how the implementation of the legislation is to be publicised.

13. The lack of any requirement for local authorities to make the schedule of heritage assets available anywhere except at the planning departments themselves. We suggest there should be a requirement for copies to be held at all major public libraries, for example.

14. The retention of Ecclesiastical Exemption. Whilst we understand the rationale put forward in support of this, we take the view that all heritage assets, whether places or worship or not, should come under the same legislation. Our view here is based in part on (a) the anomalies that exist in granting faculties between one Anglican diocese and another, and, (b) the seemingly wanton manner in which faculties are granted within Anglican dioceses for major alterations to historic (and in particular medieval) churches. We suggest that any proposals for alterations to ecclesiastical buildings should be ultimately determined by local planning authorities whether or not they are also subject to diocesan faculties or other denominational consent.

15. The degree of “sloppiness”, vagueness or ambiguity in some sections of the bill. For example, page 120 section 220, clause (1) refers to “a person” whilst clause (2) makes a sudden leap to “the relevant authority” whatever that may be. Then on page 121, section 222, whilst we welcome the implied protection, it seems to us unclear whether the “objects or structures fixed to a building” refer to interior fittings as well as external items and whether this would apply to Grade II properties as well as those scheduled as Grade I or Grade II*. What of fireplaces, panelling or staircases, for example.

16. We note that the proposals in the White Paper *Heritage Protection for the 21st Century*, that Grades I and II* categories should be merged, and that Ancient Monuments should be subject to the same controls as listed buildings, are nowhere referred to in the draft bill.

17. We note that the list of local authorities given on page 41, section 82 (4) does not include Metropolitan Districts.

May 2008

Memorandum submitted by Dr Philip Whitbourn OBE

SCOPE OF THE DRAFT BILL

The scope of the draft Bill, as published, seems highly unsatisfactory, not least because it is woefully incomplete, with key areas missing. Also, as it currently stands, the Bill is badly skewed, with some thirty pages devoted to the special interest subject of Marine Heritage; only about one third of a page to internationally important World Heritage Sites; and nothing at all to the key subject of Conservation Areas.

CONSERVATION AREAS

In her foreword to the March 2007 White Paper on Heritage Protection the then Secretary of State commendably opened with the words: “The historic environment matters to all of us. It tells us who we are and where we have come from. It gives identity to our villages, towns and cities”.

For the past forty years or so, Conservation Areas have rightly been at the heart of our heritage protection system in the very “villages, towns and cities” of which the Secretary of State spoke. As the law stands at present, the destruction of buildings of character in Conservation Areas is controlled through the Conservation Area Consent procedure, under section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Demolition without Conservation Area Consent is currently a criminal offence punishable, ultimately, by up to 12 months imprisonment, or a fine commensurate with the financial benefit of the offence, or both. So it is an area where crime is known not to pay.

Moreover, where planning functions are exercised in Conservation Areas, there is a statutory duty to pay “special attention to the desirability of preserving or enhancing the character or appearance of that area”. (Section 72 of the 1990 Act) Also, English Heritage (alias the Historic Buildings and Monuments Commission for England) is specifically charged by Parliament, under Section 33 of the National Heritage Act 1983, with a statutory duty “to promote the preservation and enhancement of the character and appearance of Conservation Areas situated in England”.

So it should seem almost unthinkable for a so-called “Heritage Protection Bill” to be published, without a single clause on Conservation Areas.

Yet, the only mention of Conservation Areas in the published document appears in two brief references in the explanatory notes that are specifically stated not to form part of the Bill. On page 134 it is said that, when introduced, the Bill will contain additional clauses covering Conservation Areas. These should be there now for proper scrutiny in this key area of Heritage Protection. Then, on page 191, there are two “additional explanatory notes” in paragraphs 278 and 279.

CONSERVATION AREA CONSENTS

Paragraph 278 makes it clear that the additional clauses would “not replicate the provisions relating to Conservation Area Consent” in the 1990 Act. Instead, amendments to the General Development Order would be made, requiring planning permission to be obtained for the demolition of buildings in Conservation Areas. That would be a fundamental change, not only because it would take such control out of its present position in the primary legislation, and relegate it to a less secure Statutory Instrument. The potentially really serious fundamental difference here is that whereas demolition without Conservation Area Consent is a criminal offence, work without planning permission is not. In other words, the effect of such a change could be to legalise unauthorised demolition in Conservation Areas.

The remedy for dealing with works without planning permission is through the enforcement procedure. This can be a fairly blunt instrument at the best of times. However, the owner of, say, a house built without planning permission, may run the risk of being made to pull it down. On the other hand, no amount of enforcement action can bring back an old building that has been destroyed. Replicas are never the same, even in the unlikely event of accurate record drawings being available.

One possible way out of this problem might perhaps be for the primary legislation to make the demolition without planning permission of buildings in Conservation Areas a criminal offence, punishable by the present penalties. In the absence of a proper Bill, with the relevant clauses included, the matter remains a serious source of anxiety.

WORLD HERITAGE SITES

While Conservation Areas are absent from the draft Bill altogether; the treatment of World Heritage Sites is scarcely any better, and is perfunctory in the extreme. The Explanatory Note 78 on page 148 admits that clause 45 does no more than record the existence of such sites. The note also states that inclusion of such sites in heritage registers “will not subject them to any protection regime”. So what, it may well be asked, sort of “Heritage Protection Bill” is that, and what sort of message would it send out to the international community about the way in which the UK treats its most precious Heritage Assets? Our historic villages, towns and cities generally matter to us all, as the Secretary of State said. Our World Heritage Sites have a wider significance, which extends far beyond our own shores. Sites such as Stonehenge, Hadrian’s Wall, and the City of Bath are important internationally, as well as nationally and locally. Our Heritage Protection regime should thus treat them with especial care, and be seen to do so. Clause 45 signally fails to do any such thing, and the words on page 148 just compound this failure.

At the very least, consideration should be given to clauses that would make clear a statutory duty to pay special regard to maintaining those qualities of universal significance in World Heritage Sites and their “Buffer Zones”, when exercising planning functions, including the preparation and implementation of Local Development Frameworks.

In the published draft Bill the whole of Chapter 3 comprises but one clause, with about eight lines of singularly unproductive text.

“Buffer Zones” around World Heritage Sites have long had international recognition, but have not so far had a place in English planning law. The opportunity should be taken to remedy this situation, with clear and firm primary legislation. Reliance, in this internationally important field, should not be placed solely on the second-best expedient of planning circulars and the like.

DRAFTING

The wording of the draft Bill seems not only laborious but, at times, unnecessarily obscure. On the same page as clause 45, for example, clause 44 reads:

44 Relationship between requirements of Chapter 2 and general duty:

(1) Section 1, so far as requiring English Heritage:

- (a) to include and retain in the heritage register for England registrable structures and registrable open spaces which it considers to be of special historic, archaeological, architectural or artistic interest; and
- (b) not to include or retain in that register registrable structures and registrable open spaces which it does not consider to be of special historic, archaeological, architectural or artistic interest, has effect subject to any relevant duty under this Chapter.

(2) For the purposes of this section, a relevant duty under this Chapter is any duty of English Heritage arising from this Chapter:

- (a) to include or retain in the heritage register for England a registrable structure or registrable open space which it does not consider to be of special historic, archaeological, architectural or artistic interest; or
- (b) to remove from or not include in that register a registrable structure or registrable open space which it considers to be of special historic, archaeological, architectural or artistic interest.

This clause makes no mention of the Secretary of State. Yet it appears from explanatory note 77 on page 148, that the main purpose of the clause is to afford the Secretary of State reserve powers to direct that an item be included in, or removed from, the Heritage Asset Register in the event of a disagreement with English Heritage. If that is indeed the case, it would seem preferable that the clause should say so in clear and unambiguous terms, specifically mentioning the Secretary of State.

HERITAGE REGISTERS

Clauses 1–85 of the draft Bill contain somewhat cumbersome-looking proposals for the registration of “Heritage Assets” of various kinds. Under the arrangements put forward, responsibility for according statutory protection to historic buildings and monuments would pass from the publicly accountable central government, advised by English Heritage, to the expert, but publicly unaccountable, English Heritage. Clause 78 provides for the Secretary of State to make regulations about the form of the register, and the information it must contain. The notes do not expand on this, but a “likely” format is shown in Annex 1 of the White Paper. That exemplar runs to eleven pages, including some quite detailed history, descriptions and other information. If such an exemplar were to be followed universally, it could represent a huge amount of work, not all of which may be necessary. More worryingly though, such work would need to be meticulously done, if it were not to run the risk of becoming a hostage to fortune, in the event of a Public Inquiry. Planning Silks and hostile expert witnesses could well have a field day with a key document of this kind, were it to be found that it could not withstand the scrutiny of being put under their legal microscopes.

FINANCIAL ANXIETIES

Detailed registers could also prove time-consuming and expensive to produce, collate and update. Serious concerns have already been expressed about whether levels of funding would be sufficient to operate the envisaged system properly.

SPECIAL LOCAL INTEREST

Local Listing under clause 215 might, if properly thought through and given real meaning, prove to be an interesting concept. At present, Local Lists have only any serious value within Conservation Areas, where demolition control exists. However, note 258 on page 187 does not seem encouraging. The note makes it clear that recognition as an asset of special local interest would not mean that it would be included in the heritage register, or subject to the consent regime. So, as matters stand in the published Bill, the proposal would appear somewhat meaningless.

TRANSITIONAL AND MISCELLANEOUS PROVISIONS

Of the several sections still missing from the draft Bill, one is headed “Consequential, Miscellaneous Provisions, Transitionals”. Paragraph 285 explains that “this section will contain those provisions identified as appropriate for inclusion before introduction”. In the absence of those provisions, it is of course not possible to reach a view on whether they would be “appropriate” or not. Nevertheless, they could be of great importance, not least where the status of the present lists and schedules are concerned. As yet unidentified “Miscellaneous Provisions” could also prove a worry.

AIMS OF THE DRAFT BILL

Explanatory note 3, on page 131, claims that the Heritage Protection Bill has been “designed to reform and unify” the heritage protection systems that exist. This seems to be the aim, and to be based on the presumption that reform is necessary, and unification desirable. On the other hand it could be held that reform is not, for the most part, particularly necessary, nor unification necessarily desirable. The present heritage protection system has evolved organically from the scheduling of mainly prehistoric monuments in England in 1882; followed by the listing of buildings at the end of the Second World War, and the introduction of Conservation Areas in the 1960s. Also in the 1960s came the present Listed Building Consent procedure. All of that was generally in response to real concerns felt by the public at the time. It seems highly questionable whether much public clamour for drastic reform exists today. On the whole, the present system works reasonably well. Listed Building Consent is a clearly understandable title, as are Conservation Area Consent and Scheduled Monument Consent. All involve somewhat different considerations and, quite often, different areas of expertise. Nor would it be helpful to mix up English terrestrial conservation law with Welsh and marine systems.

“Heritage Asset Consent” could risk causing greater confusion, especially as some works would always need consent, others only sometimes, while others again, such as registered Heritage Open Spaces and Marine Heritage, would not involve Heritage Asset Consent at all.

CONCLUSION

All in all this is a half-baked and incomplete draft Bill. There is no great urgency or need for reform and, if change is to be contemplated at all, then it should be on the basis of a complete and altogether better thought-out document. If that requires more time, then so be it, as there seems no good reason to rush through a half-baked piece of legislation. Scope does exist for improvements to the present system. Better care for our World Heritage Sites could provide one such improvement, and a meaningful procedure for Local Listing could be another. Putting the law back to where it was thought to be regarding partial demolition, before the Shimizu case, is important, but not necessarily at the expense of Conservation Area Consents.

June 2008

Memorandum submitted by the Standing Conference on London Archaeology (SCOLA)

1. The Standing Conference on London Archaeology (SCOLA) was set up in 1992 to promote the practice, study and public awareness of archaeology in London; its members include professional and volunteer archaeologists, archaeological societies and local authorities. SCOLA has since its inception made informed comments on the London aspects of all issues concerning the historic environment including archaeological ones, in particular when national Government or the Mayor of London consults on policy proposals.

2. SCOLA welcomes the intention of the Government to legislate in the next session to modernise and strengthen the Heritage Protection legislation; we also welcome the publication of the Bill in draft to give opportunity for comment and improvement outside the sometimes confrontational atmosphere of Public Bill Committee debates. We particularly welcome the explicit addition of archaeological interest to the grounds for inclusion of a structure on the register. We invite the Select Committee to urge the Government to give this Bill high priority among the measures to be announced in the next Queen's Speech.

3. There are some things which we wish to see added to the Bill:

- (i) The provision for the registration of open spaces in England should not be restricted but should be as wide as that in Wales. Many sites have their main significance as a part of a wider historic landscape, and if that is allowed to be degraded, the sites themselves may lose contextual significance. Moreover, a relatively intact landscape of prehistoric, Roman or medieval fields or hedgerows is a historic asset in itself.
- (ii) It is important to provide local planning authorities with control over the demolition of what are now called "locally listed buildings", whether or not in a conservation area.
- (iii) The Bill should give an explicit role to local archaeological, local history, and civic and amenity societies, giving them a right to be consulted on all proposals affecting heritage assets in their area, including ones for registration, de-registration, certificates of no intention to register, and heritage asset consent.
- (iv) The Bill should recognise and enshrine the importance of preventative maintenance of heritage assets.

4. Outside the Bill itself, we ask the Select Committee to recommend the Government to press on with the updating of PPG15 and PPG16 (which is lagging far behind the updating of PPGs generally), and to do so in the form of a full PPS and not of mere guidance notes, which will inevitably have less weight. Finally, we would underline the need for proper resources in local planning authorities, English Heritage, and the relevant Government departments if the new legislation is to have the benefit which it can, and to which we all look forward.

June 2008

Memorandum submitted by Rochester Cathedral

HERITAGE PARTNERSHIP AGREEMENTS

Rochester Cathedral participated in a pilot project to develop a Heritage Partnership Agreement covering the cathedral and precincts, between 2005 and 2007.

HPAs are a development I want to support, based on our experience of the pilot. Its benefits have been as follows:

1. The process of developing and reviewing the HPA gets all the important partners around the table from the start. This relational approach has been a vital ingredient in allowing us to address potentially difficult issues with a more constructive and less defensive attitude. It has built trust, which has often been the missing ingredient where heritage protection has been concerned. The current systems tends to pit regulators against the regulated, which is naturally confrontational. The new system is far more constructive.

2. No-one enjoys the frustrations of having the secular and ecclesiastical systems overlapping (so-called "dual control"), and anything that simplifies the necessary permissions and approvals processes—without weakening protective mechanisms—is to be welcomed.

Memorandum submitted by the Portable Antiquities and Treasure Scheme, British Museum

DRAFT HERITAGE PROTECTION BILL

We welcome the publication of the Draft Heritage Protection Bill, a much-needed reform of the present régime. However, there are some issues of concern which the Culture, Media & Sport Select Committee may wish to scrutinise further.

This response is sent on behalf of the Portable Antiquities Scheme (PAS), a project to record archaeological objects found by the public in England and Wales. The recording of finds is undertaken by a network of 37 Finds Liaison Officers based with local partners (museums and local authorities). This work is co-ordinated and supported by a Central Unit based at the British Museum, and 6 Finds Advisers. PAS is managed by the British Museum on behalf of the Museums, Libraries & Archives Council (MLA); the partners contribute some of the funding.

HISTORIC ENVIRONMENT RECORDS AND THE PORTABLE ANTIQUITIES SCHEME

1. We welcome statutory provision for Historic Environment Records (HERs) (Part 5), the key record-holders of information about the historic environment. However, the principal mechanism by which data about archaeological finds made by the public reaches HERs—the PAS²—is under threat and this will have a direct impact on HERs and local museums, with cost implications for Local Authorities.

2. The threat facing PAS: in 2008–09 the budget for PAS has been frozen (£1.3 million), leading to the loss of three post-holders and £100k cut in non-staff costs, and funding for 2009–11 is subject to a review; the fourth such review in 10 years. There is a concern that if further cuts are made, and PAS can no longer provide a national service, then finders will look to HERs and local museums to identify and record these finds, for which there is no provision, funding and (in many cases) expertise to do so.

3. PAS established 6 “pilot schemes” in 1997, and extended these to the whole of England and Wales (thanks to HLF funding) in 2003. Since 1997 more than 334,000 archaeological objects found by the public have been recorded by PAS, helping to transform our archaeological knowledge of the country; this data is published online (www.finds.org.uk). The outreach activities of the Scheme (776 events in 2007 attended by 37,500 people, including 7,522 children) also help to engage people in archaeology and help them understand more about the history of their local area.

RESTRICTIONS ON THE USE OF METAL DETECTORS

4. We agree with the principle that metal-detecting should not take place in a registered heritage structure or heritage open space without written consent of the heritage authority concerned. However, those restricted areas must be clearly defined, particularly if they are earthworks (2.2a), archaeological remains (2.2e), “groups of things” (2.2h) and battlefields (3.2b), so that detector users are clear of their legal obligations and restricted areas are properly protected.

5. We are concerned that secondary documentation (which needs only secondary legislation) relating to metal-detecting, in particular, has not yet been published, as this does not allow proper scrutiny of the draft Bill.

June 2008

Memorandum submitted by the Association of Chief Archivists in Local Government (ACALG)

I am writing on behalf of ACALG, the Association of Chief Archivists in Local Government, which is the professional body for the heads of local authority archive services in England and Wales.

We welcome the opportunity to comment on the draft of this important piece of legislation and welcome the need it recognises and regularises to protect heritage by a wider definition than the present “built structures” approach. The opportunity to redefine Historic Assets and create recognised historic environment records (HERs) which can now include sites and scatterings of archaeological finds is an important one and will, we hope, ensure the more effective preservation of the heritage.

Looking at the draft specifically as archivists working for local authorities including the planning authorities who will be required to create and maintain the HERs, we would suggest that it may well be useful to specifically include, possibly at 213(1) a specific requirement to ensure the preservation of content superseded from the HER, but which is worth retaining for historical purposes. My understanding is that at present such information is not removed from the existing Sites and Monuments Records (SMRs) or Listed Building Schedules but merely noted as superseded. We would suggest that at some point for operational purposes the HERs will be migrated to new systems, or simply “tidied up” and that at such a time there is a risk that older data no longer required will be dumped. Specific inclusion in the legislation would reduce this risk.

We would also take this opportunity to remind the Committee about the rather serious difference between the level of protection afforded to buildings and the heritage environment and the lack of protection afforded to “portable heritage” and most specifically archive collections. These can be as enmeshed with the identity and history of a community as any building or landscape, but have little if any protection in most cases other than the refusal of an export licence if they are perceived as being over a certain monetary value. We do not suggest that the processes already existing and widened and strengthened by the proposed legislation would be the appropriate means to do so, but suggest this is a question which merits a further consideration. At present the archive room of an historic building can have protection, but the contents of the room do not even though they relate to the fields the estate and house are on or the people who lived and worked there.

² See Historic Environment Records, draft guidance for Local Authorities in England (DCMS, May 2008), 35.

Even within the narrower scope of the current proposed legislation it could realistically be maintained that the HERs would be incomplete without the information contributed to them from archives. We would suggest that this anomaly should be looked at.

June 2008

Memorandum submitted by Heritage Partnership Agreements

I made my own 700 acre Estate available as a pilot to try out the principles of Heritage Partnership Agreements.

The Estate comprises about 750 acres with a grade II* house, two further grade II farmhouses, a grade II lodge and a grade II cob and slate barn. It also has a scheduled ancient monument and is conditionally exempt from IHT.

It seemed an ideal opportunity to get English Heritage, the local Planning Authority and the owner (me) together to discuss the way forward for the built heritage on the Estate given the changes in farming practices, tenures and occupation; the historic nature of the buildings and the landscape, uncertainty about the extent of the curtilage of various buildings and possible alternative economic uses for the buildings in a way that would endure even if staff in the various organisations were to change in future.

I felt that having a Heritage Partnership Agreement in place would mean that I could, with confidence, commission professional advice on building repair and improvement and deal with comparatively straightforward matters that had recently arisen such as signage on the ancient monument. It would help me too to understand the viewpoints of the regulating bodies.

I envisaged a two way process, hence the term partnership, which would save all parties money and time and lead to a sensible application of the legislation balancing the retention of important historical integrity with a degree of pragmatism.

In practice the pilot was never completed due to staff changes and resource pressures at English Heritage and then subsequently pressures on my own time. Nevertheless I still believe strongly that the principle is sound. There are some lessons I would take away from the pilot as follows:

1. The system seemed popular with the Local Authority and I believe that the local Conservation Officer welcomed the chance to discuss some of the principles with English Heritage which enabled the relative merits of the buildings to be looked at in a national and not just a local context.
2. As owner, I was pleased to have the opportunity to have that same discussion and to build a constructive dialogue with the two other organisations. It also focused my mind on what viable uses there may or may not be for important historical buildings before it becomes too late and they are beyond repair.
3. English Heritage was not ready in staff terms for a project like this. Due to its novelty, too many staff were involved, each wanting an input into the report, so that the draft read like a series of different sections cut and pasted together without cohesion, which it was. Each staff member seemed reluctant therefore to take responsibility for the pragmatic overall approach that was needed. I believe that this is a problem that would be ironed out as these became more common.
4. I believe that when I come to submit applications for future work, the process will be easier and I hope that, if the legislation is enacted, I will be able to put a Heritage Partnership Agreement into place.

June 2008

Memorandum submitted by Cornwall County Council

HERITAGE PARTNERSHIP AGREEMENTS

1. Cornwall County Council was pleased to work with DCMS, English Heritage and North Cornwall District Council on the pilot Heritage Partnership Agreement on designated bridges and roadside structures in North Cornwall. The comments below reflect the experience and views of staff who were involved from the Historic Environment Service and Transportation Department (Structures) of the County Council.

1.1 The establishment of agreed specifications enabling necessary works to be carried out for the duration of an HPA, obviating the need for individual consents, is recognised by both the Historic Environment Service and the Transportation Department as a mechanism for increased efficiency and consistency, whilst sustaining heritage significance. Preliminary figures from this particular pilot suggested that time spent by all parties in preparing and processing consent applications could be reduced by approximately one-sixth, in addition to savings in the logistical costs of handling each application.

1.2 We therefore would welcome the introduction of HPAs through the Heritage Protection Bill in that it promises the opportunity to streamline the consent process whilst retaining the protection for our designated Heritage Assets. Through our experience in piloting the Heritage Partnership Agreement with North Cornwall District Council and English Heritage we would anticipate future improvements in the delivery of maintenance projects for heritage structures along the highways of Cornwall.

1.3 As an individual Authority we are not in a position to verify the estimates contained within the overall Impact Assessment, however subject to the HPAs being successfully developed, we foresee savings being generated for the Authority. However, we would emphasise that the HPAs will only be successful if they can be quickly and efficiently developed and implemented; this will require adequate resources for the creation of Heritage Asset Records and preparation of the HPA documentation.

1.4 As this Council will become a unitary authority from April 2009, and so the owner of and planning authority for highway structures (and other property), we presume that we will not be able to agree HPAs with ourselves; we assume that other unitary authorities will be in the same position in relation to consents and HPAs. We conclude that this will require the commitment of English Heritage staff resources at regional offices to deal with such instances, thus it is important that an appropriate level of resource be made available to English Heritage to do this.

June 2008

Memorandum submitted by Dr Hazel Conway

1. I understand that the aim of this Bill is to provide a unified list, but on inspection this would not appear to have been achieved. Scheduled Ancient Monuments (SAMs) and Listed Buildings (LBs) will become Registered Buildings and Archeological Sites and these will require the new unified consent, namely Historic Asset Consent. By contrast Landscapes, Parks, Gardens, Battlefields and World Heritage Sites will become Registered Historic Sites which will “continue to be dealt with through the planning system”. They will not share the same designation, protection or status and will therefore in effect be seen as second class Heritage Assets.

2. The term used in the Bill to embrace Landscapes, Parks, Gardens and Battlefields is Heritage Open Space. Open Space is a term which implies a void which may have been in existence for years/centuries/millennia. It gives no clue to what exists on the site and why it is of historic significance.

3. The Government has signed up to the European Landscape Convention and this would imply that it has no major problems with the term landscape.

4. May I suggest that a more useful and acceptable term than Heritage Open Space would be Historic Landscapes. This would have the advantage that it would include cultural landscapes such as battlefields and commons, as well as the designed landscapes, parks and gardens for which this country is so justly famous.

June 2008

Memorandum submitted by the Association of Small Historic Towns and Villages (ASHTAV)

The Association of Small Historic Towns and Villages (ASHTAV) is an organisation that works to unite amenity and civic societies, parish and town councils and individuals in small historic towns and villages throughout Britain. Our aim is to preserve the beauty, vitality and distinctiveness of these towns and villages, encouraging high standards of architecture and planning and supporting local communities. We keep our members informed of developments and best practice in government, planning, environment, housing and transport through a website, seminars, and quarterly magazine.

ASHTAV welcomes the opportunity to make a submission to the Culture, Media and Sport Committee regarding the Draft Heritage Protection Bill. Comments on the areas of interest specified are set out below.

1. THE OVERALL AIMS AND SCOPE OF THE DRAFT BILL

1.1 ASHTAV supports the review of heritage protection, and particularly the aim to make the process of heritage protection more transparent and easier to follow for everyone, benefitting small community groups, interested individuals and historic building owners. We hope that the publication of enhanced criteria, and guidance aimed at non-heritage professionals, will bring success in this objective.

1.2 ASHTAV is very pleased to see that the role of Conservation Areas and Local Lists in protecting heritage is to be strengthened, helping to preserve local distinctiveness and coherent historic environments. The enhancement of Conservation Area powers to pre-Shimizu levels is very welcome. However, both Conservation Area and Local List protection is reliant on strong local policy, including the establishment of Article 4 directions, currently underused due to complexity and a lack of will at local government level.

It is imperative that the new powers are backed up by legislation that is easy to use by local authorities, and that training is given in this area. We are concerned that there is still no statutory duty on Local Authorities to maintain and enforce their Local Lists.

1.3 It is stated in the Draft Bill that increased consultation will be an important part of the new process. However, although there is mention of consultation arrangements with local and regional government and major stakeholders such as developers and advisory agencies, there is very little mention of consultation with the general public. ASHTAV maintains that good consultation should take into account the views of those living and working within a historic environment, and that local communities should be regarded as important stakeholders in decisions made about heritage assets.

2. THE ESTIMATES OF COSTS AND BENEFITS SET OUT IN THE IMPACT ASSESSMENT PUBLISHED ALONGSIDE THE DRAFT BILL

2.1 Assumptions are made in the estimates of costs and benefits shown in the Impact Assessment which in our view are unrealistic. Primarily we would disagree with the statement that: "Unless clearly stated otherwise, we assume that the number of people working within and using the heritage protection system in the future will not deviate from current trends". The changes involved in the transition to a unified list, the necessity to re-evaluate many entries on the list, and to establish some level of consistency alone will require a substantial amount of work, and therefore increased staffing, and increased cost. English Heritage would need vastly increased capacity to deal with the load, which would be difficult under their current funding levels without taking away funds from another area of their work. We hope that this will not come at the expense of project funding, building restoration and maintenance, or outreach and interpretation.

2.2 ASHTAV is not a statutory amenity society, but understands the common pressures and difficulties of maintaining an excellent service and a heavy workload without a great deal of staff or budget. It is judged in the Impact Assessment that whilst there will be a cost implication for the statutory amenity societies, this should not be taken into account due to the fact that although the statutory amenity societies must be consulted, they do not have to respond. In our experience the reality is that any increase in the amount of paper work coming in or changes in process made will have an immediate impact. The statutory amenity societies should be given increased funding to enable training to take place and to expand capacity to absorb the increased administration the new system will require.

2.3 The impact on small societies such as local civic societies is not taken into account. These societies are often at the forefront of protection for their local environment, and it would be beneficial to all if funding were provided to increase their capacity, giving them the tools to utilise the new heritage protection process.

2.4 As we discuss above, we see little evidence in the Draft Bill that there will be increased public involvement with the Heritage Protection system. ASHTAV would be keen to see enhanced legislation and guidance to ensure consultation does take place with local communities and interested individuals.

3. THE STAFFING AND SKILL LEVELS NEEDED FOR EFFECTIVE IMPLEMENTATION OF THE PROVISIONS IN THE DRAFT BILL

3.1 There will be a need for an increased number of staff, with relevant training and skills, to prepare the enhanced register entries. Obviously this will take place over time, but to have a truly integrated register some deadline must be set for this, and adequate provision made in terms of staff and skills.

3.2 ASHTAV is aware that there are still Local Authorities who operate with only one Conservation Officer, sometimes none at all, and very few archaeological staff. The successful maintenance of Historic Environment Records will be dependent on skilled and numerous staff to operate the system, especially in terms of making the HERs accessible to the public, in turn making the heritage protection process more accessible to the general public.

June 2008

Memorandum submitted by the Cambridge Colleges' Bursars' Environment and Planning

1. INTRODUCTION

1.1 This submission in respect of the Draft Heritage Protection Bill is made on behalf of the Cambridge Colleges' Bursars' Environment and Planning Sub-Committee (CCBEPSC).

1.2 A submission was made to the Department of Culture, Media and Sport (DCMS) by the CCBEPSC in May 2007 in response to the Heritage Protection for the 21st Century White Paper, attached at Appendix 1.

1.3 The CCBEPSC was established to report to the Cambridge Colleges' Bursars' Committee with regard to all issues related to the built and natural environment, including Town & Country Planning, Building Conservation and Transport matters.

1.4 The CCBEPSC also assumes responsibility for representation of the Colleges' views in respect of these and related matters. This submission is therefore the view of the Cambridge Colleges as a collective of educational establishments. It is not the view of any specific college and similarly, it is not the view of the University of Cambridge, which is a confederation of Colleges, Faculties and other institutions.

1.5 The Committee will be aware that the Cambridge Colleges are owners, occupants and custodians of many important, historical buildings within Cambridge in their operation as higher education establishments. Many are owners of significant amounts of property and indeed historic property across the country, although it is important to recognise that this response is made within the context of the Colleges as operational educational establishments.

1.6 The Colleges' buildings are in use throughout the year, occupied all year by graduates and during term time by undergraduates. Many colleges make use of the facilities during vacations for residential conferences.

2. COMMENTS

2.1 The CCBEPSC welcomes the Heritage Protection Bill in principle and in terms of its aspirations and objectives. The CCBEPSC consider that there is a need for simplification and streamlining of the current system for control of development affecting the historic environment, for all involved in the process. However, the CCBEPSC consider that the success of the proposed provisions will depend upon the detail for the operation of the new system.

Resourcing

2.2 One of the CCBEPSC's biggest concerns is that of the resourcing of the new system. Our interpretation of the Bill and its implications, is that it will mean increased workload for English Heritage, particularly in their new role as designators of "Historic Assets". English Heritage's existing role as advisors to the Secretary of State and Planning Authorities within the context of current heritage consents and permissions will effectively continue through their role as advisors in the determination of "Historic Asset Consents". This increased remit for English Heritage must be properly resourced to allow for the ease of operation of the new system.

2.3 We are also concerned as to the availability of resources to the asset owner, particularly time resources, in operating within the requirements of the new system. These concerns particularly relate to involvement with the preparation of Heritage Partnership Agreements (HPA) and this is discussed below.

Heritage Partnership Agreements

2.4 The CCBEPSC's question the value of the proposed HPA. The pilot project document associated with the Heritage Protection White Paper was not conclusive about the benefits of this approach to the control of development affecting Historic Assets. There is clearly scope to be generally positive about the idea and the advantages of the asset owner, English Heritage and the Local Planning Authority (LPA) working together to assign degrees of value to a complex asset. However, we see only limited benefit in terms of the workability of an HPA. The HPA is intended to give a grouped or themed consent to minor or repeated works to an asset. In reality, we consider that there will be very few areas of work to a listed building which could be dealt with in this way.

2.5 At the present moment in time, Colleges are having to face a significant amount of regulatory intervention promoting changes in design and additions to both services and facilities within the College estate. The regulatory pressures stem from the need to provide fire alarms, emergency lighting, fire exit signs, additional shower and washing facilities and alterations to kitchens, as well as provision of facilities for the disabled. These regulatory requirements will therefore also have resourcing implications for the Colleges and involvement with preparation of HPA's would add to this workload.

2.6 Required changes to buildings and facilities are driven by a range of comparatively recent legislation. Much of this work is unlikely to be intrusive but may require disruption to plasterwork whilst cables and fittings are fitted. There are also the ongoing "big picture" challenges which involve difficult balances/choices such as those prompted by access, climate change and energy conservation. For a system of HPA's to be beneficial, the system must allow for smaller or themed works to be removed from formal control processes. Building complexities mean that there are differences from College to College and even between buildings within a given College. We are concerned that HPA's will be unable to successfully account for these complexities, without onerously comprehensive agreements. The potential implication is that work will be duplicated, because of a need to apply for Historic Asset Consent, in view of an HPA failing to successfully

identify what can, or cannot be undertaken without the need for Historic Asset Consent. We are also concerned as to the usefulness of an HPA in terms of accommodating repeat works, as it is questionable how often the similar works may take place, if at all.

2.7 In terms of resources for the owner, it is clearly a good idea to set proposals for alteration to a listed building into a long term strategy set within an HPA or similar. We are doubtful however as to whether works could actually be dealt with any differently to that within the current system of formal control processes. The CCBEPSC considers that for proper and efficient control, a properly resourced system, both at the local level and within English Heritage would be the most appropriate way forward.

3. CONCLUSIONS

3.1 We are supportive of the Bill in terms of its aspirations and objectives of simplifying and streamlining the current system for the identification, protection and management of our Heritage.

3.2 We are concerned however that the new system should be properly resourced in order that its objectives are achieved. We consider that English Heritage's remit will be extended and therefore there is a need for sufficient resourcing in that regard.

3.3 We are also concerned as to the implications for asset owners particularly with regard to the preparation of HPA's. Colleges would need to spend a great deal of time and money preparing HPA's, involving a great deal of hands-on assistance from English Heritage and the LPA.

3.4 Furthermore, we consider that the value of an HPA is questionable. HPA's would need to be onerously comprehensive to accommodate the complexities presented by the Colleges' buildings. HPA's may fail in this regard and lead to the need for Historic Asset Consent applications in any event, effectively leading to duplication of workload.

3.5 HPA's may operate successfully in relation to less complex buildings and therefore they must be an optional mechanism for control of works and development. The CCBEPSC considers that proper resourcing of the control system at the local level and with English Heritage would best achieve the objective of achieving an efficient system.

3.6 The Cambridge Colleges would be willing to cooperate through further dialogue to help develop ideas and measures which could be relevant to owners and managers of historic buildings.

June 2008

APPENDIX 1

The White Paper, Heritage Protection for the Twenty First Century, invites comments by 1 June 2007. It is perhaps a matter of regret that this White Paper was only drawn to the attention of the Chairman of the Cambridge Bursars' Committee well into the consultation period and, in the time available, it has not been possible to take full soundings from every college. However, it is noted (perhaps with some disappointment) that the Heritage Protection Review's assessment of eight pilot projects did not include any Oxbridge college, nor as I understand, was an offer made for us to be involved. I have noted the preference for a conservation plan to enable management agreements to be achieved and can see the wisdom of having such well researched documentation to hand. However, at the present moment in time, colleges are having to face a significant amount of regulatory intervention promoting changes in design and additions to both services and facilities within the college estate. The regulatory pressures stem from the need to provide fire alarms, emergency lighting, fire exit signs, additional shower and washing facilities and alterations to kitchens as well as provision of facilities for the disabled. These changes are driven by a range of comparatively recent legislation. Much of this work is unlikely to be intrusive but may require disruption to plasterwork whilst cables and fittings are fitted. There are, of course, the ongoing "big picture" challenges which will involve difficult balances/choices such as those prompted by access, climate change and energy conservation. All of this is equally dependant upon the necessary skills being available within the community to undertake the tasks to the standard required.

The present concern of colleges is likely to be on the need for adequate resources to be available within English Heritage to provide timely and informed responses—the biggest impediment to joint working. Nothing will be gained from any amendment to the system if it still fails to deliver swifter action.

As far as Heritage Partnership Agreements (HPA) are concerned—the ideas within the White Paper and the observations within the associated pilot project document are not conclusive about the benefits of this issue. There is clearly scope to be generally positive about the idea and the advantages of the asset-owner, English Heritage and the Local Planning Authority (LPA) working together to assign degrees of value to a complex asset, but I can see only limited benefit in terms of the workability of an HPA. The HPA is intended to give a grouped or themed consent to minor or repeated works to an asset—in reality, there will be very few areas of work to a listed building which could be dealt with in this way.

The additional, complicating factor not reflected in the White Paper is the complexity of listed buildings in use in the colleges, where requirements deriving from a range of different legislation must be balanced against the asset value. This appears to be a constant and very significant difficulty for the colleges—and it would be helpful if the White Paper was able to inform other areas of the legislation in order to lessen, or at least simplify, the burden, especially in relation to buildings of clearly designated status.

In terms of resources for the owner, it is clearly a good idea to set proposals for alteration to a listed building into a long term strategy set within a “Conservation Plan”, but I am doubtful that many of the resultant consents could actually be dealt with any differently than within the current consent system.

I am persuaded to conclude:

1. that colleges would need to spend a great deal of time and money preparing a conservation plan leading to a potential HPA, involving a great deal of hands-on assistance from English Heritage and the LPA, and
2. that its value is questionable. It will be a matter of discussion between the owner, English Heritage and LPA as to how much would be expected in terms of the Plan—and this could be prepared over a long period—but I am concerned that these will be required from a very early stage after the amendments to the legislation to accompany future consent applications. The Paper states that the HPAs would be “voluntary”, but as with the existing consideration of listed building consent application, these can be considered to cause incremental detriment if judged in isolation and the requirement for a Plan under the new legislation would kick in very quickly. This would be a very significant resource issue for the colleges.

Finally, I am sure that Cambridge colleges would be willing to cooperate through further dialogue to help develop ideas and measures which could be relevant to owners and managers of historic buildings.

Memorandum submitted by the London Diocesan Advisory Committee (DAC)

1. CONTEXT

1.1 The London DAC’s main purpose is to provide advice within the London Diocese, as part of the Church of England’s statutory system of care and control of its church buildings, their contents and curtilages.

1.2 The Church of England Diocese of London covers 277 square miles of Greater London north of the River Thames, as well as Spelthorne in Surrey, and has an interface with 18 boroughs. It contains about 400 parishes and 450–500 churches.

2. OVERALL AIMS AND SCOPE OF THE DRAFT BILL

2.1 We support the broad principles of the draft Bill, including: developing a unified, open, accountable and transparent approach to the historic environment; maximising opportunities for inclusion and involvement; and putting the historic environment at the heart of an effective planning system.

2.2 We welcome the decision that the Ecclesiastical Exemption is to be continued as we believe it provides a stringent level of control of church buildings comparable to that found under secular control, whilst understanding the special needs of places of worship.

2.3 We are pleased that it is proposed to extend the Ecclesiastical Exemption to cover individually registered heritage structures within churchyards whose function is ancillary to the church. As the draft guidance on the *Operation of the Exemption* states, in effect this will incorporate structures in churchyards such as lychgates, memorials, churchyard walls, charnel houses and parish rooms. This represents an endorsement of the exempt system of control operated by the Church of England. Works to such structures already require consent through the Church of England’s own system of control, the faculty system. We are therefore adequately resourced and skilled to accept this proposal fully within the Exemption.

2.4 We note that Conservation Area Consent is to be merged with planning permission. In effect this means that the existing ecclesiastical exemption from Conservation Area Consent for the total demolition of ecclesiastical curtilage structures will be lost. At present, exemption from Conservation Area Consent for the demolition of a church building, listed or not, is limited to those schemes carried out under the Pastoral Measure.

2.5 Under 4(iii) of the draft *Code of Practice* it is stated that a notice describing the proposed works and inviting comments from any interested persons should be published in a local newspaper circulating in the locality. This is a new requirement, which is additional to the existing arrangement of a notice being displayed for 28 days outside the building in a prominent position visible to the general public. We would question whether advertising in a local newspaper is appropriate or worthwhile, given the general decline in readership of such newspapers. It can also be an expensive procedure, particularly in parts of London

where the only local newspaper in circulation is the Evening Standard. Consideration would need to be given to how any secular requirement to advertise would relate to the application procedure for the ecclesiastical faculty.

2.6 Paragraph 33 of the draft guidance on the *Operation of the Exemption* cites the need for each denominational system to seek information from the local Historic Environment Record (HER) after receiving an application and for consultation to take place by the applicants themselves at the pre-application stage. Within the Diocese of London a considerable amount of information is held about historic churches either at parish or diocesan level, especially in the DAC's library and database, and also records at the Guildhall Library and the London Metropolitan Archive. Consulting the Historic Environment Records may provide some additional information, in particular about the context of church buildings and their adjacent properties, but it is likely that this information will usually be a supplementary, rather than a primary, resource for gaining understanding of an Anglican building's special interest.

2.7 We are pleased to note that guidance is to be produced to assist in the development and management of Heritage Partnership Agreements (HPAs). We feel that there might be benefits in running HPAs on ecclesiastical sites in the Diocese of London. We have already made some suggestions on this matter to English Heritage which we would be keen to explore further.

2.8 The London DAC does not wish to comment on the principle of the new heritage asset register. It should be noted, however, that some churches are still designated A, B or C (roughly, but not precisely, equivalent to I, II* or II), under a system which has already been obsolescent for many years. These buildings tend to have very brief descriptions. We suggest that they should be re-visited and given new descriptions and designations before any others are embarked on.

3. THE ESTIMATES OF COSTS AND BENEFITS SET OUT IN THE IMPACT ASSESSMENT

We do not wish to comment on the detail of the Impact Assessment but note that considerable additional burdens, both financially and in terms of staff and skill levels, will be placed on English Heritage and Local Government in accommodating the new legislation. We are told that Central Government will provide the estimated necessary funding to English Heritage, and that the DCMS and English Heritage will fund additional burdens placed on Local Government. The changes proposed are substantial and we fear that the projected costs in the Impact Assessment are grossly underestimated. It would be a great shame if a lack of adequate resources renders the proposed system ineffective, making it no better than the present system which it is proposed to reform. We would therefore urge that the issue of financial resources is given the utmost attention.

4. THE STAFFING AND SKILL LEVELS NEEDED FOR EFFECTIVE IMPLEMENTATION OF THE PROVISIONS IN THE DRAFT BILL

See our comments in section 3 above.

We trust that these various observations are helpful to you, and thank you for inviting our views. Please include this organisation in any further consultations which may be undertaken.

June 2008

Memorandum submitted by Safer and Stronger Communities Select Committee, Surrey County Council

I have been asked to write to you on behalf of Surrey County Council's Safer and Stronger Communities Select Committee, to commend the Heritage Protection Bill but to highlight its concerns with regard to funding.

The Select Committee considered the Heritage Protection Bill at its meeting on 4 June 2008. It supports the aim to create a "unified heritage protection system that is easier to understand and use, more efficient, accountable and transparent, and [that] maximises opportunities for public inclusion and involvement". However, the draft Bill has major resource (including funding) issues, as well as facilities and training implications for Surrey County Council. While it is proposed in the Impact Assessment published alongside the draft Bill that these new burdens will be funded by DCMS and English Heritage, the Committee has concerns that these costs have not been accurately assessed. The Committee also has concerns about the outcomes if the appropriate level of funding is not transferred directly to the appropriate level of local government.

I hope that you will closely scrutinise the estimates of costs and benefits set out in the Impact Assessment with regard to additional resource issues for local authorities.

June 2008

Memorandum submitted by the Local Authority World Heritage Forum (LAWHF)

Thank you for extending an invitation to the UK Local Authorities World Heritage Forum (UK-LAWHF) to submit comments on the inquiry to the Draft Heritage Protection Bill. I hope the remarks of the Forum can be regarded as a constructive contribution to the formation of this Bill.

The UK-LAWHF represents the interests of Local Authorities in relation to World heritage matters. Membership is open to any Local Authority within the UK that has all or part of an inscribed World Heritage Site, or one that is on the Tentative List, within its administrative boundary. Currently we have 32 members.

The Forum was formed in 1994 to encourage networking and information exchange, and to encourage Government to recognise the role of local authorities in managing World Heritage Sites, and provide them with an effective policy framework and resources for their obligations to World Heritage. The Forum is a Special Interest Group of the Local Government Association.

Our comments are set out below:

1. The Forum welcomes the draft Heritage Protection Bill but is concerned that the opportunities afforded by the introduction of the draft Bill should be enhanced to make the Bill more robust in certain areas and more transparent with clarification in others.

2. The Forum recommends that, with respect to statements on World Heritage Sites and their protection, the Secretary of State should adjust the Bill to:

1. be consistent with section 79(1) for other Heritage Assets and clarify the nature of the entry against a World Heritage Site and ensure this entry is going to include a statement and maps setting out a description of the site and its boundaries;
2. ensure that recognition of Buffer Zones and the settings of World Heritage Sites is made in primary legislation and amend the Bill to recognise these matters by stating they will be included in the proposed Heritage Registers;
3. ensure statutory recognition of the natural site, the Dorset and East Devon Coast, by including this in the Heritage Register for England;
4. ensure the Statement of Outstanding Universal Value is inscribed in the Heritage Registers and this statement should set out how these values are to be protected in policies in the Development Plan and other means;
5. establish how the appropriate entry of a World Heritage Site and its statement on Outstanding Universal Value for each site in the Register will receive publicity and consultation so that proper weight might be given on these matters as material considerations when determining planning applications;
6. clarify how intangible values of World Heritage Sites will be protected or cherished through presentation and education initiatives;
7. clarify that Heritage Asset Consent is not required for works within a World Heritage Site and control of change in these sites will rely on control of change on individual buildings and policies in the Development Plan affecting the site, conservation areas and other relevant areas;
8. set out how the protection and control of change to those features, properties parts of World Heritage Sites not inscribed on the Heritage Registers are going to be achieved;
9. recognise that there will be additional costs falling on the Local Planning Authorities in introducing the proposed Heritage Asset Consent to their working procedures, contributing to the Heritage Register and responding to a new duty of establishing and maintaining the proposed Historic Environments Records.

June 2008

Memorandum submitted by the English Historic Towns Forum (EHTF)

1. GENERAL

1.1 The English Historic Towns Forum (EHTFR³) has welcomed the ongoing Heritage Protection Review and is pleased to see the positive outcomes being embodied in draft legislation. It is reassured that the Draft Bill endorses the fundamental principles of conservation and maintains protection levels. Achieving this in practice will be substantially reinforced by legislation that brings the law of conservation under one umbrella with a single overarching concept of special interest. It is essential that the legislation as finally passed provides a framework that will endure in the long term.

³ The EHTF is an independent body founded to establish and encourage contact between local authorities having responsibility for the management of historic towns and cities, and between these authorities and other public, private and voluntary sector agencies. Its mission is to promote prosperity and conservation in historic towns.

1.2 That said, the Forum notes that much of the reform's substance will be delivered through Regulations and national policy statements and guidance. The devil may well be in the detail and it will be essential for these matters to be the subject of extensive and robust consultation with local government and all other key interests.

2. SPECIFIC CONTENT

Heritage Structures

2.1 The EHTF:

- (a) welcomes the concept of including all structures within a single registration, thus creating the potential for integrated protection of the historic environment; and
- (b) supports the introduction of special archaeological and artistic interests, though there is a need for rigorous guidance on how these interests are to be assessed in order to ensure consistency.

Registration Procedures

2.2 The proposed system for determining what is added to and deleted from the register of structures appears to be clear, democratic and accessible and as such is welcome. The operation of this will depend on regulations to be published and the EHTF urges that these ensure full engagement at the local level.

Consents etc

2.3 Matters covered under this broad area are endorsed by the EHTF. The Forum notes:

- (a) the clear advantages of having the Register available on line in discouraging/successfully challenging works carried out without consent;
- (b) that the content of the Regulations on what information must accompany an application for a Heritage Asset Consent will be crucial is assisting local authorities in their regulatory roles; and
- (c) in making decisions local authorities will be required to take expert advice on special areas of interest, including both the existing and new ones—the resource and skill/knowledge implications of this need to be fully understood and provide for.

Heritage Structures in Planning Applications

2.4 The accurate and consistent definition of curtilages for historic structures, especially in definitive plotting through GIS, is a challenge for many local authorities. Guidance on this is required.

Heritage Open Spaces

2.5 The EHTF welcomes the proposal in the Bill to give heritage open spaces proper protection within the planning system by putting the list on a statutory footing and making clear the special interest.

Heritage Partnership Agreements

2.6 Heritage Partnership Agreements (HPA) are supported by the Forum. HPAs recognise the complexity of many sites and buildings and allow for a much more efficient use of scarce resources, which can consequently be focussed on the key heritage assets. This is to the advantage of both the local authority and the property owner. Agreements should be as wide ranging as is consistent with the proper discharge of heritage protection functions.

Historic Environment Records

2.7 The establishment of comprehensive historic environment records is most welcome in replacing the current ad hoc and often antiquated systems. Effective creation and use of the records must:

- (a) be GIS based;
- (b) embrace state of the art electronic document and record management systems;
- (c) be available on line (see 2.3 above); and
- (d) be properly resourced—doing this effectively will be beyond the current capacity of many local authority historic environment teams.

Local Designation

2.8 The Forum supports and welcomes the intention to include in the legislation the power for local authorities to designate and control the development of structures of special local interest.

Conservation Areas

2.9 This vital area is not covered by the Draft Bill and the EHTF urges the Government to bring forward proposals at the earliest possible opportunity. The designation, management and maintenance of Conservation Areas are of the utmost importance in conserving the sense of place of our historic cities, towns and villages. The EHTF supports must strongly action in two particular areas:

- (a) the requirement for all demolitions in Conservation Areas to have specific consent thereby reversing the disastrous effect of the Shimizu decision; and
- (b) seeking benefits for a Conservation Area through planning applications instead of simply maintaining the status quo as a discharge of conservation duties, as seen in the regrettable South Lakeland case.

Repairs

2.10 The EHTF supports the proposal to allow urgent work and repairs notices to apply to all asset types and for such action to proceed before the works become “urgently” necessary.

3. RESOURCES

3.1 The improved heritage protection regime proposed in the draft legislation will require additional resources, knowledge and skill if it is to be implemented effectively and efficiently. The key areas of concern for local authority members of the Forum, as already alluded to above are:

- (a) the skills and knowledge to assess authoritatively special interests, especially given the introduction of the new archaeological and artistic interests;
- (b) the need to assess heritage open spaces;
- (c) the establishment of the unified historic environment record; and
- (d) taking advantage of the power to make local designations of historic structures.

3.2 There may be as yet unanticipated additional demands arising from proposals for legislation covering Conservation Areas.

3.3 The Forum expects further light to be shed on these issues as Regulations and guidance are published. A comprehensive package is required.

3.4 It may be appropriate for some of the resource implications to be addressed through national funding schemes, eg training for conservation staff. Other aspects, eg the historic environment record, require additional resources to be channelled to local authorities, possibly a supplementary grant based on the number of entries on the record.

June 2008

Memorandum submitted by the Association of Gardens Trusts

1. INTRODUCTION

The Association of Gardens Trusts was established as a charitable trust in 1993 and comprises 36 County Trusts in England, together with another 10 in Wales. We have over 7,500 members who actively support the care and conservation of our historic designed landscapes, parks and gardens for the enjoyment and education of all ages. The Objectives of the Charity are to promote Gardens Trusts, and through them, the interest, education, appreciation and involvement of the public in matters connected with the arts and sciences of parks and gardens; and to assist in the protection, conservation, restoration or creation of parks and gardens in the United Kingdom for the education and enjoyment of the public. Each County Gardens Trust, similarly run by volunteers, is an independent charity and draws its membership from both rural and urban areas. We have a well-informed and specialist expertise in historic parks and gardens.

2. The Association of Gardens Trusts welcomes much of the draft legislation and its objectives, particularly the intention to strengthen the powers to protect our historic parks and gardens. However there are aspects of the draft bill that cause us concern. Our points are given below.

3. The Association of Gardens Trusts welcomes aspects of the draft Bill:

3.1 The move towards a more holistic approach to protecting heritage assets. However, the lack of parity of protection of the various types of assets militates against unified designations, see 4.3 below.

3.2 The charge on the title in the land registry for Registered sites. Registered parks and gardens will feature on the Land Registry maps and therefore be apparent on land searches.

3.3 The intention outlined in the Notes to broaden the criteria for designation of a conservation area to include special archaeological and special artistic interest which we trust will encourage the designation of historic designed landscapes as conservation areas. We would welcome conservation area designation for all historic designed landscapes, whether on the national Register or on the Local Lists held by the Local Planning Authorities (LPAs.)

3.4 The principle of greater openness of the proposed designation system. However we underline that this will require additional resources for English Heritage and national amenity societies in order to achieve the level of consultation. See 5. below.

3.5 The duty of LPA's to consider the impact of proposed development on heritage structures, heritage open spaces and their settings.

3.6 The potential for Heritage Partnership Agreements to include land outside the designated area but which forms an important setting for the designated asset. This could help with the integrated management of wider historic landscapes not just the registered elements.

3.7 The category of Heritage Open Spaces rightly emphasizes that the setting is of high priority. However we have some concerns, see 4.2 below.

3.8 The statutory duty of LPA's to create and maintain Historic Environment Records and the recognition that these should include heritage assets of local interest. The tier of parks and gardens below those graded II on the English Heritage Register of Parks and Gardens of Special Historic Interest in England are of great regional and local significance and contribute in no small measure to the character of our towns, suburbs and countryside. The Association agrees that lists of these parks and gardens should be held in LPAs' Historic Environment Records but would stress that the importance of these sites needs to be reflected in the records kept. The county gardens trusts have, over many years, researched and recorded these gardens and can supply LPAs with appropriate details.

4. The Association of Gardens Trusts has concerns about the following aspects of the draft Bill:

4.1 The terminology of "Heritage Open Spaces". We consider that this term lacks meaning and does not take into account their designed landscape value, which in the case of our historic parks and gardens, is of paramount importance. If a generic term is required we would suggest Heritage Landscapes or Historic Landscapes. Further, the term Heritage Open Spaces can imply public access and there are many important historic parks and gardens which do not have such access. The term Heritage Landscapes would reflect the European Landscape Convention's definition of "Landscape means an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors". Both CADW and Historic Scotland include the terms gardens and landscapes in their terminology for these sites.

4.2 Regarding setting it is necessary to establish that this includes the views and vistas both into and out from the garden or park which are part of the design intention. We note that the CADW and Historic Scotland Registers of parks and gardens of special interest do include such "envelopes" around sites to include vistas, where structures such as wind turbines and telecommunications masts would cause a material damage to the setting.

4.3 New additions to the register will not automatically include curtilage buildings and we hope that this does not mean in practice that garden buildings will be left at risk because their value is unrecognised.

4.4 The lack of parity of protection of the various types of assets militates against unified designations, and we are disappointed that protection for historic parks and gardens is not equivalent to that offered to historic buildings. This could lead to historic parks and gardens in a multiple asset site being considered of less importance. It seems at odds with the unified approach and confusing for everyone; against the Government's stated objectives for a consistent and intelligible system.

5. The current and proposed staffing and skill levels both at English Heritage and particularly in the local authorities are woefully inadequate for effective implementation of the provisions in the draft Bill. For example, highly desirable "local lists" have never been made by large numbers of local authorities because they have never had sufficient resource and skills to create and maintain them. Similarly, conservation skills and their value are inadequate and inadequately recognized in many local authorities. Unless this Bill secures provision for improvement in staffing and skills then its aims will never be delivered. Similarly more use should be made of the considerable expertise in the historic environment amenity societies. Often these voluntary groups work on very slender budgets. Small amounts of funding—capacity—building—could yield significant assistance in delivering the aims of the Bill.

CONCLUSION

The Association of Gardens Trusts welcomes the legislation and its objectives, particularly the intention to strengthen the powers to protect our historic parks and gardens. However, we have concerns about the misleading terminology of Heritage Open Spaces, and the apparent lack of parity with protection for historic buildings.

We consider that the minimal extra resources announced by the Minister are insufficient and the need to provide an adequate number of skilled staff, especially in the LPAs, to implement these proposed provisions, has not been fully addressed. Without full resourcing, the provisions of this Bill cannot be implemented

June 2008

Memorandum submitted by the National Trust

1. The National Trust welcomes publication of the Draft Heritage Protection Bill and supports the broad thrust of the changes to the heritage designation regime that it introduces. The proposed legislative changes provide a significant opportunity to develop a system of heritage protection which is fit for purpose in the 21st century, enabling us to enhance and modernise how we look after our amazing cultural inheritance. It also represents an important step towards the Government's principle of putting the historic environment at the heart of an effective land use planning system by enabling local communities to participate better in the process and simplifying the legislative framework of heritage regulation.

2. We have been involved with preliminary discussions regarding the structure and scope of the Heritage White Paper and participated in pilot studies for the proposed Heritage Partnership Agreements at two of our properties at Godolphin in Cornwall and the Langdale Neolithic Axe Factories in the Lake District.

3. In addition to commenting on a number of specific proposed legislative changes included in the Bill, which are outlined below, we have a number of broader aspirations and concerns which set the context of the proposed reforms.

4. Firstly, we believe the Bill provides a welcome platform to revitalise the Government's commitment to heritage in its widest sense. As the huge volume of support and enthusiasm for successful History Matters campaign in 2006 demonstrated, there is tremendous public enthusiasm for history and heritage. This is further evidenced by continued growth and support for organisations like the National Trust and English Heritage, participation in Heritage Open Days (almost a million people in a single weekend take part) and the continued passion for history in the bookshops and TV schedules. The popularity of heritage has also been confirmed by Taking Part the DCMS's own research into participation levels across its range of interests—with visits to historic sites coming top of the list showing 70% of people visiting historic sites at least once a year.

5. We are concerned, however, that this enthusiasm and interest is not matched by the Government. Heritage regularly fails to feature in key announcements from Government, including from the lead Department (DCMS), and has long struggled to secure the levels of investment needed to secure the future of our important heritage assets. The above inflation settlement for English Heritage in last year's Comprehensive Spending Review (CSR) was very welcome. However, it comes after 10 years of cuts, growing pressure on resources from the Lottery and increasing costs of conservation—being exacerbated by the challenges of climate change.

6. The Bill does not present a radical vision and is but one piece of the jigsaw for securing a better future for the historic environment, providing only the primary legislative changes for the designated heritage assets. Although important and useful, the Heritage Bill should be viewed as one aspect of the broader actions needed to ensure the value of the historic environment is recognised and managed, rather than be seen as the priority or the panacea. We are concerned it will absorb undue energy in the Government and English Heritage at the expense of wider concerns. Addressing the broader issues such as costs of maintenance, the effect of incremental damage of the local environment, the loss of valuable skills and responding to social, economic and environmental changes should be considered as central to any consideration of how to ensure the historic environment meets the requirements of the 21st century.

7. Whilst the Bill does not tackle these concerns, it provides a welcome platform to confirm the important contribution heritage makes across a range of Government priorities, including civic pride and identity, and to build on the Government's commitment to the nation's heritage—as signalled by the CSR outcome. We urge the Committee to ask the Government to make the most of this platform.

8. Secondly, the National Trust can only give the Bill its support if the necessary resources, staffing and cross-Governmental support for effective delivery is also in place. We share fears, apparent throughout the heritage sector, that, without sufficient and appropriate resources, skills and capacity building amongst those responsible for delivering the new and more demanding and complex protection system, notably in local government, these reforms will unravel a regime which has allowed for the protection of our cultural inheritance over the last 60 years. We would rather have no legislation than a Bill which does not have the means for its effective delivery.

9. Thirdly, we are concerned the Bill continues to overlook two opportunities for stronger protection and management of our historic environment which should be included as part and parcel of the reforms to the designation system. These are:

- (i) fulfilling the Government's commitment to refreshing the planning policy guidance for the historic environment and archaeology (PPG 15 and 16 and Welsh Office Circulars 61/98 and 60/96) with a view to strengthening provisions; and
- (ii) introducing stronger protection through the planning system for the settings of historic parks and gardens—which are intrinsic to their cultural value and extremely vulnerable to development.

10. We urge the Committee to seek a Ministerial Statement summarising the complementary initiatives around the Government's commitment to the historic environment. This will give a greater reassurance to those who care about the historic environment that the Government places an equal value on the contribution it makes to society.

11. Our key issues on the detail of the Bill are that:

- the aims of the Heritage Bill are fully implemented and delivered by the Welsh Assembly Government/Cadw;
- the Bill will only be successfully implemented and delivered by cross-Government working of which there is little visible evidence at present;
- the Bill delivers a system which can ensure the protection of locally valued historic environment to the same degree as the nationally designation by adequately installing and delivering legislation which enables communities to identify and protect places that are important to them;
- the welcome proposals for Heritage Partnership Agreements are effectively delivered and resourced;
- legislative provision is made for local planning authorities to define the settings of heritage assets within Local Development Frameworks; and
- there is full integration with the provisions of the Marine Bill and that this addresses the need for the coastal and marine historic environment to respond to coastal change exacerbated by climate change.

THE ROLE OF THE NATIONAL TRUST

12. The National Trust is Europe's largest conservation body with over 3.5 million members, 50,000 volunteers, an annual turnover approaching £400 million and a presence throughout England, Wales and Northern Ireland. We currently protect and manage on behalf of the nation over 250,000 hectares of countryside and 1,100km of coastline together with a significant proportion of the country's designated sites and buildings of heritage significance. This includes six World Heritage Sites, over 6,000 listed buildings, 1,200 scheduled ancient monuments, 149 registered museums and 8% of registered historic parks and gardens.

13. Our property portfolio is hugely diverse, ranging from some of the nation's most iconic and well-known sites—from Sutton Hoo to the great country houses of Hardwick Hall or Kingston Lacy. We also care for many of the more ordinary and everyday elements of our rich and diverse cultural heritage. This includes places like the Back to Backs in central Birmingham, the Workhouse in Southwell, Nottinghamshire, over 1,000 vernacular buildings, three lighthouses and a gold mine. As well as our houses, we look after a diverse collection of gardens and historic landscapes, like Stourhead or Sissinghurst, are responsible for a virtual national collection of works of art, from Titian to Turner, and look after a rich and diverse industrial archaeology, like the Stone Age Axe factories in the Lake District.

14. The National Trust has a significant interest in the marine historic environment. A recent assessment of the marine historic environment revealed that almost 50% of the current 48 Protected Historic Wrecks in the territorial waters of England, Northern Ireland and Wales lie within a mile of a National Trust property. This includes wrecks like the "Assurance" and "Pomone" just off the Needles, Isle of Wight (naval shipwrecks from the 18th and 19th century); the Rill Cove wreck off the Lizard (17th century); and the wreck of the Holland V, one of the first submarines developed by the Royal Navy, just off the Sussex Coast. In a number of cases we also retain manorial rights of wreck, including the Admiralty of Purbeck and around the Lizard, that bring specific responsibilities to the Trust for material brought up from the seabed or washed ashore onto our land

BROAD AIMS AND SCOPE OF THE HERITAGE PROTECTION BILL

15. The Heritage Protection Bill provides a once in a generation opportunity to secure the best possible system for valuing and conserving the nation's rich cultural heritage and we are pleased to see that many anomalies with the current system are being addressed through rationalisation of the listing process. We also welcome the proposals for allowing enhanced opportunities for civic participation and understanding which

the new regime could deliver. Other measures that, if implemented adequately, will assist management of the historic environment are the introduction of Heritage Partnership Agreements and provisional registration for assets being considered for designation.

16. We have a number of concerns regarding the legislative reforms within the Bill that we wish the Committee to explore further during the pre-legislative process: notably Heritage Partnership Agreements, protection of settings and of undesignated aspects of the historic environment, and marine legislation. There are a number of omissions from the Bill for which we await the secondary legislation and guidance necessary to give much greater clarity and purpose (see Annex).

(a) Developing a unified approach to the historic environment

17. One of the principles behind the introduction of the Heritage Bill was to cut down on onerous and complicated bureaucracy for owners and managers of the historic environment. Overall, with the right resources and support, the principle changes in England will work well—with English Heritage playing a central role. However, in Wales, with Cadw retaining their scheduled Ancient Monuments (SAM) administration responsibilities, these benefits will not be realised. Whilst we recognise that there isn't a short term solution in Wales, we would urge that Welsh Ministers use their legislative powers to modify or adapt the legislation better to meet the needs of Wales, whilst taking account of the overall aims of the legislation, and commit publicly to delivering this over an agreed timescale. In addition, there are concerns regarding the responsibility within Wales for appeals and designation. We wish to see a transparent process that is undertaken by an organisation with the requisite knowledge and resources.

18. We are also concerned by the limited evidence of cross Government working on implementation of the Bill's legislative changes and its links with other policy areas. We would like to see greater clarity over the link with the work and policy agenda of the Department for Communities and Local Government and the Department for Environment, Food and Rural Affairs. We feel that the Bill and the work around implementation needs to be jointly sponsored by the Department for Communities and Local Government as the new system is to be administered by local authorities and negotiated partly through the planning system. We were surprised to see that there was an absence of any visible interaction between the two departments within the Bill or the Heritage White Paper. The same is true for the Department for Environment, Food and Rural Affairs whose contribution to the continued protection and care of our rural cultural heritage, including through the England Rural Development Programme, is immensely valuable. We urge this oversight to be corrected through ensuring joint action to follow up the White Paper. It is also important to strengthen the connection with the proposals for new marine legislation—about which there is greater detail below.

(b) Maximising opportunity for inclusion and involvement

19. A key omission from the Bill is clauses relating to the protection of the local undesignated historic environment. Whilst Clause 215 does place a duty on local authorities to assess assets and consult owners there is nothing in the way of ensuring that mention in the historic environment records will provide additional protection. Whether it is row of Victorian shop fronts or a memorial cross, local heritage is irreplaceable and passionately valued by local communities. Over 90% of adults living in England think that when improving local places it is worth saving their historic features. We encourage the use of local designations as a means of providing local communities with the opportunity to identify and manage those aspects of the heritage that are important to them. We believe that this proposal has the greatest potential to address the frequently voiced concern that buildings and monuments that are valued by communities are ignored by the heritage protection system. Careful consideration should be given to implementation and it should be backed up with sufficient resources. We have a concern over the status of local lists and believe that use of Article 4(1) as the process to implement protection would be better replaced by recognising local lists as legitimate designations in planning, so giving local sites automatic protection from demolition. We urge the Committee to seek more information being provided on local designation and the opportunities for public consultation before the Bill is formally introduced.

20. The significance of the wider undesignated landscape and how this may be protected and managed appropriately has not been picked up by the Bill and supporting work. We feel that recognition of the importance of the wider landscape would be of immense value for sites such as Stonehenge—allowing for whole landscape rich in cultural assets to be afforded wider protection. We are pleased that Registered Landscapes in Wales will be included on the Register which enhances the status of these significant historic open spaces. We can see no reason why the same approach isn't taken in England. For example Flatford Mill in Suffolk is an AONB but also has artistic and historic significance as a landscape which could be given special protection under the new designation rules. We have confidence in English Heritage to designate sensibly and to establish appropriate open space designations in those areas where piecemeal designation has not worked.

(c) The historic environment at the heart of an effective planning system

21. Key to the success of the reforms will be clearer links with the land use planning system. We are concerned at the continued delay in reforming the planning guidance for the historic environment—at present PPG15 and 16 and Welsh Offices Circulars 61/96 and 60/96. Many of the changes proposed within the Bill will not be effective without supportive planning guidance. We believe that any revision of planning guidance should strengthen existing protection of the historic environment and recognise its significant value in ways that deliver the Government's commitment to establishing the historic environment at the heart of the planning system. Planning guidance for Wales should also cross refer to the changes in legislation and a Ministerial Interim Planning Policy Statement supported by Technical Advice Notes needs to be produced as soon as possible. There should be participation from the heritage sector and elsewhere in this process.

22. We also believe that the review of PPG15/6 and the Welsh Office Circulars need not be delayed as there are issues such as climate change adaptation and public engagement that could be fixed now without changes in legislation. We do not believe that the English Heritage Conservation Principles can be considered a substitute to the review of planning policy. These are for English Heritage's internal use and they do not apply to Wales. Cadw has no immediate plans to produce a similar set of principles.

23. We are concerned that other planning policy activity should integrate with the changes to heritage legislation. For example in PPS20 on Coastal Planning, the policy will focus on management and control on development on eroding coasts. Proposals such as temporary planning consents to help maintain the economic life of an area for as long as the land remains and the idea of rolling back settlements will have a potential impact on designated historic environment. We believe that there needs to be greater integration with this policy as consultation takes place later this year.

DETAILED COMMENTS

(a) Heritage Partnership Agreements

24. The potential to provide greater clarity regarding the scope of works that would and would not require consent for large complex sites in advance is potentially welcome. This should allow strategic management of large sites without the need to seek multiple consents over a period of many years. Such agreements could be tailor-made for regeneration and growth projects and/or include complex sites. Greater certainty could be built into such projects with the prior consent of owners, managers, developers, local authorities and English Heritage. The expectation is that the introduction of these agreements will help to change the culture of management enabling managers of complicated sites to undertake their conservation commitments and responsibilities in a more timely and efficient manner. This will be a great advantage for complex sites that are owned by the Trust but managed in a number of different ways. For example, Dolaucothi Gold Mines, Carmarthenshire which has one part on a 99 year lease to the Forestry Commission, one part on an Agricultural Act Tenancy (difficult to alter management), one part on a new tenancy with lists of conservation clauses, one part in hand and one part open to the public.

25. It appears, however, that the provisions set out in the Bill limit the use of HPAs as a vehicle for granting consent or waiving the need for repeated applications for certain types of works. At present HPAs are intended to remove uncertainty over what works require consent or not, so reducing unnecessary bureaucracy for both the owner and the local planning authority. It does not, however, give automatic class consent for certain types of work as these will require another process to be signed off (for which we await secondary legislation to determine who is responsible). This is an important issue to raise as the introduction of HPAs in the Bill is intended to be a significant tool to enable more efficient management of historic sites. In management agreements previously trialled by English Heritage as long ago as the mid 1990s (eg at Willis Faber Coroon in Ipswich) it found that they never really took off because they do not grant consent in advance and this is what would be the key in helping to manage complicated sites effectively. In the Trust's experience, however, both English Heritage and Cadw have worked with us to get the most of a management agreement. For instance Cadw has already descheduled parts of the mine at Dolaucothi to enable us to get on with basic maintenance.

26. We welcome the subsection 3 of Clause 157 for local planning authorities (and later on English Heritage, Secretary of State and WAG) to have the power to make payments to owners to facilitate the beneficial management of the asset or assets covered by an HPA. We do question what the start up costs of Heritage Partnership Agreements may be and also highlight the importance of having the necessary skills and competencies to develop and manage what is an intrinsically more complex process.

(b) *Settings*

27. The Trust fully supports the extra emphasis in Clauses 155 and 156 of the Draft Bill on the protection of the settings of heritage assets. Given the Government's aim of putting the historic environment at the heart of an effective land use planning system, however, we believe the emerging legislation should take an even stronger stance on settings protection. Our experience is that various properties, including major houses and the associated historic parks and gardens on the English Heritage Register, have been significantly affected, or are currently threatened, by development within their settings.

28. As the settings include views out over the wider landscape, it is the planning system that has to be relied upon for protection. National Trust examples include Sheringham Park, Montacute, Saltram, Hardwick and Belton. All of these properties are held in perpetuity by the Trust on behalf of the nation and the protection of their settings is an important aspect of the continued conservation of the houses, parks and gardens. Negotiations are proceeding with the local planning authorities where these properties are situated with a view to obtaining a step change in the level of protection, by defining the settings on the Proposals Maps associated with the emerging Local Development Frameworks.

29. These negotiations are based on the success in the Amber Valley Local Plan 2006 where the setting of Kedleston Hall and Park was defined on the Proposals Map. This outcome has meant that the protection no longer relies on the vague impression of "setting" in a written policy. The National Trust strongly feels that the emerging legislation should provide that local planning authorities should be required to define the settings of major heritage assets within Local Development Frameworks. Such a change would be a significant step towards ensuring that the historic environment is truly embedded at the heart of the land use planning system.

30. Through our experience we also understand the difficulties of defining what a setting is. For example, settings are a grey area for how we establish the protection of Scheduled Ancient Monuments. There are cost implications and expertise required to understand settings of historic parks and gardens. We believe there is a need for guidance for local authorities on how settings may be defined in LDFs, using tools such as landscape characterisation. The National Trust will be looking to support the English Heritage work on assessing settings.

(c) *Marine historic environment*

31. As the Committee is no doubt aware there is a concurrent pre-legislative scrutiny of the draft Marine Bill taking place. This presents an opportunity to ensure that measures being implemented within marine legislation are integrated with the new heritage protection regime and *vice versa*. The Committee may wish to consider how the new marine heritage designation will sit within the marine planning system proposed in the Marine Bill and how the historic marine sites fit within the proposed new system of Marine Conservation Zones. We are greatly disappointed that the Marine Bill does not consider the role of the historic environment within its conservation objectives which may compromise the heritage interest of sites. Any Marine Policy Statement which is developed should reference the marine historic environment measures introduced through the Heritage Bill.

32. There needs to be greater clarity of the role of English Heritage or Welsh Ministers in the protection and licensing system for the marine environment. At present the Marine Bill objectives will be to deliver only biodiversity objectives within the Marine Conservation Zones. Therefore, there is the potential for conflict between licensing decisions for a particular site if they overlap. Greater clarity within both Bills for this process would ensure the system was less open to confusion and delay. In addition, to ensure a working relationship between those responsible for the more general marine environment licensing system and those whose priority is the marine historic environment is in place, English Heritage and Cadw needs to be adequately resourced and empowered to deliver this role.

33. The Heritage Bill does not adequately answer the challenges of intertidal ownership and management. We are concerned that the complicated nature of sites which stretch from foreshore to underwater means that many are subject to two different regulatory authorities. Consequently, such agreements could prove difficult to negotiate in practice. We believe, therefore, that where this situation occurs, additional resources and support will be necessary to develop the appropriate structures post-designation to make the integration of the two parallel systems (terrestrial and marine) work. This will be the test for integrating marine and terrestrial planning and will be helped by strong marine historic environment policies within the Marine Planning Statement

34. In terms of the specific proposals, we were disappointed to see that the proposal within the Heritage White Paper to extend designation of marine heritage beyond that of sea wrecks to include types of sites such as ancient landscape did not come to fruition. One benefit of this approach is that the evidence held in submerged landscapes can tell us more about the potential impact of sea level rise and climate change.

35. We were also disappointed to see that the proposal within the White Paper for a flexible consents system to respond to the impact of climate change on our coastline is also absent. The National Trust recognises and aims to work with the processes of coastal change wherever we can, but also recognises this can put the historic environment at risk. The National Trust policy on coastal management therefore states that "archaeological and heritage assets will be conserved and enhanced where such an approach is

consistent with the impacts and trends of coastal change. Recording, excavation, adaptation or relocation of heritage assets will be undertaken where in situ conservation is not possible". The National Trust has 50–60 hot spots which are threatened by coastal change, for example at Porlock Bay and Cuckmere, which have significant historic environment and listed assets.

36. Whilst we appreciate that the Heritage Bill only provides for the high level legislation necessary to change the designation and licensing system as it currently stands, we feel that there is a need to ensure that there is enough room for manoeuvre and sufficient safeguards to allow the marine historic environment designation and licensing system to respond to the dynamics of a changing coastline. This approach must by necessity also include those listed heritage structures and open spaces on the coastline which may be vulnerable to coastal change. Procedures for conservation and exit strategies may need to come through secondary legislation and guidance. We would also recommend that designated sites include an assessment of risk from natural and accelerated (ie anthropogenic) coastal processes

37. English Heritage's Rapid Coastal Zone Assessment Surveys should be able to help pinpoint where the priority areas are for these exist strategies, are taking place around the coast but they are expensive. The Select Committee may wish to examine where this thinking is being developed and whether there is the potential for pilot studies. We have already been in conversation with English Heritage about the potential of using Plymouth and Milford Haven in a Welsh context.

ESTIMATE OF COSTS AND BENEFITS SET OUT IN THE IMPACT ASSESSMENT

38. For heritage to be at the heart of the planning system it needs to have the continuing skills and resources to maintain it there. We are deeply concerned that the proposed reforms will fail if they are not backed with measures to provide the extra capacity, skills and resources essential to delivery in both local authorities and English Heritage. Those who have been tasked with delivering the new system need significant additional resources and to develop their skills and competencies. We believe the Impact Assessment (IA) of resources required to implement the new measures underestimates the financial impact of the changes. It identifies that the main impact of the new legislation will fall on English Heritage. English Heritage had identified the costs of implementation of HPR as around £11 million but secured only half this sum, after efficiency savings, in the CSR.

39. This is not reflected in the Impact Assessment and the implications of this for English Heritage are uncertain after 2010. It has identified limited resources which are said to be sufficient to support preparatory work over the next three years. However the funding made available for the new registration will not cover the need to modernise the half a million designations backlog. This will have implications for the efficiency and adequate response to any contested appeals or consents. We understand that English Heritage will be undertaking a consultation on how it will go forward on a detailed programme for implementation 2009–11 with a fund of £7.5 million. Our concern is that the additional funding needed to meet the shortfall will be found from elsewhere in English Heritage and the opportunity cost for these other areas of its responsibilities will be great. The critical time, when additional resources are needed for implementation, will be in the next Spending Review period, covering the years 2011–14. The Committee may find it useful to examine what funding will be necessary and how this may be delivered.

40. Significant additional resources also need to be committed to local authorities. The new responsibilities for administering all Historic Asset Consents, developing Heritage Partnership Agreements for large sites, and the statutory status to assemble and maintain a new system of the Historic Environment Records (HER) will be very significant. In our view it is an impossible task for local authorities without upfront and ongoing support. In particular there are costs associated with the training and capacity building (including recruitment of conservation officers) of staff needed to ensure familiarisation with a new heritage protection system. Upgrading the HERs will have resource implications as currently most HERs are greatly stretched, frequently starved of resources and threatened by the emergence of new Unitary Authorities. The HERs, as envisaged by the Heritage White Paper, will not work unless there is a major increase in funding. There is an urgent need to review what these full costs will entail for local authorities. This should build on the only estimate so far available from DCMS regarding the costs of the devolution of responsibility for scheduled monument consent (estimated to be around £400,000 pa from 2010/11 assuming that planning authorities will use in house and out sourced conservation expertise).

41. Despite the statutory obligation to maintain HERs there are concerns that this will be a weak spot and funding is already limited. For example in the South West central funding for local authorities will rise at an annual rate of only 0.9% per year in real terms, which raises doubts about the ability to find the resources to implement heritage protection reform. Whilst we welcome the commitment from DCMS to fund any new burdens on local authorities either itself or through English Heritage, it is vital that any extra resources that are committed to local authorities are there only to deliver the heritage protection reform and for DCMS/DCLG to ensure they don't disappear into local authorities general funds. There are precedents for this, such as the Planning Delivery Grant.

42. How the Welsh Assembly Government intends to fund these changes is a further source of concern and there is no indication that there are plans to provide any additional resources. In Wales, HERs are maintained by four Archaeological Trusts, which whilst badly funded still manage to do an excellent job

that is greatly admired throughout the sector. The legislation makes provision for different arrangements in Wales but as there is still considerable ambiguity we would like to see a clear statement that the legislation and appropriate levels of funding will actively support the Welsh system.

STAFFING AND SKILLS LEVELS NEEDED FOR EFFECTIVE IMPLEMENTATION OF THE PROVISIONS IN THE DRAFT BILL

43. Whilst we welcome DCMS stating that they will meet the additional burdens of the legislation this does not address the pressing need to plan for long term delivery of the new reforms. The greater emphasis being placed on the role of local authorities in the absence of measures to address the huge variations in local historic environment services is striking. This is illustrated in the Atkins Report, which concludes that improving standards and consistency will be an enormous task. We work closely with local authorities and English Heritage and the Welsh Assembly Government (WAG) through Cadw on issues relevant to Listed Buildings and Scheduled Monuments across the country and are very aware of the pressures on those organisations and their resource issues. To give just two examples—it took 12 months to receive listed building consent for works at Dinefwr in Wales and more than two years to mend a wall which was becoming an increasing health and safety problem at a property in North Cornwall.

44. The greatest single skills shortage with local authorities is the provision of specialist conservation services. We are already starting from an existing position which is far from perfect and there is already limited capacity within local authorities to manage the current system. Recent figures indicate that 20% of local authorities have no specialist service and a further 30% rely on one full or part time member of staff. Of note too is the dismantling of a number of local authorities archaeological departments. North Hampshire has axed all archaeological teams whilst there are fears regarding the impact of unitary authorities. For example, Northumberland County Council is about to go unitary, and the loss of conservation officers currently in district councils, means that the unitary authority will have to spread less expertise more thinly (covering a vast geographical area), and there is real concern about how services can be delivered, particularly given the additional responsibility to be imposed on local authorities in terms of determining consent applications. Without a statutory requirement for local planning authorities to maintain both archaeological and conservation services there is no guarantee that local authorities will have the staff on the ground necessary to undertake the work required. This is becoming increasingly more pressing as many conservation officers are now reaching retirement age.

45. In addition, although listed building consents may be handled in a timely manner, the conservation officers lack status in the local planning authority and have limited influence when it comes to strategic matters. For example, in Wales the conservation officers are often overworked and without status resulting in delays in addressing listed building consents. In contrast the four Welsh Archaeological Trusts provide a good archaeological service and have service level agreements with most of the Welsh Unitary Authorities and local planning authorities to support this. There is provision in the Bill to allow planning authorities to delegate responsibilities to other bodies and we are given to understand that this will be used to ensure the work currently carried out by the Archaeological Trusts will continue. In Wales our major concern is how consent for building work will be improved and we would wish to see the same types of service level agreements put in place between the WAG and the local authorities to encourage delivery—a similar practice could be implemented in England.

46. The role of conservation and archaeological officers in local authorities is crucial to the success of the White Paper and there is an unassailable case for providing them with a better career structure, enhanced status and training. The new approach will also require strengthened skills in community involvement and participation. There needs to be a clear commitment to taking action in this area if the sector is to have confidence in the review, and it needs to be a very visible part of any announcement. This means not just money, vital though this is, but also a properly thought out investment strategy in the skills, guidance, training and capacity building for local authorities, professionals and heritage organisations required, and in the partnerships to deliver these.

47. One way forward might be through an initiative which animates a national debate about the skills, knowledge and experience needed and draws up recommendations which would go forward as a package with any legislative proposals. We recommend that DCMS works with organisations such as the Academy of Sustainable Communities and Improvement and Development Agency and strengthens the role of HELM as a training provider.

Annex

OMISSIONS FROM THE BILL

The Draft Bill provides enabling powers in several areas where at present there is no detail about the arrangements. These will be set out in regulations and orders to be made by statutory instrument under the Bill, or subject to detailed guidance to be issued by the national authority (English Heritage, the Secretary of State or Welsh Ministers). At present there is no indication whether these will emerge before or after passage of the Bill. It would be helpful for the Committee to use the pre-legislative scrutiny to explore thinking around a number of the areas covered by the Bill.

Selection criteria for “special interest” (Clauses 4 and 49)

We understand these will be consulted upon soon. There has always been confusion about the interpretation of “curtilage” and it would be good to have this clarified. We also hope this clause is used to protect the setting of buildings and archaeological sites.

Class Consent Orders to be made by the Secretary of State and Welsh Ministers (Clause 93)

We welcome the implication that legislation will address abuse of the current system but ask for further clarification as to when in future class consent orders will be issued. In our mind these should only be issued under exceptional circumstances. We hope that under this the protection of vulnerable archaeological sites under agricultural land will be protected from ploughing.

Regulations about procedures in handling applications for Historic Asset Consent (Clause 103)

We note that this clause gives the Secretary of State and Welsh Ministers powers to make regulations in the future that will affect applications for HAC. As it stands this reads as if it might be possible to reduce the potential benefits of the proposed system—for instance if it gets too difficult or expensive to administer.

June 2008

Memorandum submitted by the Theatres Trust

The Theatres Trust welcomes the opportunity to comment on the DCMS Select Committee Inquiry. Our submission focuses on theatre heritage and our evidence and recommendations are provided in this context.

The Theatres Trust is an advisory Non-Departmental Public Body and a statutory consultee on planning applications that affect land on which there is a theatre, and was established by the Theatres Trust Act in 1976 “to promote better protection of theatres”. Our 15 Trustees are appointed by the Secretary of State for Culture, Media and Sport, though our remit covers the whole of the UK. The Trust’s main objective is to safeguard theatre use, or the potential for such use, through direct engagement and advisory work in the fields of theatre and culture, planning, regeneration, architecture, and heritage.

Heritage is therefore one of our key areas of concern, alongside architecture & design and theatre use. Our submission identifies the remit and valuable role that The Theatres Trust plays in protecting the nation’s theatres.

We seek through the Bill to secure legislation that will enable us to be statutorily consulted on the Heritage Register, applications and consents, and establish our role in Heritage Partnership Agreements as they relate to theatres.

We ask the Committee to acknowledge the role of The Theatres Trust and help us to enhance and strengthen our work in the heritage field, thus enabling us to harness fully heritage legislation to protect theatres in England and Wales.

The Theatres Trust would be pleased to provide oral evidence to the Select Committee.

DRAFT HERITAGE PROTECTION BILL

1. The Theatres Trust welcomes and supports the overall aims and scope of the draft Bill. The present system for protecting heritage structures has developed in a piecemeal fashion and is complicated to operate, lacking in transparency and accountability. Successful delivery of the ambitious programme of reforms will depend on a strong partnership between the Government, English Heritage, Cadw and Statutory and Non-Statutory consultees in the heritage sector. Securing The Theatres Trust’s role in the heritage protection system will strengthen this partnership and enable our expertise to be fully brought to bear.

2. The Theatres Trust is pleased that the Bill acknowledges artistic interest in its criteria for registrable structures as this provides for comprehensive recognition of the heritage value of theatres to the nation.

3. We would welcome inclusion in the Heritage Protection Bill of The Theatres Trust’s statutory remit as a consultee, and advisory public body and expert on theatre buildings in the UK.

4. *Statutory consultee:* The Trust would welcome formal recognition of its role as a statutory consultee on heritage matters relating to theatres. This includes Heritage Asset Consents; in the compiling and amending of Heritage Registers; appeals on potential heritage structures; and on Certificates of no intention to register. We would also like to be notified of all heritage asset enforcement notices where they relate to theatres. Further details are provided below.

5. *Heritage Asset Consent:* The Theatres Trust asks that it be recognised formally as a statutory consultee on heritage matters and all applications for heritage asset consents on theatre buildings. Currently the Local Planning Authority is not required to consult the Trust although we are often asked for our opinion on such matters.

6. *Heritage Registers*: In the draft Bill the registration process does not refer to The Theatres Trust as a statutory consultee. This is an anomaly, as the Trust is regularly consulted on applications for listing, (or “registration” as it will become) and is called upon to provide an expert opinion in appropriate cases. Furthermore, we were integral to the revisions of English Heritage’s *Principles of Selection for Listing Buildings in relation to culture and entertainment*. As this work is already accommodated within our current work, drawing upon our qualified staff and our theatres database (a register of the theatres in the UK compiled and maintained by the Trust) we anticipate that our levels of work will not increase. The Trust would wish to be a consultee where a theatre is proposed for the register.

7. *Heritage Partnership Agreements*: The Theatres Trust would like to be in a position to act as a party to, and a consultee on Heritage Partnership Agreements (HPAs). We would like to be consulted from the early stages of development, assist in the drawing up of such agreements where they relate to theatre buildings and as a party continue to offer assurance and advice as necessary.

8. The Theatres Trust welcomes the development of Heritage Partnership Agreements (HPAs). Registration of a theatre building can create significant additional burdens on the operation of a theatre in theatre use, its owners and the local authority. In the case of theatre buildings changes are regularly required to accommodate new incoming productions. Much of this change does not affect the special interest of the building and the HPAs would allow the operator to understand what does and does not require heritage asset consent. The Theatres Trust is therefore keen for theatre owners to enter into such agreements to make it easier for all parties concerned and to ensure that producers are able to accommodate their productions and eliminate uncertainty. The opportunity to be included as a party and/or as a consultee to HPAs could provide assurance to all other parties.

9. *Purchase Notices*: The Theatres Trust would also like to be notified of a Purchase Notice for theatre buildings and be given the opportunity to be a statutory undertaker. This would align with our current remit under The Theatres Trust Act 1976 which gives us powers to acquire or hold any theatre for the benefit of the nation, contribute to the acquisition of any theatre or land and maintain or assist in the maintenance of any theatre. Within the draft Bill there is an opportunity for the Trust to be a statutory undertaker when a Purchase Notice is served on a local authority. This would allow the Trust to take over a theatre building where it felt there was a need or benefit and also to be able to offer advice.

10. *Historic Environment Records*: In relation to the proposed changes to local listing and the creation of HERs and the Impact Assessment, The Theatres Trust is in a position to offer its services regarding the creation and maintenance of Historic Environment Records and the development of conservation practice with regard to theatres. The Theatres Trust is also able to advise planning officers, councillors and the general public on specialist theatre conservation matters. We would like the Bill to endorse our advisory role in the area of Historic Environment Records.

11. The impression of the Trust is that planning authorities’ conservation officers are over stretched and under-resourced. We recognise that there is a shortage of conservation officers, particularly those who have specialist skills in theatre buildings. The Trust is particularly well placed to assist, lead and advise on such matters. The Theatres Trust wrote and produced *A guide to theatre conservation from English Heritage* in 1995 and we are currently working with English Heritage and the theatre industry to update this guide. We are continually referred to on theatre conservation issues. Each year we visit around 200 theatre buildings and offer advice on conservation of historic theatres. This is a role that we would like to consolidate.

12. We welcome the English Heritage initiative to pilot partnerships with local authorities in sub-regional groups to test the feasibility of sharing skills and expertise. The Planning Delivery Grant could also be ring-fenced for conservation, including theatre conservation.

13. The Theatres Trust is in a position to take a lead role on developing benchmarks for conservation practice with regard to theatres and so support professional development within the conservation sector. The Theatres Trust is also able to advise planning officers, councillors and the general public on specialist theatre conservation professionals and would welcome endorsement of the Trust’s conservation role.

The Theatres Trust: nature and membership of the organisation and factual information

14. In recognition of the importance of theatres, The Theatres Trust was established by The Theatres Trust Act 1976 and The Theatres Trust (Scotland) Act 1978 as an advisory Non-Departmental Public Body (NDPB) and statutory body “to promote the better protection of theatres”.

15. The Trust has accumulated a collection of over 30,000 records (photographs, slides and plans) relating to theatre buildings. The Trust’s collection is widely recognised as the most complete architectural and heritage record of theatre buildings in the UK. In addition The Theatres Trust publication, the *Guide to British Theatres 1750–1950* (ed 2000), is regularly acknowledged as the source handbook for those researching theatre buildings. This is now available online alongside a digital image library and educational resources for teachers. This includes information on backstage historic machinery that would not necessarily be available to English Heritage or CADW when considering a case. The Theatres Trust also prepares Guidance Notes and publishes *TM* the Trust’s quarterly theatre magazine.

16. There are over 750 listed theatres in the UK, not all of which were originally constructed as theatres. The earliest still in use, Bristol’s Theatre Royal (Grade I), was opened in 1766, and the latest, The Barbican, was built between 1971 and 1982 (Grade II). Around 650 of these are in England and of the purpose built

ones 10 are Grade I and around 50 are Grade II*. Around one third of the listed theatres have been converted to other uses. Taking just one theatre architect, Frank Matcham, out of his 28 remaining theatres, 27 are listed of which 20 are at a high Grade. The English Heritage Buildings at Risk Register for 2005 identifies 18 theatres in London and 7 theatres outside London which are deemed to be 'at risk'. However the true figure is much higher as English Heritage at present does not include buildings that are Grade II outside London or unlisted. The Trust has records of several dozen Grade II theatre buildings outside London that may be considered to be 'at risk'. Theatres are also usually landmark buildings of local historic importance and therefore included in conservation areas or Local Lists.

17. The General Development Orders for England and Wales, and for Scotland, require that all planning authorities must consult The Theatres Trust before a decision is issued on any planning application or development involving land on which there is a theatre, as defined in the 1976 Act. The Act defines a theatre as "any building or part of a building constructed wholly or mainly for the public performance of plays". Plays are defined in the Theatres Act 1968 and include singing, dancing and solo artists. The Order refers to the planning application (which may concern several acres of land) and not just to the theatre itself. The Trust's remit thus extends to development on adjacent sites if they affect or involve the theatre concerned.

18. The Theatres Trust is the specialist organisation in the United Kingdom protecting the heritage interests of theatres in the context of our broader responsibility for protecting and improving theatres as a national resource. The Trust works closely with national amenity societies, other voluntary groups, local authorities, theatre owners, English Heritage and DCMS. The Theatres Trust is recognised as the expert body and authority in its field.

June 2008

**Mewmorandum submitted by the Association of Local Government Archaeological Officers for Wales
(ALGAO:Cymru)**

THE ROLE OF ALGAO:CYMRU

The Association of Local Government Archaeological Officers for Wales (ALGAO:Cymru) is the national body representing local government archaeology in Wales. ALGAO:Cymru co-ordinates the views of its members and presents them to Welsh Assembly Government, Cadw and to other national organisations.

The range of interests of our members embraces all aspects of the historic environment including archaeology, buildings and the historic landscape. Of particular relevance to the Draft Heritage Bill, ALGAO:Cymru members are responsible for the management of all Historic Environment Records (HERs) in Wales and for the management of the 95% of the archaeological heritage that is not designated.

GENERAL COMMENT

ALGAO:Cymru welcomes and supports the Draft Heritage Bill and its proposals to unify the system of heritage designations and consents in Wales and to make the system more open and accountable. The evidence presented here relates to key issues of principle and policy that we wish to draw to the Committee's attention in order to strengthen the implementation and benefits of the reforms. In particular ALGAO:Cymru commends the submissions made by The Archaeology Forum (TAF) with respect to Wales.

Given ALGAO:Cymru's member's existing responsibilities for the delivery of Local Authority Historic Environment services and in particular for the provision of Historic Environment Records in Wales, we would be keen to work closely with the Welsh Assembly Government and Cadw on the production of the items of specific policy and guidance noted below.

THE NEED FOR A CLEAR VISION FOR INTEGRATED HERITAGE PROTECTION IN WALES

The provisional nature of the Draft Heritage Bill means that uncertainty remains over delivery of the reforms and what these will mean to members on the ground in Wales. An integrated vision for the future delivery of heritage protection in Wales has yet to be articulated and we are concerned that, given the legislative timetable, there will be few opportunities to contribute its development before the Bill is put to parliament.

We await further advice concerning specific arrangements envisaged for Wales, whether through secondary legislation or guidance. ALGAO:Cymru are keen to work with Cadw and the Welsh Assembly Government (WAG) in developing guidance documents building on the current strengths of the historic environment sector in Wales and developing practical and economically viable solutions to the delivery of integrated Local Authority Historic Environment Services.

ALGAO:Cymru would ask the that Committee requests that the WAG and Cadw addresses the need for a new integrated vision for heritage protection in Wales, and that appropriate guidance be issued at the earliest opportunity.

HISTORIC ENVIRONMENT RECORDS

ALGAO:Cymru welcome the proposals to make the maintenance of Historic Environment Records a new statutory responsibility, a measure we feel will be of benefit to the new heritage protection system in Wales and also of benefit to the wider public who are interested in their local heritage. We also support the draft Guidance on Historic Environment Records, published by DCMS on 2 May. It is clear from this guidance that Historic Environment Records will be fundamental to the delivery of the new measures. However, in order that these measures are successfully implemented in Wales, it is essential that clear guidance relating to the position of Historic Environment Records in Wales within the framework of the Draft Bill's proposals, be produced by WAG and/or Cadw as soon as possible.

ALGAO:Cymru would request that the Committee supports the provision to make the creation and maintenance of Historic Environment Records in Wales, statutory, and asks that the particular provisions for Wales be published as soon as possible.

FUNDING THE ADDITIONAL COSTS OF IMPLEMENTING THE DRAFT BILL

Whilst in England it has been recognised that there will be an additional cost in delivering the proposed reforms and there is a commitment from DCMS to address the funding gap, the fact that there is no similar recognition in Wales is a cause for concern. ALGAO:Cymru would urge that the Committee seek a policy statement from WAG, on the resource implications of the delivery of the new measures in Wales.

June 2008

Memorandum submitted by RESCUE, The British Archaeological Trust

INTRODUCTION

1. RESCUE is an entirely voluntary and self-funded organisation established in 1972 to promote the position of archaeology as a central part of the cultural and intellectual life of the nation. Our remit is a wide one, promoting the interests of archaeology in Britain and our membership is drawn widely from both the professional and amateur/voluntary wings of the discipline. We have only one part-time employee and the Rescue Council is drawn entirely from working archaeologists and active amateurs. We feel that this gives us a unique insight into the wide range of issues that affect archaeology and thus put us in a position of being able to campaign on issues with which we are dealing on a day-to-day basis. We are regular contributors to the debates initiated by documents produced by English Heritage and relevant government departments, and also contribute to wider discussion through our membership of Heritage Link and The Archaeology Forum.

2. RESCUE welcomes the opportunity to comment on the draft Heritage Protection Bill. We note that the Committee has requested views on specific questions, relating to the overall scope of the draft Bill, the estimates of costs and benefits, and the staffing and skill levels required for effective implementation. We have therefore designed this response to address these areas of concern, rather than provide a wider appraisal.

THE OVERALL AIMS AND SCOPE OF THE DRAFT BILL

3. The draft Bill aims to create a unified regime for the protection of terrestrial and marine heritage, addressing the suggested confusion currently inherent within the system of legislation covered by the Ancient Monuments and Archaeological Areas Act (1979), the Planning (Listed Buildings and Conservation Areas) Act (1990), the Historic Buildings and Ancient Monuments Act (1953), and the Protection of Wrecks Act (1973). Broadly and briefly, the draft Bill addresses the creation of new Heritage Registers for England and Wales, defines what type of site or structure will be eligible for inclusion on such a register, and outlines the proposed process for registration. Control of works and prevention of damage to registered Heritage structures and issues such as heritage partnership agreements, use of metal detectors, compulsory purchase, guardianship and preservation works are covered also. Marine heritage licences are outlined, and proposals for the creation of statutory Historic Environment Records are outlined. The draft Bill follows on from the white paper Heritage Protection for the 21st Century (2007), which outlined the Government's aims and objectives

4. We particularly welcome the following areas which the draft Bill addresses, as representing the achievement (in part or in full) of issues that have concerned RESCUE and other heritage organisations for a number of years:

- the creation of a unified system for national designation to replace the current categories of listing, scheduling and registering;
- the creation of statutory status for Historic Environment Records (HER) as described in Part 5, paragraphs 210–215; and
- the expansion of the definition of archaeological monuments to include those relatively ephemeral sites of early human activity which do not include permanent structures.

5. We are concerned and disappointed however by the many omissions from the draft Bill as it currently stands. Details of matters relating to (for example) World Heritage Sites, conservation areas, and ecclesiastical exemption, are missing, to be addressed in separate documents. It is also the case that related heritage issues such as reform of the current PPG's 15 and 16, provisions for the maintenance of the status of museums and their collections and archives, the protection of the settings of historic sites, or details of how these proposals relate to the ongoing reform of planning legislation are ignored. We are also greatly concerned that there will be a distancing of local people and amenity bodies from the decision-making on heritage matters. We recognise that some (but not all) of these issues are to be addressed, but we do not believe that the "creation of a simplified unified system" is promoted by the piecemeal release of a series of separate documents which do not clearly relate to one another or could be mistakenly viewed in isolation.

6. RESCUE therefore urges the Committee to examine the process by which this Bill has been drafted and released and discuss if whether or not this is appropriate, fit for purpose, and fulfils the overall objectives of the original consultation and White Paper to end the fragmentation apparent within the current system.

7. RESCUE also urges in particular that the Committee support the creation of a robust PPS, to replace the current PPG's 15 and 16, within the provisions of this reform. We would argue that the draft Bill should include an explicit restatement of the importance of PPG 16/replacement PPS as the primary means by which provision is made for the archaeological recording of unknown, undesignated and locally designated archaeological sites and monuments prior to their alteration or destruction through development and other kinds of non-reversible impact.

8. We further note that the creation of statutory HER's is not accompanied by a similar commitment to propose a statutory duty on the relevant authorities to provide qualified Heritage Advice and Curatorial services. In effect, this assumes that HER's are a static archive requiring little more than simple administration, which is not the case. An HER is a dynamic resource, which requires constant updating and alteration as additional work in the Historic Environment is undertaken our knowledge of the past increases. In order to fully resource a statutory HER, it is surely necessary to ensure that the appropriate levels of qualified supporting expertise are also provided. We believe that this omission from the draft Bill could lead to the inadequate implementation of these proposals in the short term, and their operation over time.

9. RESCUE would therefore suggest to the committee for their consideration, that in order to fully implement these proposals it would be necessary to require that an HER be a part of a properly-resourced and statutory Historic Environment Service, which would provide the appropriate levels of skill and expertise to ensure that the information available for consultation is both reliable, current, and adequately supported.

THE ESTIMATE OF COSTS AND BENEFITS SET OUT IN THE IMPACT ASSESSMENT

10. RESCUE endorses the significant concerns raised over the resourcing arrangements in the Impact Assessment that have been submitted by other bodies within the archaeological community. In particular we would like to add that whilst we welcome the proposals to make the provision of a Historic Environment Record a statutory responsibility on local authorities, we are concerned that without a commitment to adequate financial support for this initiative, these authorities will fail to carry the required measures forward. We note the suggestion given in the Impact Assessment that an initial one-off cost of £628, 276 is indicated to implement this policy, with an annual commitment rising to £565,095 pa after five years. We believe that with approximately 80 such HER's in England and Wales, such figures are likely to prove to be both inaccurate and wholly inadequate. Furthermore, we do not believe that overall it is possible to quantify that there will be the levels of savings within the operation of the new system that the Impact Assessment has given, and would like to query the basis for these figures.

11. RESCUE would strongly urge the Committee to question the sources for the estimates for the likely costs of the creation of statutory status for HER's, and query their validity. This should be undertaken in conjunction with testimony from a sample of the local authorities which would be required to implement the proposals, and involve the submission of their own independent estimates of the costs. RESCUE would urge that similar scrutiny be applied to the financing necessary for the operation of the unified designation system, and the creation of the proposed national Register of Heritage Assets.

THE STAFFING AND SKILL LEVELS REQUIRED FOR EFFECTIVE IMPLEMENTATION OF THE PROVISIONS IN THE DRAFT BILL

12. We note that amongst the “Key Assumptions/Sensitivities” it is stated that: “[. . .] we assume that the number of people working within and using the heritage protection system in the future will not deviate from current trends.” and that: “Organisations can continue to carry out administrative duties effectively.” English Heritage has seen progressive cuts to its budget over the last decade with a consequent decline in staff numbers and an increase in the workload for those who remain. Changes to the roles played by English Heritage are outlined at various points in the draft Bill but we are concerned that these are not matched by an explicit commitment to the increased staffing or training which will be necessary if these are to be implemented efficiently and comprehensively. We would expect to see this matter addressed as a matter of urgency as it underpins much else that is proposed in the Bill. We would draw attention particularly to the resource implications of the new designation process, which we do not believe can be accomplished with the resources currently available at either national or local levels.

13. RESCUE wishes to highlight that “current trends” have actually involved a severe reduction of financial resourcing and staffing levels for heritage protection at both English Heritage and Local Authorities across the country. We would urge that the Committee question the ability of English Heritage, and Local Authorities in particular to adequately resource and implement these proposals without a significant increase in expertise and staff which is not outlined within the Impact Assessment. RESCUE would also like the committee to seek clarification of the precise definition of “One-off training and capacity building” for local authorities (paragraph 37), and query how it is proposed that this will be met from within English Heritage’s current allocation, particularly when the same paragraph contains the statement that a breakdown of costs relating to the training needs of local authorities... is not currently available.”

June 2008

Memorandum submitted by British Waterways

ENGLISH HERITAGE GRANT AND LOAN MAKING POWERS

1. British Waterways is a public corporation established by the 1962 Transport Act. BW manages and maintains 2,200 miles of canals and river navigations in England, Scotland and Wales and is sponsored by Defra and by the Scottish Government. For England and Wales BW’s present day objectives are set out in Waterways for Tomorrow (2000). BW is responsible for an important historic estate that contains 2,792 listed buildings, 45 scheduled monuments, 480 kilometres of linear conservation areas and many thousands of archaeological sites. BW’s historic estate also bisects or adjoins 8 historic battlefields, 24 registered parks and gardens, and four World Heritage Sites. One of BW’s core objectives is to conserve the heritage of the inland waterways on behalf of the nation and in support of this objective BW employs in-house heritage advisers.

THE OVERALL AIMS AND SCOPE OF THE DRAFT BILL

2. BW broadly welcomes the Draft Heritage Protection Bill although notes that it would be useful to define in more detail exactly what constitutes a “heritage structure”.

3. BW notes the English Heritage statement that the Bill is incomplete and has yet to fully address:

- Conservation areas;
- Local Designation; and
- English Heritage grant and loan making powers.

4. BW supports greater clarification of conservation area controls and believes there is a need to make conservation areas simpler and more understandable in terms of the protection given to the historic environment and the controls that may be applied to it.

5. BW is interested to note that designation decisions (ie the registration process) will be made on the basis of a broader range of criteria, taking account of the special historic, archaeological, architectural or artistic interest and notes that consent decisions will be based upon the effects of change to the “specialness” of a heritage asset. In the case of waterway heritage assets, which are often specialized structures, BW would be interested to learn what particular guidelines for designation may apply.

6. BW is interested in understanding whether the ability to register Heritage Open Spaces could include entire canals and if so, whether registration would also include curtilage buildings.

7. BW welcomes the introduction of an appeal system against decisions to register in England and equally welcomes the mechanism to appeal against decisions not to register.

8. BW would welcome greater clarity on the status of World Heritage Sites and in particular any cross-referencing to separate controls that may in future apply or be subject to review at the present time.

9. It is not entirely clear what will happen to existing class consents (BW has its own Class 3 Consent) and BW will be seeking clarity on this.

10. BW welcomes the ability to include within consent conditions one that may control “who may carry out works or a removal” as this is seen as important to safeguarding waterside heritage assets in general.

11. BW welcomes the introduction of Heritage Partnership Agreements and has actively piloted a trial HPA for Foxton Locks in Leicestershire. This HPA has been developed with the help and support of English Heritage and of Harborough District Council and Leicestershire County Council. BW is currently developing HPA pilots for the Lancaster Canal and for the Pocklington Canal and is again being supported by English Heritage in this work. The main benefits of an HPA are; the reduction of bureaucracy; greater understanding of the significance of heritage assets; greater control in terms of self-regulation and greater accountability for safeguarding heritage assets within a traffic light system of pre-agreed works, notifiable works, works requiring consent. Having a comprehensive HPA for an entire canal (for example) would bring clear benefits over the existing system of piecemeal designations and consent regimes and disparate local conditions. BW views HPAs as being instrumental to effective future heritage management of the waterways and is keen to develop more once they become part of the statutory system.

ESTIMATES OF COSTS AND BENEFITS SET OUT IN THE IMPACT ASSESSMENT PUBLISHED ALONGSIDE THE DRAFT BILL

12. BW welcomes the fact that DCMS is resourcing the introduction and implementation of the Draft Heritage Protection Bill and inclines to the view that greater simplification of the existing system can only, over time, bring more efficient working and lower costs.

13. BW supports the view that the introduction of Heritage Partnership Agreements will, after the initial set up costs have been met, significantly assist the reduction of bureaucracy, staff time and related costs of the existing system.

STAFFING AND SKILL LEVELS NEEDED FOR EFFECTIVE IMPLEMENTATION OF THE PROVISIONS IN THE DRAFT BILL

14. BW employs its own in-house heritage advisers and is therefore able to meet the staff and skill levels needed for implementation of the provisions in the draft Bill.

15. It is not clear to BW that all local authorities (or for that matter English Heritage) necessarily have the right resources to effectively implement the provisions of the draft Bill and BW would welcome further information relating to how local authorities in particular will be required to guarantee effective implementation.

Memorandum submitted by Wiltshire Archaeological and Natural History Society (WANHS) and Campaign to Protect Rural England (CPRE) Wiltshire Branch

INTRODUCTION

WANHS: Registered Charity no. 1080096 and Company no. 38856490; 41 Long Street, Devizes, Wiltshire SN10 1NS.

WANHS is the County Society, with a current membership of around 1,000.

The Society runs a Designated museum in Devizes which is particularly important for its prehistoric collections, notably from the World Heritage Site of Avebury and Stonehenge. The Society has been active in the protection of the heritage of Wiltshire since its foundation (1853). Its Buildings and Monuments Committee monitors planning applications affecting Listed buildings and archaeological sites and monuments in the county, acting as agent for the Council for British Archaeology in commenting on applications for Listed building demolitions. The Society has taken part in planning enquiries into local and structure plans in the county and into a series of planning proposals affecting Avebury and Stonehenge. The Buildings and Monuments Committee has helped to assemble this joint response to the Draft Bill.

CPRE Wiltshire Branch: Registered Charity no. 211318; Lansdowne House, Long Street, Devizes, Wiltshire SN10 1NJ.

CPRE Wiltshire is the local branch of national CPRE and promotes the beauty, tranquillity and diversity of rural England by encouraging the sustainable use of land and other natural resources in the towns and countryside of Wiltshire. CPRE works closely with WANHS on heritage matters and, like WANHS, has for many years been specifically involved in commenting on planning documents and planning applications affecting Wiltshire and its heritage. CPRE Wiltshire Branch has discussed this joint response to the Draft Heritage Protection Bill in committee.

The contact for this response is Kate Fielden, WANHS Trustee and Chairman of its Buildings and Monuments Committee; and CPRE Wiltshire Branch Trustee and Executive Committee member.

1. GENERAL COMMENTS ON THE DRAFT BILL

1.1 We are pleased to see the draft Bill and to have the opportunity to comment on it. We are particularly glad to see proposals for unifying the designation of heritage assets and the creation of Heritage and Historic Environment Registers. We are also pleased to note that “sites of human activity without structures” will be included within designated heritage assets.

1.2 We do, however, have a number of concerns about the Draft Bill, especially its incomplete state which makes it impossible to comment fully on all areas. Information about, for example, World Heritage Sites and Conservation Areas is confusing and incomplete.

1.3 It is not clear how PPGs 15 and 16 are to relate to the Bill, nor whether these crucial documents are to be updated to a PPS at the same time as the Bill is to become Law. We hope that a new PPS to cover the matters included within PPGs 15 and 16 will be produced as soon as possible.

2. SPECIFIC QUESTIONS

Some more of our more pressing questions are listed, below

2.1 We are concerned about the status of our current heritage assets following passage of the Bill. At the time the Bill is passed, what will be the status of current Listed Buildings, Scheduled Ancient Monuments, Conservation Areas, Areas of Special Archaeological Significance (in our view a most important designation)), historic parks and gardens and battlefields, and World Heritage Sites? Will Heritage Registers be drawn up to include these items before the Bill becomes law?

2.2 Are Conservation Areas as separate entities to be scrapped? We think that to eliminate them under this title, even though they may be included in the Heritage Register and re-named as heritage open spaces, would be a mistake. The term “Conservation Area” is well understood by local communities; it actually describes what should happen in such areas—where people live and which they value and want to have protected as a part of the local scene. The term “heritage open space” invokes no immediate notion of conservation—simply recognition of a valued asset.

2.3 What precisely are going to be Registered Heritage Assets? More information is needed. What will be the deciding factors in defining Registered Heritage Assets?

2.4 Will there be clear distinction between Heritage Assets that will need EH’s consent for works and those that will require LPA consent only? [The Impact Assessment indicates (para 9, bullet pt 3) that there will be a “unified heritage consent scheme . . . to be administered by local authorities”; while the Bill indicates that some consents will be administered by the “appropriate national authority” (eg, Clause 88 (1)(a)).]

3. SPECIFIC CONCERNS

3.1 *Consultation*

3.1.1 The Draft Bill provides for consultation on various aspects of the management of Heritage Assets, including nomination, designation, planning applications, appeals and enforcement. It appears throughout the Draft Bill, however, that consultation with or nominations from the general public and amenity societies, when they are to take place, are to be limited to national amenity societies. We do not agree with this limitation for the following reasons:

- (i) National amenity societies at present may rely to a large extent upon the requirement for LPAs to notify and consult local people and appropriate local amenity societies, eg Civic Societies, in respect of planning applications etc. relating to heritage assets.
- (ii) Local amenity societies, with local knowledge, are generally in a better position and better informed to comment on proposals re heritage assets than national amenity societies. To exclude the requirement to notify and consult such bodies (and indeed the general public) would be to deny the voice of local people whose local heritage assets are at stake.
- (iii) The burden of consultation to be placed on EH and national amenity societies alone would obviously be too great, both in terms of finance and manpower.
- (iv) The Bill would require a very considerable additional burden to be placed upon LPAs in terms of finance and manpower—in both of which there are severe shortages at the present time.
- (v) The minimum time limit for consultation on various aspects of Heritage Asset management etc (28 days) would be too short for satisfactory consultation with local amenity societies via national amenity societies.

(In respect only of planning applications involving demolition of Listed Buildings, the CBA currently consults its local agents (in the case of Wiltshire, WANHS), and it is sometimes the case that WANHS does not receive notification from the CBA for more than a week after the consultation period has begun.)

- (vi) If LPAs are not required to consult with local amenity societies on proposals re heritage assets, then these would also, all (apparently) have to be scrutinised by national amenity societies alone or via their local agents, creating an enormous additional burden on those societies and/or their agents.
- (vii) There is lack of absolute clarity re the publicity requirements for proposals concerning heritage assets. There should be an obligation to advertise and seek comments locally re proposals/applications concerning local heritage assets, in the interests of local people and of the heritage assets themselves.

There is already a tendency for cash-strapped and under-staffed LPAs to “cut corners” and limit consultation on planning applications affecting heritage assets to Parish Councils only: this unsatisfactory state of affairs is likely to continue unless the Bill requires wider local consultation.

3.1.2 The Impact Assessment says that there will be “increased public involvement with and access to the heritage protection system . . .” (para 18). This appears, however, to be increased access to HERs and not inclusion in nomination of or consultation on works to Heritage Assets, where the participation of the public ought not to be, in effect, denied.

Similarly, the Impact Assessment says (Annex F, last para. of Section 2: Policy: ‘What individuals and organisations are likely to have an interest in or likely to be affected by the policy?’): “The scope of this policy covers heritage organisations, local authorities, national amenity societies . . . those involved in development and planning and members of the public”.

The Draft Bill, however, appears largely to exclude the public from active participation in the heritage protection process: we think this should be rectified.

3.2 *Setting*

Very little is said about the settings of heritage assets, although the requirement to take them into consideration is mentioned. We believe that Chapter 5 (The Heritage Registers Supplementary), Clause 78, should require provision of a specification or description of the setting of a Heritage Asset within the information to be included in Heritage Registers. This would ensure clarity in an area that is at present extremely muddled.

We suggest that Clause 106 (4)(a) should read:

“. . . must have special regard to the desirability of preserving the registered heritage structure and [not ‘or’] its setting . . .”

Similarly, in Clause 115 (4)(e):

“or” should be exchanged for “and” after “registered heritage structure” and before “its setting”.

3.3 *World Heritage Sites*

3.3.1 It is not made clear, in respect of the Draft Heritage Bill, that cultural WHSites are to be distinguished from WHSites designated for their natural heritage. Are the latter to be dealt with under separate legislation?

3.3.2 In respect of cultural WHSs:

- (i) There is no reference to information to be included on Heritage Registers in respect of cultural WHSs (see Clause 79).
- (ii) There is no recognition of the possibility that a Heritage Structure or Heritage Open Space may also be a WHS.
- (iii) In the section on Heritage Assets on Land, Chapter 2, “Registrable Heritage Assets”: Clauses 2 and 3, WHSites are not mentioned.

Nevertheless, WHSs are elsewhere considered to be heritage assets (Clause 1(3)(c)); registrable heritage assets (Clause 78 (2)); and registered heritage assets (Clause 210, subsection (2)(a) and Clause 211, subsection (3)(a)). We think that these anomalies should be rectified throughout the Bill. This might be dealt with by specifically including WHSites as categories of “Registrable Heritage Assets”: “Heritage Structure” and/or “Heritage Open Space” under the definitions in Clauses 2 and 3 of the (draft) Bill, since these are the Clauses where the range of assets capable of being considered for registration are set out, and these are the Clauses which are referred to throughout the Bill for definitions of “Heritage Structure” and “Heritage Open Space”.

Memorandum submitted by Wiltshire County Council

DRAFT HERITAGE PROTECTION BILL

Wiltshire County Council welcomes the opportunity to comment on the draft Bill. We are aware that detailed commentary on the implications of the draft Bill for local authorities is being prepared by organisations such as the Association of Local Government Archaeological Officers and the Institute of Historic Building Conservation. We also recognise that the Bill only concerns itself with the matters that need to be dealt with at the level of primary legislation and that much of the detail of the reforms will be stated in new policy documents and guidance to be issued over the next few months.

We will, therefore, confine our response here to issues which we feel are more specific to Wiltshire County Council. Whilst broadly supporting the draft Bill, we have a number of concerns about how effective implementation can be achieved and the potential financial impact of the changes on the Council.

SUPPORT FOR THE BILL

The Council is supportive of the overall aims and scope of the Bill, recognising the many benefits it will bring to the historic environment in Wiltshire. In particular, we support the Bill's aims to provide a more transparent and streamlined heritage protection system, providing more opportunities for public involvement and community engagement. The inclusion of the historic environment and designated archaeological sites in the mainstream of the planning system will help to encourage the growth of successful and sustainable communities. We are also broadly supportive of the new statutory duty on local authorities to develop Historic Environment Records (HERs) in a manner which is fit for purpose as a tool in the planning system and provide widespread access to its data for public use. With Stonehenge and Avebury within our local authority area, we see the proposal for statutory recognition of World Heritage Sites as a significant and desirable step forward.

STAFFING, SKILLS AND CAPACITY

It is apparent from the draft Bill that the new system cannot be implemented without sufficient resources and skilled practitioners in local authorities. Wiltshire County Archaeology Service is a relatively small team operating in a county with a rich archaeological resource (21,000 sites on the Sites and Monuments Record and over 2,000 scheduled monuments). Without additional staffing, appropriate training and funding, the Service would not have the capacity to deliver the new system which requires a consent regime based on pre-application discussions and management agreements.

We understand from statistics provided by colleagues at English Heritage that there are around 40 scheduled monument consent applications in Wiltshire each year. There will be a similar number of new asset consents (HACs) to deal with. However, as well as the HACs, the Bill outlines a number of other new areas of associated work. Local authorities will now have to be involved with the development of Heritage Partnership Agreements for complex sites. There will be an increase in workload to the Archaeology Service and Planning Service relating to reviews and appeals against granting of HAC, and enforcement action for acts in contravention of HAC. The proposal for certificates of immunity from registration for archaeological sites is also new and likely to require additional resourcing.

There is no mention in the Bill or Impact Assessment of the ongoing management of registered sites and if this role will be devolved to local authorities along with the consent regime. This management role is currently done by Field Monument Wardens within the English Heritage Inspectorate teams. If this is to be devolved, further funding will be required.

One of the key risks we have identified for Wiltshire is that without adequate resourcing for the new scheme, the preservation of non-designated archaeological sites via the development control process may suffer as the resources of the Archaeology Service are spread too thinly. This will result in irrevocable damage to the County's archaeological resource.

IMPACT ASSESSMENT: ESTIMATE OF NEW ADMINISTRATIVE BURDENS

There is a commitment reiterated in the Assessment that the DCMS will meet the cost of additional burdens on local authorities, such as increased responsibilities for HERs. We welcome this. However, the Assessment also states that it is impossible to quantify exactly what the impact of the proposed legislative changes will be on local authorities. It seems to us that a lot of further work is required to form a better understanding. We fear that the Impact Assessment really fails to accurately assess the financial impact of the reforms at local level. In terms of the commitment from DCMS, we would want to see more detail setting out how the burdens on each individual local authority are going to be assessed in relation to the assistance to be offered. For us the key question is: how will the costs/savings identified at national level be balanced to achieve real long-term savings in Wiltshire, as envisaged in the draft Bill?

One of our main concerns is a risk identified in Annex A of the Impact Assessment that the new system may lead to a stronger focus for local authorities on statutory requirements, resulting in a reduction in the resources available for non statutory work (research, education, community engagement, management of non designated sites).

OTHER ISSUES

We do have concerns about some of the new concepts and terminology set out in the draft Bill.

The concept of “special archaeological interest” for example is proposed to justify registration of a protected heritage asset instead of the criteria of “national importance” currently used for scheduled monuments. Further explanation is needed of how different this will be from national importance and on how it will mesh with the archaeological provision within the planning process where national importance is used to justify the preservation in situ of remains.

We are also concerned that the term “historic environment” which featured frequently in the White Paper, does not appear in the draft Bill.

Under the current legislation, certain activities affecting scheduled monuments are immune from requiring consent (class consents) and one of these activities is ploughing. The White Paper brought some hope that this class consent will be revoked in the new Bill. We eagerly await the further details and draft consents linked to the new legislation on this in the hope that the regular ploughing of protected monuments in Wiltshire can be prevented under the new system.

We will hold back on commenting on these issues in detail until there is further clarification within the raft of secondary policy and guidance.

June 2008

Memorandum submitted by British Property Federation (BPF)

INTRODUCTION

1. The British Property Federation (BPF) represents companies owning, managing and investing in property. This includes a broad range of businesses comprising commercial property owners, the financial institutions and pension funds, corporate landlords, local private landlords, as well as all those professions that support the industry.

2. We welcome the select committee’s inquiry into the draft Bill. In general, we support the reforms being brought forward such as the introduction of a unified approach to national designation to replace the separate regimes for listing and the introduction of a single “heritage asset consent” to replace the existing separate consent regimes for listed buildings and scheduled monuments. However, we do have some concerns with particular aspects of the Bill which are detailed below.

3. Our evidence is of a general nature, representing the views of the commercial property industry. We have seen the written evidence of the Country Land and Business Association and fully endorse their detailed comments.

DETAIL

Skills and resources

4. The Department for Communities and Local Government Committee is currently conducting its own inquiry into planning skills to which the BPF submitted written and oral evidence. There was a consensus amongst those who submitted evidence that the planning system is suffering from a lack of skills and resources. We are concerned that some of the changes suggested in the draft Heritage Protection Bill will compound this problem. For example, compiling the new Heritage Register and the new duty for local planning authorities to create and maintain a Historic Environment Record will have resource implications for conservation staff. Whilst it will be fairly easy for such information to be recorded when new designations are made, a much harder challenge will be to update the existing entries as they move across to the new system.

5. It seems highly unlikely that the Government will significantly increase resources in the planning system and, as a result, there will be insufficient qualified staff to administer the new reforms. The outcome for owners of heritage buildings, therefore, is likely to be increased costs and delays.

Request for registering

6. The Bill allows for anybody (including those without a direct interest in the building, monument, land etc) to request a heritage asset be listed, as is possible under the existing system. It is important that clear guidance is provided to ensure that this right is not abused and used by third parties to unreasonably delay development. The Bill must strike the right balance between ensuring transparency and fairness and the need to establish an expeditious system which is not overly expensive. English Heritage's "sift test"—the first hurdle in an application for registering—should be robust. We support the current approach outlined in the Bill, especially the ability to reject a repeat application which contains no new significant information and which was recently considered.

Archaeology

7. We understand English Heritage's discretion as to whether to register a heritage asset will be removed as a result of the Bill. This means, for example, that if an archaeological site is of "special interest" English Heritage will be obliged to register it. We are concerned about the ramifications of this, as it could in theory lead to the registering of large amounts of currently unscheduled archaeology. We are not aware of a problem which necessitates this change. Our concern is that it could result in costly surveys and excavations being required unnecessarily. In our view, English Heritage should retain some discretion as to whether an archaeological site or building should be listed.

Conservation Areas

8. The Bill is likely to facilitate a review of Conservation Area policy through the merger of Conservation Area Consent with planning permission. This change has been inspired by the case *Shimizu (UK) Limited v Westminster City Council* (1997). The change will make the removal of parts of an unlisted building in a Conservation Area subject to planning permission. The BPF feel this would in many instances penalise responsible property owners in these areas, adding extra burden and cost. This change will also potentially lead to a flood of planning applications being received by local planning authorities, and as mentioned above in paragraphs 4 and 5, it is doubtful whether authorities have sufficient resources to deal with the increased workload.

9. Another proposed change relates to the case *South Lakeland District Council v Secretary of State for the Environment* (1992). We understand that the effect of this case will be reversed meaning that change will not be permitted in Conservation Areas unless it has a positive effect, where previously a neutral effect was deemed to be acceptable. This change will make a real difference to development proposals in Conservation Areas creating a subjective hurdle which could potentially be used as a mechanism to block development per se regardless of its merits. It would be better for the government to issue guidance stating that if a local planning authority believes a site or section of a Conservation Area needs to be enhanced it should refer to this in its local development framework. Such a process would be both more targeted and democratic.

Appeals and Local Member Review Bodies

10. Following on from the Planning Bill, the draft Heritage Protection Bill will allow Local Planning Authorities (LPAs) to delegate many decisions to its officers, and abolish the right of appeal, other than to a Local Member Review Body (LMRB) from the same LPA. There is widespread opposition to the concept of LMRBs; the fact that both initial decisions and appeals will be dealt with by the same body will have a corrupting influence on the planning and heritage protection systems and on public faith in them. LMRBs should be removed from both the Planning Bill and the draft Heritage Protection Bill and the traditional right of appeal to the Planning Inspectorate should remain.

Heritage Partnership Agreements

11. We welcome the introduction of Heritage Partnership Agreements (HPAs). They should introduce greater flexibility for owners and managers of complex sites, and reduce the number of consent applications for routine and repetitive works. However, guidance should be clearly set out on the matters that can be included in HPAs, the form that they should take and procedures for entering into an HPA, to ensure that they can be implemented without delay and uncertainty.

Online heritage portal

12. Clause 81 of the Bill provides for local and national historic environment records to be made publicly available. We understand that the intention is for this to be done through a comprehensive and easily accessible online heritage portal, containing information about registered heritage assets, such as maps and photographic data.

13. The portal is an excellent idea and will certainly aid those who are seeking to learn more about heritage. However, if the portal allows unrestricted access to potentially sensitive information about the location of valuable objects in historic buildings, then it could become a handy tool to assist criminal

behaviour. There would potentially be an ability to search for terms such as lead, statues etc and then find corresponding maps and photographs. Careful consideration should be paid to what information is publicly available and who should be able to access it.

June 2008

Memorandum submitted by Historic Environment Record Officer, Southampton City Council

These comments and queries concern the additional burdens on HERs resulting from the Heritage Protection Bill, and the funding of those burdens.

The Impact Assessment states in a few places that DCMS and EH will meet the cost of additional burdens to local authorities in respect of HERs (eg paragraphs 8, 11, 12 and 44). However this clearly refers to post-implementation funding—Table 6 (page 21) has all “one-off” costs falling in Year 1 post-implementation. There is no mention of additional funding prior to implementation of the Bill.

Due to past underfunding, most HERs have considerable backlogs of archaeological and historical data not yet entered into the database. In many local authorities the development control process with respect to archaeology still depends to a large extent on the knowledge of individual staff members, to supplement information on the HER or fill gaps in the data. It would seem from the Draft Bill and associated documents that all such information will need to be on the HER database if the archaeological resource is to be protected—if the HER is to include all registrable heritage assets of local special interest (Draft Bill, Note 258) and if special archaeological interest is to provide the flag for PPG16 to apply (EH Commentary, Note 100). In addition, listed buildings and locally listed buildings will need to be on the HER. The Bill and associated documents do not mention a transition period after implementation during which the full force of the Bill will not apply. Is this an oversight? Or must we assume that registrable heritage assets will not be fully protected unless they are on the HER at the time of implementation? If the latter is the case, much work will need to be done in the years before implementation, to clear the backlog of archaeological, historical and buildings data, on top of keeping the HER up-to-date with information from new archaeological sites. Further guidance is needed from English Heritage as to what will need to be on the HER and when this must be achieved by.

Other resource implications for HERs are as follows:

- Owners must be consulted before sites of local special interest are added to the HER. This will presumably need to be done prior to implementation.
- The requirement for the HER to be available on-line will have significant cost implications apart from the obvious cost of new IT systems. Extra staff resources will be needed to bring existing records up to a sufficient standard for public display.
- Significant IT requirements with respect to: (1) putting the HER online; (2) extra software licences for additional staff; (3) making the HER interoperable with Corporate GIS and back office planning systems, which may not be interoperable one-with-the-other (referred to in DCMS Draft HER Guidance, paragraphs 20 and 32).
- Outreach (Note 42) will be an extra burden for some smaller HERs (although many larger HERs already engage in outreach). For instance, publishing a HER leaflet is likely to increase the number of enquiries from members of the public.

If there will be additional burdens on HERs prior to implementation, will Central Government/English Heritage funding be available for this? If not, the work must be funded by local authorities and HERs will each need to make a business case for increased resources. This will only be accepted and included in business plans if the framework for assessing the performance of HERS (the EH/ALGAO Benchmarking) is in place and is being monitored. Otherwise the HER will be just one of many competing requirements on local authority funding.

June 2008

Memorandum submitted by Surrey County Council Heritage Conservation Team

Surrey County Council Heritage Conservation Team wishes to make the following representation on the Bill, in particular its associated Impact Assessment.

Surrey County Council is a County Council responsible for the provision of education, social services, environment and community services. The Heritage Conservation Team (hereafter SCC HCT) is part of the council's Cultural Services provision, and is responsible for heritage development control, the county

Historic Environment Record, and the Portable Antiquities Scheme in the county. If enacted the team would be the part of the county council most directly influenced by the Bill, and the part of the council with the direct responsibility to undertake the new requirements of the Bill.

SUBMISSION

1. SCC HCT broadly welcomes the Bill, which it feels should help enhance the protection, understanding and enjoyment of the historic environment.

2. It should be noted that SCC HCT also contributed to the comments on the Bill submitted by ALGAO (the Association of Local Government Archaeological Officers) to the Committee and to DCMS. SCC HCT is in support of and agreement with the detailed commentary on specific provisions of the Bill made in the ALGAO submission. Such comments are not repeated here but should be considered passim to this county specific comment. However, SCC is most strongly concerned about the financial provisions and proposals of the associated “Impact Assessment”. In particular, SCC is concerned that:

- (a) The transfer of listing and scheduling processes from the Secretary of State to English Heritage is considered by DCMS to be “non-monetisable” at this stage (Impact Assessment, page 14). SCC HCT is; [i] of the opinion that such a process is, or could be, monetisable by this stage in the legislative reform process; [ii] concerned that no specific guidance has as yet been provided as to the reorganisation, if any, of English Heritage in the light of this devolved responsibility, and in particular the role of local government in this devolved structure; [iii] concerned that such a process will, rather than leading to annual financial savings (estimated to be c.—£198,000: Impact Assessment, page 14), in fact lead to a substantial rise in costs, which may have to be bourn at the local government level.
- (b) The introduction of a new formal right of appeal against designation decisions by English Heritage (Impact Assessment, page 15) will lead to a substantial rise in workload and thus costs, which may have to be bourn at the local government level, and that such workloads and costs have not been fully problematised or monetised by DCMS at the level of local government.
- (c) The introduction of a new combined Heritage Register (Impact Assessment, pages 16–17) will lead to a substantial rise in workload and thus costs, which may have to be bourn at the local government level, and that such workloads and costs have not been fully problematised or monetised by DCMS at the level of local government. Also, that the new Heritage Register will include substantial new heritage assets, including registered parks, gardens and battlefields, for which there is generally a lack of specific skills to manage at the local government level, and that DCMS and its partners EH and HELM have not sufficiently problematised or monetised the training programme that will be required to challenge this skills shortage.
- (d) The introduction of a new unified consent regime (Impact Assessment, pages 17–18) will lead to a substantial rise in workload and thus costs, which may have to be bourn at the local government level, and that such workloads and costs have not been fully problematised or monetised by DCMS at the level of local government.
- (e) The introduction of new asset management arrangements—provisionally known as Heritage Partnership Agreements (HPA’s)—(Impact Assessment, page 19) will lead to a substantial rise in workload and thus costs, which may have to be bourn at the local government level, and that such workloads and costs have not been fully problematised or monetised by DCMS at the level of local government.
- (f) The introduction of a statutory duty on county councils to create and maintain an Historic Environment Record (HER) (Impact Assessment, page 20–21) will lead to a substantial rise in workload and thus costs which will have to be bourn at the local government level, and that such workloads and costs have not been fully problematised or monetised by DCMS at the level of local government. Also, that the new statutory HER’s will include substantial new heritage assets, including registered parks, gardens and battlefields, for which there is generally a lack of specific skills to manage at the local government level, and that DCMS and its partners EH and HELM have not sufficiently problematised or monetised the training programme that will be required to challenge this skills shortage.

3. Overall, SCC HCT is concerned both by the lack of financial as well as management detail as regards the proposals highlighted in sections 2a.–2f. SCC HCT is most concerned that DCMS and its partners EH and HELM have not sufficiently problematised or monetised the management, transfer and training programmes that will be required to assist local authorities in meeting their new responsibilities, particularly the programme of transfer of responsibility from DCMS to English Heritage, which may prove to have a major impact upon local government level heritage services. SCC HCT most respectfully urges the Committee to request that DCMS publish detailed financial and structural breakdowns of these proposals at the earliest opportunity, in order to enable local government heritage services such as SCC HCT to be prepared for the proposals of the Bill. SCC HCT also most respectfully urges the Committee to request that DCMS ensure that in particular that any funding provided for such a process is [a] sufficient in quantity and duration; [b] “ring-fenced” in order to ensure it reaches the appropriate level of service within local

government. SCC HCT considers the currently proposed costings for the proposals highlighted above to be worryingly inadequate. SCC estimates that the total costs involved in such a programme to be far higher than currently suggested in the Impact Assessment (page 29), by a factor of at least 50%. As a consequence, SCC most humbly suggests that DCMS should plan to directly assist local government heritage services in meeting such new and enlarged responsibilities as laid out under the Bill through the award of both one-off and ongoing financial support for at least five years, ring-fenced in order to ensure such monies reach the appropriate level. In addition, SCC HCT most humbly appeals the Committee and DCMS to take into consideration other, non-financial needs of local government heritage services in the light of the Bill, particularly the provision of capacity building (eg facilities such as enhanced GIS provision) and training (eg in new areas of remit such as parks, gardens and battlefields). SCC HCT is concerned that, without a combination of direct and indirect financial and non-financial support over at least a five-year period, protected down to the appropriate level, local government heritage services such as SCC HCT will struggle to meet the new responsibilities proposed in the Bill.

June 2008

Memorandum submitted by Kent County Council Environment and Waste

The preliminary comments of Kent County Council on the draft Heritage Protection Bill are set out below. It is difficult to comment in full at this stage as secondary legislation is still awaited for most areas of the bill and some of the primary legislation has not yet been drafted. Our comments will focus therefore on the main principles and issues. More detailed comments will be provided to DCMS by the deadline of 27th June, and as further secondary legislation is published. Comments are made in numbered paragraphs as requested.

1. We strongly welcome government's aim of improving the heritage legislation within England and Wales and acknowledge the extensive work which has gone into preparing the draft legislation to date. We are concerned, however, by the lack of clarity in some aspects of the primary legislation and wish to emphasise the difficulty in commenting in full in the absence of secondary legislation and the undrafted sections of the draft bill.

2. We are very pleased to see the widening of the definition of a registerable "heritage structure" to include artefact scatters and other non-structural remains (Part 1 Ch 2 section 2 (2) (g)). Consideration should also be given to the inclusion of sites with important palaeoenvironmental evidence where artefactual evidence has not yet been found.

3. The concept of "special interest" as opposed to national importance is new to archaeologists (Part 1 Ch 2 section 4 (1)). It is important that the criteria for defining special interest are clearly set out and there is no weakening in the protection afforded to heritage assets as a result of this change.

4. The intention to seek representations prior to the registration of heritage assets is welcome but it is essential that assets are fully protected by immediate provisional registration during this period (Part 1 Ch 2 section 11 (2)).

5. The process outlined for obtaining heritage asset consent requires clarification (Part 2 Ch 1). It is not clear whether the initial specialist advice would be provided by the Local Planning Authority's (LPA) adviser with English Heritage only being consulted in certain cases, or whether both English Heritage and the LPA's own adviser would be involved in the initial stages. It is important to avoid duplication as much as possible and it would be very helpful if flow diagrams showing how the process would work could be provided. It will also be important to ensure that experts with the relevant specialist expertise are consulted at the appropriate time. It is unlikely that sufficient expertise to deal with both archaeological sites and historic buildings will be provided by the same officer and the mechanism for deciding which type of heritage expert should be consulted will need to be clearly defined to avoid unnecessary delays and errors in judgement. It will not be sufficient to rely on expert advice provided by the applicant. It is imperative also that the process of looking after our most important heritage continues to operate in an unbiased and independent way. We must be clear that the net results of these changes will be to enhance heritage protection and not diminish it.

6. We are very concerned about the proposal to require "the relevant council" to purchase a heritage asset site if heritage asset consent has not been granted, or has been granted with conditions, and the site cannot be given a "beneficial use" (part 2 Ch 4 144). "Beneficial use" in this context requires careful definition and the LPA should not be placed in a position where it has to take on the maintenance of heritage structures without appropriate financial provision. It is not at all clear why the relevant council should be expected to take on the responsibility of maintaining such heritage assets when there is surely a duty of care on the landowner to maintain the historic assets within their ownership.

7. We are particularly pleased to see the proposal to give Historic Environment Records a statutory basis (Part 5 210). It would be helpful, however, if the requirement for district councils to have access to a HER could be strengthened as this would aid the negotiation of partnership arrangements for funding the

provision of HERs. The legislation should also clearly allow LPAs to recover costs for the provision of HER information in relation to commercial developments, as this is an important source of revenue for HER teams.

8. We strongly welcome the intention to reverse the outcome of the “Shimizu” case and return to the situation where planning consent will be required for partial, as well as total, demolition of a building within a conservation area.

9. Finally, in relation to the Impact Assessment we are pleased to note the commitment from DCMS and English Heritage to fund the new responsibilities placed on local planning authorities as a consequence of the bill. However, the expectation that little will be added to their costs as a result of the new consent regime seems highly optimistic. Although, as noted above, there is a need for further clarification regarding the detail of the consent process, the total of £400,000 to be divided across all LPAs in England and Wales, seems to be a severe underestimate of the likely increase in resources actually needed. It would be helpful if, alongside further clarification of the process, a breakdown of how these costs have been calculated could be provided. It is possible that the impacts have been assessed in relation to the present consent regime for listed buildings with little thought having been given to the way the scheduled monument consent process currently operates.

We would be pleased to discuss any of these issues in more detail and would be very grateful if further clarification could be provided as soon as possible to enable us to plan effectively for when the new system will come into effect.

June 2008

Memorandum submitted by the Cathedral and Church Buildings Division of the Archbishops’ Council of the Church of England

1. We welcome the opportunity of the Culture, Media and Sport Committee’s Inquiry into the draft Heritage Protection Bill to provide the evidence contained in this submission.

2. The Church of England has for many centuries exercised authority over works to parish churches, through the legal procedures contained in the faculty jurisdiction. Since the advent of State legislation covering works to historic buildings and ancient monuments, exemption has been granted from control of works to ecclesiastical buildings in ecclesiastical use.

3. The Church’s regime for the care of its buildings is more extensive than the secular system. There are systems for the inspection of churches, in particular on a quinquennial basis by architects and surveyors experienced in historic building conservation. The controls also cover buildings and contents in their entirety, so that (unlike in the secular system) movable objects such as furnishings and communion plate are given the same protection as the building itself. Unlisted buildings are given the same protection as listed ones, so buildings falling outside the current criteria for listing are treated with the same care.

4. The last 20 years has seen considerable development in the Church’s controls. Legislation was passed to establish legal controls over works to cathedrals,² and to enhance the care of parish churches.³ The procedural rules governing both churches and cathedrals were also developed.⁴ Church legislation is regularly reviewed in consultation with the relevant Government Department, English Heritage and others. We therefore believe that the applicable ecclesiastical regimes provide a modern and appropriate method of care for historic buildings.

5. The proposals in the draft Heritage Protection Bill have in our view considerable potential to improve the care of the historic built environment, and we warmly welcome them. The proposals to provide a unified system of heritage designation and consent will we believe bring clarity and simplicity to the care of the built heritage. We are working with English Heritage and others in piloting the proposals for Heritage Partnership Agreements, in order to maximise their potential for church buildings. The Bill undoubtedly has resource implications, but the continuance and extension of the ecclesiastical exemption reduces the pressure on the public purse.

6. Various issues in relation to the draft Bill and its impact on the ecclesiastical systems of control have been identified and raised with officers of the DCMS. The principal issues that are outstanding as a result of these discussions are:

- (a) Conservation Areas. Apart from the exemptions in relation to listed buildings and scheduled monuments, there is also the ecclesiastical exemption in relation to conservation area consent, for the demolition of unlisted churches.⁵ The Government intends to abolish conservation area consent as a separate consent process and merge it with planning permission. The exemption will no longer apply. Whilst the merging of conservation area consent with planning permission seems an appropriate way forward, we are considerably disappointed that the exemption will be lost. This will bring in an undesirable level of dual control, which is highly regrettable. It may also raise a particular difficulty where a use cannot be found for a redundant church, and, under the Pastoral Measure 1983, the alternative outcome is either to vest the building in the Churches Conservation

Trust or demolition. Planning policy guidance should stress the need for a pragmatic approach to facilitate re-use, and if necessary, enable demolition and redevelopment. These proposals could impact both on locally listed churches as well as those unlisted but within conservation areas.

We hope that this can be reconsidered.

- (b) Bishops' Chapels. Certain categories of buildings, including chapels in episcopal houses of residence, have traditionally been outside the ambit of the faculty jurisdiction. Legislation was therefore passed⁶ to enable these buildings to enter the faculty system, and temporary exemption granted⁷ to give the opportunity for the guardians of these categories of buildings to opt into the faculty jurisdiction.

In correspondence with staff of the DCMS, the issue was identified that the existing exclusion of the house of residence of a minister of religion from the definition of "ecclesiastical building"⁸ would cause a difficulty in relation to the exemption for chapels in episcopal houses of residence. This definition is continued in the draft Bill. In order to overcome this difficulty, the suggestion has been made that an order under Section 153(5) of the draft Bill could exclude the operation of Section 153(3) insofar as it affects chapels in episcopal houses of residence subject to the faculty jurisdiction. This is currently being considered by the DCMS staff. Without such an order, chapels could be subject to unnecessary dual control, which we hope could be avoided.

- (c) The coverage of the exemption. We welcome the proposal in the draft Ecclesiastical Exemption (Registered Heritage Structures) Order to extend the exemption to items such as listed monuments and scheduled structures in churchyards, which are currently subject to dual control. Similarly, we welcome the fact that the DCMS are intending to introduce a broader interpretation of the definition of ecclesiastical structures used for ecclesiastical purposes. The wording in the draft Order does not appear totally to meet the policy objective, and the Church's legal team is in discussion with that of the DCMS to achieve a form of words that more closely reflects the policy. We also consider that it is unnecessary to restrict the exemption to structures within the curtilage of a registered church building, as opposed to structures etc. within the curtilage of any church building subject to ecclesiastical control. This is being considered by DCMS staff.

As far as cathedral churches are concerned, the proposal to define the extent of the exemption with reference to the ecclesiastical use of ecclesiastical structures within the precinct of a cathedral appears well considered. Where there is room for doubt as to whether a structure is either "ecclesiastical" or in "ecclesiastical use", cathedrals will be encouraged to discuss the matter with their local authority in the light of any guidance or advice from the Cathedrals Fabric Commission for England.

7. Subject therefore to the resolution of the issues set out in paragraph 6 above, the Draft Heritage Protection Bill and the Ecclesiastical Exemption (Registered Heritage Structures) Order are warmly welcomed.

References

- ¹ The Inspection of Churches Measure 1955 (as amended).
- ² The Care of Cathedrals Measure 1990, the Care of Cathedrals (Supplementary Provisions) Measure 1994 and the Care of Cathedrals (Amendment) Measure 2005.
- ³ The Care of Churches and Ecclesiastical Jurisdiction Measure 1991.
- ⁴ The Care of Cathedrals Rules 2006 No 1941; the Faculty Jurisdiction Rules 2000 No 2047; the Faculty Jurisdiction (Places of Worship) Rules 2000 No 2048; the Faculty Jurisdiction (Appeals) Rules 1998 No 1713; the Faculty Jurisdiction (Injunctions and Restoration Orders) Rules 1992 No 2884.
- ⁵ The Planning (Listed Buildings and Conservation Areas) Act 1990, Section 75.
- ⁶ The Care of Places of Worship Measure 1999.
- ⁷ The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, No 1771, Article 6.
- ⁸ The Planning (Listed Buildings and Conservation Areas) Act 1990, Section 60(3).

June 2008

Memorandum submitted by The Joint Nautical Archaeology Policy Committee

1. The Joint Nautical Archaeology Policy Committee (JNAPC) welcomes the opportunity to provide written evidence to the Committee on Culture, Media and Sport in respect of their inquiry into the Draft Heritage Protection Bill.

2. The JNAPC was formed in 1988 from individuals and representatives of institutions who wished to raise awareness of the United Kingdom's underwater cultural heritage and to persuade government that underwater sites of historic importance should receive no less protection than those on land. Some information on the JNAPC and its membership is attached in Appendices 1 and 2.

3. The JNAPC would like to make the following comments on the marine heritage aspects. References to paragraph numbers in the draft Bill are shown in brackets.

4. We welcome the inclusion of marine assets and marine heritage assets in the draft Bill, and that registered marine heritage assets will be included in the same heritage register as their terrestrial counterparts. We hope that this will ensure a more seamless approach to the protection of our underwater cultural heritage in relation to heritage structures on land.

5. We seek confirmation that the definition of Marine Assets (46) and Heritage Structures (2(2)) will include important palaeo-environmental sites such as Bouldnor Cliff in the Solent. We also seek clarification that Marine Heritage Sites may include wider areas of archaeological interest (similar to heritage open spaces (3) on land), rather than just point locations. Two examples of such areas would be (i) part of the Goodwin Sands where there are known to be a large number of historic wrecks and (ii) important areas of submerged prehistoric land surfaces in the Solent.

6. There is an inconsistency in the draft Bill whereby the heritage authority responsible for registering a site on land in England is English Heritage but for marine heritage assets it is the Secretary of State (49(3)). We see no reason why the marine registration authority should not also be English Heritage for underwater sites, in line with the proposed seamless approach. This inconsistency continues into the proposals for the granting of licences (188(2), 192, 194(1)). These inconsistencies need to be explained and justified.

7. We welcome the proposals for provisional registration.

8. In the section on the “grant or refusal of licence”, the use of the word “salvage” in 196(5) is inappropriate for a marine heritage asset and should be replaced. We suggest “archaeological excavation in accordance with the Annex of the UNESCO Convention for the Protection of the Underwater Cultural Heritage”. Clause 197(1) should also include a requirement for conservation and publication.

9. In the section on “designation of site as suitable for unintrusive diving activities” reference to “salvor in possession” in 198(5) reveals the major weakness of the draft Bill in that it has not addressed the reform of Salvage Law in relation to marine assets (see paragraph 13 below). We believe that the reference to “salvor in possession” should be removed as it is inconsistent with the proper treatment of marine assets under the Annex to the UNESCO Convention.

10. We welcome the proposed duty on local planning authorities to create, and keep up to date, a historic environment record for registered marine heritage sites (210(3)(c)). Not only should this extend to the limit of territorial waters, but it should also go to the limit of the UK’s jurisdiction. We have concerns as to who will provide the resources and expertise for this activity and how it will relate to the Maritime Record in the National Monuments Record.

11. Whilst we welcome the proposal that the Receiver of Wreck should inform heritage agencies of marine assets reported to her under the Merchant Shipping Act 1995, we have a major concern about the wording of paragraph 280 which states that “the Receiver of Wreck will be under a duty to pass on any information she considers relevant in relation to the protection of marine assets and possible registration of marine historic assets to the relevant heritage agencies”. JNAPC recommends that there should be an unambiguous statutory requirement for the Receiver of Wreck to report all finds of marine assets to heritage agencies. This would overcome the recognised problem of information on important finds being withheld by the Receiver on the basis of “commercial in confidence”. This happened recently in the case of the Dutch East Indiaman *Rooiswijk* whose cargo of silver coins and ingots was salvaged and sold before it could be protected by designation under the existing legislation, the Protection of Wrecks Act 1973. The site has subsequently been designated indicating that it should have been a candidate for protection as soon as it was discovered.

12. It would be appropriate to include Heritage Partnership Agreements in the marine environment, further adding to the seamlessness of the legislation.

13. The most serious omission from the draft Bill is that no attempt has been made to address the reform of salvage law in relation to marine assets. Marine assets will continue to be regulated by commercial salvage law which encourages the sale and dispersal of artefacts, completely in contravention to the Annex of the UNESCO Convention for the Protection of the Underwater Cultural Heritage, which the Government has endorsed. Also there will be no statutory requirement to report the recovery of artefacts from submerged prehistoric land surfaces, the new category of marine assets included in the draft Bill. The JNAPC took part in the DCMS working group on “salvage” as part of the consultation process and the group made three important recommendations to DCMS ministers but these recommendations have not been included in the draft legislation. They were:

- (i) marine assets should be removed from the salvage regime governed by the Merchant Shipping Act 1995 (MSA 95);
- (ii) the concept of ‘salvor in possession’ should be abolished for marine assets as this can still prevent the protection and proper management of registered marine heritage assets; and

- (iii) both the discovery and the disturbance of all marine assets should be reported to heritage agencies in line with the Valletta Convention, which DCMS has ratified. Under MSA 95 recovery of “wreck” must be reported to the Receiver but this does include finds such as artefacts from submerged prehistoric land surfaces because they are not technically “wreck”.

This is a major missed opportunity by Government and we suggest that the Committee should address these points urgently and enquire why DCMS has not included them in the draft Bill.

14. At the consultation stage there was considerable interaction between DCMS and Defra so that the marine historic environment and the natural marine environment might share certain features such as Marine Protected Areas, Policing, Enforcement and a Marine Management Organisation. With shared stakeholders and joined-up government this was an obvious objective. However there is little sign of this laudable objective being achieved in either the draft Heritage Protection Bill or the draft Marine Bill. We suggest that the committee should revisit these proposals.

APPENDIX 1

THE JNAPC—PAST, PRESENT AND FUTURE

The JNAPC was formed in 1988 from individuals and representatives of institutions who wished to raise awareness of Britain’s underwater cultural heritage and to persuade government that underwater sites of historic importance should receive no less protection than those on land.

The JNAPC launched *Heritage at Sea* in May 1989, which put forward proposals for the better protection of archaeological sites underwater. Recommendations covered improved legislation and better reporting of finds, a proposed inventory of underwater sites, the waiving of fees by the Receiver of Wreck, the encouragement of seabed operators to undertake pre-disturbance surveys, greater responsibility by the Ministry of Defence and the Foreign and Commonwealth Office for their historic wrecks, proper management by government agencies of underwater sites, and the education and the training of sports divers to respect and conserve the underwater historic environment.

Government responded to *Heritage at Sea* in its White Paper *This Common Inheritance* in December 1990 in which it was announced that the Receiver’s fees would be waived, the Royal Commission on the Historical Monuments of England would be funded to prepare a Maritime Record of sites, and funding would be made available for the Nautical Archaeology Society to employ a full time training officer to develop its training programmes. Most importantly the responsibility for the administration of the 1973 Protection of Wrecks Act was also transferred from the Department of Transport, where it sat rather uncomfortably, to the then heritage ministry, the Department of the Environment. Subsequently responsibility passed to the Department of National Heritage, which has since become the Department for Culture Media and Sport.

The aim of the JNAPC has been to raise the profile of nautical archaeology in both government and diving circles and to present a consensus upon which government and other organisations can act. *Heritage at Sea* was followed up by *Still at Sea* in May 1993 which drew attention to outstanding issues, the *Code of Practice for Seabed Developers* was launched in January 1995, and an archaeological leaflet for divers, *Underwater Finds—What to Do*, was published in January 1998 in collaboration with the Sports Diving Associations BSAC, PADI and SAA. The more detailed explanatory brochure, *Underwater Finds—Guidance for Divers*, followed in May 2000 and *Wreck Diving—Don’t Get Scuttled*, an educational brochure for divers, was published in October 2000.

The JNAPC continues its campaign for the education of all sea users about the importance of our nautical heritage. The JNAPC will be seeking better funding for nautical archaeology and improved legislation, a subject on which it has published initial proposals for change in *Heritage Law at Sea* in June 2000 and *An Interim Report on The Valletta Convention & Heritage Law at Sea* in 2003. The latter made detailed recommendations for legal and administrative changes to improve protection of the UK’s underwater cultural heritage.

The JNAPC has played a major role in English Heritage’s review of marine archaeological legislation and in DCMS’s consultation exercise *Protecting our Marine Historic Environment: Making the System Work Better*, and was represented on the DCMS Salvage Working Group reviewing potential requirements for new legislation. The JNAPC has also been working towards the ratification of the UNESCO Convention with the preparation of the *Burlington House Declaration*, which was presented to Government in 2006.

APPENDIX 2

MEMBERS

Chairman	Robert Yorke
Organisations	
Association of Local Government Archaeological Officers	Paul Gilman
British Sub Aqua Club	Jane Maddocks
Council for British Archaeology	Gill Chitty
Hampshire and Wight Trust for Maritime Archaeology Institute of	Garry Momber

Conservation	
Institute of Field Archaeologists, Maritime Affairs Group	Julie Satchell
ICOMOS	Chris Dobbs
National Maritime Museum	Gillian Hutchinson
National Museums & Galleries of Wales	Mark Redknapp
National Trust	David Thackray
Nautical Archaeology Society	George Lambrick
Professional Association of Diving Instructors	Suzanne Pleydell
Shipwreck Heritage Centre	Peter Marsden
Society for Nautical Research	Ray Sutcliffe
Sub Aqua Association	Stuart Bryan
United Kingdom Maritime Collections Strategy	Chris Dobbs
Wessex Archaeology	Antony Firth
Wildlife and Countryside Link	Joanna Butler
Individual representation	Affiliation
Sarah Dromgoole	University of Nottingham
Michael Williams	Wolverhampton University
Observers	
Advisory Committee on Historic Wreck Sites	Tom Hassall
Cadw	Sian Rees
Department for Culture, Media and Sport	Annabel Houghton
The Crown Estate	Carolyn Heeps
English Heritage	Ian Oxley
Environment Service, Northern Ireland	Rhonda Robinson
Foreign and Commonwealth Office	Andrew Tate
Historic Scotland	Philip Robertson
Maritime and Coastguard Agency, Receiver of Wreck	Alison Kentuck
Ministry of Defence	Peter MacDonald
Ministry of Defence	Bob Stewart
Royal Commission on the Ancient and Historical Monuments of Scotland	Robert Mowat

June 2008

Memorandum submitted by John Price

I have read a copy of the current draft and wish to draw your attention to the following points although I suspect a number could be dealt with by regulations from the Secretary of State.

1 (a) BACKGROUND

I have worked in Heritage Protection for over 40 years mainly in archaeological artefacts and museum objects and have been employed in university departments, local government, central government and government agency and latterly in a private capacity where I supply occasional services to save and remove interesting intact archaeological structures weighing up to 25 tons discovered in archaeological excavations. I was head of the archaeological conservation team, for nearly two decades, of the Ancient Monuments Laboratory, possibly the largest multidisciplinary dedicated archaeological laboratory in Britain which provided specialist services and much training for students and interns. My thoughts are basically but not entirely centred around the “finds” side of Heritage Protection.

1 (b) Experience has taught me that there are always threats of all kinds to every Historic Asset together with insufficient resources to maintain these cultural items for a growing population who also have a growing appreciation and awareness both at local and national levels, through media and television, of what has survived. Besides the relatively small numbers of professionals there are countless county societies and local groups as well as dedicated specialist national societies formed decades ago helping to support heritage protection. The resources mentioned in the Draft seem to me to be very trivial compared to the public expenditures of England and Wales and must be regularly enhanced for the year by year, ever increasing discovery of new information regarding HE resources.

2 (a) COSTS

As a ratepayer and an observer of museums in the UK, I find that there are annual calls for museum closures from local authorities short of funding and wanting cuts in specialised staff. It is my belief that councillors, when faced with extra shortfalls for annual support of the (much needed) Historic Environment Resource centres and needing to keep within an ever expanding budget, will reduce financial support for museums which provide the major source of long-term expertise in the housing and care of the many fragile artefacts that are discovered each year in excavations on both research, HE and rescue sites.

The Committee could arrange to seek information regarding the Government's Renaissance Scheme and posts created and the resources supplied to the Museum HE sector and the current local government recent Heritage Champions Scheme whereby a considerable number of local councillors have yet to be appointed.

2 (b) The Committee could also investigate why there are no statistics regarding the thousands of artefacts from land and marine sites found annually in excavations which are destined for publicly funded museums and which require constant care. The number of specialist conservators has decreased in past decades despite an increasing volume of material. The costs of work required is obviously a factor in a local authority heritage budget. As Government advisor, English Heritage could be given resources to find out the position?

3 DEFINITIONS

(a) In 2 (2) h (a group of things). Presumably artefacts come into this description? How will they be treated in future eg in museum collections as a "registrable structure"? Will artefacts found before the area is made an Historic asset be "registrable"?

(b) In 228 could "things" be defined as on page 124?

4 RECORDING

(a) In emergencies eg fire damage and possible subsequent partial/total demolition, could there be a statutory clause to make sure photographs and records are taken, preferably by a competent person, of any structure revealed by the event? There may be a necessity to record quickly.

(b) In HER offices could there be a clause asking for good archive Conditions and Standards to be made available for public and staff? Records will be used indefinitely and wear and tear will be present.

5. REMOVAL

(a) If an HE structure (Asset) is moved eg in a road widening scheme, and carefully re-sited will it still be an HE Asset?

(b) If a fine structure is found during excavations, and is not an HE asset, but it is moved intact to a place of safety can it become an HE asset in due course after Inspection?

6. MISCELLANEOUS

(a) What is the basis of the "28 day" rule? Is this enough?

(b) What, if any, are the problems if the HE Asset lies across the borders of England and Scotland?

(c) In 10.4 (open Spaces), the Heritage Authority must publish a notice inviting representations. Does this also apply to "Registrable structures"?

(7) MARINE (para 46)

If a storm or other weather event provides damage to an HE Asset and causes material to be cast ashore or elsewhere, who is responsible for the "finds" and the "urgent" first aid that may be necessary to allow the artefacts to survive? Can English Heritage supply emergency funding? Is there a national plan for provision of help?

June 2008

Memorandum submitted by ICOMOS-UK

1. ICOMOS-UK'S INTEREST

Our parent body ICOMOS is an advisor to UNESCO on World Heritage sites (WHSs) and in the UK, ICOMOS-UK offers advice to English Heritage, Historic Scotland and Cadw on aspects of World Heritage. We therefore have a specific interest in the implementation of the World Heritage Convention 1972, in the UK.

Our main interest in this Bill relates to its impact on World Heritage sites (WHSs). These are sites that have been inscribed on the World Heritage list for their international significance and for their value to mankind for both present and future generations. They represent the pinnacle of the UK's heritage assets, and have Outstanding Universal Value as defined by UNESCO. The correct conservation of WHSs and the integration of their planning impacts, management, and sustainability is reached by lengthy consultation among local and national stakeholders. The manner of their nomination and management, to a significant degree, sets a paradigm for the registration, conservation planning and management of lesser heritage sites in the United Kingdom. There is thus an obligation to sustain these sites in the long term. ICOMOS-UK considers that this status and the obligations of the World Heritage Convention, 1972, should be reflected in statutory recognition through national protection.

The UK has been a strong supporter of the World Heritage Convention. ICOMOS-UK would like to see an exemplary system in place in the UK to give adequate protection to WHS. We consider that this protection should include not only national protection but also the adoption of planning aspects of WHS Management Plans into local plans and the appointment of a statutory consultee to monitor developments within WHSs.

Below are given details of our views on the following aspects of the draft Bill:

- Lack of Protection for WHSs
- Implications for changes from Certificate of Immunity to No intention to Register
- Conservation Areas
- Provisional Registration

and an initial response on the DCLG Protection of World Heritage Sites: Consultation Paper.

Our task in providing comments to the Select Committee by the deadline of 16 June has been made difficult by the timetable for comments on the DCLG "Protection of World Heritage Sites" consultation paper being different to that for the draft bill, and by the fact that the draft bill is incomplete, still not having within it the content which will deal with conservation areas.

We consider that it would be wholly inappropriate for this Bill to pass through Parliament without any reference to and definition of "conservation areas", or without a reference and definition of "WHS buffer zones" which are approved by the UNESCO World Heritage Committee as an essential component of the protection of WHSs.

We will be submitting a fuller response on the DCLG consultation paper in due course.

2. BACKGROUND

In responding to Protecting our Historic Environment October 2003, ICOMOS-UK outlined the need for protective area designations at national level which could protect ensembles not necessarily meriting individual protection—and which could be applied to all WHSs.

The ICOMOS-UK Press Release issued when the White Paper was published in March 2007 welcomed the White Paper's commitment to:

- i. Give statutory protection to WHSs in the planning system.
- ii. Introduce specific call-in notifications for significant developments affecting WHSs.
- iii. Provide, where appropriate, Buffer Zones for WHSs.

We subsequently submitted in March 2007 a paper to the DCMS, prepared by ICOMOS-UK and World Heritage Coordinators, on measures needed to protect WHSs, and detailed measures needed to be addressed by any Planning Circular.

We also submitted in March 2008 comments to DCLG on proposals for revised call in procedures for development proposals within WHSs, a copy of which is enclosed.

3. LACK OF PROTECTION FOR WHSs

The overall thrust of the Bill is that there will be a single combined register of heritage assets. Clause 1 of the Bill defines heritage assets as:

- (a) a heritage structure as defined by section 2;
- (b) a heritage open space as defined by section 3;
- (c) a world heritage site as defined by section 45; and
- (d) a marine heritage site as defined by section 47.

Section 45 says:

- (1) In this Act “world heritage site” means any cultural heritage or natural heritage within the meaning of Articles 1 and 2 of the World Heritage Convention that has been included in the World Heritage List mentioned in Article 11 of that Convention.
- (2) In this section “World Heritage Convention” means the Convention concerning the Protection of the World Cultural and Natural Heritage adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation at Paris on 16 November 1972.

Paragraph 78 says that:

“The register must indicate, as respects each heritage asset included in the register, whether the asset is a heritage structure, heritage open space, marine heritage site or world heritage site.”

And paragraph 210 adds:

For the purposes of subsection (2)(a) each of the following is a registered heritage asset:

- (a) a registered heritage structure;
- (b) a registered heritage open space;
- (c) a registered marine heritage site; and
- (d) a world heritage site.

However the crucial text for World Heritage sites is however in Explanatory Note 78 which “says:

78. This clause [that is 45] defines what constitutes a world heritage site for the purposes of this Bill. As set out in clause 1 of this Bill, details of world heritage sites in England and Wales shall be entered into the heritage registers for England and Wales respectively. The fact of such inclusion will not subject them to any protection regime and is simply a record of their existence.” (emphasis added)

WHSs will be included in the Register as a “heading”, within which individual heritage assets will be protected. The Draft Bill thus sets out that WHSs will be merely listed as assets without giving them any additional protection.

ICOMOS-UK considers that this measure will not benefit WHSs.

It is not clear from the draft Bill whether the statement of Outstanding Universal Value (OUV) for a World Heritage Site, its buffer zone and its setting, for which the Government has successfully applied to have inscribed on the World Heritage List, will be part of its description as a heritage asset.

Under clause 4 it is set out that the criteria for determining special interest for heritage structures and heritage open spaces are to be published by a heritage authority. No mention is made of WHSs and it needs to be clarified that the criteria are those of the World Heritage Convention and the decision on which criteria are met the right of the UNESCO World Heritage Committee alone, to which, for each WHS in the UK, the Government is committed after wide consultation with local and national stakeholders, in accordance with the requirements of the UNESCO Operational Guidelines.

Issues

The lack of specific statutory protection for WHSs is, in the view of ICOMOS-UK, highly unsatisfactory. WHSs are inscribed for the benefit of both present and future generations. Currently some parts of existing WHSs are without any statutory protection and are only protected by local plans, which are not fixed for the long-term.

Overall ICOMOS-UK considers that links to planning in the draft Bill are weak. We consider that, particularly for World Heritage sites, there is a need for relevant government departments to work together to ensure the protection of WHSs is at the centre of the planning system.

The Planning Circular which has recently been put out for consultation sets out amendments to the General Development Order to include WHSs as Article 1(5) land under the Town and Country Planning Order 1995. This is said to mean that they will, in this respect, be equivalent in planning terms to other protected areas such as conservation areas, National Parks and AONBs and small changes such as to windows will be controlled. However the status of the designations listed vary from national (National

Parks) to local (Conservation areas) and thus the level of protection could vary significantly. Currently conservation areas have in practice limited protection and within National Parks there is very limited control of vernacular features unless they are subject to specific protection.

ICOMOS-UK considers that WHSs should be given national protection.

In its initial comments on the White Paper, ICOMOS-UK pressed for nationally designated conservation areas which could apply to all WHSs, thus giving them national protection—rather than local protection which applies currently to Conservation Areas.

The draft Bill allows for open spaces in England that are gardens, parks or battlefields to be Heritage Assets, if they are considered to be of “special historic, archaeological, architectural or artistic interest”. (see clause 3 (2)). In Wales any land may be a registrable open space and this land may include buildings or registrable structures. (clause 3 (3) & (4)). In the case of Wales, it could be argued that WHSs could be registered as heritage open spaces.

For England the definition of heritage open space should be widened to allow it to include land of special historic, archaeological, architectural or artistic interest—which would in effect be to create a conservation area with national protection.

Heritage Asset Consent (HAC) will be required for works to registered structures which might impact on their special interest (clause 86). First it needs to be established that this applies to WHSs, as under Clause 4, which defines special interest, only heritage structures and heritage open spaces are mentioned, and not WHSs or marine heritage sites. If it does apply to WHSs, then it needs to be made clear—whether they are considered a single heritage asset or a basket of several heritage assets, and how the impact is to be measured against their OUV and the attributes that carry their OUV.

4. IMPLICATIONS FOR CHANGES FROM CERTIFICATE OF IMMUNITY TO NO INTENTION TO REGISTER

The current certificate of immunity will be changed to a certificate of “No intentions to Register”. This is set out in clauses 39 and 40 for structures and land and include:

A heritage authority may on the application of any person issue a certificate under this section in respect of any land.

(2) A certificate under this section is a certificate stating that the heritage authority will not, at any time within five years beginning with the date on which the certificate is issued, include the land in question in its heritage register as a registered heritage structure or as part of a registered heritage structure.

(5) Where a certificate has been issued under this section, the heritage authority must not, at any time within five years beginning with the date on which the certificate is issued, include in its heritage register as a registered heritage structure or as part of a registered heritage structure:

- (a) the relevant land or any part of it; or
- (b) anything beneath (or above) the relevant land.

Explanatory note 74 says:

Clauses 39—40 introduce provisions for “certificates of no intention to register” (CNIRs) which replace and extend what were previously known as Certificates of Immunity. Once granted, a CNIR prevents the land to which it applies from being registered as either a heritage structure (clause 39) or an open space (clause 40) for a period of five years from the date on which the certificate is issued. Anyone can apply for a CNIR, and the certificate applies to the land, anything beneath the land, and anything above it, unless the certificate explicitly provides otherwise.

Issues

The concern here is that the certificate of No Intention to Register could be applied for within Conservation Areas or within WHSs. There is currently no presumption that a Certificate of No Intention to Register will not apply within Conservation Areas or WHSs. This leaves open the possibility that areas either within Conservation Areas or WHSs could be in effect be designated non-protected areas. When combined with the lack of protection for WHSs and the potential changes in Conservation Area arrangements (see below), this is a cause for concern.

5. CONSERVATION AREAS

Explanatory Note 278 sets out the first of two proposed changes for Conservation Areas:

This part of the Bill will provide for Conservation Areas to be designated as currently, except that it will now be possible to designate a Conservation Area on the basis of special archaeological and artistic interest as well as special historic and architectural interest, but will not replicate the provisions relating to Conservation Area Consent in the Planning (Listed Buildings and

Conservation Areas) Act 1990. Instead, amendments to the Town and Country Planning (General Permitted Development) Order 1995 will have the effect of requiring planning permission to be obtained for the demolition or partial demolition of buildings in Conservation Areas. (emphasis added).

Clause 279 sets out the second proposed change:

This section of the Bill will contain provisions to reverse the outcome of the case of *South Lakeland District Council v Secretary of State for the Environment and Carlisle Diocesan Parsonages Board* [1992] 2 WLR 204 in which it was held section 72 of the 1990 Act does not require local planning authorities to insist that developments are beneficial to conservation areas, merely that they do not harm them. This section of the Bill will provide that change that does not benefit the conservation area will not be considered to be appropriate. (emphasis added)

Issues

ICOMOS-UK has concern over the implications of changes in arrangements for demolitions. Currently there is a presumption against demolitions in Conservation Areas. What is now being proposed is that planning permission should be obtained for demolition. As retrospective planning permission could also be obtained, this leaves open the possibility that owners could find it beneficial to demolish buildings and then apply for retrospective permission to regularise the situation.

It must be recognised that demolition of heritage assets and their “historic, archaeological architectural or artistic interest” cannot be restored after demolition, as is incorrectly claimed by Clause 29 concerning HAENs. These offences must therefore be dealt with as under the present law as a serious criminal offence, since planning permission carries lesser penalties for non-compliance.

Clause 279 refers to developments but concludes that change should be beneficial. It is not clear if change includes demolition; and this needs clarification. Such a presumption that change should be beneficial does not apply to WHSs and clearly should do so.

ICOMOS-UK would like to these details in the final Bill.

6. PROVISIONAL REGISTRATION

The draft Bill provides in paragraph 11 for the provision of a list of sites that might be put out for consultation by a heritage authority as possible heritage assets. These have to be a registrable structure or a registrable open space. There is no mention of WHSs in this regard.

As WHSs can become registrable assets, ICOMOS-UK considers that there needs to be a link between the Tentative List process and Provisional Registration of World Heritage assets.

7. DCLG “PROTECTION OF WORLD HERITAGE SITES” CONSULTATION

The White Paper stated that it was the intention to update planning policy to strengthen consideration of WHSs in the planning system (para 53) and to introduce a new Planning Circular which will be part of a revision of part of PPG 15. This planning circular is said by the White Paper (para 54) to recognise in national policy the need to protect WHSs and to make “more prominent” the need to create management plans and “where needed” buffer zones, and to clarify the impact of Design and Access Statements in relation to WHSs.

8. The DCLG Protection of World Heritage Sites: Consultation Paper, which includes a Planning Circular and draft English Heritage Guidance note has now been put out for consultation and ICOMOS-UK will be commenting. In particular we consider that this should include:

1. Article 4(1) Directions to remove permitted development rights as a matter of course for WHSs that become Article 1(5) land.
2. Consideration of the roll out of Article 1(5) land into buffer zones where clearly delineated within cartographic boundaries. Where the buffer zone is defined as a conservation area inclusion of Article 4(1) for areas with WHSs within them.
3. Clear guidance on scope and extent of the potential to promote protection for WHSs within RSSs, UDPs and LDFs alongside shared representation with EH support at EIPs, where needed.
4. Formal adoption of buffer zones and wider setting, clearly defining their extent independently or as part of management plans and the planning weight to be accorded to such designations.
5. Adoption of the appropriate parts of management plans as SPD.

6. Guidance on notifying UNESCO on major developments.
7. Controls on farming, including major agricultural buildings, and forestry in WHSs.
8. Regulations for infrastructural development affecting WHSs.

June 2008

Memorandum submitted by the Garden History Society

1.0 EXECUTIVE SUMMARY

1.1 The Garden History Society, the national amenity society for historic designed landscapes and a statutory consultee, has given careful consideration to the Draft Bill.

The Society welcomes aspects of the Draft Bill. These include:

- The Draft Bill’s holistic approach to the historic environment.
- The statutory duty placed on English Heritage to designate historic assets including heritage open space.
- The duty placed on planning authorities to consider the impact of proposed development on heritage open space and its setting.
- The potential for land forming the setting of registered heritage open space to be included in heritage protection agreements.
- The statutory duty placed on local planning authorities to establish and maintain Historic Environment Records including lists of locally significant heritage open space.
- The proposed expansion of the criteria for the designation of conservation areas to include “artistic” significance.

1.2 The Society has significant concerns over certain areas of the Draft Bill.

These include:

- The implications and appropriateness of the term “heritage open space”.
- The definition of “registerable open space” in England and the different treatment of land in Wales.
- The appropriateness of the use of “certificates of no intention to register” in relation to designed landscapes.
- The absence of a consent regime for heritage open spaces.

1.3 The Society has significant concerns over the resource implications for heritage bodies, statutory consultees and national amenity societies contained in the implementation of the provisions of the Draft Bill.

2.0 THE GARDEN HISTORY SOCIETY

2.1 The Garden History Society is the national amenity society for the study and conservation of historic designed landscapes⁴.

2.2 Since 1995⁵ the Society has been a Statutory Consultee on planning applications affecting all sites included by English Heritage on the Register of Parks and Gardens of Special Historic Interest in England⁶ (regardless of Grade).

2.3 The Society has a Council of Management which includes among its members many leading experts and practitioners in the fields of garden history and historic landscape conservation. Members of its Conservation Committee have similar expertise and advise the Society’s four professional Conservation Officers.

2.4 The Society has been involved fully in the process of Heritage Protection Review and responded to the Heritage White Paper (2007). The Society has also participated fully in discussions of the reform process with other members of the Joint Committee of National Amenity Societies.

2.5 This Memorandum has been written by the Society’s Principal Conservation Officer who was employed between 1998 and 2003 as a Consultant Register Inspector at English Heritage and therefore has direct experience of issues relating to the designation of historic designed landscapes in England.

⁴ Planning Policy Guidance Note 15, para A.16: “*The Garden History Society was closely involved in setting up the Register of Parks and Gardens, now maintained by English Heritage. Its work, however, is analogous to that of the national amenity societies. . .and it has more experience of dealing with planning applications affecting parks and gardens than any other body.*”

⁵ Central Government Circular 9/95; Environment Circular 14/97; Culture, Media and Sport Circular 1/97.

⁶ English Heritage, by contrast, is a Statutory Consultee in respect only of sites included on the Register at Grade I or Grade II*.

3.0 ASPECTS OF THE DRAFT BILL WELCOMED BY THE GARDEN HISTORY SOCIETY

3.1 *The philosophical approach of the Draft Bill*

3.1.1 The Society supports the holistic approach to the historic environment embodied in the Draft Bill [Part 1 Chapter 1] and welcomes the move to a unified Heritage Register for England and Wales.

The Society considers that this will encourage owners, planners and those responsible for formulating conservation policies for historic places to adopt a similarly holistic approach, thus avoiding intervention or change which, while beneficial to one aspect of the historic environment, may be prejudicial to another equally significant historic asset such as a designed landscape setting for a listed building.

3.1.2 The Society notes that when a site is assessed for possible inclusion in the Heritage Register as “heritage open space” it will also be assessed for its potential architectural or archaeological interest. We understand, therefore, that garden or landscape structures and garden archaeology will receive greater attention within the designation process than has been the case hitherto.

- While this is welcome in principle, we draw attention to the need for a requisite number of appropriately qualified officers to be retained by English Heritage, and the cost implications entailed.

3.1.3 We have a concern that where a site proposed for inclusion on the Heritage Register as heritage open space is already partly designated as a heritage structure, there may be a temptation for English Heritage not to add a further layer of national designation, despite this being contrary to what we understand to be the spirit of the provisions of the Draft Bill.

We already have experience of such a case at Saltram, Devon:

- here we supported proposals for the inclusion of the Boringdon Arch (Grade II* Listed and sited above an unrelated Scheduled Ancient Monument) and an associated plantation, a focal point of the 18th century designed landscape, to be included within the Grade II* registered landscape. In a Report dated 28 November 2007, the English Heritage Adviser stated that although the Arch (designed by Robert Adam) “fully complies with English Heritage’s principles” [on designed landscape designation], “it is neither practical nor necessary to add another layer of national designation to it by including it in the Register”⁷.
- If applied more widely, this case would present a worrying precedent for the marginalisation of designed landscapes within the reformed designation system.

3.2 *Statutory Duty to maintain a Heritage Register including heritage open space*

3.2.1 The Society notes that whereas under the provisions of the National Heritage Act 1983–84⁸, English Heritage is empowered to compile a Register of Parks and Gardens of Special Historic Interest, under the terms of the Draft Bill [Part 1 Chapter 1 sections (1) and (3)] there will be a statutory duty placed on English Heritage to compile and maintain a Heritage Register which will, by definition, include nationally significant historic designed landscapes.

The Society welcomes the removal of the element of discretion allowed to English Heritage with regard to the designation of historic designed landscapes under the existing designation system, and its replacement with a statutory duty.

3.2.2 Placing a statutory duty upon English Heritage to designate nationally significant historic designed landscapes within the unified Heritage Register creates a limited, but welcome degree of equality between historic designed landscapes and other designated heritage assets which has been lacking under the existing designation system.

3.3 *Procedural changes*

3.3.1 In principle the Society welcomes the greater openness of the proposed designation system with consultation during the designation (or amendment) process [Part 1 Chapter 2 section 10 (2) and (3); Part 1 Chapter 2 sections 21, 22] and a right of appeal [Part 1 Chapter 2 sections 25–37].

- We consider, however, the Government has not taken due account of the additional resources which will be required by national amenity societies such as ours, or indeed English Heritage, properly to implement these welcome changes.

⁷ English Heritage (Listing), Adviser’s Report: Saltram, Plymouth (UID 163608), 28 November 2007, p 6

⁸ Section 8C of the Historic Buildings and Ancient Monument Act 1953 (inserted by section 33 of, and paragraph 10 of Section 4 to, the National Heritage Act 1983–84.

3.4 *Inclusion of registered sites on Land Registry maps*

3.4.1 The Society welcomes the proposed demarcation of sites included on the Heritage Register on Land Registry maps [Part 1 Chapter 5 section 82 (6)]. This simple measure will ensure that designated historic designed landscapes will be shown up along with other land charges during land searches, thus avoiding a new owner being unaware of the heritage significance of the property he or she has acquired.

3.5 *Planning considerations and the setting of registered sites*

3.5.1 The Society welcomes the duty placed on planning authorities to consider the impact of proposed development on heritage structures and heritage open spaces and their respective settings [Part 3 Chapter 1 section 155].

3.6 *Heritage Partnership Agreements and the setting of registered sites*

3.6.1 We further welcome the recognition in section 157 (1) Heritage partnership agreements that in terms of conservation management of heritage sites, it may be desirable to include within the management agreement land outside the designated area but which forms an essential part of the setting of the designated asset.

3.7 *Conservation Areas*

3.7.1 The Society notes the intention outlined in para 278 (Notes) to broaden the criteria under which a local authority may designate a conservation area to include special archaeological and special artistic interest. We conclude that in this context “artistic interest” can encompass designed landscapes, and therefore this change is welcomed;

- Greater clarity in the wording of the Bill might be helpful in this regard and avoid the potential for future dispute.

3.8 *Historic Environment Records*

3.8.1 We welcome the statutory duty placed on local planning authorities to create and maintain Historic Environment Records, and the recognition within the Draft Bill [Part 5, 215 (2)] that heritage assets of special local interest should be included on the Historic Environment Record.

- We note, however, that as with the proposed Conservation Area criteria, “artistic interest” is used in an undefined way in relation to Historic Environment Records, leaving open the possibility of dispute at public inquiry as to whether a particular designed landscape has an appropriate level of “artistic interest” to justify its inclusion on the Historic Environment Record.

4.0 ASPECTS OF THE DRAFT BILL WHICH CAUSE CONCERN TO THE GARDEN HISTORY SOCIETY

4.1 *Terminology: Heritage Open Space*

4.1.1 After careful consideration, the Society has concluded that the term “heritage open space” employed in the Draft Bill is inappropriate and misleading.

We understand that in the quest for simplicity, Government has sought to reduce the number of designation categories and to amalgamate designed landscapes with historic battlefields, presumably on the basis that these are both “spatial” designations.

4.1.2 In relation to designation, the use of the term “heritage open space” fails to recognise that designed landscapes may be suitable for national designation by reason of their special historic and aesthetic interest. It is the fact that a “space” or place has been the subject of human aesthetic intervention that makes it a potentially nationally significant designed landscape; the space, whether open or not, is in that sense incidental.

- The term “heritage open space” is therefore inappropriate when applied to designed landscapes.

4.1.3 “Open space” is a term more commonly applied to non-designed areas, utilitarian areas, or areas of natural environment interest. Places such as village greens, commons, downland or sports fields come to mind when the phrase is applied. It is this latter sense in which “open space” is understood in the planning system: PPG17 refers to planning for open space, sport and recreation.

4.1.4 The term can imply a right of public access to “open” space and may be confused with the rights of access to the countryside conferred under the Countryside and Rights of Way Act 2000.

- This is clearly undesirable in relation to private property which has been the subject of national or local designation.

4.1.5 At present the Welsh designation system uses the phrase “Landscapes, Parks and Gardens of Special Historic Interest”, while Historic Scotland speaks of “Gardens and Designed Landscapes”.

- We consider that the phrase presently used in England, “Historic Parks and Gardens” is too prescriptive; and submit that the phrase “historic designed landscapes” or “historic landscapes” would be much preferable for use in the context of heritage designation.

4.2 *Scope of “registerable open space” as defined by the Draft Bill*

4.2.1 The Draft Bill [Part 1 Chapter 2 section 3 (2), (3)] states that in England, a garden, park or a battlefield may be a “registerable open space”; in Wales, by contrast, any land is a registerable open space.

- We see no necessity for this difference between England and Wales, and submit that it would be preferable and more logical for all land in England to be a potentially “registerable open space”.

4.2.2 We consider restricting potentially registerable open space in England to parks, gardens or battlefields to be unduly and unreasonably prescriptive. Existing legislation empowers English Heritage to compile a Register of “gardens and other land considered by the organisation to be of special historic interest”⁹.

- The proposed wording of the Draft Bill appears to draw back from this liberal vision in a way which would preclude sensible and sensitive development of the understanding of spatial designation over the next few decades.

The understanding of historic designed landscapes has advanced greatly since the Register of Parks and Gardens was first established in the mid-1980s, and indeed, the Register in its present form includes many sites (such as cemeteries, urban squares and walks, and institutional landscapes) which would probably not be readily understood by the public in the conventional sense of “parks” or “gardens”.

4.2.3 We are aware that research is being undertaken into other forms of designed landscape, examples of which may in the future be considered to be of national significance and therefore worthy of national designation. These include sites such as retail landscapes, landscapes associated with transport (highways or airports) and industry (power stations for example), or commemorative landscapes such as those associated with crematoria.

- It appears likely that the proposed wording of the Draft Bill [Part 1 Chapter 2 section 3 (2)] would preclude the designation of such sites.

4.2.4 The key element which unites these landscapes, and sets them apart from natural landscapes, cultural landscapes or vernacular landscapes is that of design.

It is the interest and significance of the design and its physical realisation which makes these sites of “special” interest and potentially worthy of designation.

4.2.5 In order to avoid unnecessary prescription being enshrined within the eventual Act, we submit that the words “garden or park” should be removed from this clause [Part 1 Chapter 2 section 3 (2)], and should be substituted by the phrase “designed landscape”.

4.3 *Certificate of no intention to register: open spaces*

4.3.1 For similar reasons to those outlined in para 4.2.3 above, we consider that progressive advances in the understanding of designed landscapes and their relative significance makes it dangerous for a heritage authority to grant a certificate of no intention to register enduring for five years.

- To illustrate the point, the bulk of cemeteries now included on the Register of Parks and Gardens were added less than five years ago; the same is true of many of the registered institutional landscapes. Ten years ago, public parks were little recognised by the designation system.

These significant changes in understanding, value and perception have come about rapidly and it is quite possible that the existence of a certificate system would have precluded the designation of nationally significant sites, notwithstanding the opportunities for consultation with appropriate persons outlined in the Draft Bill [Part 1 Chapter 2 section 42].

4.4 *Heritage asset consent*

4.4.1 The Society has recorded above (para 3.1.1) its welcome in principle for the proposed unified approach to designation of the historic environment.

- However, we are perturbed that a unified approach has not been adopted to the control and consent regime for heritage assets.

⁹ English Heritage, Register Guidance Manual (1996), p 7—refers to National Heritage Act 1983 as in note 5 above.

4.4.2 Part 2 Chapter 1—Requirements for Heritage Asset Consent deals exclusively with works in relation to registered heritage structures; yet some of the specified works, such as flooding or tipping [Part 2 Chapter 1 section 86 (2) (d)] clearly have the potential to have a significantly adverse impact on registered heritage open space which is not covered by the requirement for consent as set out in the Draft Bill.

4.4.3 If the omission of heritage open space from this Chapter of the Draft Bill [Part 2 Chapter 1] is intentional, it appears to us to be perverse and illogical for the reasons set out in paras 4.4.4 and 4.4.5;

We submit that Government should reconsider this aspect of the Draft Bill.

4.4.4 Failure to provide a uniform approach to requirement for consent across the range of heritage assets included in the unified Register is illogical and threatens to undermine the Government's stated objective of creating a more consistent, logical and generally intelligible system of heritage protection by perpetuating the different levels of statutory control and protection found in the existing system.

4.4.5 At a philosophical level the differentiation between heritage structures and heritage open spaces in terms of consent and control may send a message to owners, planners and others that in some way nationally designated landscapes are of secondary importance in relation to registered heritage structures. Such a message, whether intended or not, would clearly contradict the purpose of combining all heritage assets within a unified Register.

4.5 *Resource implications of implementation of the provisions of the Draft Bill*

4.5.1 It appears plain to us that implementation of the provisions of the Draft Bill will entail a significant increase in resources for a range of bodies.

- These will include: English Heritage, local planning authorities, statutory consultees and national amenity societies.

The Draft Bill places significant additional duties and responsibilities on each of these bodies which cannot reasonably be undertaken without an increase in resources from central Government, on whose behalf the tasks will be undertaken.

We are not convinced, on the basis of the information made available to date, that Government has fully understood the resource implications of the changes proposed in the Draft Bill.

4.5.2 Without adequate additional resources to enable national and local heritage bodies and others such as statutory consultees properly to undertake additional duties such as responding to consultations on proposed additions or amendments to the Heritage Register, it is certain that the Government's objectives for a reformed Heritage Protection system cannot be met.

5.0 SUMMARY AND CONCLUSION

5.1 The Garden History Society, in its role as Statutory Consultee and national amenity society for historic designed landscapes respectfully submits that in its consideration of the Draft Heritage Protection Bill, the Committee should pay particular attention to:

- The terminology employed by the Draft Bill, and particularly the implications of the term "heritage open space".
- The inconsistency of approach between England and Wales in respect of the categories of land which may be designated as heritage open space.
- The absence of a consistent control and consent regime across the range of designated heritage assets.
- The significant resource implications for heritage authorities, statutory consultees and national amenity societies which would arise through the implementation of the provisions of the Draft Bill.

June 2008

Memorandum submitted by the Joint Committee of the National Amenity Societies

INTRODUCTION

1. The Joint Committee of the National Amenity Societies was founded in 1972 to coordinate strategic action, particularly in matters of government policy, legislation and taxation, between the national conservation organisations concerned with the built environment. It meets six times a year.

2. The constituent members are:

- 2.1 The Society for the Protection of Ancient Buildings founded in 1877 by William Morris and others, the first conservation organization established in England. Concerned particularly with buildings constructed before 1700 and the philosophy of repair.

- 2.2 The Council for British Archaeology founded in 1944 is an educational charity working throughout the UK to involve people in archaeology and to promote appreciation and care of the historic environment for the benefit of present and future generations.
- 2.3 The Ancient Monuments Society, which dates from 1924 and is concerned with historic buildings of all ages and all types. It is in a working partnership with the Friends of Friendless Churches which owns 38 disused but architecturally important places of worship.
- 2.4 The Georgian Group founded in 1937 to study and to champion buildings constructed between 1700 and 1837.
- 2.5 The Victorian Society, founded in 1958 to study and to champion the architecture of the Victorian and Edwardian periods.
- 2.6 The Twentieth Century Society, founded in 1979, to study and to champion architecture after 1914.
- 2.7 The Garden History Society, set up in 1965 to study and champion historic parks and gardens.
- 2.8 The Civic Trust, founded in 1957 for the improvement and conservation of urban areas, historic and non-historic. It was the Civic Trust which persuaded Parliament to introduce the concept of the Conservation Area in 1967.

3. Our members may submit their separate evidence to the Committee highlighting aspects of the bill relating to their areas of expertise.

EVIDENCE

4. *The overall aims and scope of the bill*

4.1 The Joint Committee of the National Amenity Societies welcomes the draft bill. We are pleased that the bill recognizes that the concepts behind the current system of heritage protection are sound, even if the administrative arrangements require streamlining. We understand that a fundamental principle behind the drafting of the bill is that the levels of protection currently enjoyed by the nation's "heritage assets" are not to be reduced, and we strongly endorse this approach.

4.2 We are pleased to see, at long last, that the bill will reverse the impact of the Shimizu judgment on demolition within conservation areas, as it will reverse the effect of the South Lakeland judgment and so require a local planning authority to seek benefits for a conservation area.

4.3 Much of the success of the new regime will depend on supplementary guidance which has not yet been drafted, and which should be published alongside the new legislation. This should include revisions to PPG 15 and PPG 16, as well as new circulars.

4.4 Language. We regret the loss of familiar terminology which is widely understood by the public and the introduction of alien new terms; "registrable heritage assets" and "heritage asset consent", for example, are particularly unfortunate. However the legal language of the bill need not be the public language of the future, and we hope that the policies and guidance which are yet to come will choose more engaging terminology.

4.5 Local designation. We would have liked to have seen a statutory duty for local authorities to develop and maintain local lists of heritage assets. This would be a vital part of protecting the heritage that is valued by local people and which gives places their particular character, but which does not meet the high level of significance required for national designation.

4.6 Specific recognition of the role of the national amenity societies. We welcome being named in the bill as consultees during the designation process (Section 9(3)(d)). However, the bill does not specifically name us as one of the bodies to be invited to make representations in Section 103(2) Procedure for dealing with applications. Our present statutory role within the system is to advise on applications which include the demolition of a designated structure, and so it does seem odd not to be explicitly mentioned in this context.

5. *The estimates of costs and benefits set out in the Impact Assessment published alongside the draft Bill*

5.1 Impact on the national amenity societies

5.1.1 National amenity societies pick up a number of new roles in the revised system, in particular much greater involvement in designation: we are to be consulted about the proposed inclusion, removal or amendment of register entries. The Impact Assessment states that "while [amenity societies] will be statutory consultees, they are not statutorily obliged to respond so are therefore free to fulfil this role in the light of their resources and priorities". (page 10, paragraph 14). It is surprising that we were not consulted about this assessment. We have not been told how many such notifications we may expect to receive. But even filtering them to determine those to which we may wish to respond will be a significant administrative task.

5.1.2 We welcome the new arrangement that national amenity societies will be invited to provide advice on designations, as we believe very strongly that we can add value to this process. But if consultation is to be anything more than tokenistic, then the new system must also ensure that we are resourced to do so. To assert that we need only contribute so far as our resources allow is counter to the aim to create a more open system which involves the public in decisions about their heritage.

5.1.3 In addition, we will also become involved in Heritage Partnership Agreements and Certificates of No Intention to Register. The former, if the pilots are anything to go by, are time-consuming to set up and being part of the consultation process will be resource intensive. No acknowledgement has been made of this.

5.1.4 Particularly during the transitional period, the national amenity societies will face increased demand from the general public for advice about the new system and how it operates. This is a service we already provide informally for the present system, and it does take up a lot of our time. Many members of the public tell us that they find it easier to engage with the amenity societies than with other institutions, so we expect this work to expand.

6. *The staffing and skill levels needed for effective implementation of the provisions in the draft Bill*

6.1 Designation

6.1.1 One of the benefits of the new system are the enhanced register entries, but these will be in place only for new designations. There is no provision for wholesale revision of existing designations or a new national re-survey, so the actual benefit of the new arrangements is likely to be limited unless resources are allocated to make good this deficiency.

6.1.2 It is likely that demand for revisions to individual existing designations will arise as heritage asset consent is applied for. This could result in substantial additional work for the English Heritage designation team. Inability to provide new designations in a timely manner will discredit the system.

6.1.3 The White Paper signaled that strategic or thematic designation is to take precedence over spot-listing. We hope that this will not be the case: spot-listing requests often follow from development pressures which may raise the threat of destruction of irreplaceable heritage assets. Spot listing is a necessary remedy to the inadequacy of the present lists, many of which are incomplete or hopelessly out of date. The only alternative would be a national re-survey which would give greater comfort to owners and developers that any special interest in their property had been identified but even then it is unlikely that the need for spot-listing would disappear.

6.1.4 Spot-listing provides the only way in which the designation system is directly responsive to the needs of the public: to be told that a particular building will not be considered for designation because English Heritage is busy on a thematic study of, say, cold war heritage is unlikely to convince an interested person that the system places any value on their input at all.

6.1.5 To build in a lack of responsiveness to public demand would be extremely unfortunate, and so English Heritage needs to be resourced to be able to provide “on-demand” designations alongside thematic programmes.

6.2 Heritage Partnership Agreements

6.3 We are concerned that the impact of HPAs on English Heritage and local authorities may have been underestimated. As pilots, at least, these have been very time-consuming to negotiate. If they are taken up widely the impact on LPAs and EH will be substantial.

June 2008

Memorandum submitted by Country Land & Business Association

SUMMARY

- (i) Like (we believe) almost everyone in this field, the CLA welcomes the Bill in principle.
- (ii) We anticipate that most consultees will say, in essence, that “the Bill is generally good but needs proper resourcing”. This Memorandum however does not just say that, because we do not feel that that would be an adequate response.
- (iii) Firstly, the heritage protection system is in crisis, primarily (but not entirely) because it is grossly under-resourced in the local authorities who are supposed to operate it. That crisis causes grave problems for heritage on the ground, which need to be addressed. Merely to call for “more resources” is not enough, because in practice those resources will not be forthcoming.

(iv) Secondly, the Bill actually involves (see Appendix 1 section A) substantial net increases in the legal protection of heritage; we question how helpful this would be in improving the real protection of heritage on the ground.

(v) As drafted, we think there is a danger that the Bill might have only a limited positive effect on the effectiveness of heritage protection. We have therefore looked (in Appendix 1) at changes we feel should be made to the detail of the legislation and guidance to ameliorate the current crisis and improve the real protection of the historic environment on the ground.

(vi) Heritage is important. Parliamentary time will not often be available for heritage protection, and it is vital that we make the most effective use of this opportunity.

(vii) Our comments must be provisional at this stage because of course we have not seen all of the Bill, and very little of the secondary legislation or guidance.

THE CLA AND HERITAGE

(viii) The CLA's 36,000 members are individuals, land agents, charities, institutions, and rural businesses. They manage and/or own a quarter to a third of all the listed buildings in England and Wales, and probably an even higher proportion of monuments.

(ix) The CLA is thus by far the largest "owner" stakeholder group. Our members are motivated only partly by profit. Overwhelmingly they have a deep concern for heritage, support its protection, and certainly do not want to see this diminished. This moreover is not just the theoretical interest of the architectural historian or conservation academic: our members are on the front line, along with the local authorities who run the heritage protection system, and with other kinds of owner like the building preservation trusts which take on buildings at risk. Our members cannot just luxuriate in academic debate: they have to manage heritage, and pay for it. Looking after heritage is astoundingly expensive: many of our members are spending tens of thousands of pounds a year¹⁰.

THE FUNDAMENTAL ISSUES

(x) Heritage cannot be protected just by laws and fines (compare the dropping of litter, which is illegal and carries huge fines, but is endemic). What really protects heritage is three things: (a) overwhelming public support; (b) the willingness of a subsection of that public to buy and own it, and to pay for its maintenance; and (c) the willingness of everyone to accept that heritage cannot be frozen: it must be allowed to change.

(xi) All heritage is in constant decay. As above, preventing that is extremely expensive, costing many billions of pounds a year across England and Wales¹¹. While public subsidy should be available, on a carefully-targeted basis¹², there are many other priorities for public spending and the amount available for heritage will always be a tiny proportion of its total cost. In the real world, nearly all the money has to come from owners. That requires those owners to be able and willing to pay, because they are happy owning and living in historic buildings or because the buildings are generating the funds, for example as business premises or tourist attractions. That in turn requires a heritage protection system which allows, indeed encourages, appropriate physical changes. The Heritage White Paper of course acknowledges this right at the beginning (section 1.1, point 2: "An effective heritage protection system needs to strike a balance between protecting what is important and enabling appropriate change").

(xii) Heritage law does need improvement. But to change the law alone would be to better arrange deckchairs on the Titanic. The real problem with heritage protection is not the law: it is its implementation and enforcement, and particularly the difficulties and costs people face on the ground when, as above, they need consent to make appropriate changes to historic buildings to make them viable and relevant in the future. These problems are largely the result of a crisis in conservation resourcing in the local planning authorities (LPAs) who take most of the decisions¹³.

(xiii) The fundamental problem is that (a) the current system is predicated on the assumption—defensible in theory—that any and every change to the historic environment could be damaging and thus ought to be properly examined and decided by experts, but that (b) in practice the expertise that this examination requires is, in most cases, not available¹⁴.

¹⁰ In a CLA member survey *Who pays for heritage?* in 2005–06, the 243 respondents were *each* spending £33,000 pa on average on the maintenance and insurance of listed buildings. This figure will be greater than the average for *all* listed building owners, but does not include spending on unlisted historic buildings.

¹¹ The *total* cost of looking after *listed* buildings in England and Wales is perhaps £4 billion to £8 billion pa (based on £5,000 to £10,000 pa per building), and perhaps five times as much again to cover *unlisted* historic buildings.

¹² For example there is a strong case for public support for redundant agricultural buildings not suitable for conversion.

¹³ The primary source for this is the *Local Authority Conservation Provision Survey*, IHBC/EH/Oxford Brookes University, 2003. Evidence that it has worsened is in *Historic Environment Local Delivery Project Consolidated Report* (The Atkins Report), April 2006, and in the IHBC submission and many other submissions to the House of Commons Select Committee on Culture Media and Sport in 2006. For the practical effects from an owner viewpoint, see the *CLA Member Heritage Survey*, CLA, 2006).

¹⁴ This is less true of archaeology whose resourcing is stronger, and probably improving; for example archaeological staff employed by local authorities actually rose, by 50%, in 1997–2003 (see the English Heritage/ALGAO publication *Local authority archaeological services: report on staffing and casework surveys 1997–2003*, 2008).

(xiv) Taking competent and sustainable heritage decisions requires skill and experience. There are few things more valuable to heritage (or its owners) than a really good conservation officer. But in the real world most heritage consent decisions are not taken by conservation staff at all, but by general staff in overworked development control departments. Even where there are skilled and experienced conservation staff, they are usually overworked, often demotivated because conservation has low status in most LPAs, and do not have the time needed to get properly involved in every case. All this has a variety of dire consequences. These include (a) unnecessary costs and delays for owners, which both (b) diverts spending from maintenance and (c) (as important) discourages people from owning heritage at all; (d) a perception that the system is inconsistent and unreasonable; (e) buildings decaying or losing value because their owners think they cannot get consent to alter them; (f) the neglect by LPAs of issues like Conservation Area management; and (g) despite draconian penalties, an apparent epidemic of unauthorised work to listed buildings (because LPAs do not have resources either to help or to enforce, and many owners either do not understand the complexities of the law or, rationally but illegally¹⁵, decide to sidestep “heritage bureaucracy”).

(xv) These problems are serious and need to be solved. An obvious (and correct) answer is to call for “more resources” for heritage, as most relevant bodies (including your Committee¹⁶, and the CLA) have been doing for years. The problem with this approach is that in the last decade at least it has been, for built heritage¹⁷, completely unsuccessful¹⁸: during probably the largest-ever peacetime expansion of public spending, since 2000, resources for heritage have been repeatedly cut in real terms¹⁹. We are now in an era of tight constraint on public spending, so that increases in heritage spending are still less likely. We have seen DCMS undertakings on resourcing, but it seems unlikely that this is intended to mean that the Department will find the additional sum—perhaps £50 million to £100 million a year—which would be needed to resource local authority conservation provision properly, especially given that local authorities are the responsibility of CLG, not of DCMS. In this context incidentally we note the words “DCMS and English Heritage”, which may imply that it is actually EH which will have to find, from elsewhere in its budget, the funding which is actually provided for the new system.

(xvi) The heritage sector certainly should continue to fight for further resources. But we need to ensure that the system will work better even if—as is likely—those resources were not forthcoming. Moreover, Governments are more likely to put further resources into a system if it can be demonstrated to be effective and efficient, and operating to the clear benefit of the public, which is not certain of either the existing or proposed systems. More effective reform will strengthen the case for funding in future.

(xvii) Appendix 1 to this Memorandum therefore sets out changes we think should be made to the detail of the primary and secondary legislation and guidance, both to ameliorate the current crisis and improve the real protection of the historic environment. Most of these changes are concerned with reducing the overall need for resources, and with concentrating resources on the most important assets and the most significant proposals.

APPENDIX 1

SUGGESTED CHANGES TO THE PROPOSALS

For clarity, specific changes we suggest are underlined, and key points are in bold.

A. ARE SUBSTANTIAL INCREASES IN NOTIONAL PROTECTION DESIRABLE?

1. One of the key intentions in the Heritage Protection Review was that it would not involve significant increases, or decreases, in protection. But listing the changes shows at least 20 major or moderate increases in protection, but very few decreases. Of course it is possible to argue about the detail, but it is clear from this list that the proposals in fact involve a large net increase in protection. This is probably from “mission creep”, a desire to “tidy up anomalies” and “add tools to the toolkit”, rather than deliberate intent.

2. These increases are not self-evidently either “good” or “bad”. Many may feel that they must, by definition, be “good”. But of course all regulation has consequences, intended and unintended: for example in the tax system, increasing rates beyond a certain level decreases tax revenue, because people stop doing things or avoid the tax. Too much regulation of heritage is self-defeating: if people are less keen to own it because it is seen as expensive, unchangeable, and a bureaucratic nightmare, it deteriorates: its real protection has been reduced. And in the under-resourced heritage sector, having both belt and braces may not be the best policy if it means you cannot afford a shirt.

¹⁵ We have no evidence of CLA members deliberately ignoring the law, but as above only a minority of heritage is managed by CLA members.

¹⁶ Heritage Inquiry, 2006, Report, recommendations 1, 11, 12, 13, 14, 16, 27, 34, and 41.

¹⁷ The only real exception is archaeology, which as above is probably better funded than it was in 1997.

¹⁸ The very beneficial Heritage Lottery Fund could be mentioned, but this was created more than a decade ago, is not public money, is now in decline, and has been of little benefit to great majority of heritage in the private sector because it does not qualify for HLF help.

¹⁹ Even the recent “increased” CSR settlement for English Heritage, though welcome, is only a monetary increase; EH funding continues to fall in real terms.

3. Many of the increases involve archaeology, already well protected; in particular PPG16 puts it in a privileged position, obliging developers to fund archaeological investigations almost irrespective of cost. The removal of the discretion not to schedule will require²⁰ large amounts of archaeology to be scheduled, even where EH believes it is adequately protected in other ways. In most cases this appears to be a double waste of resources, in the designation and subsequently in the consent process. It would be better to retain this discretion, and to extend the discretion not to register to other types of asset; decisions not to register are normally likely to be competent and sensible.

4. We have concerns about designating areas merely because someone thinks there might be archaeology there²¹. It would be important that such an expectation has a demonstrably sound basis, and is not just based on interpolation or guesswork.

5. The Heritage White Paper talked of abolishing Class Consent 1, which allows ploughing to continue above buried archaeology, but this is not mentioned in the Bill. It is important that any change is sensible and proportionate, based on financial incentives, as advocated in your Committee's Heritage Inquiry in 2006 (recommendation 38).

B. HERITAGE REGISTRATION

Designation descriptions

6. One of the main gains from the new system—in theory—is new-style designation descriptions, setting out what is significant and what is not, and defining the heritage asset in a plan. Everyone will then know what is protected²², removing the problematic concept of “curtilage” (which means that, where a farmhouse is listed, a nearby barn is usually protected even if it is not even mentioned in the description; this has, unsurprisingly, caused many problems and is one of the key factors bringing the system into disrepute). Secondly, everyone will know what is significant and what is not, and owners can where possible confine change to areas of less significance. The resource savings from reduced uncertainty and better applications are huge.

7. If however plans and new descriptions are not provided for the 400,000 existing entries carried across from the existing lists, these gains would be confined to a small elite of new registrations. All these existing descriptions therefore need to be improved. The resource implications, if spread over say 10 years, are well within the capacity of DCMS. (A cheaper but less good alternative would be to allow owners to request a new-style description, which would concentrate resources on the smaller number of cases where change is actually being contemplated or where “curtilage” is unclear).

8. To achieve this, streamlining of the new-style entries will be required: the example with the White Paper is excellent, but too expensive to research in practice. A new stripped-down style should (a) define exactly what is designated and what is not, with a plan, and (b) say concisely what is and is not significant (guidance must say that saying what is not included and less significant is important, and stress proportionality, ie that less significant assets will, other things being equal, need shorter entries).

9. It is important that, as proposed, it must be possible to register only parts of assets, because that enables non-significant parts (like 1960s plastic conservatories) to be excluded, and that guidance encourages this, so that changes to these parts would then not require consent, significantly reducing the burden on both LPAs and owners.

Grading

10. Reforming the grading system has enormous but largely untapped²³ potential to improve the heritage protection system, by providing an upfront indication of significance for all listed assets at the point at which change is being contemplated. With a comprehensive grading system, LPAs, owners, and amenity groups would be able to assess immediately how significant a heritage asset is likely to be²⁴, and thus target their scarce resources at the more significant.

11. Firstly, the current system of Grades I, II* and II is familiar to heritage experts but incomprehensible to the general public. If we are trying to democratise heritage, we should make it simpler: Grades A, B, and C are the obvious solution.

12. Most importantly, what is now Grade II should be subdivided. 93 per cent of all listed buildings are Grade II. The current system, in which nobody can tell whether a Grade II building is almost Grade II*, or at the other extreme only just merited designation, is indefensible, and wastes resources on a large scale. As

²⁰ RIA, p9, and information from the Council for British Archaeology.

²¹ English Heritage's commentary on the Bill, points 19–27.

²² We are relieved to see confirmation in English Heritage's commentary on the Bill that the boundary of a registered asset can go no further than the extent of special interest, and that for new registrations all structures of special interest within the curtilage will be specifically mentioned and “nothing else within the curtilage will be protected”.

²³ Within the Heritage Protection Review process, discussion on grading was largely confined to a relatively arcane issue, whether Grade II* should be abolished.

²⁴ Of course guidance would need to say that the grading system is not infallible and that further enquiry may be needed, but it should work well in the great majority of cases.

things stand, LPAs often, and arguably should unless someone expensively proves otherwise, treat all Grade II buildings as if they are very nearly II*. Similarly, an Amenity Society in London notified of an application to alter a Grade II building in Yorkshire has no idea whether it should devote its very scarce resources to it. Even new-style register descriptions will not make this clear. But these problems could be easily solved by adopting new grades, say C to G. In no sense could this be said to be “complicated”: a child of five could understand it, which could not be said now of Grade II*. Informal contact with EH suggests that it could make designation less fraught, especially at the boundary between the current II* and II, where now there is a huge gulf between II*, exceptionally significant, and II, which might be only just of national significance.

13. It is important to note that we are not suggesting that a Grade G building is unworthy of protection. It would require the same consents as a Grade A building. But consents on a Grade G building would, other things being equal, be easier to obtain, and less resource would need to be expended by the owner, the LPA, and anyone else involved.

14. Owners should be able to appeal the grading as well as the registration, and the grade would not be statutory (so that owners or others could argue that an individual grading is incorrect). But we suspect there would be few grading appeals by owners, and we think it would cut the total number of appeals by owners. At present listing is a potential disaster for owners, precisely because many LPAs treat all Grade II buildings as if they were almost Grade II*. A listing at Grade E, F, or G would be much less threatening, and owners would be much less likely to appeal.

15. Grading should of course also be applied, in the same way, to assets formerly classed as monuments. As with buildings, most should be at Grades C or below (any suggestion that they must all be in the top grade is self-evidently wrong, implying that every lump in a field is as significant as Stonehenge).

Completing registration in England

16. In England, a key problem in the current system is that systematic designation all but ceased some 20 years ago, and tens of thousands of assets meet current designation criteria but are not designated. This is clearly unsatisfactory (a) for these assets, which can potentially be demolished or altered, (b) for owners and developers who may spend time and money developing proposals which have to be aborted because the building is then “spotlisted”, (c) for the listing body, because ad hoc “spotlisting” wastes resources, and (d) for the heritage protection system because the decisions tend to be controversial and “spotlisting” should, and does, bring the whole system into disrepute.

17. We are concerned that the new system may be worse. The ability of anyone (under clause 21) to propose an asset for registration arguably only formalises what already happens informally. But advertising this ability is likely to increase the number of applications, the new processes of consultation and Provisional Registration and better descriptions will increase the resources required to handle each application, and each is expensive to handle because they have no geographical logic. The result may be that all EH’s allocated resources will be taken up by spotlisting applications under clause 21, leaving nothing for proactive work. The “sift test” for clause 21 applications²⁵ in practice seems unlikely, given the desire for public involvement and that decisions to refuse to consider an application at all may be controversial, to stop many applications on (say) pre-1918 or even pre-1945 structures. Objectors to development may thus be able to hold up works to almost any unregistered historic structure by requesting registration, even if eventually the asset is not registered. We would question, for these pragmatic reasons, the desirability of clause 21. In any case, it is important that the “sift test” guidance is tough, so that it is clear that there is a substantive a priori case for registration before the registering body has to consume resources.

18. The solution to all these problems is a geographical²⁶ designation programme, alongside the improvement of existing entries advocated in 7 above. This has been done in Wales²⁷, and could obviously be achieved in England. It would solve the problems listed in 16 above, and in particular “spotlisting” could all but cease: there would be few clause 21 applications, and most of those would fail the “sift test”.

19. It must be said that we would be less keen to see this happen in isolation: however strong their belief in heritage protection, not all CLA members are now keen to see their own heritage assets designated, because they are then subject to the currently appalling heritage consent system. But the new-style descriptions and the other changes suggested here would make that system much more efficient and acceptable.

²⁵ See Explanatory Note 56.

²⁶ “Thematic” designation brings almost none of the benefits of geographical designation, and its role should be as a check: having completed geographical designation in an area or region, EH should then look at all (say) C19th mills or interwar cinemas, and adjust registrations and gradings if this overview showed that the wrong examples were being protected.

²⁷ To be more precise, the listing of buildings has been completed; but not the scheduling of monuments.

Provisional registration

20. We see the justification for Provisional Registration while the registration process is underway. But compensation provisions like those in the existing Building Preservation Notice procedure must be carried forward into the new system, because owners and developers will incur substantial and demonstrable financial losses, especially if building work was about to start and compensation has to be paid to a contractor.

Registration: consultation and appeals

21. We welcome consultation of owners within the registration process, and the new statutory right of appeal. Rights of appeal should of course include designations carried across from existing lists; we would not expect there to be many appeals in practice, but it would be unjust if owner A, whose building is registered in 2011, has a statutory right of appeal, but owner B, whose building was listed in 1975, never has.

22. We see the argument for rights of consultation and appeal beyond the owner and occupier, but forsee resourcing problems in practice.

23. Appeal panels must always include people with practical experience of managing and paying for historic buildings, not just architectural historians or conservation academics.

C. THE CONSENT SYSTEM: CONTROL OF WORKS TO HERITAGE STRUCTURES

De minimis changes

24. In the Bill, like the existing legislation, there is still no de minimis provision, like the use of the word “material” in the planning system: anything which affects special interest, however trivially, or beneficially, will always need Heritage Asset Consent (HAC). This means that regulators have little discretion to allow trivial things through (“your proposals look fine, but the law says you must still make an application”) and therefore wastes scarce LPA resource²⁸ on minor applications²⁹. In our view a de minimis provision (probably by inserting the word “material” into clause 86) is essential. An apparent objection is that something arguably trivial, like painting one door pink, can have a major effect on special interest. This is of course true, but it misses the point, which is that painting a door pink usually would be material. The solution is good guidance, not a refusal to use the word “material”. Consent should not be needed for something which is not material³⁰; it is a waste of scarce resources. We suspect that this change might reduce the number of HAC applications by at least a quarter³¹.

Class consents and permitted development

25. Similarly, the class consents system (Clauses 93–4) could be used (like permitted development in the planning system, without which the planning system could not function at all because it hugely reduces the volume of planning applications) to grant consent for particular kinds of work (those identified by research as almost always getting consent, or those—like perhaps defined energy efficiency works—otherwise seen as desirable). Again, this could significantly reduce HAC applications.

LPAs and advice

26. We welcome a new statutory requirement for every LPA to “receive expert advice” before taking HAC decisions, but few LPAs could now comply with this without extra resources. Our suspicion is that merely consulting statutory consultees like the National Amenity Societies may be thought sufficient to meet this new duty, even if they do not have the resources to reply (the RIA, moreover, claims that these bodies should not be given even trivial extra funding because they are not obliged to respond). We believe strongly that this new duty should mean what it says, and should be backed up by a statutory statement of conservation provision standards in LPAs. But, as above, we doubt that this is intended or that it will happen.

²⁸ And *owner* resources: even the most trivial consent application is likely to cost at least £500–£1,000, which could be spent on something more productive, like maintaining the building.

²⁹ There were 33,500 listed building consent applications in 2006–07 (RIA p17).

³⁰ cf EH’s commentary on the Bill, points 89–90.

³¹ This needs research, and obviously some of the substantial resource freed up could and should be used to check that the law was not being abused (a check which is often not happening in the current system).

Financial sustainability

27. As above, heritage cannot survive unless it is funded and used. That the key clause 106 on granting or refusing HAC refers to consulting Historic Environment Records, but not to sustainability, is a victory of the ivory tower over the real world. It is essential that a new subsection (c) is added to clause 106 (4), requiring the sustainability of the asset to be taken into account in consent decisions, alongside the need for its protection. This should be amplified in guidance, but to say this only in guidance is insufficient (in the current PPG15 it is largely lost in an appendix).

Conditions attached to consents

28. The Bill should not contain the long list of sample conditions in Clause 110. There is a real danger than many LPAs would impose most or all of these conditions in a disproportionate way as a “checklist”. Suggested conditions should be in guidance, where they can be explained and caveated, not in primary legislation.

Time limits on enforcement and prosecution

29. As in the existing system, the Bill has no clause preventing prosecution or enforcement action after a specified time period, as there is after four or 10 years in the planning system. We know of cases of action being threatened after more than 30 years, and subsequent owners always have a threat hanging over them. Where properties are sold, this aborts transactions, encourages “gazundering”, and makes money for solicitors and insurance companies. Four years would be too short, but in our view the new system should prevent prosecution or enforcement action being taken once 10 years have elapsed after the completion of the works.

Appeals and Local Member Review Bodies

30. Clauses 113–6 pick up the provisions in the Planning Bill allowing a LPA to be forced to delegate many (probably most) decisions to its officers, and abolishing the right of appeal in favour of referral to a Local Member Review Body (LMRB) from the same LPA. Both initial decisions and appeals from those decisions being dealt with by the same body will have a corrupting influence on the planning and heritage protection systems, and on public faith in them (not least because the LMRB will usually be advised by the same officers who took the initial decision). This is especially true for HAC decisions, so it is vital that the right of appeal remains.

Heritage Partnership Agreements

31. Whilst we welcome Heritage Partnership Agreements (clauses 157–160), and would like to see them used widely, in practice we expect that LPAs, EH, and owners will not have the resources needed to draw them up, and they are thus only likely to be used for the largest and most complex and high-profile sites.

D. LANDSCAPES AND WORLD HERITAGE SITES

32. We strongly agree that no specific additional consent regime should be applied to landscapes (ie parks, gardens, and battlefields) or World Heritage Sites.

33. But we are very concerned that (a) “making it clear in law that their special interest and their setting is a high priority, not just a material consideration”³², and (b) the (undefined) restrictions on permitted development rights being sought by EH³³, notably an extension of the concept of curtilage to cover the whole of an open space, potentially create a large increase in bureaucracy.

E. HISTORIC ENVIRONMENT RECORDS, ONLINE REGISTERS, “LOCAL LISTING”*Historic environment records (HERs)*

34. In theory, we support the new statutory duty on local authorities to maintain these. But HERs are resource-hungry. They exist for archaeology, which is relatively well-resourced, but are very incomplete for built heritage, which is not. Making local authorities create comprehensive HERs would, if—as we expect—they will not be properly resourced, divert resources from vital other work, to the detriment of actual heritage on the ground. We therefore think an isolated duty on local authorities to maintain HERs is not desirable. Even if funding were available initially, it would fall away but the statutory duty would remain in place. We strongly support a statutory duty on LPAs to have access to effective conservation services, which should include keeping HERs, but as above we do not expect this to happen.

³² EH’s commentary on the Bill, point 75.

³³ EH commentary, point 69.

Security implications

35. While we see good reasons to make register entries and HERs available online, some basic safeguards are essential. If thieves can search untraceably for lead or fireplaces or flagstones, then these things will be looted from historic buildings. Cadw have told us that they will include safeguards, but EH have said that they will not consider even the most basic safeguards (like disabling some search terms) in their Heritage Gateway project. Safeguards are essential, or this is an open invitation to loot heritage.

“Local listing”

36. “Local listing” has a role in protecting buildings which do not merit national designation. But it must be simple, certain, consistent, and proportionate, based on nationally-set selection criteria and guidance, and involve consultation of the public and owners. Above all guidance must make it clear that locally listed assets and their settings are not frozen: the “local listing” is a material consideration to be considered alongside other material considerations.

F. NEW GUIDANCE INCLUDING A NEW PLANNING POLICY STATEMENT

37. Clear concise guidance in plain English is all-important in creating a heritage protection system which is workable, efficient, fair, consistent, and proportionate. It would improve the quality of both applications and decision-taking, and greatly reduce the resources required. Potentially this is much more beneficial to heritage than the Heritage Protection Bill itself. In particular, a new Planning Policy Statement (PPS) for heritage to replace PPG15/16 is essential and must be in place before the Bill is implemented. This is of course the key guidance used by EH and LPAs.

G. CONSERVATION AREAS

38. These are a key part of heritage protection. Removal of Conservation Area Consent and (depending on the details) the Shimizu anomaly would be improvements, but would leave a system which is highly complex, often provides inadequate protection, and is, without rights of consultation and appeal, undemocratic. Greater change is needed.

39. We have doubts about adding “specialist archaeological” and “artistic” interest to the existing designation criteria. Is there really a problem whose solution requires this?

40. While we are keen to see Conservation Areas enhanced, we question the reversal of South Lakeland. Given how subjective the judgements are, having to prove that change is “beneficial” is a big hurdle, and in the real world applicants will incur substantial extra costs and a lot of desirable development may not even be put forward. It may be better for guidance to suggest that if a LPA thinks enhancement is needed it should (briefly) say this in its Local Development Framework (or a Conservation Area Appraisal, which the suggestions in this Appendix would free up staff to draw up), in which case this would be a material consideration³⁴. Especially important is that law and guidance says that what matters is the net effect: many proposed changes have some negative effects which are more than outweighed by positive effects.

H. TERMINOLOGY

41. It matters that the heritage protection system is not off-putting, or accessible only to lawyers. We feel that most of the new terms are both too different and too long, particularly “Registered Heritage Structure” and “Registered Heritage Open Space”, which would be unwieldy even as acronyms. There is no perfect solution, but the best option may be to keep the word “listed”, which to most people now implies heritage, so that that word does not need to be used. This would create, for example “Listed Structures” and “Listed Open Spaces”.

June 2008

Memorandum submitted by the Society for the Protection of Ancient Buildings (SPAB)

1. INTRODUCTION

The Society for the Protection of Ancient Buildings was founded in 1877. It is the oldest of the National Amenity Societies and has special expertise in conservation training and repair techniques. It is a charity with approximately nine thousand members, including building conservation professionals and homeowners.

³⁴ This is suggested in Mynors, *Listed Buildings Monuments and Conservation Areas*, 2006, p498.

The Society was pleased to be involved in discussions preceding publication of the draft Heritage Protection Bill. We have read the published draft with great care and interest. Some issues within, such as new marine heritage legislation, are beyond the scope of our work (which is chiefly related to historic buildings and sites). Where the draft Bill affects our interests it contains many proposals that are welcome to the SPAB. Although there is much to commend in present heritage protection legislation, it is complex, having evolved piecemeal over many years. Current legislation would benefit from some streamlining provided there is—as Ministers have assured us—no lessening of protection. However, we believe that, as important as the means of designation are the conservation controls that follow, and the way in which expert advice and guidance is provided.

After consideration of the draft Bill, the Impact Assessment, and the secondary guidance that has been produced so far, the Society has the following comments and suggestions. We hope that these can be considered by the Culture, Media and Sport Committee, and by government as the Bill's form is finalised.

2. GENERAL POINTS

2.1 *Heritage Vision*

We are disappointed that the draft Bill does not yet carry a statement from DCMS emphasizing the vital contribution that the historic environment makes to our culture, to regeneration, and to the tourist industry. The Bill provides a valuable opportunity for this point to be made on the sector's behalf, and we hope that DCMS will make this statement for government, when the final version is published.

2.2 *Resources and transition*

Effective operation of the new system seems dependent on revised designation descriptions, which define such matters as “special interest” and the extent of curtilage. If resources were available to ensure a full designation resurvey (particularly of England where this has not occurred on a comprehensive, national basis for a quarter of a century) we would have more confidence that the transition between the old system and the new could occur smoothly, with limited risk of public confusion. However, as things stand, there seems no prospect that resurvey work will occur at anything other than a modest pace over a very lengthy period. This risks the creation of a dual system of heritage protection which could potentially be more confusing than present arrangements. This is not a failing of the Bill but of the limited new resources apparently available for its implementation. It is possible that publication of the proposed transitional arrangements will help to allay these fears—we hope so.

The new system places greater emphasis on the role of local planning authorities. To carry out their expanded role in heritage protection it seems vital that each has an experienced conservation officer or conservation team. At present many councils do not employ a conservation officer, and indications are that the number employed overall is decreasing. It is crucial, in our view, that central government ensures that conservation officers are in place, throughout the country, if the Bill's proposals are to be effectively implemented. We do not believe that English Heritage can do this work adequately within its existing resources.

It is welcome that DCMS seems prepared to foot the Bill for local authority work required to set up Historic Environment Records (HERs), but is this an unlimited future commitment to fund their management? Also, what is to happen in Wales?

2.3 *Position of the National Amenity Societies*

Notifications to the National Amenity Societies (of proposals for new designations, de-Registration, Certificates of No Intention to Register (CNIRs), and HPAs, etc) will increase as a consequence of the Bill. We are dismayed that the Impact Assessment says that resourcing implications for the National Amenity Societies can be disregarded since this work occurs at our own expense and discretion. The SPAB's casework is currently at capacity and we have no spare resources to take on extra work without dropping other casework. If the new consultation arrangements are to be of any value, those formally engaged with it must be in a position to carry out their intended roles.

Rather curiously, while the draft Bill specifically mentions that the National Amenity Societies must be notified in the case of new designations and a number of other proposals (eg 29(3)(d)), it does not state specifically that we must continue to be notified where an application proposes demolition of a protected structure. This is our principal, current statutory role in the planning system. We understand that there is no intention to change our status, and that we would be mentioned in secondary guidance, but we would welcome the assurance provided by the mentioning of our present role in new primary legislation.

2.4 *Building Maintenance*

The Society has long championed effective, regular maintenance as the best (and cheapest) way to look after historic buildings. We currently hold National Maintenance Week each year, and we also run the Faith in Maintenance project (supported by HLF, EH and others). We are disappointed, therefore, that the opportunity has not been taken, within new primary legislation, to encourage preventative maintenance. At present, there is no statutory obligation on owners requiring them to maintain protected buildings, or incentives to persuade them to carry out such works. While the Bill includes the possibility of insisting on Preservation Works for heritage structures, this would simply be a successor to existing Urgent Works and Repairs notices for listed buildings, which have normally been used only when buildings have reached an advanced state of decay.

3. DETAILED POINTS

3.1 *“Special Interest”*

Attempting to define more clearly the “special interest” of a building, at the time of designation, has benefits in terms of the understanding of the structure and in controlling works. It also has some potential problems. Inevitably, views on the significance of any heritage structure—its “special interest”—will change over time. Given that the review of designation descriptions is unlikely to occur with any frequency, it is probable that the defined “special interest” of a building will become out of date. When listed buildings were last resurveyed on a national basis, in the early 1980s, it is unlikely that as much importance was attached to 19th and 20th century elements as would be the case today. These list descriptions, though, were then informative rather than prescriptive. They left open the possibility that special interest and significance could be reinterpreted over time. The new designations, being more prescriptive, will have greater risk of out-datedness. Only by ensuring that new resources are available for regular review of all designations can this difficulty be overcome.

3.2 *Access to HERs and the Register*

We welcome the fact that public access, via the internet, is proposed in the case of the Register and HERs. The restriction on public access to English Heritage’s LBOonline has been, in our view, very regrettable. In Wales list descriptions are not currently available on line. We hope that this problem can be resolved as a result of the Bill, or sooner.

We think that it would be valuable if HERs could include— or be linked to—records of the planning history of designated sites in addition to information about historic interest. We welcome the encouragement of local designations and their inclusion within HERs.

3.3 *Preservation Works*

We are pleased that Preservation Works are to be possible wherever a sound case exists for intervention, and not just where they have become urgently necessary. We also welcome the (apparent) intention to extend Preservation Works and enforcement powers to structures that were formerly scheduled ancient monuments. The lack of urgent works powers for scheduled monuments has been a major failing of current legislation. However, we remain concerned by the difficulty faced in persuading councils to take action. We hope that secondary guidance, when published, will assist in this.

3.4 *Ecclesiastical Exemption*

The SPAB has long accepted that the ecclesiastical exemption has some benefits for historic buildings—particularly in terms of the greater potential for the control of repair works. However, we have always believed it vital that the exemption is regularly reviewed. We are concerned, therefore, that the published secondary guidance on the exemption seems to endorse it without a firm plan for regular review. We also have some concern that exemption would be extended to the boundary of an ecclesiastical site, and to registered structures within, without exempt bodies having any formal Preservation Works powers or procedures equivalent to those of the secular system.

3.5 *Designations Appeal Panel*

A more open designations process, with a right of appeal, seems in the public interest. We hope there will be a National Amenity Society right to appoint a representative to sit on the new designations appeals panel. We think it regrettable that Wales is not to have a panel of this kind.

3.6 *Provisional Registration*

Building Preservation Notices are currently little used by councils, due to fears about compensation claims. With a more open designation system, interim protection, while a designation proposal is being considered, is much needed. We therefore welcome the proposal to introduce Provisional Registration. Our one concern is that, with greater openness already being operated by English Heritage during the current listing process, there will be a period of some years, in advance of new legislation, when heritage structures under consideration for designation will be left vulnerable. Further consideration might be given to the issue of whether it is appropriate for English Heritage and DCMS to use its newly introduced and more open consultation procedures in the absence of legislation that will provide Provisional Registration.

3.7 *Expert Advice*

We welcome the fact that Local Planning Authorities will not be able to determine applications for Heritage Asset Consent without having sought “expert advice” (106(5)). We are concerned, though, that they may be considered to have fulfilled this obligation merely by notifying bodies such as the National Amenity Societies. At present, we and the other National Amenity Societies only see a proportion of listed building applications (those involving an element of demolition). To do more would be impossible for us within existing resources (and no new resources have been offered to us). To fulfil their obligation to obtain “expert advice” it seems unavoidable that councils will have to have in-house, specialist conservation officers. This requires additional staff which many councils are very reluctant to fund. This does not seem to have been adequately considered in the Impact Assessment.

3.8 *Heritage Protection Agreements*

Although we have been involved in discussions, details of planned arrangements for Heritage Protection Agreements—particularly in relation to sites enjoying ecclesiastical exemption—remain somewhat unclear. We understand that the National Amenity Societies may have a role as “scrutineers” but the exact nature of this role is as yet unclear. Without a firm understanding of the proposed system, we cannot feel fully confident of it. This is particularly so if, as we understand at present, arrangements for the use of “scrutineers” may be left to the discretion of individual dioceses. It seems that HPAs for the exempt bodies may also be based on an enhanced quinquennial inspection. There needs to be certainty that church architects are prepared to undertake this work, and that church bodies can afford the fees required for enhanced inspections.

3.9 *Machinery in Mills*

We welcome the clear statement that machinery will be considered part of any mill which is a designated structure. Uncertainty about this matter, among local planning authorities and owners, has been of concern to the SPAB’s Mills Section for many years.

3.10 *Conservation Areas*

So far, it is clear only that abolition of conservation area controls is proposed, making demolition works within them instead subject to planning permission. The Society has some reservations about the loss of a special conservation area control, although we accept that its removal will somewhat simplify the present system. We hope for further assurance that the effects of the unfortunate Shimizu and South Lakeland legal rulings will be reversed. Government quite properly began consideration of how the negative effects of the Shimizu ruling might be ameliorated as long ago as the mid 1990s, but as yet amendments have not been put in place.

3.11 *World Heritage Sites*

We are pleased that World Heritage Sites are to appear on the Register. However, it is disappointing that, according to the explanatory notes accompanying the draft Bill “The fact of such inclusion will not subject them to any protection regime and is simply a record of their existence.” We hope that more can be done, through secondary guidance, to help the effective protection of World Heritage Sites.

3.12 *PPG15/Welsh Circular 61/96*

Details of the successor to PPG15: Planning and the Historic Environment and Welsh Circular 61/96 have not yet been published. Both have proved valuable documents and the Society considers it extremely important that the heritage sector has high level published policy guidance, from government, as successors.

June 2008

Memorandum submitted by the London Fire Brigade (LFB)

SUMMARY

1. The London Fire Brigade (LFB) operates a large number of notable and historic buildings across the capital and has worked extensively with English Heritage and other partners to protect this valuable part of London's architectural heritage. Almost 50% of London Fire Brigade's estate is subject to some form of conservation designation.

2. Investment has been made in new equipment for the LFB, designed to deal with the increased threat of incidents such as flooding and terrorist attacks. Stations often require adjustments to be able to accommodate this new equipment. Some previous listing requirements on historic fire stations have made these adjustments disproportionately costly to the LFB, and ultimately to the taxpayer.

3. Fire and emergency cover across London is provided by the whole network of stations. The most appropriate location for equipment is ascertained by mapping risk across the capital. In order to provide a rapid response to all emergencies it is essential that equipment is housed in the most appropriate location. Currently, the listing criteria on some historic stations jeopardises this.

4. The introduction of the draft Heritage Protection Bill is an opportunity to clarify the need for heritage authorities to take into account the public benefit of listing buildings used operationally by the emergency services.

THE LONDON FIRE BRIGADE

5. The London Fire Brigade (LFB) is run by the London Fire and Emergency Planning Authority (LFEPA), a functional body of the Greater London Authority.

6. The LFB is the third largest firefighting organisation in the world; it employs approximately 7,600 staff and covers the 620 square miles of Greater London. Making London a safer city by minimising the risks and social and economic costs of fire and other hazards is the principal aim of the London Fire Brigade and underpins everything it does.

FACTUAL INFORMATION

7. The London Fire Brigade (LFB) property portfolio includes some of the earliest purpose-built fire stations in the United Kingdom. They often achieve a high architectural standard and many are important civic landmarks in their boroughs. This rich heritage and contribution to the townscapes of London is something the LFB is proud of and it works closely with English Heritage and other partners to preserve these buildings. Of the 111 stations, 16 are statutorily listed, 11 are locally listed, and 25 are within conservation areas—almost 50% of the LFB estate is subject to some level of conservation designation.

8. The nature, type and scale of incidents faced by London Fire Brigade changes as London develops, creating pressure on fire stations to accommodate modern equipment and new operational requirements.

9. In recent years there has been big investment in new equipment for the London Fire Brigade. The New Dimensions and London Resilience programmes have funded specialist strategic vehicles for responding to identified threats to the lives of Londoners. Such vehicles include Urban Search and Rescue Units, Fire Rescue Units, Decontamination Units and High Volume Pumps. Many of these are larger than the standard fire engines. Fire stations need to be flexible enough to accommodate these larger appliances, their specialist crews and equipment where needed. It is essential that this equipment be housed in the most appropriate locations in London so that in emergencies it can be deployed swiftly.

10. Housing this new equipment in historic stations can be extremely difficult for the LFB, with a number of recurring problems proving particularly costly and disruptive—as the criteria of current listings prohibit the changes that are needed.

11. With the increase in size of fire engines, the bays that accommodate them need to be made larger. Some bays are so small that new fire engines have had to be specially adapted to allow them to access their bays. In order to ensure flexible fire cover for London, all reserve fire engines as well as engines housed at neighbouring stations would also have to be adapted in this situation.

12. Fire station appliance bay doors must open automatically for engines responding to a call and close automatically behind the fire engines, for station security. Operating equipment for this must be fitted to the doors of older stations. The replacement and refurbishment of appliance bay doors at listed stations has been substantially more expensive than at other stations.

13. All fire appliances need to be able to turnout quickly and safely on to the public highway and ideally should have a return route accessing the rear of the appliance bays. Older stations often necessitate fire appliances to back into their bays whilst the firefighters control the main road traffic—this is disruptive to traffic and can increase the likelihood of accidents.

14. There have been many changes within the fire and rescue services that have impacted on the function of LFB properties. An increasing emphasis on fire prevention makes it necessary for stations to be accessible to the public for example, and rising numbers of women firefighters have necessitated changes to accommodation facilities. The requirements of the Disability Discrimination Act and health and safety legislation rightly apply to us as much as any other organisation; indeed, as a public body concerned with safety the LFB aims to set an example.

15. Another factor that could be taken into account when listing decisions are made is the fact that often fire stations have been built to very similar designs. For instance, during a recent listing process, the English Heritage advisors' reports stated that both Plumstead and Deptford Fire Stations were comparable to other London fire stations that are Grade II listed—stations such as Brixton, Clerkenwell, Southwark and West Norwood. In these cases the benefits of listing further stations should be weighed against the need to provide suitable operational and staff accommodation in these locations.

16. Often, current listing criteria have effectively ruled out redevelopment of a station on the same site. The guidance document, PPG 15, Planning and the Historic Environment, is quite clear that if a listed building cannot continue in the use for which it was constructed, it must be offered in the market for other uses. Fire stations lose some of their special interest just by ceasing to be used for their intended purpose, just as much as by physical change.

17. Each fire station in London forms part of a network for strategic provision of fire cover for the whole of the capital. There are tight constraints on suitable geographical locations for stations to ensure that incident attendance times are maintained. In many parts of London, finding an alternative site for an existing station is extremely difficult because there is relatively little available land in a suitable location and the cost likely to be much higher than the sale value of the old station.

18. The LFB receives no funding specifically to meet the costs of adapting listed buildings, for relocating where their adaptation is unrealistic, or for costs resulting from their functional inefficiency. Unlike commercial or private owners, there are no compensating benefits for the LFB in terms of value added by the attraction of listed buildings as places to live or do business. The scarcity and cost of suitable sites combined with strict listing requirements can potentially leave emergency services with buildings that aren't fit for purpose and with no opportunity to move to new sites.

19. What is needed is a more flexible approach to updating existing listed stations. The LFB, along with all other emergency services, has a duty to provide a modern service to the community and staff with a healthy, safe working environment. The listing of some operational buildings hampers the ability to do this and can have a significant impact upon the costs of improvements. Special consideration should be made of the unique needs of the emergency services operating from historic buildings when listing and building consent applications are dealt with, with the emphasis on the balance of benefits to the public in these cases.

RECOMMENDATION

20. That the new legislation, the draft Heritage Protection Bill, is used to make it a requirement that heritage authorities have a duty to take into account the unique needs of emergency services when listing and dealing with building consent applications for operational buildings.

June 2008

Memorandum submitted by the Quarry Products Association (QPA)

The QPA is the principal trade association representing the quarrying industry in the United Kingdom. Our members produce almost 90% of the total UK output of aggregates. They are also responsible for producing important industrial materials such as silica sand, agricultural and industrial lime, ready mixed concrete, mortar and blacktop for roads.

QPA have given extensive consideration to the draft and are generally supportive of the simplified system of heritage designations that it proposes to introduce.

However, we have several significant concerns about the way that the new system would interface with the land use planning system.

Our greatest concern stems from the fact that under Clause 155 (1)(b) a planning authority has a duty to consider the possible effects of a proposed development on not only the heritage asset itself but also the setting of that structure or open space. Amongst other objectives, the planning system aims to reduce uncertainty to potential developers. It does not seem possible to define the term "setting" with the degree of precision necessary to achieve that objective.

If despite this problem, considerable weight is still attached to "setting", it is quite wrong not to include owners of land which constitutes "setting" as statutory consultees in the designation process.

QPA also have an overall concern that structures and open spaces can be provisionally included on the heritage register simply because an application to register has been made and what a wide range of individuals are eligible to make such applications. Taken together with the proposal in the Bill to give appeal rights to a very wide range of individuals and the process seems bound to create major delays in the planning process.

QPA would be happy to provide further detail on any of these points and are likely to do so in our response to the Department for Culture Media and Sport.

June 2008

Memorandum submitted by the Association of Greater Manchester Authorities (AGMA)

INTRODUCTION

This report examines the implications of the proposed Bill in relation to the 10 Greater Manchester Local Authorities.

The Draft Heritage Protection Bill, which introduces a new integrated approach to managing the historic environment and creates a system that is able to protect our historic assets, is welcomed in principle. The Bill imposes new burdens on local authorities however and these will have potentially significant resource implications. The commitment by DCMS to fund these new burdens is welcome, and although it is difficult to predict the impact of these new responsibilities and the scale of resources required, overall they should be outweighed by wider benefits of a potentially more effective, responsive and inclusive heritage protection system. There is a need for further clarification and guidance on many aspects of the provisions of the Bill, when it is hoped that roles and responsibilities will become clearer, and standards and benchmarks will be agreed.

Detailed comments on particular aspects of the Bill:

(i) *the Bill and the consultation process.* Key sections of the draft Bill are missing or incomplete and therefore it is difficult or impossible to make full meaningful comments on all aspects of the proposals at this stage. In particular additional detail and clarification is required on:

- (i) conservation areas;
- (ii) roles and duties of historic environment services within local authorities—need for local authority based expert guidance;
- (iii) resources and capacity;
- (iv) local designations; and
- (v) how the introduction of the Bill will dovetail into the new planning system.

(ii) *programme and timing* In terms of timing it is crucial that PPGs 15 and 16 are revised as a PPS and are harmonised with the introduction of the Heritage Bill to avoid confusion between two sets of terminology. Meanwhile Local Development Frameworks are being produced by Local Authorities and refer to policies, concepts and terminologies embodied in PPG 15/16 rather than those contained in the new Bill.

(iii) *transfer of existing lists to new register:* concern that the new register will become a mixture of new and old entries, the latter simply imported from the existing lists. There are major resource implications for the task of re-writing new descriptions to the same standard. If this does not take place there is likely to be particular confusion over interpretation/definition of “curtilage”. Appropriate mapping and clear guidance will be required.

(iv) *new entries on register.* Concern that English Heritage will continue to place an emphasis upon themed reviews rather than spot listing or regional resurveys. Areas of particular need in Greater Manchester include updating of present lists with acknowledged poor coverage and inadequate list descriptions; also a need to give appropriate recognition to key remains relating to textile mill power technology, either water or steam.

(v) *mapping of heritage assets.* Clause 79 (7) suggests that mapping is not necessary in defining a registered heritage asset. Whilst there may be problems with doing this for below-ground archaeological remains (and in these cases an appropriate health warning should be issued), it will be essential to provide a reasonably large scale map showing the protected structure or space in the majority of cases, to avoid doubt and dispute.

(v) *definition of new concepts & terminology.* Existing terms such as “listed building” are well understood and widely used by the public— their re-branding under the umbrella of “registered heritage assets” may be a legal requirement of the Bill but the new terms are unlikely to gain popular currency and understanding. More careful consideration should be given to how established terminology can be transferred though into the new legislation and guidance.

“Special interest” is not defined although it will be informed by the “principles of selection” contained within national policy guidance. This is such a key element throughout the Bill that clear guidance is needed as soon as possible. For example to determine those works which require consent there is no reference to the existing concept of “character”, only that the “special interest” must be affected.

Furthermore the use of the term “special” is applied equally to assets which have national or local interest.

The concepts of special archaeological and artistic interest are new and again need clarification. The new term “artistic interest” can be a very subjective area and will require the establishment of clear criteria.

In defining whether an archaeological site holds special or ordinary interest, PPG16 Annex 4 criteria should be referred to and applied. Reference should also be made to national, regional and local archaeological research frameworks which can help define the special interest of an archaeological site. The concept of “archaeological interest” may be misleading because it encourages archaeological investigation—many sites are already well understood from previous work and just require preservation in situ.

(vi) *Certificates of No Intention to Register.* In the case of archaeology this should include initial archaeological desk based assessment and evaluation. Clear guidance is needed here including procedures for developers to follow. This could create an increase in archaeological investigations, when developers wish to demonstrate that a site has no special archaeological interest.

(vii) *Gradings.* The mass of existing HER entries are ungraded, although they will range through sites of national, regional, county or local interest. There is no guidance on whether HERs should be reassessing these sites with a view to determining their registrable potential—this could have major resource implications.

(xiii) *Enforcement.* Where enforcement is required, an application has to be made to EH who have 28 days to respond. This is not practical unless the heritage asset is protected during this application otherwise it could be destroyed by the time EH respond. This does not sit comfortably with the wider aim of devolving decision making to a local level.

(ix) *Ecclesiastical exemption.* The internal processes established by the Exemption need to be as robust as the secular system and should be subject to periodic monitoring. Continuing concerns that communication between DAC and local authorities is inconsistent.

(x) *Heritage Partnership Agreements.* These could be powerful tools for achieving viable futures for heritage assets. In particular they represent an important opportunity to proactively manage Scheduled Monuments. However there are likely to significant resource implications in drafting them and clear guidance will be needed.

(xi) *Building recording.* Under clause 110, it is important to flag up the need for archaeological survey and recording, not just providing access (a hangover from RCHME days). Any buildings of special interest, whether heritage assets or local designations, should require an archaeological survey for archive and research purposes ahead of part or complete demolition, and to inform sympathetic conversion. The clause should require the applicant to fund a contracting archaeological body to record the registered heritage structure ahead of and during demolition/destruction in accordance with a scheme of recording that has been approved by the LPA/EH in advance.

(xii) *Consultation.* Local planning authorities are required to consult owners on proposed local designations. This could have major resource implications and, unless appropriate planning controls are in place, could encourage owners to initiate speculative demolition. It is recommended that a notification process following designation, combined with an appeal process, would be more appropriate.

Clause 251(4) requires consultation with owners of special local interest structures or open spaces before they can be entered on the database HERs. The resource implications for this are massive: just one archaeological desk based assessment, in an urban centre or for a long rural linear site such as a road or pipeline, can generate scores of new entries.

(xiii) *Locally designated heritage assets.* Protection over locally designated assets is not addressed by the Bill—further guidance is required and clarification over how it will be aligned with planning control.

(xiv) *Historic Environment Records guidance*

- Guidance should make reference to benchmarks created by HER/ ALGAO representatives and English Heritage to define the extent and quality of a HER.
- The guidance and draft bill fail to tie in maintenance of HERs to a requirement to provide the wider curatorial archaeology service—this is a wasted opportunity to secure integrated archaeological curation at a local and county level.
- Under section 33 it is also desirable for HERs to maintain reference collections to inform strategic management of the archaeological resource and for development control work.

- The way the advice is set out suggests that any “heritage” operative could maintain a HER—there is no reference to the skills, education and training undertaken by archaeologists to become HER Officers. The quality of data on HERs can be very variable and needs skilful interpretation—there is no reference to the intellectual rigour required to sift good from inappropriate data which may be put forward for inclusion on the HER.

Access to HERs—clause 213(b) is poorly thought out and goes against good HER management and policies, resulting in consultants or the public requesting all of the HER database (which might run to tens of thousands of records).

(xv) *Abolition of Conservation Area Consent*. Demolition in conservation areas is presently a criminal offence—if Conservation Area Consent is subsumed under Planning Law it is likely to become downgraded to a civil offence—this is likely to result in an increased threat of demolition of historic buildings in conservation areas.

(xvi) *Urgent works notices*. The capacity of local authorities to carry out urgent works in default would be strengthened if costs were reclaimable as a land charge (as exists under the Building Acts) rather than as a civil debt. There is no provision within the draft Bill to remedy this longstanding weakness in the existing legislation.

June 2008

Memorandum submitted by J K Preston

1. SUMMARY

1. *The overall aims and scope of the draft Bill*

I strongly support the Bill’s aims, but it fails to deliver the holistic approach which is needed, and in particular from DCLG. Conservation Areas are inadequately considered, and there is no cross-reference to the Building Regulations—a key issue for all owners of historic buildings. Regrettably, the Bill takes a very narrow view of Historic Environment Records; the current proposals for HERs fail to meet the needs of a holistic and well-managed Historic Environment. A holistic approach should include arrangements for managed archiving as well as electronic records.

2. *Costs and benefits*

The Impact Assessment is inadequate in detail, and is unrealistic in its assessment of the impacts on Local Authorities.

3. *The staffing and skill levels needed for effective implementation*

Existing shortages of skilled staff will be compounded, by the time the Bill is implemented, due to the age profile of the conservation profession. The Bill will bring additional training needs. English Heritage’s proposed training and “capacity building” initiatives will not provide the number of skilled staff needed. Neither DCMS nor English Heritage appear to have sufficiently recognised that the delivery of Heritage Protection outcomes, as opposed to processes, will require the availability of skilled professionals and trades in the Private Sector to carry out appropriate works to heritage assets. The courses which might provide the training are inadequate in number, and unable to sustain themselves due to apparent lack of demand. There is no coherent Government or Local Authority support for the training needed.

2. INTRODUCTION

I am Historic Environment Manager for Cambridge City Council, having previously been a Conservation and Design Officer and a Planning Officer. In these roles I have spent over 30 years helping owners of historic buildings, and their agents, make sense of, and find solutions to, the diverse range of regulations and requirements which impinge on them. For the last 15 years I have also been involved in managing archaeological information, as project manager for the City Council’s Urban Archaeological Database. I have 10 years’ experience of promoting the Conservation Plan approach (which underlies the proposed Heritage Partnership Agreements) among Cambridge Colleges. In recent years I have been managing the impacts of e-government requirements on my service, and have had to try to reconcile the totally separate systems requirements of ODPM / DCLG on one side, and DCMS / English Heritage on the other. I have worked to achieve shared understanding among the building conservation and archaeological communities and to tackle issues, through organising conferences³⁵, through making presentations to the Historic Environment Record Forum, and through writing articles.³⁶

³⁵ Including instigating, and speaking at, the 2005 IHBC / IFA / Oxford University conference “Managing the Historic Environment in the Digital Age”

³⁶ Including “e-government—Issues and Opportunities at the Sharp End” published in English Heritage’s Conservation Bulletin 51.

I am Education Secretary for the Institute of Historic Building Conservation (IHBC) and a Trustee of the Conference on Training in Architectural Conservation. I was a member of the working groups for the Local Authority Conservation Provision Survey (English Heritage & IHBC, 2002), the Matrix for Excellence for Design and Conservation (published as “Matrix for Excellence in Urban Design and Conservation”, IDEA and Planning Officers’ Society), and the Matrix for Excellence for Historic Environment Services (working document not published, DCMS, English Heritage, IHBC and ALGAO). I was interviewed for the 2007 Terraquest survey for DCMS and CLG on Planning and Historic Environment Information Systems.³⁷

I was the invited author for the paper on “The Context for Skills Education and Training” published in the 10th anniversary edition (November 2006) of the Journal of Architectural Conservation (authoritative, with peer-reviewed papers).³⁸

3. THE OVERALL AIMS AND SCOPE OF THE DRAFT BILL

I fully support the aims of the Bill, but as drafted it fails to fully deliver these for some of its most vital customers: the owners of historic buildings.

A key problem at the “sharp end” is that owners have to deal not just with Planning and Listed Building legislation, but many other requirements, notably the Building Regulations. The Building Regulations (parts L and M) promote access and energy conservation in existing buildings: difficult balances frequently have to be struck between these competing worthy causes. Having worked with colleagues in English Heritage to secure special consideration under the Building Regulations (parts L and M) for historic buildings (widely defined, including buildings in Conservation Areas and buildings of local interest), it is particularly disappointing that the draft Bill does not seem to recognise that these interactions exist, let alone provide for them. This omission will cause very significant problems for many “heritage asset” owners, including those in Conservation Areas³⁹. It could also be particularly problematic for potential Heritage Partnership Agreements for historic buildings.⁴⁰ Some of the potential problems could be averted by cross-referencing the Bill and its accompanying guidance to British Standard BS7913:1998 *A guide to the principles of the conservation of historic buildings*, which provides an excellent basis for balancing competing regulatory requirements.

A second issue is that effective management of the historic environment depends on close linkages, between both people and supporting systems. However the Bill (and the accompanying draft guidance) take forward a narrow view of Historic Environment Records as successors to Sites and Monuments Records. This approach will not deliver close integration (on which achievement of the Bill’s aims depends) of record systems for the historic environment with wider systems covering planning, building regulation and land charges (essential if owners are to be formally notified of protected status).⁴¹

It is my firm view that the proposed single level model of HER will not work for 2-tier authorities. Instead, information will need to be managed at both local level and at the HER, but in an integrated way. The sooner this is recognised, and proper provision is made for enabling it, the better. These requirements need to be integrated with managed (and properly resourced) archiving and disposal of hard copy records, in accordance with wider Local Government guidelines, and in conjunction with Archive services. I see no sign that these issues have been adequately tackled in either the Bill or the Impact Assessment.

A further issue with the proposals for Historic Environment Records is that they carry forward a set of archaeological standards developed by archaeologists for archaeology—rather than reflecting the broad scope and needs of the wider Historic Environment. This is a great missed opportunity, particularly disappointing given the existence of European Standards for Documenting the Cultural Heritage, which provide a framework for bringing together standards for recording archaeological sites, cultural objects, and historic buildings⁴², and appear well suited to the holistic approach of the Bill. This is illustrated by the example of Greenwich (The Royal Naval College, The Queen’s House, The Royal Observatory and the Park).⁴³

³⁷ DCMS Planning and the Historic Environment Research Stage 1 Report
© TerraQuest Solutions 2007 Ref: 1315/3/6469 DCMS Stage 1 Report v1.doc
and DCMS Planning and the Historic Environment Research Stage 2 Report
©SupportaTerraQuest2007 Ref:1315/3/6469report.doc

³⁸ Available at http://www.ihbc.org.uk/recent_papers/docs/JAC_Nov_06_Preston%5B4%5D%5B1%5D.pdf

³⁹ eg where owners wish to keep and repair traditional timber sash windows.

⁴⁰ for example, I have been working with one Cambridge College (grade I) on a 12-year strategy for refurbishment. A key element of that strategy is the heating of the 3rd floor; the strategy depended on agreeing the approach to providing that new heating system, in principle and some years before any formal application, with Building Control under the special provisions of Part L. The College has now outsourced its Building Control, so preventing the continuity of understanding which is essential for successful partnership.

⁴¹ I have been trying unsuccessfully for four years to get effective electronic linkages between my Council’s electronic management systems (to ODPM specifications) and the incompatible (DCMS-promoted) HER at the County Council. I have raised the problems repeatedly; I was one of those interviewed for the 2007 DCMS / Terraquest survey³, which I had hoped would lead to a realistic joined-up lead from DCMS and DCLG in the current Bill.

⁴² “Documenting the Cultural Heritage”, R Thornes and J Bold, Council of Europe and Getty Information Institute 1998 ISBN 0-89236-543-9

<http://www.object-id.com/heritage/intro3.html>

⁴³ <http://www.object-id.com/heritage/standards.html>

4. COSTS AND BENEFITS

The Impact Assessment appears incomplete and inadequate. The summary (p29) of Administrative Costs does not adequately reflect the costs to be borne by Local Authorities. DCMS and English Heritage have given no indication of how they will deliver their commitment “to meeting new burdens placed on local authorities”.

The Historic Environment Record costs are a narrow assessment based on existing HERs only. The costs of providing effective electronic linkages (to enable exchange of information) between different systems and 2-tier authorities have not been assessed; nor have the costs of the improved record and management systems which will be needed at district level.

5. THE STAFFING AND SKILL LEVELS NEEDED FOR EFFECTIVE IMPLEMENTATION OF THE PROVISIONS IN THE DRAFT BILL

There is a current shortage, of near crisis proportions, of skilled conservation professionals within local government.⁴⁴ Staff retention, as well as recruitment, is a key issue. This shortage has been overlooked in a succession of Government-supported surveys (Egan, ODPM/ DCLG, LGA / Employers’ Organisation, and most recently and concerningly, the Academy for Sustainable Communities’ “Mind the Skills Gap” skills needs survey (November 2007), which failed even to identify conservation officer skills within its questionnaire.⁴⁵

Design in the historic environment, and IT skills, are high priorities in terms of skills needs, along with the “generic skills” highlighted by Egan. Such skills are needed, to varying extents and without explicit recognition, by conservation staff (for example, the community engagement skills needed for the longstanding Statutory Duties relating to Conservation Areas, and the partnership working / visioning / catalysing / project management skills needed for working with property owners and delivering conservation projects).

The current staffing and skill shortages will be compounded by the age profile within the profession (with a very significant proportion of existing conservation professionals, including myself, likely to be at or approaching retirement age when the Heritage Protection Bill comes into effect); and the additional requirements of the Heritage Protection Review.

There is a comparable, and equally serious, shortage within the Private Sector of the skills needed to deliver outcomes for the Heritage Protection Review. The National Heritage Training Group Survey of Skills Needs for Built Heritage Sector Professionals (April 2008) noted (for the UK as a whole) a total of 507 conservation-accredited professionals, equating to one conservation-accredited architect for every 14,722 traditional buildings; one conservation-accredited surveyor for every 84,444 traditional buildings; and one conservation-accredited engineer for every 276,364 traditional buildings.⁴⁶ The parallel survey for Building Crafts⁴⁷ noted that “there is a real need for a collective response to the demand for increased knowledge and understanding of the needs of pre-1919 buildings. Without appropriate information, advice and guidance and education for private stockholders, there will be no way of transforming the enormous latent demand for traditional building skills into an active market.”

The need for conservation awareness and training is now greater than ever, not just among the traditional professions, but also across a broader professional landscape. This includes structural engineers (identified as a priority by English Heritage), regeneration professionals, urban designers, building control surveyors, mortgage surveyors, facilities managers, and many others whose professional practice affects historic buildings or their settings.⁴⁸

There are at least nine Sector Skills Councils involved in the Historic Environment⁴⁹, but there is no Sector Skills Council for Local Government. The Local Government Single Status Agreement between Employers and Unions has diminished the status of conservation staff and depressed salary levels, making recruitment even more difficult.

“Heritage Counts” 2007, prepared by English Heritage, noted that “There appears to be a gap between the formulation of strategies at the centre and action on the ground to actually deliver more trained people. There is a lot of training activity taking place, often as a result of individual grass roots initiatives. However, at the centre there is a very complex range of bodies involved in skills policy and no effective means of coordinating their activity.”⁴⁹

⁴⁴ Local Authority Conservation Provision Survey, 2002; recent IHBC survey; also my own experiences in trying to recruit staff.

⁴⁵ “Mind the Skills Gap” anticipated “a significant shortage of qualified professionals with the necessary skills to deliver sustainable communities between now and 2012”. It highlighted predicted shortages of 91% for landscape architects urban designers and architects, and 46% for planners, but anticipated an 8% surplus for the “environmental officer” category, and by implication for the conservation officers included within that category. That anticipated surplus was based on predictions for sustainability officers, and is both misleading and demonstrably untenable for conservation and historic environment officers.

⁴⁶ http://www.constructionskills.net/pdf/research/specialists/NHTG_skillsresearch_professionals_2008_summary.pdf

⁴⁷ http://www.constructionskills.net/pdf/research/specialists/NHTG_skillsresearch_England_2008_summary.pdf

⁴⁸ “The Context for Skills Education and Training” J Preston, *ibid*.

⁴⁹ “Heritage Counts” 2007

English Heritage's proposed "training and capacity-building" will not meet the scale of the needs of Heritage Protection Reform. Rather, what is needed to implement the Bill, and to meet the staffing and skills needs arising from it, is a strong partnership between DCMS, DCLG, English Heritage and the Local Government employers, to translate the latent demand for skills into real demands for training.⁵⁰ This in turn would offer some hope of providing a sustainable environment in which graduate and postgraduate courses could grow to meet the needs, rather than trying to survive as at present.

I hope very much that the Committee will be able to raise these issues, and to achieve the improvements to the Bill which are so urgently needed to make it succeed.

June 2008

Memorandum submitted by Teresa Kirk, Victoria & Albert Museum

Thank you for inviting us to submit our views on the draft bill. We would like to question a few passages where the description of a fixed or moveable object seems unclear. These are Part 1, Chapter 2, Section 4, Point 1(a) and Part 2, Chapter 1, Section 87 (2). It seems to us that these two descriptions differ significantly. One further point is in Part 1, Chapter 2, Section 9, where we are surprised that national museums are not listed as appropriate persons to be invited to submit a representation.

June 2008

Memorandum submitted by Heritage Lottery Fund (HLF)

THE HERITAGE LOTTERY FUND

1. The Heritage Lottery Fund (HLF) is the largest dedicated funder of the UK's heritage, with £180 million a year to invest in new projects. HLF has committed over £4.2 billion to more than 28,000 heritage projects across the UK since 1995.

2. HLF's view of heritage is broad, progressive and inclusive. Understanding, valuing and sharing diverse histories changes lives, brings people together and provides the foundation of a confident, modern society.

3. The Fund's focus is on conserving, sustaining and sharing heritage. Through its grant making it aims to:

- conserve the UK's diverse heritage for present and future generations to experience and enjoy;
- help more people, and a wider range of people, to take an active part in and make decisions about their heritage; and
- help people to learn about their own and other people's heritage.

DRAFT HERITAGE PROTECTION BILL

4. HLF broadly welcomes the draft Heritage Protection Bill, which will increase the ability of the statutory system to protect the wide range of heritage that HLF funds and safeguard its investment.

5. In particular, HLF welcomes the proposals in the Bill to bring together buildings, archaeological sites, parks and gardens under one registration scheme. The Heritage Lottery Fund has encouraged an integrated, holistic approach to heritage protection and management, which has enabled its projects—houses set within parks, industrial buildings set within their landscapes, area-wide historic townscapes etc—to be far more transformative than would otherwise have been the case.

6. Whilst HLF is pleased to see that no element of the Bill as it currently stands will lessen protection of the historic environment, it is concerned that clauses relating to Conservation Areas are not included and will be included only when the Bill is introduced. Despite the importance of Conservation Areas in protecting much of the UK's heritage, any changes to the system ensuring their protection will not receive the same level of pre-legislative scrutiny as the rest of the Bill.

7. A central concern is that the successful operation of the proposed Heritage Asset Consent Regime is very largely dependent on the resources available to local authorities and funding from government must be sufficient to enable all local authorities to employ and train dedicated conservation staff. Currently around 30% of local authorities only have one full or part time conservation professional in post, around 20% have no access to specialist conservation services, more than 10% have no internal conservation service

⁵⁰ Through a "Virtuous Circle" based on: set Standards of Service Delivery—the skills needed to deliver them—the numbers (and levels) of skilled people needed—the combination of qualifications and experience they need—the training and experience they need—the courses needed to provide the training, and the workplace opportunities needed to provide the experience—the demand needed to sustain the courses to deliver the skills and the Service.

of any type, and 2% take no conservation advice of any kind⁵¹. HLF has a legal contract with its grantees for the maintenance and upkeep of the heritage that it funds, which is enforced for a period of 10 years after it awards the grant. Beyond this period, the long-term protection of those buildings and sites that HLF funds is in the hands of local authorities and they must be adequately resourced to deliver their responsibilities in this regard.

8. HLF sees Sites and Monuments Records/Historic Environment Records (SMRs/HERs) as one of the most important ways of maintaining and disseminating knowledge about the historic environment. To 31 March 2007 HLF had made 10 awards to local authorities in England for projects which have enabled SMRs/HERs to provide digital access to records, create educational resources and run community outreach projects. Whilst HLF welcomes the proposed duty to create and keep up to date Historic Environment Records (HERs), it should be recognised that making this a statutory responsibility of local authorities will mean that HLF will not be able fund any activities which are included among the statutory duties of HERs. (Though it could continue to fund relevant activities which are not included amongst statutory duties—as long as they meet HLF criteria—such as outreach to schools or community groups). At the same time, making HERs statutory may encourage many HLF grantees to deposit in them the detailed conservation, management and maintenance plans that they develop as part of their applications.

HLF would be willing to expand on any of these points if that would be useful.

June 2008

Memorandum submitted by Campaign to Protect Rural England (CPRE)

INTRODUCTION

1. The Campaign to Protect Rural England (CPRE) welcomes the opportunity to submit written evidence to the Select Committee Inquiry on the Draft Heritage Protection Bill. CPRE is the nation's single largest participant in the planning system. We recognise the crucial role played by conservation controls in protecting the historic environment and wider countryside.

2. In drafting this evidence we have consulted our network of 40 county branches and nine regional groups. This network has extensive experience of heritage protection through the planning system, and our volunteers play an active role in local planning matters.

3. While CPRE broadly supports the Draft Bill and its proposals, we have concerns about the practical implications of the implementation of some aspects. We are also concerned that the secondary legislation and statutory guidance for a number of key areas is yet to be drafted. We hope that the opportunity to comment on these in detail will be available in due course.

AIMS OF THE DRAFT BILL

4. CPRE welcomes the introduction of a unified designation system based on harmonised definitions and selected criteria, as this will provide a "more joined up" approach to heritage protection. We welcome, too, the Government commitment that there will be no reduction in protection of the historic environment as a result of this process.

5. We are pleased to see that the Bill recognises the importance, for the first time, of "sites of human activity without structures" as among heritage assets that can be registered for protection. This inclusion gives recognition of the importance of aspects of the historic environment hitherto unprotected by legislation.

6. We strongly support the recognition given in the Bill that putting the historic environment at the heart of the planning system will play an important role in underpinning sustainable communities. CPRE remains concerned that on the evidence of planning reforms so far this does not appear to be borne out in practice. It will be vital for new legislation to be accompanied by a draft Planning Policy Statement for the Historic Environment to replace PPG15 & 16 and that other Departments, who carry planning related responsibilities, such as DCLG and BERR, support DCMS's worthy aspirations for the historic environment, in respect of primary and secondary legislation, statutory instruments, policy and guidance.

7. A major concern for CPRE is that the Bill does not propose that Conservation Areas should be recorded on the Heritage Assets Register. In our view, this does not make sense and would result in the heritage register providing an incomplete and woefully inadequate record of heritage assets in England.

⁵¹ "Quantifying local planning authority conservation staffing", IHBC 2006

Conservation Areas are listed in Historic Environment Records and many are of national significance. Moreover, their inclusion on a national register would encourage local authorities to take measures to protect and enhance Conservation Areas and carry out thorough Conservation Area Appraisals as part of this process. We believe that as well as recording Conservation Areas in England on the Register, the current statutory duty to preserve and enhance the character and appearance of Conservation Areas should be retained.

8. A related concern is the absence of any clause in the current draft Bill to address the damaging situation brought about by the Shimizu case which opened up a loophole to allow part, or even substantial, demolition of a building in a Conservation Area. We urge the Committee to recommend a clause be added in the final Bill to address this.

THE ROLE OF THE VOLUNTARY SECTOR

9. CPRE is delighted that the Draft Bill recognises the crucial role of the voluntary sector in safeguarding heritage. A growing body of research demonstrates the huge contribution made by volunteers (see, for example *Making Consultation Matter*, Heritage Link, 2006).

10. However, we are disturbed that the Draft Bill fails to recognise the support and training amenity societies and voluntary groups will need in order to engage constructively and effectively in the new process, or the costs this would entail. Such an investment we believe would be worthwhile, however, since it would reduce delay and help secure continuing protection for heritage.

11. We also have concerns that, throughout the Draft Bill, consultation, when it is to take place, seems to be limited to national amenity societies (eg section 9(3d)). Local amenity societies, with local knowledge, may be in a better position to comment on proposals regarding heritage assets. We recommend that the minimum time limit stated for consultations to be extended beyond 28 days to allow satisfactory co-ordination between local amenity societies and their national counterparts.

RESOURCES FOR IMPLEMENTATION

12. CPRE is disturbed at the current lack of the capacity of local authorities for delivering Historic Environment Record and related services. For example, they will need to pay for or employ specialist staff they do not currently have to discharge new duties, such as processing heritage consents relating to archaeology. We welcome support given by English Heritage to develop local capacity, and the offer of support from the DCMS to fund additional administrative needs of local authorities, but we believe there needs to be clearer guidance on the requirements for establishing and implementing the new system.

13. Lastly, we are concerned at the level of resources it is proposed will be available to English Heritage to oversee and maintain the implementation of the new system beyond the initial period of funding due to end in 2010–11. Extra investment beyond the first phase of funding will almost certainly be required given that it will take time for the new system to become established.

June 2008

Memorandum submitted by the Ministry of Defence (MOD)

The MOD has been asked by Lord Bruce-Lockhart, Chairman of English Heritage (EH) to submit evidence to the Culture, Media and Sport Committee with regard to Heritage Partnership Agreements as part of its pre-legislative scrutiny of the draft Heritage Protection Bill.

The MOD is responsible for the largest number of historic environment assets on the UK Government Estate, with 793 listed buildings and 720 Scheduled Monuments. The defence estate lies within nine cultural World Heritage Sites (including St. Kilda, Hadrian's Wall and the City of Bath) as well as within numerous Conservation Areas. A number of MOD sites are on the English Heritage and Historic Scotland Registers of Parks and Gardens including Halton House, the Priory at Chicksands and Craigiehall. Areas of DM Kington lie within the registered Edgehill battlefield.

As part of the consultation period for the Heritage Protection Bill, the MOD put forward two of its sites which have significant heritage issues to participate in the Heritage Partnership Agreement pilot studies. These sites were RAF Scampton and MOD Shoeburyness. As assessment of these pilot projects and the resulting "lessons learned" are at Annex A.

OVERVIEW OF PILOT PROJECTS AND LESSONS LEARNED FOR HERITAGE PARTNERSHIP AGREEMENTS

PILOT PROJECTS

RAF Scampton

RAF Scampton was selected as it combined a variety of heritage sites and management issues which includes a Roman villa and road along side 20th Century military history having been used as a WWI Training Aerodrome, a WWII heavy bomber station (famous for the home of the Dambusters) and as a V force site during the Cold War.

The management guidelines were developed jointly by English Heritage in consultation with the RAF, Defence Estates and West Lindsey District Council and were completed in 2005.

At the time there was an initiative to re-develop RAF Scampton and the management guidelines aimed to reconcile the need for change while maintaining and enhancing the site's architectural and historical interest. In common with many sections of the MOD estate there is a need to balance the preservation of heritage whilst maintaining defence capability, which means managing change in a sensitive manner. From a MOD point of view, it was hoped these guidelines would provide a tool to facilitate the sustainable development of the MOD estate and provide a mechanisms for de-conflicting heritage and defence issues.

The plans to re-develop RAF Scampton did not come to fruition and the guidelines have not been adopted by the Department.

MOD Shoeburyness

MOD Shoeburyness (Foulness Island) was chosen for its continuous defence occupation since 1850 but primarily for its use for the development of nuclear weapons technology from the late 1940s (Cold War Structures). In addition it has a scheduled Romano-British burial site and model of the "Atlantic Wall" together with seventeen listed buildings within its rural community.

A working group was also established consisting of the key stakeholders. English Heritage, Defence Estates, QinetiQ (MOD contractor), Rochford District Council and Essex County Council.

At the initial scoping phase, it became apparent that due to the health and safety issues on the site, English Heritage's aims and goals for the project were unachievable so the project did not come to fruition. However, English Heritage did undertake an extensive desk-based study which later informed the historic environment of MOD's own Integrated Land Management Plan (ILMP) for the site.

LESSONS LEARNED

1. Resources. An HPA requires a significant upfront input of resource both in terms of cost, effort and time. It requires undertaking detailed assessments (possibly involving a contractor), drafting the documentation and liaison between the various stakeholders. Whether this initial expenditure justifies the potential benefits of having an HPA in place will need to be determined on a case by case basis. It is ultimately a business decision.

2. Risks. Undertaking the pilot project at RAF Scampton brought to light a raft of heritage issues which EH deemed to be of significance. Instead of providing a tool to sensitively manage the heritage issues through change at RAF Scampton, the opposite materialised. It has served to highlight the risks associated with Scampton which has been a contributing factor for the RAF not to invest in Scampton. With the move of the RAF Aerobatic Team (RAFAT) to RAF Waddington, Scampton will be under utilised and this could be detrimental to the heritage fabric of the station.

3. Commitment. An HPA requires a commitment by all parties (the owner, English Heritage and the Local Planning Authority) for it to work. The process will either fail or the HPA will not have legal force unless it has signatories of all parties. This is potential significant risk to any HPA initiative.

4. Engagement. The HPA process requires a high level of engagement with the land owner, the HPA and LPAs. The MOD has a close working relationship with EH and there is a robust stakeholder engagement framework in place. As Crown Immunity has recently been removed from the Planning Acts its relationship with the LPAs has changed and they now have a greater statutory influence over MOD's estate development. Consequentially, LPAs tend to be more guarded in their dealings with defence issues. The relationship with the LPA could influence whether a HPA is initiated and becomes successful.

5. Staff turnover. Staff turnover is a potential issue for MOD either it be within MOD itself, the LPA or EH. There is a risk that the agreement/document can be forgotten if incoming staff are not appropriately briefed. Potentially this could lead to decision that may be taken unwittingly that could result in legal implications (as the HPA has legal force). The turn over of staff at RAF Scampton was a contributing factor in the guidelines not being adopted.

6. Health and Safety. An HPA requires a detailed assessment of the relevant sites. Here are significant Health and Safety issues on many MOD sites which would restrict access and preclude assessments taking place. On such sites adopting an HPA would be unviable eg the situation at MOD Shoeburyness.

CONCLUSION

The MOD has an agreed Standing Clearance for work to scheduled monuments on Salisbury Plain Training Area (SPTA). SPTA is rich in scheduled monuments (over 300) and without this agreement in place work to the scheduled monuments on SPTA would be considerably more difficult as Scheduled Monument Clearance (SMC) would need to be obtained for each work strand and this can take several months to obtain. This is a form of HPA and is successful as it slims down the bureaucracy.

The heritage on the MOD estate is carefully managed. Substantial effort has been expended in recent years to building it into estate management processes, environmental assessments and management plans. The Department is regarded by Historic Scotland and English Heritage as an exemplar to other departments in the management of its heritage. Already having this robust framework in place there is likely to be little appetite in voluntarily engaging with an additional layer of management which is legally binding.

The HPAs require substantial initial investment which may not justify the business benefit. For small self contained MOD sites (such as Britannia Royal Naval College) where issues are relatively straightforward a HPA would be beneficial. However, the majority of MOD sites are more complex and have a range of issues would mean the investment costs would outweigh any benefits. It is unlikely the uptake of HPAs by MOD would be great, although their applicability would be assessed on a site by site basis.

June 2008

Memorandum submitted by London Underground

1. London Underground (LU) owns or has responsibility for 250 stations, and serves in total 268, of which 57 are listed buildings. We carried, in 2007, over 1 billion passengers, arguably making our listed stations some of the most “visited” listed buildings in the country. In addition to this LU is currently undertaking the largest ever investment programme in its history that is both refurbishing and renewing existing facilities as well as delivering new services, such as step-free access to stations and trains.

2. Such service demands and investment requirements place, potentially, great strain on the management of historic structures. LU has strong and developed policies and processes regarding issues involving both heritage and design. We are proud of our heritage as for us it is a tangible and positive asset, both of our past as well as being of demonstrable value to our brand and future.

3. We already have the benefit of close liaison with both local authority officers and English Heritage, through regular scheduled meetings as well as site specific contact, and this, we feel, materially assists all parties in the management of listed and heritage sensitive structures. In 2005 LU was party to the pilot Heritage Partnership Agreements (HPA) scheme—looking at selected listed stations on the Piccadilly line in central and north London. The draft HPAs gave us much food for thought both in terms of what benefits it could deliver as well as how we would wish to further develop such an approach.

4. LU is aware that certain costs would accrue as owners in delivering HPAs, but we consider that in terms of ongoing management and resource there is the possibility of both financial and management benefits to offset against this.

5. Overall, LU can see positive advantages in being able to further develop partnership agreements such as HPAs. They offer the possibility of agreeing in advance the extent, scope and methodology of common and recurring requests for works on stations—such as cleaning, basic maintenance and signs schemes. These currently frequently require an individual approach, and even application for consent, to one of over 35 individual local authorities. In addition they offer the potential to bring together work that in the future LU may wish to consider delivering. For example, the possibility of introducing Station Development Framework documents (management plans for individual stations) could be linked to HPAs making for better and more assured management of listed stations.

6. It is also the case that HPAs offer the possibility of being able to look at a common agreement or management strategy for groups of stations. This is an issue for LU where we have a number of

architecturally similar stations that straddle many different local authority boundaries. HPAs could offer the opportunity to be able to agree common strategy for works to these stations or groups of buildings so ensuring a consistency in approach to the management and evolution of these stations.

June 2008

Memorandum submitted by the Historic Houses Association (HHA)

The Historic Houses Association's locus in the debate is its Members' role in managing and sustaining 1,500 historic houses, castles, gardens, parks and estates throughout the UK. These welcome 15 million visitors per year, contributing significantly to the economy, culture and education of local communities and the nation alike. The HHA's member houses provide considerable public access and enjoyment and there is an extraordinary diversity and variety among them.

Two-thirds of the built and historic environment is owned and managed privately. The HHA represents a significant group of these owners. It is our Members who manage much of the nation's finest privately owned heritage, paying for it and securing its future.

1. KEY POINTS

1.1 The Historic Houses Association welcomes the draft Heritage Protection Bill and supports the Government's intention to simplify and clarify the designation system whilst retaining the level of protection it provides. The heritage protection review has provided an opportunity to draw together disparate legislation as well as introducing new elements to protect the heritage.

1.2 In particular, the HHA supports proposals for:

- consultation with owners on listing decisions;
- a new right of appeal for owners on listing decisions; and
- the introduction of statutory Heritage Partnership Agreements.

These provisions recognise the central role of private owners in heritage management and have the potential to bring greater clarity, transparency and surety in the way in which we look after our historic resources.

1.3 The absolutely critical point is that the implementation of the Bill must be properly resourced. In order to meet the objective of a faster, more transparent system which is fit for purpose, investment is needed to enable both English Heritage and local authorities to lead and implement the changes.

1.4 There is a need for a new Planning Policy Statement on the historic environment to replace PPGs 15 and 16, to sit alongside the Bill and ensure the planning system is aligned with the new designation system.

1.5 The HHA has a number of specific concerns about the registration and consent systems which are set out below:

- The proposal to abolish the right of appeal on Consent decisions (where these have been taken with delegated authority) other than to a local member review body within the Local Planning Authority is a great concern. This raises real issues of accountability, democracy and fairness.
- The new system should be supported by updated list descriptions giving a clear indication of what aspects of a building or site are particularly special. The existing list needs to be translated, otherwise two systems will in effect operate in parallel, causing confusion and undermining the intentions of the Bill. This will require additional resources for English Heritage as part of the next Spending Review. The HHA would strongly oppose costs being recouped from a charge made to applicants.
- The HHA would oppose the introduction of an economic condition for registration of 20th Century or other buildings, but would support flexibility to pursue an economic use for registered buildings. The HHA recommends that sustainability of the asset should be a key criterion considered when an HAC is requested.
- The HHA is concerned that the way in which provisional registration will be implemented will lead to a frustrating and bureaucratic system and there will be real risk that local authorities will be unable to resource the more innovative aspects of the legislation, such as Heritage Partnership Agreements, which have the potential to deliver long term benefits and cost savings. We also recommend that the compensation provisions which are available under the Building Preservation Notice system should be carried forward into the new system.

2. OVERALL AIMS AND SCOPE OF THE DRAFT BILL

2.1 The HHA continues to press for public investment in our heritage. The costs of maintaining Britain's private houses, castles and gardens are significant and expenditure by private owners in looking after England's historic environment overshadows the public sector contribution. In 2003/04 the private sector spent £3.4 billion on historic buildings (*Valuing our Heritage 2007: National Trust, English Heritage, Heritage Link, Historic Houses Association, Heritage Lottery Fund*). Only 10% of the costs of major repairs to privately owned historic houses are funded by public grant.

2.2 This puts additional pressure on the owners of historic buildings to seek to make them economically viable, for example as tourist attractions or business premises. That in turn requires a heritage protection system which accommodates appropriate physical changes. This is recognised in the Heritage White Paper: "An effective heritage protection system needs to strike a balance between protecting what is important and enabling appropriate change".

2.3 The real issue for the HHA is the practical difficulties and costs owners face on the ground when they need consent to adapt historic buildings to make them viable and relevant in the future. Those problems are mainly the result of a crisis in conservation resourcing in the local planning authorities which take most of the decisions.

2.4 The HHA has a number of detailed points recommending changes to the detail of the legislation and proposals for the guidance which will follow to ensure that the new heritage protection system will work efficiently:

A. *Heritage registration*

Designation Descriptions

(a) One of the main potential gains from the new system is new-style designation descriptions, setting out what is significant and what is not, and defining the heritage asset in a plan. This will ensure greater clarity in setting out what is protected, as new entries on the Register will clearly identify what precise building(s) is/are included. This means that only those buildings of special interest within the curtilage will be protected and will prevent areas of less significance, such as ancillary buildings, which themselves are not of special interest, being unnecessarily drawn into the system.

(b) However, the benefit in practice will be minimal if plans and new descriptions are not provided for the 400,000 existing entries which will be carried across from the existing lists. The HHA recommends a geographically-based programme in England, as has been done in Wales, to improve these existing descriptions. In the meantime, owners should be able to request a new-style description. To achieve this, streamlining of the new-style entries will be needed. They need to clearly define exactly what is designated and what is and what is not significant.

(c) It is important that, as proposed, it must be possible to register only parts of assets, because that enables non-significant parts to be excluded. This could be a significant step forward in cutting the regulatory burden on both LPAs and owners. This will need to be supported by clear guidance.

Register of Heritage Assets

(d) Whilst the HHA supports the intention for local authorities to compile and keep up to date a register of heritage assets, we feel that this must be supported by a geographical designation programme. This would give greater surety for the owners and represent a strategic use of resources.

(e) The proposal to open up the process for registration application is likely to block up the system. Whilst we support the principle that anyone should be able to propose a heritage asset for registration, advertising this ability is likely to increase the number of applications and the processes this will trigger—consultation, interim protection and the need for plans and better descriptions. This is likely to result in local authorities' resources becoming focused on dealing with reactive work, leaving nothing for proactive work at all.

(f) As a result, the HHA is concerned that some of the more innovative proposals for heritage management, such as Heritage Partnership Agreements, will suffer as resources will not be available to promote and develop them. The HHA is encouraged by the proposal for a "sift test" but recommends that the guidance associated with this needs to be very robust, obliging applicants to provide a reasonable justification, a plan, and photographs.

Provisional registration

(g) The HHA understands the justification for Provisional Registration while the registration decision process is underway. However, there could be difficult consequences for owners and, where there is actual financial loss, compensation should be provided. The compensation provisions which are available under the Building Preservation Notice system should be carried forward into the new system.

Consultation and appeals

(h) The introduction of the right of appeal by owners on designation decisions is extremely welcome. This is a justified safeguard and will increase confidence in the new system. However, this right of appeal should be restricted to owners, in line with the planning system. In particular, for domestically-occupied private properties, there should be no third party right of appeal. That would undermine English Heritage's expertise, create uncertainty and difficulty for owners and block up the system just when the aim is to streamline it. Whilst the HHA welcomes the basis on which the appeals can be made (that relevant material has been ignored or irrelevant material has been considered, that evidence has not been assessed appropriately, or factual error), we remain concerned that opening up the appeals process to "those with an interest" will result in appeals by people who have neither the expertise to determine a listing nor the responsibility for managing the property should it be listed as a result. The principle that the costs of appeals should not be met by the owners if they are successful should be incorporated here.

(i) Appeal panels must always include people with practical experience of managing and paying for historic buildings, not just architectural historians or conservation academics.

B. *Consent system*

De minimis changes

(a) The Bill does not allow for a de minimis provision, in a similar fashion to the use of the word "material" in the planning system; anything which affects special interest, however trivially, or beneficially, will always need Heritage Asset Consent (HAC). This means that regulators have little discretion to permit trivial, like for like changes. In our view a de minimis provision is essential.

Class consents and permitted development

(b) Similarly, the class consent system does not have to be limited to archaeology, as in the past: it could be used to grant consent for particular kinds of work (those identified by research as almost always getting consent, or—like perhaps energy efficiency works—otherwise seen as desirable). This could significantly reduce HAC applications and LPA workload.

LPAs and Advice

(c) We welcome a new statutory requirement for every LPA to "receive expert advice" before taking HAC decisions, but few if any LPAs could comply with this without substantial extra resources. We are concerned that guidance will say that merely consulting statutory consultees such as the National Amenity Societies would be sufficient to meet this new duty, even if they do not have the resources to reply. We believe strongly that this new duty should be backed up by a statutory statement of conservation provision standards in LPAs.

Financial sustainability

(d) The HHA recommends that sustainability of the asset should be a key criterion considered when an HAC is requested. Most applications by HHA members will be based on a need to alter buildings to make them more habitable or perhaps commercially viable for the 21st century, and so it would be sensible to broaden the basis for decision in this way.

Conditions attached to consents

(e) The HHA is concerned that the long list of sample conditions are included on the face of the Bill. There is a great danger that many LPAs would impose most or all of these conditions as a "checklist" in a disproportionate way. Suggested conditions belong in guidance, where they can be explained and qualified, not in primary legislation.

Time limits on enforcement and prosecution

(f) As in the existing system, the Bill has no clause preventing prosecution or enforcement action after a specified time period, as there is after four or 10 years in the planning system. The HHA's view is that the new system should prevent prosecution or enforcement action being taken once 10 years have elapsed after the completion of the works.

Appeals and Local Member Review Bodies

(g) Our greatest concern with the Draft Bill's procedural provisions is the abolition of the right of appeal on Consent decisions taken with delegated authority other than to a local member review body within the Local Planning Authority. Although this reflects what is proposed in the Planning Bill, it is deeply concerning and raises issues of democracy and accountability, not least because the review board will be advised by the same officers who took the initial decision. This is especially true for heritage decisions, because the LMRB is even more likely to be advised by the same people who took the original decision, so it is vital that the right of appeal remains in place.

Heritage Partnership Agreements

(h) The proposal to introduce management agreements has, in our view, the potential to be one of the single most useful elements of the review. These agreements can encourage a positive approach to longer term management, promote effective partnerships between stakeholders and give certainty and clarity to those responsible for managing historic places. The HHA has been involved in a suite of pilot projects led by English Heritage to explore how the proposed system would work in practice.

(i) Feedback from those HHA members who have taken part in the pilots has shown, however, that there are some shortcomings which need to be resolved. These involve the structure of agreements and resources and a key lesson is that agreements take time and resources to put in place and their development needs to be effectively resourced. Whilst agreements are likely to result in longer-term savings, significant upfront investment and time is required to establish them and make them work.

Gardens and Parks

(j) The HHA strongly agrees that no specific additional consent regime should be applied to landscapes (ie parks, gardens, and battlefields) or World Heritage Sites. Our most obvious interest is that gardens and parks are organic and must retain the freedom to develop and change. Although individual structural features within them may be listed, statutory listing of the whole would be both impractical and inhibit future creation

C. Historic Environment Records, Heritage Gateway and Local Listing

(a) Ensuring public access to information about the historic environment is important to implement a more transparent system and ensure that owners, local authorities and heritage professionals have the right information to make decisions. However, we have considerable concerns about the expansion of the online Heritage Gateway. Unless significant changes are made there remains a real threat to the security of the historic environment, in particular the safety of vulnerable and sensitive heritage, such as garden statuary or moveable architectural features such as fireplaces. This concern is acute for those places which are not generally open to the public or are not permanently occupied.

(b) We believe that the Heritage Gateway will provide a first-class tool to search designation descriptions for fireplaces, statues, flagstones, or lead, and then to allow thefts to be planned in detail by searching Historic Environment Records for plans and photographs. We recommend strongly that certain safeguards need to be put in place to protect our historic environment for people now and in the future and we have suggested what these should be to English Heritage. English Heritage has not heeded our concerns but Cadw has responded more positively.

(c) Local listing has a role in protecting buildings which do not merit national designation. But it must be simple, certain, consistent, and proportionate, based on nationally-set selection criteria and guidance, and involve consultation of the public and owners.

D. New guidance including a new Planning Policy Statement

(a) We recommend that the historic environment, cutting across so many Departments, should have its own Planning Policy Statement, which would put the historic environment at the heart of an effective planning system at the highest level. Clear, concise guidance is needed to create a heritage protection system which is workable, efficient, fair, consistent, and proportionate. It would improve the quality of both applications and decision-taking, and greatly reduce the resources required. A new Planning Policy Statement for heritage to replace PPG15/16 is essential and must be in place before the Bill is implemented.

E. Conservation areas

(a) The HHA is disappointed by the omission of Clauses on Conservation Areas and recommends that this section, and other omitted sections are published by DCMS with some form of public consultation before the Bill is finalised.

(b) The HHA has previously supported the merging of Conservation Areas Consent with planning permission. This would further simplify and streamline the protection regime, would integrate conservation issues into the planning system and would ease the regulatory burden on those seeking consent. We are heartened that this merger “would not reduce protection” and we support the proposal that statutory guidance would make it clear that conservation professionals should be involved in considering planning application for sites within a Conservation Area and in any pre-application discussions.

(c) Applications for Conservation Area Consent do not require a fee and this should be translated to the equivalent applications for planning permission in the new system.

F. Terminology

(a) The HHA is concerned that introducing a new terminology will be confusing and off-putting and will dilute the heritage listing “brand”. We feel that most of the new terms are both too different and too long, particularly “Registered Heritage Structure” and “Registered Heritage Open Space”. There is no perfect solution, but the best option may be to keep the word “listed”, which to most people now implies heritage, so that that word does not need to be used. This would create, for example “Listed Structures” and “Listed Open Spaces”.

3. ESTIMATE OF COSTS AND BENEFITS SET OUT IN THE IMPACT ASSESSMENT

3.1 The key point for which the entire heritage sector is lobbying hard is that the Bill must be properly resourced if it is to succeed and the critical level of conservation expertise needs to be addressed. Investment is needed to enable both English Heritage and local authorities to lead and implement the changes. Resources for conservation are grossly inadequate in most local authorities. If staff are to deliver the new system and provide the new more integrated approach to the historic environment, significant extra support is needed to develop skills, train staff and to support new ways of working.

3.2 Local authorities are hit by a double whammy in that the numbers of listed buildings are not reflected in each authority’s local government finance settlement. We recommend that this should be remedied and this should be reasonably straightforward to do.

3.3 We welcome DCMS’s commitment to meeting the costs of new burdens placed on local authorities by the Bill, provided this does not impinge upon the future funding of English Heritage. However, this does not resolve the existing crisis in staffing and skills in Local Authorities’ historic environment services which is the responsibility of CLG. We are also concerned how funding is safeguarded in Local Authority budgets to secure the new heritage protection system when CLG has confirmed that local authorities must decide on their local priorities.

3.4 The HHA is not in a position to question the costs set out in the Impact Assessment, but supports Heritage Link’s (of whom we are a member) proposals to ensure the following questions are answered:

- How the “savings” of £4.80 million over five years will fall back to DCMS, English Heritage and local authorities to give the “net” figure of £1.7 million?
- How the shortfall between EH-estimated needs and its CSR settlement will be managed and what impact this will have on other English Heritage operations and public profile?
- What other costs arising from transition and implementation have been explored and when these will be made public?

3.5 The section on English Heritage grant and loan making powers is also important to the heritage sector and its omission from this pre-legislative scrutiny part of the Bill process is regrettable.

4. STAFFING AND SKILLS LEVELS NEEDED FOR EFFECTIVE IMPLEMENTATION OF THE PROVISIONS IN THE DRAFT BILL

4.1 In our response to the Heritage White Paper, we stressed the need for cross Government support would be made more evident in the Bill itself. However, the Draft Bill makes no mention of CLG, the Department with responsibility for delivering much of the Bill. We still consider that combined sponsorship of the Bill would give a far stronger message of cross government commitment.

4.2 The English Heritage/IHBC Local Authority Conservation Provision Survey in 2003 and subsequent evidence, including our members’ experience, show that resources for conservation are already very stretched in most local authorities and critically inadequate in some. Although training by English Heritage and the HELM project are valuable, a successful outcome cannot be achieved without additional resources going directly into local authorities in carefully-targeted ways over several years.

4.3 Assuming the new system is implemented from 2010, English Heritage intend to update list descriptions on a rolling basis as applications for consent are made. This will require additional resources for EH as part of the next Spending Review. The HHA would strongly oppose costs being recouped from a charge made to applicants.

June 2008

Memorandum submitted by Michael J Coupe

1. GENERAL

The forthcoming legislation represents a fundamental recasting of heritage protection controls, and aims to integrate as far as possible the patchwork of separate systems for dealing with the individual components of the historic environment. Accordingly, the provision of a unified register and system of consents for works to heritage assets (ie listed buildings, scheduled ancient monuments, and archaeological sites) is to be welcomed, insofar that it represents a significant simplification of the current arrangements, which are widely regarded as unnecessarily complex. Even so, it is important to recognise that much of the substance of the reforms will be delivered through statutory instruments and new national policy guidance, none of which is available at present. Similarly, key elements of the Bill have yet to be drafted: it follows therefore that the broadly supportive stance noted above must be to some extent provisional on the successful translation into the Bill of the proposals for dealing with the missing subjects mentioned in Paras. 276 to 285 of the Explanatory Notes, notably those relating to conservation areas.

2. RESOURCE IMPLICATIONS

The welcome separation of the roles of Government and English Heritage envisages the transfer of important responsibilities to the latter, notably the maintenance of a publicly accessible Heritage Register defining more closely the extent of the special interest relating to each heritage asset, and including new criteria for special archaeological and artistic interests. Similarly, local authorities will be charged with the task of establishing and maintaining Local Environment Records, as well as taking on the main burden for dealing with applications for Heritage Asset Consent and ensuring that decisions are informed by proper expert advice. Moreover, both English Heritage and the local authorities will have to cope with added responsibilities for consultations and appeals.

Over and above all of this, the introduction of a new system of statutory controls will involve unfamiliar terms and procedures, which will require training and the acquisition of new skills for professionals, administrators and elected members. It will also be important to ensure that the general public are kept properly informed, and that they appreciate that the introduction of new controls does not signify any weakening of heritage protection.

In previous evidence to the Committee, I have drawn attention to the real terms reductions in the core funding of English Heritage, and have suggested that DCMS, and by implication, the Treasury, be reminded that Lottery funding was always intended to be additional to, and not a substitute for, basic core funding. Contrary to the popular perception that the public sector as a whole has benefited from generous across-the-board funding increases since 1997, English Heritage has been a notable exception to this trend—in real terms, at least. Perhaps it is therefore not surprising that the organisation made no complaint when it eventually received a modest increase in its grant-in-aid at the conclusion of the last Comprehensive Spending Review. This uplift was supposedly intended to meet the cost implications of the Heritage Protection Review, but most informed observers consider it to be inadequate, given that the increase will be eroded by inflation over a three-year period, and will eventually produce another de facto real terms cut in core funding. Given also the diversion of Lottery funding to the Olympics, it is difficult to see how English Heritage will be able to deliver the new heritage protection system other than over a significantly extended time-frame.

It is also unclear at present whether or not the Government has fully appreciated the true extent of the additional burdens to be imposed on local authorities—notably by the new duty to create, maintain and enable public access to Historic Environment Records, and in the eyes of most informed observers, the need to support their consideration of heritage asset consent applications by maintaining access to sources of expert professional advice relating to all the component elements of the historic environment. Under the provisions of the Bill as currently drafted, Section 103 appears to suggest that the requirement to obtain and take account of specialist advice in the handling of heritage asset consent applications can be discharged by inviting representations from interested parties. Whilst the input from the national amenity societies and other specialist organisations should not be underestimated, such bodies cannot be expected to comment on all applications, and in any case such an arrangement should not be a substitute for maintaining sources of in-house expert advice. Moreover, recent research by IHBC (ie “Quantifying local authority conservation staffing” [IHBC 2006]) paints a dismal picture of the existing arrangements for dealing with the less taxing requirements of the current legislation. In such circumstances, the commitment by DCMS to fund new

burdens is to be welcomed, though to the extent that the Impact Assessment accompanying the Bill may be overly optimistic in assessing the likely cost implications, some caution may well be warranted. Similarly, it is suggested that a proportion of the costs incurred by local authorities will be met by English Heritage (egg through an extended programme of training), but doubts have already been raised above as to the adequacy of the resources allocated to English Heritage for this purpose. Finally, the intention to subsume conservation area controls within the ambit of the planning system, though not yet dealt with in the current version of the Bill, will also have cost implications for local authorities. Given that planning falls within the remit of DCLG, the Committee may wish to inquire whether or not the Department will be funding any additional burdens falling on local authorities as a result of changes in their planning responsibilities contingent on the heritage protection reforms.

3. CONSERVATION AREAS

Conservation areas are the places that communities connect with most readily. It is therefore no accident that conservation-led regeneration has helped to create attractive places where people want to live, work, visit, and spend their leisure time, thereby underpinning a market-led return to urban living, and a full realisation of the urban potential of our existing built-up areas in accordance with sustainability principles, whilst limiting outward encroachment on to greenfield sites. The historic environment has therefore emerged as an important yardstick of quality, a source of local distinctiveness, a reservoir of attractive buildings amenable to adaptive re-use (including mixed uses and tenures), and a template for civilised high density living. In the light of the above, it is no accident that conservation area grant schemes have been highly effective in delivering social and economic benefits, as evidenced by English Heritage research documents (egg “The Heritage Dividend” [English Heritage][1999 and 2003])

Given the importance of conservation areas, it is a matter of some satisfaction that the Government has at last sought to address the unfortunate Shimizu decision, and the fact that conservation area controls are overly complicated, inconsistent in their application, and are not fine-grained enough. Although the section of the Draft Bill dealing with conservation areas has yet to be drafted (in conjunction presumably with parallel sections in the Planning Bill), it is clear that conservation areas can now be designated “on the basis of special archaeological and artistic interest”, and that the reversal of Shimizu will be addressed by abolishing conservation area consent and bringing demolition or part demolition of unlisted buildings in conservation areas within the purview of planning controls. Whilst such changes are to be warmly welcomed, it is hoped that the new regime will entail the re-drafting of the rules of materiality to bring under planning control alterations to the external appearance of unlisted buildings—including part demolition, covering such essential features as windows, doors, chimneys etc. Furthermore, it is recommended that the intended changes to the Town and Planning (General Permitted Development) Order 1995 should bring demolition generally within planning control (ie by reducing the extent of permitted development exceptions), thus obviating the need for Article 4 directions and the complex procedures they entail.

Finally in this connection, the Government is to be applauded for its intention to reverse the South Lakeland decision.

4. OTHER MATTERS OF DETAIL

Special Interest (Part 1, Chapter 1, Section 4): Although the definition of special interest governing designation decisions, the need for historic asset consent, and the criteria for decision-making is to be broadly welcomed, the current legislation provides that consent is normally required for the demolition of a listed building, in whole or in part, and for any works of alteration or extension which would affect its character as a building of special architectural or historic interest. To be consistent, therefore, the impact on “character” of works to a listed building should be reinstated: to do otherwise would be perceived as weakening existing controls.

Similarly, it is worth noting that conservation areas are specifically defined as “areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance”. In the interests of consistency, therefore, the effect on character should be retained as part of the assessment of proposals relating to both listed buildings and conservation areas.

Registration Procedures for Historic Structures (Part 1, Chapter 2, Section 4 et seq.): The inclusion of all current listed buildings and scheduled ancient monuments without amendment of their physical extent and without further legal process is to be welcomed, but the need in due course to expand past entries to the format required for new registrations will require a substantial injection of resources, and will have to be further supplemented if English Heritage is embark on the long overdue revision of outdated “greenbacks”, in particular those covering important historic towns.

The proposal to provide full protection for heritage assets during the period of provisional registration is to be warmly welcomed, and it is recommended that similar arrangements should apply to the designation of conservation areas, and the identification of what are currently described as locally listed buildings, when the relevant sections of the Bill are eventually drafted.

Appeals Against Designation (Chapter 2, Section 25 et seq.): In the event of an appeal to the Secretary of State against registration, representations have to be sought from appropriate persons (including English Heritage and the national amenity societies), but where a determination is made reversing a decision of English Heritage, although the Minister is required to take account of the published criteria for registration and advice from consultees, there must be strong grounds for advice to be available to Ministers from appropriately qualified specialists retained directly by the Department, and for that advice to be taken into account.

It is also important to ensure that English Heritage is not overly conservative in responding to requests for registration, either for fear of the possible political consequences (egg less than wholehearted support at the time of the Comprehensive Spending Review), or because financial constraints might affect its ability to defend decisions on appeal.

Certificates of No Intention to Register (Section 39): The difficulty here is how to deal with potential heritage assets that are not readily visible or are underground. Ministers currently complain about the continued prevalence of spot-listing, requests, particularly when made once development proposals are far advanced, but important historic fabric not visible on initial inspection is often revealed only when more recent structures have been removed. Similar considerations apply to underground archaeology.

World Heritage Sites (Chapter 3, Section 45): If the intention to strengthen the protection of World Heritage Sites promised in the White Paper is to be delivered, contrary to the sentiments expressed in the Explanatory Notes, there are good grounds for linking the control mechanisms to those being developed for conservation areas.

Offence of Contravening Section 86 (Part 2, Chapter 1, Section 89): The introduction of ignorance as a defence against an alleged contravention of Section 86 is not acceptable. In the long term, when all entries on the Register have been updated to provide a proper account of the extent of the special interest, and access to all the items on the Register has been made available (including access on-line), then such a defence would clearly lack credibility; for the present, however, given the brevity of early list descriptions, and the likelihood that many owners might not have been made aware of a building's listed status, such a move would be highly dangerous.

Determination of Applications by Officers (Chapter 2, Section 113 (5)(b)): It is essential that officers with delegated authority to determine applications should be professionally qualified and appropriately experienced to deal with the specific categories of application under consideration.

Review of Officer's Decision (Chapter 2, Section 115 (4) (e)): The establishment of a Local Member Review Body to reassess delegated decisions reflects a parallel system currently proposed as part of the Planning Bill. Provided that the Review Body is advised by appropriately qualified professionals, and its remit is limited to cases where there have been objections to a particular proposal, then such a procedure might be acceptable (ie analogous to the referral of a delegated decision on a planning application to the full Committee in the event of objections being received). On the other hand, if this is to be extended to cover cases where an applicant has appealed against a decision, then such cases should not be "second-guessed" by the same authority, but proceed to appeal in the normal way, subject to the views of the national body.

Heritage Partnership Agreements (Part 3, Chapter 1, Section 157 et seq.): The establishment of Heritage Partnership Agreements is to be welcomed, but it is essential that the national amenity societies are consulted in the process of setting up such Agreements.

Special Local Interest (Part 5, Section 215): as yet, the commitment to protect locally designated buildings from demolition has not been realised in the Draft Bill, or in the concurrent Planning Bill. Similarly, local heritage structures provisionally selected for registration do not appear to have been afforded interim protection from demolition.

Contrary to the suggestion that "it is likely that local authorities will hold separate informal lists of assets of local interest in their area, but this will not be a legal requirement" (Explanatory Notes 258), it is recommended that the preparation of such lists should indeed be a legal requirement, that they should be included in the Historic Environment Record, and be accessible in the normal way.

Conservation Areas (Explanatory Notes 278—279): The relevant sections in the Bill, when drafted, should make it clear that conservation areas must be included in the Historic Environment Record, and that appropriate character appraisals and other relevant information should be made readily available (including on-line). Easy access to such information should militate against ill-informed development proposals that have so often proved to be an unnecessary source of conflict between developers and local authorities, and indeed English Heritage.

Memorandum submitted by the City of York Council

This note summarises the main elements of the draft Heritage Protection Bill and sets out the City of York's comments. These comments represent officer comments and have not at this stage been approved by the Executive Member for City Strategy. However, the Executive Member will consider this paper at the next Advisory Panel meeting on 14 July.

EXECUTIVE SUMMARY

- The City of York Council strongly welcomes this draft Heritage Protection Bill.
- The City of York Council considers there are at present a number of areas where there is insufficient information available.
- The City of York Council considers that information relating to Local Designation must be published as a matter of urgency.
- The City of York Council notes that the Area of Archaeological Importance (AAI) will be revoked.
- The City of York Council notes there is no provision within the draft Bill to either allow replication of the current AAI designation or to retain the beneficial elements of AAI designation.
- The City of York Council welcomes the transfer of responsibility for making decisions on scheduled monument consent to local planning authorities.
- The City of York Council welcomes the creation of a new statutory framework enabling voluntary management arrangements (heritage partnership agreements) for owners of complex historic sites.
- The City of York Council welcomes the creation of a statutory duty for local authorities to maintain or have access to an Historic Environment Record.
- The City of York Council considers there is an urgent requirement for the publication of a Planning Policy Statement on the Historic Environment to replace PPGs 15 and 16.
- The City of York Council believes the presumption in favour of the preservation of nationally important archaeological remains should not be lost.
- The City of York Council is concerned that the resource implications for local authorities have not been adequately assessed and that the introduction of the new framework may be prejudiced by the lack of additional resources.

The City of York Council welcomes the publication of the draft Heritage Protection Bill. However, it considers there are a number of areas where further information, amendment and consideration of the resource implications are required.

The City Council would welcome the opportunity to work with the DCMS and other agencies and bodies in order to better define the resource implications of the draft Bill for Local Authorities and to explore the implications of revoking AAI status.

THE CITY OF YORK

The City of York is one of the UK's premier historic cities. The City has been a continuously occupied site since 71AD. York Minster and York City Walls are two of the finest medieval monuments in Europe. The historic environment of the City comprises, inter alia,

- c. 2000 listed buildings (1800 list entries) of which
 - 65 are Grade I 3.5%
 - 156 Grade II* 8.5%
 - 1,579 Grade II 88%
- 22 scheduled ancient monuments;
- 35 designated Conservation Areas;
- 4 registered Historic Parks and Gardens;
- 1 Area of Archaeological Importance which is divided into seven separate areas.

The City is actively considering the issue of whether York should apply for inclusion on a revised UK Tentative List of sites for World Heritage listing.

The City maintains an Historic Environment Record and has recently made available on the internet the monument data for York. This can be found at the Heritage Gateway site (www.heritagegateway.org.uk). The HER contains:

- 2,018 Monuments
- 4,058 Events

- 189 Sources
- 109 Finds
- in addition there are
- 1,070 Aerial Photographs
- 750 Reports on Archaeological Interventions.

The York City archives contain civic records dating from the 12th century to the present day. There is a separate York Museums Trust which has responsibility for the curation of the nationally designated collections in the Yorkshire Museum, the York Castle Museum and the York Art Gallery. In addition there is a wide range of ecclesiastical and private archives held within the City. There is a thriving business sector based in the City which delivers specialist heritage services both within the UK and internationally. York University Archaeology Department is a 5 star-rated research and teaching centre.

The City Council has a well-developed policy framework for the historic environment. The management and use of the historic environment for the benefit of residents and visitors to the City is an integral element of the Sustainable Community Strategy, the Council's Corporate Strategy and the emerging Local Development Framework.

THE MAIN ELEMENTS OF THE BILL

The purpose of this Bill is to create a more open, accountable and transparent heritage protection system and to safeguard the cultural property of the United Kingdom and other nations during armed conflict. The main elements of this Bill are the reform of the heritage protection system in England and Wales, including:

- replacing the separate listing, scheduling and registering arrangements with a single system for national registration of terrestrial heritage assets;
- streamlining the associated consent processes, with a new heritage asset consent replacing listed building consent and scheduled monument consent, and merging conservation area consent with planning permission;
- transferring responsibility for registering land-based heritage assets in England from the government to English Heritage;
- creating a new statutory framework enabling voluntary management arrangements for owners of complex historic sites;
- placing local authorities under a statutory duty to maintain or have access to an Historic Environment Record; and
- clarifying the system of local designation.

It also covers enacting in UK law the obligations in the Hague Convention by introducing a legal regime to protect cultural property in the event of armed conflict:

- making it an offence to attack cultural property protected by the Convention and its protocols;
- making it illegal to deal in cultural property illegally exported from an occupied territory and making provision for the forfeiture of illegally exported property and its return at the close of hostilities; and
- introducing the distinctive Convention emblem (a blue shield) to identify protected property and making its misuse an offence.

The draft Bill contains 231 clauses. There are 61 pages of Explanatory Notes. In order to inform the scrutiny and public understanding of the draft Heritage Protection Bill, DCMS intends to publish a selection of draft secondary legislation and guidance.

So far, the following draft Statutory Guidance has been published for consultation by the DCMS: Draft Ecclesiastical Exemption Order, Draft Ecclesiastical Exemption Guidance and Code of Practice, Draft Historic Environment Records Guidance for Local Authorities in England. In addition the DCLG has published a Consultation Paper on Protection of World Heritage Sites. This document contains the draft Circular on World Heritage Sites.

It is clear that other draft Statutory Guidance will be released for consultation.

CITY OF YORK COMMENTS

The City of York Council strongly welcomes this draft Heritage Protection Bill. It will simplify the current system. It will make the designation and management of heritage assets easier to administer. It will make the system more comprehensible to the general public.

The City of York Council considers there are at present a number of areas where there is insufficient information available. These are:

- Conservation areas.

- Local Designation.
- EH grant and loan making powers.

The City of York Council considers that information relating to Local Designation must be published as a matter of urgency. The issue of Local Designation is particularly important at present in York. There is considerable demand from the heritage and wider community for the City to adopt a list of buildings of local importance. The City Council has stated that it will wait until the draft Bill and Guidance are available before publishing draft criteria for designating assets of special local interest. The City of York Council considers that the speedy publication of those parts of the Bill and guidance dealing with Conservation Areas and Local Designation is essential.

The City of York Council notes that the Area of Archaeological Importance (AAI) will be revoked. The City of York has previously stated that it does not object to the revocation of the AAI, provided the beneficial elements of AAI designation are not lost in any new statutory framework. These benefits are:

- Designation raises the archaeological status of an area: it gives statutory recognition that these deposits are important, but not so important as to merit scheduling.
- It covers all types of operation, be they covered by the planning legislation or not.
- It establishes that it is an offence to undertake operations without serving a notice (the offence is undertaking an operation without serving notice, not causing damage to archaeological deposits) and thus can prevent the deliberate destruction of archaeological deposits.
- It bans the use of metal detectors within AAIs.
- Designation is registered as a charge on the land and therefore archaeology is automatically thrown up as an issue during land register searches.
- * It raises public awareness of archaeological issues.

The City of York Council notes there is no provision within the draft Bill to either allow replication of the current AAI designation or to retain the beneficial elements of AAI designation. It may be possible under the new legislation to designate a conservation area on the basis of its archaeological interest. This may allow the replication of certain elements of the AAI designation. However, in the absence of specific clauses relating to Conservation Areas this is speculation. The draft Bill will raise public awareness of heritage issues. It will ban the use of metal detectors in or on a registered heritage structure or registered open space without the written consent of the heritage authority concerned—in England, English Heritage. This is anomalous in that the local planning authority will grant other consents. The current requirement to serve notice within an AAI under Section 35 of the 1979 Ancient Monuments and Archaeological Areas Act for operations which tip flood or disturb land is very useful. It provides a mechanism for ensuring operations which lie outside the remit of the planning regime make provision for archaeological investigation and recording. These operations are mainly carried out by Utilities. The draft Bill makes no provision to make Utilities serve notice or obtain consent for operations which will have an impact on non-designated archaeological features and deposits. In York this represents a significant reduction in protection for archaeological deposits. The City of York Council would welcome detailed discussions with the DCMS about the implications of revoking AAI status.

The City of York Council welcomes the transfer of responsibility for making decisions on scheduled monument consent to local planning authorities. This proposal is welcomed. However, it will demand additional resources. Under the existing consent regime, scheduled monument consent is granted by the Secretary of State and is advised by English Heritage. The local planning authority has no locus in this process. In the new consent regime, all scheduled monuments will become Grade 1 Heritage assets; the responsibility of processing applications and granting heritage asset consent will be passed to the relevant local planning authority. There appears to be no extra resources available to local planning authorities to handle this additional workload. In addition, English Heritage holds the information and files on previous applications. The relevant files should be copied and transferred to HERs so that consent histories can be taken into account when an application for heritage asset consent is considered. In York, this is likely to impose an additional workload of between 10 and 20 heritage asset applications per year. There is no resource available for this additional workload. At County level, where the number of heritage asset applications for assets that were formerly scheduled ancient monuments will be potentially very large, the additional workload will be much greater.

The City of York Council welcomes the creation of a new statutory framework enabling voluntary management arrangements (heritage partnership agreements) for owners of complex historic sites. This proposal is welcomed. However, it will demand additional resources. The City of York took part in the pilot scheme designed to look at the impact of this proposal. The Management Agreement for the York City Walls has greatly assisted the City Council in carrying out repair and restoration works speedily and efficiently. However, the creation of the agreement involved considerable resources in terms of staff time on behalf of the City Council and English Heritage. Places such as York Railway Station and New Earswick will be good candidates for new heritage partnership agreements. However, there is no provision for additional resources to create these agreements.

The City of York Council welcomes the creation of a statutory duty for local authorities to maintain or have access to an Historic Environment Record. This proposal is welcomed. Once again this proposal will demand additional resources. The Impact Assessment published with the draft Bill suggests that ongoing estimated costs post-implementation for HERs will be £240K rising to £565K. There is the question of whether these figures are realistic. In addition there is the issue of one-off costs between now and 2010 to bring all HERs up to relevant standards as set out in the draft Statutory Guidance. The City of York Council holds and maintains an HER. However, the standards set by the Statutory Guidance will mean that current staff resources will be inadequate.

The City of York Council considers there is an urgent requirement for the publication of a Planning Policy Statement on the Historic Environment to replace PPGs 15 and 16. A key aim of recent legislation has been to support sustainable communities by putting the historic environment at the heart of an effective planning system. Protection of the historic environment should be a key material consideration in planning policy. The City of York Council considers that the preparation of a Planning Policy Statement for the Historic Environment to accompany the new legislation will be an urgent requirement. This will be essential to bring together the range of primary and secondary legislation and statutory instruments that will result from the reforms and to provide a coherent re-statement of the changes of policy, approach, criteria and terminology that will be integrated in the unified system for heritage protection. A new PPS will replace the existing Planning Policy Guidance—PPG16 (1990) and PPG 15 (1992)—both of which are overdue for revision.

The City of York Council believes the presumption in favour of the preservation of nationally important archaeological remains should not be lost. The presumption in favour of preservation of nationally important archaeological remains and their setting, whether scheduled or not (as set out in PPG 16), has been the benchmark for protection of archaeological sites since 1990 based on the provisions of the 1979 Act. This principle is embedded in current PPGs and other Government guidance and in local and national planning policies. In place of “national importance”, the new Bill introduces the new concept of “special archaeological interest” which will be the criterion for selecting sites and structures for archaeological protection. It is imperative that there is no net loss of overall protection in the new heritage protection system. It is most important that these fundamental changes, as well as the overarching principles of a unified approach to protecting the historic environment, are brought together in statutory guidance.

The City of York Council is concerned that the resource implications for local authorities have not been adequately assessed and that the introduction of the new framework may be prejudiced by the lack of additional resources.

June 2008

Joint memorandum submitted by The Tree Council, the Ancient Tree Forum (ATF) and the Woodland Trust

The Tree Council, the Ancient Tree Forum (ATF) and the Woodland Trust welcome the opportunity to put our concerns about the omissions from the draft Bill before the Select Committee for consideration.

The Tree Council, the lead tree campaigning alliance, works with its 180 member organisations to make all trees matter to everyone. In 2000, it created an initiative to locate Heritage Trees which received an enthusiastic response from its national volunteer force of 8,000 Tree Wardens, who were concerned to ensure that some record of these trees existed. This precipitated the Great British Trees project of 2002, in which a representative 50 great trees were selected from those nominated to celebrate the 50th anniversary of the coronation of Her Majesty Queen Elizabeth II. In 2003, The Tree Council formed the Green Monument Campaign, on which it has since worked with members, including the Ancient Tree Forum and the Woodland Trust, advocating provision that will safeguard ancient and heritage trees for future generations. “The Heritage Trees of Great Britain”, the book published in support of the Green Monument Campaign, sold 15,000 copies in the three months following publication in 2004.

The Ancient Tree Forum has pioneered the conservation of ancient trees and is the main UK organisation concerned solely with their conservation. The ATF seeks to secure the long-term future of ancient trees through advocacy of no further avoidable loss of ancient trees, good management of ancient trees, the development of a succession of future ancient trees, and seeking to raise awareness and understanding of the value and importance of ancient trees. It works with owners, tree care professionals and supporters worldwide who recognise the immense and unique contribution of ancient trees to environment, biodiversity, heritage and culture.

The Woodland Trust is the UK’s leading woodland conservation charity. It has four main aims: no further loss of ancient woodland, restoring and improving woodland biodiversity, increasing new native woodland and increasing people’s understanding and enjoyment of woodland. It owns over 1,000 sites across the UK, covering around 20,000 hectares (50,000 acres) and has 300,000 members and supporters. It, in turn, supports the work of less well resourced organisations where their objectives coincide: the ATF is one such.

1. SCOPE AND SUMMARY OF SUBMISSION

1.1 This submission is in response to the invitation to offer views, for consideration by the Committee, on the overall aims and scope of the draft Bill and the staffing and skill levels needed for effective implementation of provisions outlined below.

1.2 To protect all aspects of the historic environment the proposed Bill should be amended to make provision for individual trees of national importance, and groups of trees, to be proactively designated and protected for their cultural, historic, architectural, and wildlife value. This amendment, together with reforms for streamlining tree preservation order provisions in the Planning Bill, on which we have been in discussion with CLG, will in our view provide an effective integrated system.

2. COMMENTARY ON OVERALL AIMS AND SCOPE

2.1 *A single system for national registration of terrestrial heritage assets*

2.1.1 We wholeheartedly support this aim of the Bill, but are disappointed that, despite representations made at preliminary stages in response to the consultation paper “Protecting our historic environment: making the system work better”, and again to the White Paper, “Heritage Protection for the 21st Century”, there is no recognition of ancient and other notable trees as an integral and indivisible part of the historic environment and therefore significant heritage assets. In our 2003 response, we fully supported the review’s driving objectives of simplification, openness, flexibility and rigour and, in this spirit, drew attention to our concerns that existing provisions for specific protection for ancient and historic trees was notably absent. It was, and remains, our view that they should qualify as a form of historic monument as they have heritage value by virtue of both their age and their close association with people and events and should be part of a unified system. Heritage trees are a fundamental link between man and biodiversity—they are landmarks, are individually known and their importance acknowledged as having a place in our cultural life, recorded down the ages in documents and the arts. We consider that such trees, which occupy space and are perceived by people as being “places”, come within the definitions of heritage asset which are required to be included in the proposed Historic Environment Register (HER) which local authorities will have a statutory duty to maintain.

2.1.2 In failing to recognise ancient and notable trees as heritage assets, the opportunity has not been taken to afford them national recognition, designation and protection.

2.1.3 We have advocated the extension of Conservation Area designation to apply to such trees and yet the proposals to extend criteria for designation only include the archaeological and artistic. All the criteria for designation of man made structures, archaeological, artistic, historic and architectural, can equally be applied to the largest terrestrial plant structures—trees. Ancient and notable trees meet these criteria because, in part, of the actions of man and are also “fragile, vulnerable, non-renewable and a finite resource”¹ and should be included in these provisions to protect the historic environment.

2.1.4 Currently, no central or local government body has a responsibility to maintain records of our tree heritage. A coalition of mostly charitable organisations, enabled by HLF funding through the Woodland Trust have, under the Ancient Tree Hunt initiative and with the volunteer effort of The Tree Council’s 8,000 Tree Wardens, and others from all ages and backgrounds, begun to compile such a record. The enormous response to this initiative demonstrates the wide appeal and recognition by the public of these trees as part of their heritage. Government should also now recognise this and immediately include them in the measures in the Heritage Bill.

2.2 *Staffing and skills needed for effective implementation of this aspect of heritage protection*

2.2.1 We are aware from the data in *Trees in Towns II*² that there is wide variation in provision for skills and training of those staff responsible for implementing existing measures for protection of trees in local authorities. The implementation and effectiveness of legislation and policy is also very variable. We know, too, that trees—many older than most of the buildings which are currently listed—have been destroyed because, as a result of an inability or unwillingness to act, they were unprotected. The distribution of the tree heritage is unrelated to resources available to a local authority. There are often concentrations of ancient or notable trees within the administrative boundaries of local authorities with small populations and therefore limited direct sources of revenue. The urgent pressures of development and targets associated with that preclude implementation of strategic proactive protection of nationally important trees, leaving them vulnerable. Lacking any national control or direct funding, protection of our tree heritage is haphazard and uncertain.

2.2.2 Government has recognised the need for Local Authorities to improve skills levels where it is proposed to delegate responsibilities for heritage protection and administration to them, and also to provide training, advice and guidance. Without similar support and clear requirements relevant to the skills and training of those whom they employ to implement tree protection and conservation, it will continue to be haphazard and ineffective. This will lead directly to a failure to fulfil our responsibilities for the stewardship of an inheritance which, in the case of ancient trees, is of European and International importance.

3. FURTHER EVIDENCE IN SUPPORT OF FORMAL RECOGNITION FOR HERITAGE TREES

3.1 Heritage, built and living are often inextricably linked for example in historic parks and gardens, ancient woodlands and pasture woodlands. An ancient tree is important historically, culturally and for biodiversity. In recognition of this a Heritage Bill should embrace holistically those aspects, currently omitted but which are important in creating a sense of historic and cultural identity. The Natural Environment and Rural Communities (NERC) Act 2006 places a duty on all public bodies to have regard for and conserve biodiversity, and Planning Policy Statement 9, Biological and Geological Conservation, has recognised the special role of aged and veteran trees for conserving biodiversity.

3.2 The Government's own research, "Taking Part", demonstrated that registered historic parks are extremely popular visitor attractions. As the report demonstrated, people make many visits to Parks and Gardens and as such these assets deserve greater protection from development pressures. Trees as individuals, or groups such as avenues, are major components of Historic parks and gardens and integral to their design as landscape features in their own right or to enhance the setting of man made structures.

3.3 Individual trees that are ancient, champions for their species or have specific historic and cultural associations are immensely valuable heritage assets and have great public appeal.

3.4 Despite their importance, the future survival of individual trees and the settings which they create usually depends entirely on the goodwill of their current owners. They have no national recognition or protection comparable with other man-made heritage assets.

3.5 The responsibility to ensure that heritage trees are properly protected is inadequately addressed across government departments. As yet, neither DCMS nor Natural England has grasped the opportunity to promote both their heritage and wildlife value.

3.6 Valuable trees can be lost slowly, through lack of care and good management and the failure of owners to act positively and prevent damage—not only to the tree above ground, but to the root systems of trees from cultivation, digging, compaction, pollution and potential climate change.

3.7 The present planning system and TPO legislation is not effective at protecting the living historic environment. Additionally, as most ancient and notable trees are not protected, they could be vulnerable to the proposals in the Planning Bill relating to major infrastructure schemes and the widening of permitted development rights. Planting new trees for those ancient trees and woodlands lost to development is inadequate because it would take several hundred years to gain anything of the stature and visual and biodiversity qualities akin to that which is lost. It must also be remembered that their historic, cultural and archaeological values are irreplaceable. It is crucial that national and local government should proactively and properly protect these community assets.

3.8 Just as with the built and archaeological heritage, if lost, ancient trees are finite and irreplaceable. There are parallels with the built and archaeological heritage, and if lost they cannot simply be recreated.

3.9 Without national recognition and protection comparable to the protection afforded to Listed Buildings and archaeological sites, ancient and veteran trees are extremely vulnerable to damage, removal and poor tree management work since there is no requirement for consent for works.

www.treecouncil.org.uk

www.ancient-tree-forum.org.uk

www.woodland-trust.org.uk/campaigns

REFERENCES

¹ Extracts from the recent Draft Guidance to Local Authorities from DCMS in anticipation of the transfer of duties to them of keeping registers/records

"The historic environment is a rich and diverse part of our cultural heritage. By providing a tangible link with our past and an inspiration for our folklore it contributes to local character and sense of place, influences how we identify ourselves as individuals and communities, shapes our relationship with nature and the spiritual world, and enhances our quality of life. However, it is also a fragile, vulnerable, non-renewable and finite resource."

Definitions in Guidance

Historic environment: all aspects of the environment resulting from the interaction between people and their surroundings through time

Place: any part of the historic environment, of any size, that has a distinctive identity perceived by people

Heritage asset: a place with archaeological, architectural, historic or artistic interest.

- ² Research for Amenity Trees No. 9: Trees in Towns II, A new survey of urban trees in England and their condition and management by Chris Britt and Mark Johnston. Published February 2008 by the Department for Communities and Local Government

June 2008

Memorandum submitted by the Scole Committee

I am writing to you on behalf of the Scole Committee which represents a number of groups in the field of history, archaeology and building conservation in East Anglia (embracing Norfolk, Suffolk and Essex).

In our region the local authorities have developed high standards for conservation and management of the historic environment. The committee therefore welcomes the draft bill for the raised profile which it gives to the historic environment within the planning system and for the recognition given to the key role played by local authorities. It particularly welcomes the proposal to establish statutory status for the Historic Environment Records held by the local authorities. However, the committee has a number of concerns:

- In the three East Anglia counties specialist historic environment advice currently operates within a two tier local authority structure. The wording of the draft bill (and the draft guidance) in respect of the relative role of County Councils and District/Borough authorities in the delivery of historic environment advice through the planning system is confused and requires clarification.
- There is no cross reference to planning policy guidance (Nos 15 and 16). It is these which give protection within the planning system to the great majority of unregistered historic assets, particularly archaeology sites.
- The new legislation will place increased responsibilities upon local authorities, however, the committee is concerned that the resources available to those charged with implementing its aims will not be sufficient to ensure full implementation of the new arrangements.

June 2008

Memorandum submitted by the Greater London Authority (GLA)

CONSULTATION ON DRAFT HERITAGE PROTECTION BILL

Thank you for the opportunity to comment on the draft Heritage Protection Bill 2008. The proposed legislation will improve the planning process and help to preserve London's heritage for future generations. It is particularly pleasing that it makes provision for World Heritage Sites, four of which are located in London. We look forward to working with English Heritage to protect and enhance these and other heritage assets in the future.

We are very keen to ensure that the proposed legislation achieves its objectives as part of the broader spatial planning system. In this context, we would ask ministers to review two aspects of the draft Bill that might compromise my ability to implement my vision for London.

1. London's heritage is of paramount importance. The Mayor supports English Heritage in their role of identifying assets that should be safeguarded for future generations and welcomes measures that will enhance the organisation's ability to protect those assets. It is crucial that heritage be given due consideration in the planning process.

There are of course many other issues of equal weight that must be considered in the development control process such as climate change, transport, the economy and housing. English Heritage does not have the remit, and may not have the resources or expertise to consider these broader planning issues but its decisions will directly affect London's development potential. The Greater London Authority has the statutory responsibility and expertise to consider the strategic implications of land-use planning decisions and could offer significant support to English Heritage in its role. We would welcome a framework for collaboration between English Heritage and my office so that we can together decide how to protect London's heritage within the strategic planning context.

2. The Mayor is responsible for strategic planning decisions in London and must account for a wide range of economic and spatial development priorities, including heritage protection. From time to time, it may be appropriate for him to comment on decisions to include or remove an asset from the heritage register. We would suggest that the Mayor should be included in the definition of "relevant person" in clause 26 of the Bill. This is particularly important for proposals that may have strategic implications.

June 2008

Supplementary memoranda from the Historic Houses Association (HHA)

A number of member properties of the Historic Houses Association, as you will be aware, have participated in the HPAs pilots and below is a summary of their experiences which the Committee may find useful. Please do not hesitate to contact me if I can help further.

HERITAGE PARTNERSHIP AGREEMENTS: HHA VIEWS

The development of Heritage Partnership Agreements must be effectively resourced. The proposal to introduce management agreements has, in our view, the potential to be one of the single most useful elements of the review. These agreements can encourage a positive approach to longer term management, promote effective partnerships between stakeholders and give certainty and clarity to those responsible for managing historic places.

Feedback from those HHA members who have taken part in the pilots have shown, however, that there are some significant shortcomings which need to be resolved:

- HPAs will not always give the flexibility that may be needed. There appears to be no constructive way to deal with proposals and projects that fall outside the plan (for example, a project to find a use for a redundant listed building). For a dynamic, viable estate this is a real issue.
- The local authority personal do not seem to be empowered to give a holistic view of the development of an historic asset and are unwilling to agree to proposals which would also need planning permission and/or were subject to building regulations. It is imperative that planning and building staff are brought into discussions at an early state.
- There were some concerns about how genuine the “partnership” actually is. It is the local authority which appears to retain the decision-making powers and there is no mechanism to appeal.
- Structural and resourcing issues within local authorities is a grave concern. In one case an estate which fell within two local authorities, appeared to cause almost insurmountable difficulties. In another changes in personnel (the entire teams changed three times) caused practical problems.

In summary, the key lesson is that agreements take time and resources to put in place and their development needs to be effectively resourced. Whilst agreements are likely to result in longer-term savings, significant upfront investment and time is required to establish them and make them work. We also recommend that their availability should not be restricted to “complex sites”. Any heritage entity comprising more than one type of asset—what could be termed “multiple sites”—could benefit.

The HHA would like to reiterate its support for HPAs. We are concerned that their potential will not be realised as local authorities will not be able to resource their implementation and they will remain very much the exception. This would be a lost opportunity.

Memorandum submitted by Hugh Bayley MP

As Member of Parliament for the City of York, I should like to submit my views on the draft Heritage Protection Bill for consideration by your committee.

There are a range of national, regional and local organisations in my constituency with a particular interest and expertise in heritage issues and I have had the benefit of discussions with a number of them in recent weeks.

Along with the majority of the heritage sector, I very much welcome the publication of the draft Bill and look forward to the opportunity to debating the full Bill in the next Parliamentary session. It contains a number of new initiatives which will modernise and open up many aspects of the current heritage protection system, as well as bringing together all elements of the historic environment into a single holistic system which is fully in line with modern professional practice.

However, much of the detail of the proposals is yet to be published, including the important underpinning Planning Policy Statement which will be crucial for managing change for designated and undesignated heritage in a complex archaeological and historic city centre like York. Details of the as yet unpublished proposals for Conservation Area designations and local listing will be particularly relevant for a historic city like York. A clear schedule for publication of these details would enable all parties to be better placed to make informed judgements on the full implications and resources required for the proposed new system. I should like the government to publish its new Planning policy Statement before the Bill is debated by Parliament.

An issue which is particularly relevant to York is the proposal to revoke the Area of Archaeological Importance designation (repealing the second part of the 1979 Ancient Monuments and Archaeological Areas Act). It is surprising that there has been no consultation with the City of York Council or the designated authority (the York Archaeological Trust) to review the impact of this proposal. Currently the AAI status is especially beneficial in covering work by utility companies which are not covered by the planning process, and it is indicative of its perceived value that the York Archaeological Trust (an

educational charity) currently funds this work from its own resources. I suggest that there should be a formal review of the impact of the removal of AAI status to ensure that there is no loss of protection for the historic city centre of York under the proposed new arrangements.

A review of the implications of the loss of York's AAI status could be part of a pilot study using York as a test bed for the full implications of the proposed new Heritage Asset Consent procedures and Heritage Partnership Agreements. The city would make an excellent case study for a realistic assessment of the resource implications for the local authority to successfully implement the new heritage protection reforms.

June 2008

Memorandum submitted by the Rollright Trust

THE ROLLRIGHT TRUST

The Rollright Trust is a charity set up in 1997 to manage the Rollright Stones complex of guardianship monuments, an early Neolithic burial chamber, a stone circle and a standing stone which straddle the Oxfordshire Warwickshire border on the ridge of the Cotswold Hills. The Trust owns two of the three monuments, the third being held by lease along with a good deal of surrounding land which the Trust rents as a means of improving the amenity and permissive access to the site.

The Trust manages the site in accordance with a management plan that it developed itself and on which it consulted widely before adopting it in 2001. It is in the process of beginning to update the Plan.

The Trust relies on income from visitors for day-to-day maintenance of the site and has received capital grants from many bodies to make a variety of improvements in amenity and disabled access. It receives no income from English Heritage, though in the past they have paid for emergency repair to the Stones including the removal of paint. The Trust has not entered any formal management agreement with English Heritage. In the past there have been some problems unsatisfactory works being carried out by EH contractors without due notice, but in recent years a very constructive mutually consultative relationship has been developed between the Trust and EH.

ISSUES

The clauses on Guardianship, which have not been updated (and if anything made even more restrictive) stand in stark contrast to those on heritage asset designations and consents where there are now much more elaborate mechanisms for consultation and appeals to bring the legislation more into line with modern concepts of public accountability.

As in the 1979 Act (following the pattern established by previous Acts) the provisions for guardianship provide for very extensive powers for the State with only very minor concessions to the rights of owners and occupiers of property subject to deeds of guardianship—which in some cases will have been acquired as a land charge and may be quite antiquated. In effect the legislation treats Guardianship to all intents and purposes as the same as ownership, but this is not equitable when ownership and occupancy do not go with it, especially as it is a land charge that runs with the land. While the original owner/occupier might have wished to wash his or her hands of a site, subsequent ones may not take the same view.

The provisions do not formally recognise any role for the National Trust or other charitable bodies who in several cases are actually responsible for the maintenance and management of guardianship monuments and have their own legal charitable objects in doing so.

As compared with the 1979 Act, the Draft Heritage Bill proposes to curtail the very limited residual rights of owners and occupiers of guardianship sites even more because of the now extremely limited (24 hour) notice required to be given to carry out works.

The provisions do not provide for modern standards of transparency or accountability on the public guardians of the nation's most important heritage assets. The general requirement on authorities to maintain, manage and protect guardianship structures is not supported by any requirement on them to create, maintain, implement and update a Conservation or Management Plan, nor to report on performance to the Secretary of State or Welsh Minister. Nor is there any requirement to consult with the owner/occupier or other interested parties on the content of such plans, or to respect the interests as owners so long as they do not interfere with the primary conservation of the monument for public benefit.

The approach assumes that the State (ie bodies exercising guardianship **and their contractors**) will always automatically act in the best interests of conservation, without regard for the possible existence of other points of view. There is no requirement for any works to be in accordance with a properly formulated management plan, nor any requirement to report on works carried out. Other than excavation, owners and occupiers have no formal right to object to or withhold consent for inappropriate works—it is simply

assumed that all works carried out by the authorities (and their contractors) will, by definition, be appropriate. Experience shows that this is not always the case, and for such important sites a fail-safe of additional checks and balances would clearly be prudent.

Despite the Government's avowed intention to reduce activities covered by Crown Immunity, there is no provision for the guardian being required to obtain any consent from an independent authority for potentially damaging works, even including the power to remove the asset to another place!! This is despite the fact that local authorities at least are required to obtain consent for works on non-guardianship heritage assets that they own.

Where guardianship provisions do entail explicit consents (to transfer guardianship to another authority and general provisions for entry to land to carry out excavations) they are vaguely worded and there is no provision either for the guardian to appeal to the Secretary of State to override an unreasonably obstructive owner or interested party withholding of consent, or for the owner to object to works (other than excavation) being carried out, or to allow access or charge entry fees.

POSSIBLE SOLUTIONS

Possible ways to rectify these flaws might include the following:

1. The purpose of guardianship should be more clearly defined, referring to the prime objective of long term maintenance, management and protection of the special interest of especially important heritage assets for the benefit of the public.
2. The National Trust should be recognised as a potential Guardian of heritage assets IF it wishes to be case-by-case, together with other charities set up for the explicit objective of conserving and managing heritage assets, subject to EH and or local authority advice on their proven suitability AND the willingness of the charity to carry the extra responsibility entailed.
3. There should be a clearer basis of how the functions of guardians should be handled with respect to management agreements with owners and third parties.
4. Guardianship authorities should be required to prepare and maintain a Conservation and Management Plan for each guardianship asset, drawn up in consultation with the following (if not the authority itself): the owner/occupier, the local authority, English Heritage, the Secretary of State (or in Wales, the Minister), anyone known to have relevant special knowledge of or use of the site, Natural England, the local community and such other persons as may seem appropriate.
5. Each Conservation and Management Plan should last not less than three and not more than 10 years and should be subject to approval by the Secretary of State, becoming operative on a provisional basis from the point when submitted. The Guardianship authority should be responsible for the updating of the Plan, including fresh consultation, within at most two years of the expiry of its projected time scale. Such plans need not be restricted to only those parts of a heritage structure or larger assets that are covered by the deed of guardianship, but if so they must make it clear which parts of the heritage structure are in guardianship and which are not, and what the difference makes in terms of responsibilities.
6. The Secretary of State (or Welsh Minister) should by Order specify minimum standards for the content of Conservation and Management Plans, to include all aspects of how the powers of guardianship will be implemented by the authority or its contractors.
7. There should be a requirement on guardianship authorities to obtain the consent of the Secretary of State for works that would otherwise require the consent of the local authority or English Heritage, except where such works are authorised by an approved Management Plan.
8. Where Guardianship authorities and the Secretary of State do not own and occupy a guardianship structure themselves, they should be under a statutory duty to consult with and take account of the views of the owners and occupiers of the structure on all matters relating to the execution of all the authority's powers as guardian not already authorised by an approved management plan.
9. There should be a requirement on the guardian to report to the Secretary of State or Welsh Minister on their performance against the objectives set out in the management plan on a triennial or quinquennial basis—or as specified in the Plan itself.
10. There should be a mechanism for the Secretary of State to transfer of guardianship to another body should the guardian be shown (including by owners or other interested parties) to be failing to carry out its duties effectively, but only IF an alternative arrangement would clearly be better.
11. The Secretary of State should be required to maintain a public register of all assets in guardianship, to include copies of conservation and management plans and reports.
12. Further detailed amendments to wording are needed to deal with other detailed points noted below relating to compulsory purchase and other acquisition, notice of access, rights to object to proposed works and other matters.

DETAILED COMMENTS ON PROPOSED CLAUSES

164–169 Compulsory purchase of heritage assets and easements other than for repair:

- Together these clauses provide for compulsory purchase of heritage structures and guardianship assets and surrounding areas for the benefit of the public.
- 164(2) does not permit compulsory purchase of easements in relation to heritage assets that in guardianship but not owned by the purchasing authority itself.
- Except in relation to easements (under 164(1) and (3)), none of these clauses state what the primary purpose of compulsory purchase should be other than 166(2) which only requires that it is “expedient to make provision for the preservation of the registered heritage structure”—there is no requirement for this to be an option of last resort when other mechanisms for securing the preservation of the asset have been sought and failed, or cannot reasonably be expected to succeed.

170 Ending of rights on compulsory purchased land: there appears to be no option to decide by agreement what rights may or may not be extinguished.

171 Acquisition of heritage structures and associated rights by agreement:

- The purposes of acquiring an asset (under 171 (1) (a)) as opposed to an easement to support its management (under 171 (1) (b) and 171 (4)) are not spelt out.

174–175 These clauses provide for carrying out preservation works to registered heritage assets and recovering costs from owners:

- 175(3)(a) establishes that an owner may appeal against having to pay for works amongst other things on the grounds that they were unnecessary, but this only applies to the requirement to pay for preservation works, not the actual works themselves, and there is an obvious discrepancy that the 7 days’ notice that the authority must give before doing the work (under 174) is much shorter than the occupier’s 28 days in which to appeal against having to pay.
- It is not clear whether 174–5 could apply to guardianship structures not in the ownership of the guardianship authority, but 179 implies that all such responsibility passes to the authority, yet there is no equivalent right for an owner to challenge the need for any works (see below).

177–179 These clauses set out the basic parameters of how heritage structures come into guardianship and the powers of guardian authorities:

- There is no requirement to define (or redefine) the extent of guardianship which is relevant from some older existing guardianship structures (like The Rollright Stones) where the deed of guardianship is vague or where only part of a registered heritage structure is actually covered by the deed of guardianship—at Rollright arguably the stones, but not the ground on which they stand.

177 Placing registered asset into guardianship:

- 177(2) limits the public bodies in whom guardianship can be vested to the Secretary of State, English Heritage and a local authority (Welsh Ministers and local authority in Wales)—does NOT include either the National Trust or other charitable bodies set up with the express objects of conserving heritage assets, nor does this or any other clause recognise that the powers of guardianship should be executed with due regard to the charitable objects of such bodies where they are the owner.
- 177(7) allows anyone with an interest in the asset to be a party to a deed of guardianship in addition to the owner, occupier and public authority.

179 Functions of a guardian:

- 179(1), (2) and (3) The sweeping duty of heritage bodies or local authorities to look after guardianship sites in subsections (1) and (2) are only qualified in (3) as being to do “such things as appear necessary for” maintenance, control and management—ie more or less any arrangement—without the owner or occupier having any say in the matter when the place is not owned/occupied by the authority (for example this clause allows the guardian to delegate all its powers to a third party not involved in the original deed of guardianship, and controlled only indirectly through a contract).
- 179(4) defines maintenance as including fencing and any other works for repairing, covering and protecting, while 179 (5) gives public authorities acting as Guardians unrestricted powers of “examination”, “opening it up”, “excavations” and “removal to preserve it”—unless under 179(6) such process is contrary to the deed of guardianship, or under 216 (3) the owner/occupier refuses consent.
- 179(7) gives unlimited right of access “at any reasonable time” for the guardian authority or anyone acting on its behalf to carry out any of the works allowed above. This is only subject, (under section 218(1)) to 24 hours notice (rather than the 14 days for “works”, and 24 hours for “other purposes” required under section 44 of the 1979 Act), though 216(3) provides (as in sections 25 and 44 of the 1979 Act) that excavation can only be carried out with the consent of anyone whose consent would otherwise be required—presumably including the owner or occupier, but without any requirement to give more than 24 hours’ notice of access to the owner and occupier.

- There is no requirement for guardians to report regularly to the Secretary of State on the exercise of their duties under 179.

180–181 Transferring and terminating guardianship:

- 180(1) allows guardianship to be transferred to another body as defined by 177 (2) but this does not include NT or charities.
- under 180(2) any transfer requires consent of “the persons who are for the time being immediately affected by the operation of the guardianship deed” without defining what “immediately affected by the operation” might mean (eg would this include custodians employed by the original guardianship body, or by another body under an agreement, or by people who use the site for annual celebrations who fear they might be curtailed?).
- 181 There is no power for the Secretary of State to terminate, take over or transfer guardianship, or make an alternative management agreement with the owner/occupier if the functions of the guardian are not being satisfactorily carried out.
- There is no power or right for the owner or occupier who is bound by the deed of guardianship to propose transferring guardianship to another public body, or terminating it if for example the guardian is not carrying out its functions properly or effectively.

182–184 The provisions for public access to guardianship heritage structures appear to ignore any possible interest that the private owner/occupier might have if it is not in public ownership:

- 182(2) does not refer to either the existence of any management plan or the interests of the owner and occupier (if not the authority) as factors that should be considered in deciding if public access is “appropriate or practicable” under the general presumption in favour of access set out in 182(1).
- The power to control times of public access under 182 (3) and (4) makes no reference to the interest of the owner/occupier in the matter.
- The power to charge for entry to guardianship structures (182 (5) makes no reference to the interest of the owner/occupier in the matter.
- Under 182(6) the power to exclude unwanted persons does not automatically apply to the owner/occupier or to the police (though the latter may have such powers under other legislation to prevent criminal damage or public disorder).
- The power not allow public access under 182 (8) does not require the authority to take account of the possible interests of the owner/occupier.
- There is no requirement under section 183 for the guardianship authority or Secretary of State to consult and take account of the views of the owner/occupier of the guardianship heritage structure about regulations concerning public access.
- There is no requirement under section 184 for the guardianship authority or Secretary of State to consult and take account of the views of the owner/occupier of the guardianship heritage structure about provision of facilities for the public.

July 2008

Supplementary memorandum submitted by Westminster City Council

I refer to the evidence given by Robert Ayton of Westminster City Council on 1 July 2008 and that given by Dr Thurley of English Heritage on 2 July 2008. The City Council would like to make the following comments with respect to Heritage Partnership Agreements (HPAs) and Dr Thurley’s evidence.

Dr Thurley stated:

“The important thing about Heritage Partnership Agreements is that they are only really useful where you are dealing with large estates where you have a single owner with multiple buildings. Westminster, I think I am right in saying, has the highest number of listed buildings of any borough in England and so I can understand that there might be some concern there but it does not have lots of estates of the sort of nature that we are thinking of”.

“I must say I do think that it is unlikely and I think that as the word gets around and as we go on the road and explain to local authorities the significant benefits there can be from this, more and more local authorities will encourage the big estate owners who make multiple, repetitious, slightly pointless sometimes, listed building consent applications to get on and make an agreement”.

DCMS states at paragraph 41 of the Impact Assessment:

It is hoped that take-up of these new management arrangements will be high among owners of sites that require repetitive consent applications each year. As an indication, English Heritage note that there are currently around 250 listed building sites in England that have made six or more consent applications in the last three years. There are, in addition, an unknown number of applications made by owners of multiple sites which would be helped.

In his evidence Dr Thurley suggests that he is thinking of country estates but the City Council is concerned that there are many urban estates in Central London comprising large numbers of historic buildings, such as the Grosvenor, Howard de Walden, Eyre, Pollen and Portman, who may wish to pursue an HPA. These estates could fall within the definition given by Dr Thurley; that is they are single owners with multiple buildings. If urban estates are not considered suitable for HPAs then this would need to be spelt out clearly.

The comment by DCMS suggests that owners with dispersed property holdings could also benefit from HPAs. This could include major landowners and developers, such as Great Portland Estates and Land Securities, who own significant numbers of diverse properties across Westminster. Again, if these types of owners are not considered suitable for HPAs then this should be made explicit.

The City Council draws the conclusion that, unless there are clear definitions of who is suitable for an HPA, there could be considerable demand for Heritage Partnership Agreements from a significant number of property owners, and that this would involve considerable local planning authority resources, especially at the initial stages, but also later on. The draft Heritage Partnership Agreement for Piccadilly Circus Underground Station proposed a system of dealing with submissions pursuant to the pilot HPA which could have meant significant on-going work, for the City Council had it been implemented.

The City Council does not receive many of what Dr Thurley refers to as “repetitious, slightly pointless sometimes, listed building consent applications”. The City Council receives around 2,000 applications for listed building consent each year but does not receive more than a handful of unnecessary applications.

In the case of Piccadilly Circus underground station, in the last 24 years the City Council has received a total of less than 50 listed building consent applications, an average of less than two per year. Some of these may have been for relatively minor proposals, but the applications were not pointless. Even under the draft HPA, listed building consent would still have been required for these works. Dealing with this small number of applications has not been an onerous burden.

DCMS suggest that HPAs might be appropriate for sites submitting 6 or more applications in a three year period. Again, it is questionable whether a rate of two applications per year would justify the work required in setting up an HPA.

CONCLUSION

The City Council recognises that HPAs may offer some benefits, especially to land owners, and is not opposed to their use in special cases. But the City Council is yet to be convinced about the extent of their benefits compared with the extensive work required initially. It vital that local planning authorities can resist participating in them if they consider them unnecessary or too onerous.

July 2008
