

10 DCMS REVIEW – PROTECTING OUR HISTORIC ENVIRONMENT: MAKING THE SYSTEM WORK BETTER

Report By: Head of Planning Services

Wards Affected

Whole County.

Purpose

1. To consider Department of Culture Media and Sport's (DCMS) consultation paper, offer advice to the Cabinet Member for the Environment upon its content.

Financial Implications

2. None at this stage although should the proposals proceed then this may well be significant for either or both English Heritage and/or local authorities.

Background

3. DCMS published a consultation paper "Protecting our Historic Environment: Making the System Work Better" on 17th July asking for comments by 31st October. The document is part of the Review of Heritage Protection that was started in November 2002 and carried out in association with English Heritage. The outcome of the review will have significant implications for the work of the Planning Committee. A number of events are to be held during the Autumn to debate the issues set out in the consultation paper. As yet we have no details of these.
4. The Review covers the designation of Ancient Monuments, Listed Buildings, Registered Parks and Gardens, Registered Battlefields, World Heritage Sites and Conservation Areas, together with how the planning system protects these historic assets. Four objectives are identified as the basis for the proposals put forward in the review document:
 - To simplify what are seen as complex protection systems (Simplifying);
 - To increase the openness of processes which are considered inaccessible, even secretive (Openness);
 - To have a more flexible regime for management (Flexibility); and
 - To have a system robust enough to conserve the best and to continue to take on board changes in what people value without devaluing the purpose (Rigour).
5. The principal changes which are suggested in the consultation document include:
 - There should be one single list for all the relevant designations being the "List of Historic Sites and Buildings of England".

- English Heritage rather than DCMS would be responsible for maintaining the list with Government deciding policy rather than each case of designation.
 - Policy on listing should allow some discretion to decide whether a building or site will not be listed. For example where listing would not help secure a building/site's future, or some other form of protection, such as development control, is more appropriate.
 - Maps showing the extent of what is covered by any listing should be produced together with a statement of significance.
 - The listing procedure should include consultation with owners, local authorities, amenity societies, parish councils and the public with protection during the consideration of listing.
 - There should be a right of appeal against listing in all instances.
 - A single flexible consent regime should be introduced.
 - Local authorities should be responsible for dealing with all applications for consent.
 - A local section for the list or local list should be introduced.
 - English Heritage might specify more precisely what works would and would not need consent (for each listing or groups of listings) possibly within the statement of significance.
 - The possibility of using management agreements as an alternative to consent regimes is raised.
 - Regional Spatial Strategies should set out policies for protecting and managing the historic environment.
 - Guidance should be provided on the policies for Community Strategies, Local Development Frameworks and sustainability planning.
 - New ways should be found for encouraging local authorities to produce conservation area appraisals, to include community involvement and even local residents producing them.
 - Views are sought on how to address the gap in skills, knowledge and experience across the sector.
6. The consultation document asks a number of questions to which answers are sought. Appendix 1 to this report sets out your officers' views upon these.
7. The overall content of the review document is disjointed. Having at the outset suggested that a single list be established many of the issues and questions appear to show a lack of consistency with this intention. One example of this is the reference to maintaining the grading system. Only some of the present designations have such a grading system, and the review omits any reference to those designations without and how they will fit into one integrated system. The confusion arising from issues and questions referring only to some of the present designations rather than pursuing

matters on the basis of one integrated list gives the impression that the premise behind the approach will not be simplified or rigorous.

8. The realism of the suggestions is also brought into question by the apparent lack of attention to practicality. The whole programme will require an enormous resource to implement if a two-tier structure is not to remain in place for many years to come. The resources include both finance and the availability of sufficient people with the skills required, both in relation to local government and English Heritage. Neither will be available in sufficient supply. To retain both the old and new systems in tandem will cause considerable irritation amongst both the public and practitioners. The long-term implications for managing the historic heritage could be serious.
9. On a more parochial point the future for Areas of Archaeological Importance is not indicated. Hereford is one of only 5 in England. It is suspected that the designation might disappear, although this needs to be clarified and representations made about retaining its most useful provisions within the regime for the single list.

RECOMMENDATION

THAT

The Cabinet Member for the Environment be advised that Planning Committee's view upon the Review of Protecting the Historic Environment is that it generally supports the intentions for improvement set out in the document, namely to establish a system that is simpler, more open, flexible and rigorous than the present arrangements. Furthermore, the suggestion that a single list be established appears to be a useful approach in this regard. However, it has concerns about many of the more detailed suggestions and these are set out in the answers to the questions posed by the review document listed in Appendix1 and paragraphs 7 – 9 of this report.

Background papers:

Protecting our Historic Environment – Making the System Work Better (DCMS, July 2003)

APPENDIX 1: List of Questions for Consultation and Officer Comment.

Q.1.1 Would a unified List for England improve existing arrangements?

Officer Comment: In itself this may appear a constructive suggestion. However, the subsequent package of measures putting this into effect is unlikely to simplify the system, more likely having the reverse effect. The package appears cumbersome and as such will not achieve the rigour indicated as being an important objective. It is assumed that the List would be of nationally important sites and buildings and separate to the proposed Local List.

Q.1.2 Is a power at national level to designate areas of historic importance necessary or useful? What would it add to the present conservation area designation? What issues would need to be resolved?

Officer Comment: A two tiered system for designating historic (conservation) areas would again fail to simplify the system. All such areas have to date been designated by local authorities and it is unlikely that any such areas of significant importance have not already been designated. A system whereby English Heritage is consulted upon designation with ability to grade and a reserve power (as the SoS has at present) to act in default of the local authority would be better.

Q2.1 Are the suggested safeguards sufficient to allow English Heritage to become responsible for maintaining the List?

Officer Comment: Generally yes and there are considered to be sufficient safeguards with further being provided if necessary should any initial period of use show they might not be. However, whether such a move serves any useful purpose is debatable.

Q2.2. What other options might there be? For example, English Heritage might establish some form of independent committee to make the designation decisions? How would Commission for Architecture and the Built Environment's (CABE) advice on post-war buildings be factored in?

Officer Comment: Other options that establish further mechanisms would over-complicate matters. It would introduce a system such as there is now with one organisation recommending to another. If the issue is simply how to deal with more modern buildings for which policies and criteria might be difficult to set out then some sort of limited mechanism may be needed. This would be for a specific and limited section of the list. For this limited area, a panel making recommendations might be useful although its membership need not be limited to CABE. Nevertheless effort should be made to determine criteria for including modern buildings which are clear and widely understood.

Q3. What criteria should be used to determine what items should be placed on the List?

Officer Comment: The present approaches for the various designations are tried and tested and generally understood by those with knowledge of the subject. That the public may not understand them is generally down to lack of clarity, the use of professional jargon, and the fact that the relevant information is not readily available within the public domain. However, English Heritage's research has shown a high degree of support for conservation of the historic environment as it stands at present. Therefore to move significantly away from the present criteria is unnecessary. To broaden the criteria by introducing other factors such as economic, property or use issues at this stage would devalue the purpose of the designation and may potentially result in protracted discussion about what may or may be relevant. Such issues can change over relatively short periods of time. They are best considered at the consent stage where all current material considerations can be taken into account.

If new criteria are introduced without reviewing all sites and buildings in accordance with them, then a two-tier system will result and remain in being for a considerable period of time.

Q4.1. Should the present gradings of I, II* and II be retained?

Officer Comment: The present grading systems for Listed Buildings and Registered Parks and Gardens has proved useful, not the least for prioritising the allocation of resources. Scheduled Ancient Monuments, Conservation Areas and Battlefields are presently not subject to any grading. A consistent system would be needed to encompass them if one list is introduced. To grade Scheduled Ancient Monuments in particular would involve much time and resources.

There is also doubt whether one set of grading criteria could be introduced for each of the present designations. A study of whether this is possible for Scheduled Ancient Monuments and conservation areas should be undertaken before any conclusions are reached.

Q4.2. Should some of the items at grade II move onto local lists? What safeguards would be needed?

Officer Comment: It is not clear from the question whether this simply relates to Listed Buildings and/or Registered Parks and Gardens which are presently subject to grading. It would serve no purpose if local lists were simply indicative of local concern. This is the case at the moment and there is no protection for any buildings upon any local list. As a consequence few local authorities keep such lists.

The establishment of a local list comprising some or all of the present span of designations will only serve a useful purpose if it is accompanied by some increased level of protection beyond that afforded to buildings or sites not on any list. Hence safeguards at least against demolition such as is applicable within conservation areas and works that destroy the archaeological and landscape heritage are the minimum necessary.

Q5.1. Would a requirement for statements of significance help to establish for owners and local authorities what was important to conserve? How could the statements take account of the inevitable changes in values over time?

Officer Comment: Some forms or other of statements are already prepared for the various designations at the moment. They do vary in terms of length and detail. More recently detailed statements have been prepared for Scheduled Ancient Monuments. However, only a limited number of monuments have been covered in this way and the programme has been curtailed because of the heavy call on resources. Government should be aware of this fact in determining the practicality of proceeding with this suggestion.

It goes without saying that people with relevant professional knowledge and skills should prepare any statement. However, if they are to be used to indicate what is or might be important they will have to be extremely detailed, requiring full surveys. The resource implications of this would be immense. Even then it is highly likely that many features will not be identified fully. In addition the importance of some features may not be appreciated at the time of any survey and may only become recognised as knowledge increases over time. This would be particularly so for Ancient Monuments.

It is useful to provide as full a picture of the importance of any heritage site or building as possible and its utility for owners would be considerable. However, it should be acknowledged that the statement should not form the basis for determining all the features that should be subject to any consent regime. Just as conditions affecting planning policy changes over time, so will the knowledge and recognition of the importance of our heritage. It has to be appreciated by all parties that any

statement of significance might be added to over time and its use based upon this premise.

Q5.2. What should be the process for drawing up statements of significance for existing listings?

Officer Comment: Again it is worth recognising that this is likely to be a major task with there being around half a million listings. The suggestion that existing listings should have statements prepared only when applications are received for consent to do works would still amount to a significant task. Within Herefordshire we receive around 400 applications for Listed Building Consent a year. The Council does not have the resources to prepare such statements. Furthermore, should the responsibility be placed on owners, the cost of employing relevant specialists would not be small and in many instances divert scarce resources away from important repairs and restoration works. In addition there would be an issue of consistency and someone will be required to monitor the quality and accuracy of privately prepared statements. This will be at a cost to either English Heritage or the local authorities.

If statements were to be prepared the only realistic option would be for one body to undertake this work according to an agreed programme. However given the extent of the task it is highly likely that they would be general in nature and consequently their utility would be questionable.

A more preferable option would be to require information from appraisals, surveys, etc prepared by any interested party to be lodged in one local record centre such as the Sites and Monuments Record (SMR). Easy access by owners and the public in general should be afforded to this record, including through increased use of IT. This approach would allow information to be built up over time, according to the pressures placed upon the building or site.

Q5.3. Should maps take the place of the present definition based on curtilage?

Officer Comment: Again in theory such an approach would be useful provided the definition is accurate and maps are of good quality and at an appropriate scale. The resource implications are considerable and many of the problems associated with the preparation of statements of significance apply to this suggestion.

Q6.1. Should the listing process become open and who should be consulted on an application?

Officer Comment: The integrity of any system benefits from it being open and involving consultation. It will cause delay, for example when an owner is seeking a relevant consent. Provision will need to be made to defer consideration of such applications during the period within which consideration is given to including the building/site on the List.

In relation to consultation it needs to be made clear that no one party should have undue influence over the decision made by English Heritage or Secretary of State which should be on the basis of criteria governing inclusion on the list and nothing else. The organisations consulted should be prescribed for consistency of approach. The owner, local authority and parish council should be included on any such list. Both the public and amenity societies also have a part to play and it would be useful to issue advice for them upon the types of comment and information they might usefully provide.

The question seems aimed at buildings or small sites in the ownership of a limited number of parties, rather than larger areas. The inclusion of an area equivalent to a conservation area may need to be handled differently because of the number of interested parties involved. These may also include public and statutory bodies having the ability to contribute positively to the areas concerned (see answer to **Q14**) yet they have the potential to bring significant resources to bear beyond more local groups should they wish to oppose such proposals. The role of such bodies will need to be carefully defined in any primary legislation or regulations.

Q6.2. Might there be different requirements for private properties which are lived in?

Officer Comment: If the system is to be a unified one then the answer must be 'no'. Furthermore how do you differentiate between a definition of 'lived in' and using the land for one or other beneficial purpose? Arguably the vast majority of sites or buildings will have some use which an owner could legitimately claim to affect their livelihood.

Q6.3. Should protection be applied during the period when listing is under consideration?

Officer Comment: The system would be open to abuse if this were not the case.

Q7.1. Should there be a right of appeal? In what circumstances would a right of appeal be justified?

Officer Comment: In effect there is already a right of appeal against the listing of a building. This should be extended to all listings and made explicit in the designation process. The circumstances for any right of appeal should be on the basis of whether or not the policy and criteria for listing are met.

There is no indication that the review has considered appeals against inclusion on any local list. This reflects the fact that the issue of local lists has not been particularly well thought through. There needs to be consistency of approach if possible but it depends significantly upon whether there are any real powers to protect buildings or sites on local lists.

Q7.2. Should the suggested right of appeal apply just to owners or to other interested parties as well?

Officer Comment: Although there is no strong view upon this, for the sake of consistency within the planning system it is probably best if the right of appeal were only available to an owner or tenant. To open the right of appeal up to a wider range of interested parties might potentially overload the system and there is the issue of defining who such parties might be. However, should an appeal be made, those parties who have made comment through the consultation procedure should have the right to present evidence at any appeal. Again no third party should be seen to have any undue influence over the decision.

Q8.1. What kind of consent regime will be most appropriate for a unified List? Should English Heritage seek to define individually at the time of listing what works will or will not require consent or should only generic rules be applied?

Officer Comment: A regime in which local authorities would be responsible for dealing with all applications for consent ought to be possible and a useful way of proceeding. However, the SoS will need to retain powers to ensure local authorities maintain the

relevant expertise and the power to call in applications as necessary. Consultation arrangements with English Heritage will need to be clearly defined.

The problems raised under Q5.1 suggest the use of Statements of Significance in order then to define what will or will not require consent is not a practical way of proceeding. It may be possible to identify works requiring consent for new listings although a two-tier system would result and this would not simplify the system. It is considered that the suggested approach would be impractical to deliver if adopted for all listings. Even to try to cover groups of listings by generic controls would require them to be so general as to be worthless, in particular in relation to buildings. Where areas are involved, the approach should be trialled before any conclusion is reached.

Q8.2. What generic arrangements would be suitable for historic areas?

Officer Comment: The example of “potentially damaging operations” in relation to SSSIs is given as an analogy for what is envisaged. Again some pilot exercises should be undertaken to determine whether this is a useful way of proceeding. If the approach is adopted it should apply not just to sites which are presently Scheduled Ancient Monuments, but also those which are conservation areas. Furthermore the scope of historic areas might be extended to incorporate areas of wider archaeological interest, particularly within urban areas.

Q9.1. How feasible are management agreements as an alternative to statutory consents and in what circumstances could they be most useful? What would be the essential components of such agreements?

Officer Comment: The scope for these is considered to be small and most likely to relate to the larger more complex sites. It is likely to be a useful additional tool, but the resource implications should not be ignored. They will involve at least pre-agreement negotiations, some form of contract, and monitoring arrangements. Enforcement provisions need to be sufficiently robust for the approach to have any merit. On the positive side they may also cover funding provisions. In this regard schemes such as the present Conservation Area Partnership, Guardianship, Heritage Regeneration and Heritage Lottery Fund and locally determined schemes might play a part in such agreements.

Q9.2. What safeguards are needed to ensure openness and rigour?

Officer Comment: A public register of such agreements should be available for inspection. However the way in which this information is made available might be affected by the Data Protection Act

Q10. Should the Government provide for joint agreements covering the natural and historic environment (such as are now available under agri-environment schemes) to be recognised in statute as an alternative to consent requirements?

Officer Comment: This could be a natural extension of the above. However, any that proceed should be on the basis that the interests of both the natural and historic environment are safeguarded rather than one area being played off against the other. It is not evident at what level such agreements are to be promoted or if it is intended that local authorities will be involved. The approach calls for a range of expertise and project management skills in view of the diverse and complex nature of the matters that need to be drawn together. It is also difficult to see how such joint agreements can be limited to the natural and historic environment without having to cover agricultural, tourism or other issues. Nevertheless an integrated approach is

necessary for rural and urban regeneration combining positive measures with regulatory activities. This Council is better placed than many others to take up this challenge because of the composition of its Conservation section and the pro-active work it has been involved in. Once again pilot projects should be considered before coming to any conclusion on this suggestion.

Q11. How can the national interest in protecting important archaeological sites best be reconciled with the needs of farmers?

Officer Comment: Provision for the re-assessment of the longer standing Scheduled Ancient Monuments, where damaging activities are not so rigorously controlled, coupled with promoting the integration of heritage into the range of funding mechanisms in a realistic way could offer some scope. The Council's work in the Arrow Valley funded through LEADER+ and English Heritage may identify ways in which this can be achieved. When the project is concluded the results can be forwarded to DCMS as a contribution to the debate.

Q12. What would be the most helpful ways within the new Entry Level and Higher Tier schemes of encouraging farmers to protect the historic environment?

Officer Comment: The document advises that there are proposals to increase incentives to conserve the historic environment. Again the work in the Arrow Valley (and hopefully elsewhere in the LEADER+ area) may assist in identifying ways to protect and utilise the historic environment. Here we are working with the farming community in a project to produce management plans that will conserve the historic environment and promote regeneration. Additional resources for this purpose are always welcome.

Q13. What planning guidance on protection of the local historic environment would be of most value to local residents, authorities and developers?

Officer Comment: The guidance produced by English Heritage and through relevant PPGs has proved extremely useful to local authorities and need only be amended to take into account new procedures that may be adopted. In terms of new advice a lengthy list might easily be identified although the following would be needed at the outset if the principles set out in the consultation document were adopted:

- The purposes, practice and weight given to any locally determined list;
- Consultation arrangements with English Heritage;
- The information which the Council should collect and hold, access to this by the public, together with the local authority role in promoting environmental education and awareness;
- Practical examples of management agreements for the historic heritage either as a single issue or in combination with other interests, e.g. the natural environment, farming.
- Issues that need to be covered by the Community Plan and Local Development Framework.

Q14. What would be the most productive way of encouraging local authorities to undertake conservation area appraisals? What might be done to encourage them to set out bolder policies for enhancing rather than just preserving their conservation areas?

Officer Comment: Priority is often given to servicing the development control function because of the resources available. Hence the resource issue would need to be addressed if local authorities are to undertake appraisals. The resource issue is also the primary constraint upon undertaking enhancement works. However, some progress could be made by a stronger commitment to integrating the actions of public and statutory bodies within conservation areas through an appropriate mechanism. Although local authorities should remain responsible for preparing such appraisals, other public and statutory bodies/agencies should be involved in the process, being required to give some commitment to implementing proposals for preservation and enhancement which are jointly identified. Another way of encouraging greater emphasis to be given to this work is to increase the resources available for works identified through appraisals. English Heritage and HLF funds might be set aside specifically for this.

Q15. Should there be a mechanism for preventing demolition of locally listed buildings without consent? Should this be linked to development proposals? What safeguards would be needed to ensure the quality of local lists?

Officer Comment: Some protection against demolition is necessary if the local list is to serve any purpose. Refer back to **Q4.2**

Q16. How could an effective sub-regional team be created? Should it be primarily about developing guidance and sharing best practice or about facilitating casework and providing support to local authorities? What would be the benefits and downsides?

Officer Comment: The purpose of a sub-regional team is unclear and may only duplicate what is provided at the local level. The issue is the amount of additional work any new system may create not the availability of management structures to support the changes. Being a Unitary Authority, having the relevant skills available is not a particular issue. There is nevertheless more than sufficient work for the range of staff available to perform. The ability to resource sufficient skilled staff is a problem yet the creation of a regional/sub-regional team would be unlikely to solve this problem, as it will no doubt have to be funded by the constituent authorities in any event. For local authorities within a two-tier structure an approach based upon the old style 'Development Control Scheme' may be practical alternative.

Q17. What are the important skill gaps and what action would be most effective to bring about swift change?

Officer Comment: The skills gap is throughout the industry and not limited to the public sector. The shortage of architects, builders and craftsmen with conservation skills needs to be addressed comprehensively. Should these be available and the public encouraged to use those best qualified to advise upon and implement schemes then the pressures on local authorities to regulate and monitor will be reduced. There is no easy solution as suggested by the second part of the question.