

Briefing Paper

Protecting the Historic Environment

September 2003

1. Introduction

1.1 The government published its consultation paper 'Protecting the Historic Environment: Making the System work better.' In July 2003. It contains proposals that are designed to make the system of protecting historic sites and buildings and sites in England work more effectively.

1.2 The paper was launched by Lord Andrew McIntosh, the Heritage Minister, who said:

"This country has an unrivalled heritage of listed buildings, monuments, parks and gardens, conservation areas and other sites... Although the system that is in place is good, it needs improvement. There is, for example, too much overlap between different systems, unnecessary complexity and a lack of openness... We need a system for the 21st century with safeguards. One that will provide benefits to all stakeholders through more simplicity, more flexibility, more openness and greater rigour."

1.3 Tessa Jowell, the Secretary of State for Culture, Media and Sport added:

"The package is designed to bring benefits to all who use the system. Citizens would have greater opportunity to participate; owners would benefit from greater openness and information and from the ability to challenge decisions; developers would have greater certainty and efficiency of decision-taking; local authorities would have clearer guidance; and everyone would benefit from a simpler system."

1.4 The central proposal of the consultation paper is that all historic sites and buildings in England should be brought together in a single list, but that the ways of protecting them should vary depending on the nature, significance and ownership of the site or building.

1.5 This consultation paper has great significance for English Heritage, local authorities, and all those concerned with England's historic sites and buildings.

2. The Proposals

The main proposals in the consultation paper are as follows:

2.1 List of Historic Sites and Buildings of England

2.1.1 The government proposes to bring together the different regimes for protecting the historic environment into a single list to be known as the 'list of historic sites and buildings of England'.

2.1.2 The specific questions on which the government are consulting are:

- ❖ Would a unified list for England improve existing arrangements?
- ❖ 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?

2.1.3 Most commentators have welcomed the proposed national approach, seeing it as more likely to protect historic sites and buildings.

2.2 Responsibility for Delegation

2.2.1 English Heritage would be given the statutory responsibility for maintaining the list subject to the following safeguards:

- ❖ English Heritage will be required to act within published government listing policies and criteria
- ❖ The Secretary of State will have the power to call in exceptional cases for their decision
- ❖ Owners and applicants will have a new right of appeal
- ❖ English Heritage would give the Secretary of State an annual account of its stewardship of the list

2.2.2 The specific questions on which the government are consulting are:

- ❖ Are the suggested safeguards sufficient to allow English Heritage to become responsible for maintaining the List?
- ❖ What other options might there be? For example, might English Heritage establish some form of independent committee to make the designation decisions? How would CABE's advice on post-war buildings be reflected?

2.2.3 Those involved in protecting the historic environment have generally welcomed the proposal to give English Heritage the responsibility for listing rather than the Secretary of State. However, these proposals do not address the potential conflict of interest that exists with English Heritage being both the regulator of historic sites and buildings, and the owner and manager of a significant proportion of them.

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2.2.4 This raises the option of transferring responsibility for ownership and management of historic sites and buildings currently owned by English Heritage to the National Trust, the proposed elected regional assemblies or Local Authorities. If the latter option were pursued the matter of financial support to authorities that became responsible for sites or buildings of national importance would have to be considered.

2.2.5 The need for the Secretary of State to be able to call in exceptional cases for decision could be questioned, given the clear and consistent listing criteria that are proposed, and the suggestion that there should be broad rights to appeal.

2.3 Criteria and Discretion

2.3.1 It is proposed that English Heritage would be allowed to use discernment in deciding which sites and buildings will be placed on the list, with the exception of taking economic considerations into account. Consultation will be allowed at the outset regarding whether a site or building should be listed or just recorded.

2.3.2 The grading will continue to be into I, II* and II. However, English Heritage will consider over time whether sites and buildings currently graded II should continue to be on the unified list or be transferred to local authority lists with appropriate safeguards.

2.3.3 The specific questions on which the government are consulting are:

- ❖ What criteria should be used to determine what items should be placed on the List?
- ❖ Should the present gradings of I, II* and II be retained?
- ❖ Should some items at grade II move onto local lists? What safeguards would be needed?

2.3.4 The proposal to create local lists could lead to a broadening of the criteria, for example to extend protection to a building that acts as a local landmark and helps to define a sense of place. However, the proposal to create a local list could be seen as a downgrading of the importance of grade II listed buildings. Adam Wilkinson, Secretary of 'SAVE Britain's Heritage' said:

"The proposal to downgrade grade II listed buildings to local lists is as batty as it is outrageous. Without the protection afforded by being recognised as of national importance, such buildings will be susceptible to all manner of inappropriate changes, not to mention wholesale demolition."

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- 2.3.5 Similarly, dangers are seen in broadening the criteria to include the condition of a building. Adam Wilkinson comments:

“There are literally thousands of buildings at risk that are worth retaining, and for which solutions can be found with determination on the part of all involved... Removing them from the list, or not listing them in the first place, is the easy way out and would result in the eradication of important and under appreciated aspects of our heritage.”

- 2.3.6 The local lists could be seen as a means of strengthening the role of the local authority.

2.4 Making Listing more Transparent and removing uncertainty

- 2.4.1 It is proposed that the exact area and structures that are covered by a listing will be shown on a map in the List.

- 2.4.2 The List would also include a ‘statement of significance’ that would give the reasons for the listing, explain the significance of the site or building and identify the works for which consent would be needed. A statement of reasons would also have to be given for each decision not to list.

- 2.4.3 The specific questions on which the government are consulting are:

- ❖ 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 to value over time?
- ❖ What should be the process for drawing up statements of significance for existing listings?
- ❖ Should maps take the place of the present definition based on curtilage?

- 2.4.4 The proposal to introduce statements of significance is welcome as it would make transparent the reasons for listing, or deciding not to list, a historic site or building.

2.5 Openness and Protection

- 2.5.1 The government proposes that owners, local authorities, amenity societies, parish councils and the public would be informed and consulted whenever there was a proposal to place a site or building on the List. Protection would also be given to the site or building during the consideration of listing, as if a decision to list had already been made.

- 2.5.2 The specific questions on which the government are consulting are:

- ❖ Should the listing process become open and who should be consulted on an application?

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- ❖ Might there be different requirements for private properties that are lived in?
- ❖ Should protection be applied during the period when listing is under consideration?

2.5.3 The proposal that amenity societies and the public be consulted on proposals to list is welcomed as a means of increasing public awareness of the historic environment. Protection during the period when listing is considered could be seen as an essential safeguard against the activities of unscrupulous owners.

2.5.4 It could be considered that the requirements where an historic building is privately owned and used solely or partly as a residence should be no different to other circumstances. The important consideration could be seen as the characteristics of the site or building rather than its ownership or current use.

2.6 Better Information for Owners and Tenants

2.6.1 The government suggests that owners should be provided with a more comprehensive information pack that explains listing and what the owner can do to protect and enhance the site or building.

2.7 Appeals

2.7.1 A new right of appeal against listing decisions is proposed.

2.7.2 The specific questions on which the government are consulting are:

- ❖ Should there be a right of appeal? In what circumstances would a right of appeal be justified?
- ❖ Should the suggested right of appeal apply just to owners or to other interested parties as well?

2.7.3 It would appear consistent with principles of natural justice to allow an appeal, and it could be considered that this right of appeal should be extended to anyone with an interest in the potential listing.

2.8 Management and Control

2.8.1 It is proposed to establish a single, flexible consent regime for all sites and buildings on the List – apart from the local section.

2.8.2 At the designation stage it is suggested that the works that would and would not need consent will be specified more precisely.

2.8.3 It is proposed that some owners would be able to enter into a management arrangement with English Heritage (or in some instances, the local authority) as an alternative to the regime of consents.

2.8.4 In rural areas the government would like to promote joint agreements covering both environmental and heritage protection.

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2.8.5 The specific questions on which the government are consulting are:

- ❖ 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?
- ❖ What generic arrangements would be suitable for historic areas?
- ❖ 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?
- ❖ What safeguards are needed to ensure openness and rigour?

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

2.8.6 The proposal for management arrangements is interesting, and should this approach be followed, would require the production of further guidance for those involved. The consultation paper sees this as particularly appropriate for large sites in single ownership such as universities, military sites, hospitals, farms or housing estates.

2.9 Planning

2.9.1 It is suggested that there would be regional spatial strategies to set out policies for each region, reflecting any government strategy for the protection and management of the historic environment.

2.9.2 Guidance would be issued to clarify what plans district and unitary authorities would be expected to develop for protecting and enhancing their historic environment as part of their planning.

2.9.3 Local authorities would also be encouraged to provide appraisals for their conservation areas and to involve local communities in expressing what is valued in the conservation area and how it could be improved. Residents would be encouraged to draw up appraisals thus taking the initiative.

2.9.4 The Office of the Deputy Prime Minister is reviewing the General Permitted Development Order and it is suggested that this should include a consideration of existing controls over demolition. It should also include consideration of compensation to owners in conservation areas where permitted development rights have been withdrawn, and the payment of fees for planning applications.

2.9.5 The specific questions on which the government are consulting are:

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

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- ❖ What would be the most helpful ways within the new Entry Level and Higher Tier schemes of encouraging farmers to protect the historic environment?
- ❖ What planning guidance on protection of the local historic environment would be of most value to local residents, authorities and developers?
- ❖ 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 work?
- ❖ Should there be a mechanism for preventing the 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?

2.9.6 The emphasis on protecting sites and buildings at a regional level is probably significant and can be seen as a function that could potentially be given to elected regional assemblies.

2.9.7 The emphasis on the role of the local authority is also significant and the consultation paper points out that the government already encourages local authorities to make the protection of the historic environment a key plank in their community strategies. The government is now considering the issue of guidance to make clear what plans district and unitary authorities will be expected to develop for the protection and enhancement of the historic environment as part of their local development framework and sustainability planning. The government also wishes to find new ways to encourage local authorities to provide appraisals for conservation areas and to involve the community in expressing what it values in its conservation areas and how the area could be enhanced. It is suggested that authorities should invite residents to take the initiative as an important driver of the local development framework.

2.9.8 Some amenity societies have criticised the consultation paper for not recognising the potential of conservation areas. For example, John Sell, the Chairman of the Joint Committee of National Amenity Societies said:

“The weaknesses of the consultation paper are in failing to tackle how conservation areas can be used as a significant way of both involving ordinary people in caring about historic places, and in providing them with the means to protect it. Incentives to owners, insofar as they exist at all, are simply noted no commented on. If legislation is the stick, then incentives are the carrot – we need more carrots!”

2.10 Resources

2.10.1 The government intends to examine further how to strengthen local authority expertise and capacity, perhaps through developing pooled resources on a sub-regional basis. The government wish to see local authorities engaging in a debate about the skills, knowledge and experience needed to achieve the improvements that are suggested in this consultation paper.

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2.10.2 The specific questions on which the government are consulting are:

- ❖ How could an effective sub-regional team be created? Should it primarily be about developing guidance and sharing best practice, or about facilitating casework and providing support to local authorities? What would be the benefits and downsides?
- ❖ What are the important skill gaps and what action would be most effective to bring about a swift change?

2.10.3 It is not clear, however, how local authorities are expected to achieve this against the backdrop of continued resource constraints. During recent years local authorities have tended to reduce resources devoted to the historic environment, whether it be the museums service, archaeology, or specialist planning officers. The government are inviting views on how to strengthen local authority expertise and capacity and recognise that there is a need to address the skills, knowledge and experience that is required from architects, archaeologists, conservation specialists, planners and others. Local authorities may wish to suggest that resourcing is one of the issues to address.

2.10.4 Similarly, English Heritage is seen as under-funded. There is a school of thought that maintains that the only failing in the current system is the inability of English Heritage to carry out regular reviews of the listings of historic sites and buildings. As a result, sites and buildings are only listed when a particular request for 'spot listing' is made or when there is a thematic survey.

2.10.5 As John Sell commented:

"There is an assumption that better protection of the historic environment can be had by juggling resources not increasing them – I doubt it!"

2.10.6 Adam Wilkinson commented:

"Where is the money to come from? English Heritage has seen a steady fall in its income from government to the extent that institutions such as the London branch of the national monuments record are facing the chop. Funding is needed to maintain core activities, let alone expand them. Local authority conservation officers are already overloaded with work, and their opinions frequently called into question by planners with little understanding of the historic environment. Resources (and education) are needed here too. There is little point in having a system for conservation of the built environment if it is not resourced in a way to allow it to properly function."

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3. Discussion

3.1 The consultation paper attempts to clarify and simplify the existing legislation on protecting historic buildings. The legislation as it currently exists has developed piecemeal since the passing of Sir John Lubbock's Ancient Monuments Protection Act of 1882. The main pieces of legislation in current use are the 'Ancient Monuments and Archaeological Areas Act 1979', the 'Planning (Listed Buildings and Conservation Areas) Act 1990' and the 'Town & Country Planning Act 1990'. These are supported by government planning guidance.

3.2 English Heritage welcomed the proposals. Dr. Simon Thurley, the Chief Executive said:

"Today's proposals envisage a better way of protecting and managing this rich inheritance... and taking it safely with us into the future."

3.3 Stuart Lipton, the Chairman of the Commission for Architecture and the Built Environment, said:

"The Commission for Architecture and the Built Environment welcomes the aims of the present exercise, to simplify and improve the means of protecting the historic environment. We look forward to a lively debate on the merits of the proposals in the paper."

3.4 George Ferguson, President of the Royal Institute of British Architects, said that the proposals:

"represent arguments for creativity and not for the 'aspic' view of conservation."

3.5 Amenity societies have given the consultation paper a broad welcome. For example, John Sell said:

"On balance, a simpler, friendlier system is likely to benefit historic places, and for that reason we should welcome this opportunity to reconsider how our legislation could work better."

4. Conclusions

The importance of protecting historic sites and buildings cannot be under-estimated. Studies have shown that they are of immense economic and social importance as well as being an integral part of our culture.

The existing mechanisms that are in place for protecting historic sites and buildings have developed piecemeal since Victorian times, with different mechanisms being in place for different types of site. The proposals in this consultation paper take a more holistic approach and have been broadly welcomed by those involved in protecting historic sites and buildings.

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However, there are a lot of detailed implications that need careful consideration. These include the wisdom of relegating grade II buildings to local lists and the role that will be played in future by local authorities. As always, there are resource issues to address.

Copies of the consultation document are available on the Department of Culture's website at www.culture.gov.uk. The deadline for responses is 31st October 2003 and can be submitted online to he.consult@culture.gsi.gov.uk or by post to Ms. Eve Truman at the Department of Culture, Media & Sport, 2-4 Cockspur Street, London. SW1Y 5DH.

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