



## ENGLISH HERITAGE

FAO Mike Edbury

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Dear Sirs

### Penfold Review

English Heritage welcomes the opportunity to respond to the call for evidence for the Penfold Review of Non Planning Consents. This response adds an evidential framework to the information supplied by Duncan McCallum to Mike Edbury on 6 January 2010. It sets out our initial view and may be amended or supported by additional evidence at a later stage.

We recognise that the current system of heritage protection (where there is a requirement for up to 3 separate heritage consents in addition to the requirement for planning permission) would benefit from streamlining in the interests of efficiency, transparency, and clarity. We therefore strongly support the change in legislation proposed by the draft Heritage Bill which would result in a process whereby development affecting heritage assets required only one single non-planning consent. There may be further potential for combining planning permission and any such non-planning consent but this needs to be considered in the context of the following:

- a. On the basis of the evidence set out below we do not consider there are significant impacts in terms of cost or delays to commercial developers as a result of the current system;
- b. Listed Building Consent is concerned with a finer grain of detail than a planning permission and is often required when planning permission is not;
- c. An application for Listed Building Consent or Conservation Area Consent does not require a fee;
- d. There have been significant improvements in the application process generated through the Planning Portal IAPP initiative which allows an application for the two consents to be made electronically on the same form.

### English Heritage's Role in the Planning System

English Heritage is an Executive Non-Departmental Public Body sponsored by the Department for Culture, Media and Sport, with our funding agreement signed by CLG and DEFRA. We

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work in partnership with central government departments, local authorities, voluntary bodies and the private sector to conserve and enhance the historic environment, broaden public access to our cultural heritage, and increase people's understanding and appreciation of the past.

We are the UK Government's statutory adviser and a statutory consultee on all aspects of the historic environment and its heritage assets. This includes archaeology on land and under water, historic buildings and areas, designated landscapes and the historic elements of the wider landscape. Central to our role is the advice we give to local planning authorities and government departments on development proposals affecting World Heritage Sites, listed buildings, scheduled monuments, registered parks and gardens, historic battlefields, protected wrecks and conservation areas. We also publish wide-ranging guidance on the management of the historic environment.

English Heritage operates only in England (there are similar bodies in Wales, Scotland and Northern Ireland) and has 9 regional offices (mirroring the Government Offices). National HQ is co-located with the London Regional Office and the National Monuments Records Centre is in Swindon. We also open our own heritage sites to the public. A typical regional office might have about 30 staff around half of whom would be directly involved in giving advice to local planning authorities on statutory casework.

## Heritage Consents

The fundamental purpose of heritage consents is to ensure that changes to historic places are managed in such a way as to protect, and where necessary to reveal and enhance, the significance of England's important heritage assets. Statutory consultations are intended to bring appropriate knowledge and experience to the process of informed decision making.

There are three main types of non-planning consents for which English Heritage has a prescribed statutory function:-

### (i) Applications for Listed Building Consent (LBC)

Work for alteration or demolition affecting the character of a Listed Building as a building of special architectural and historic interest requires Listed Building Consent. These types of application are normally determined by local planning authorities, who are required to notify English Heritage (and the National Amenity Societies) in accordance with the criteria set out in Circular 01/2001 as amended by Circular 09/2005 and 08/2009. These are the applications which affect a Grade I or Grade II\* Listed Building or which result in the demolition of the principal building, a principal external wall of the principal building, or all of/a substantial part of the interior of a principal building of Grade II Listed Buildings.

Where English Heritage or any of the National Amenity Societies object and state that they require the Secretary of State to be notified and the local planning authority is minded to grant consent it is required to notify the Secretary of State who may then call in the application for determination following the advice of English Heritage. Applications in Greater London in the above groups, and additionally applications relating to Grade II railway stations (including curtilage buildings and underground stations), theatres, cinemas and bridges and buildings owned by local planning authorities in their area must be notified to English Heritage and decisions authorised by English Heritage. Applications by a local authority for its own property or by English Heritage for properties they manage are referred to the Secretary of State for determination.

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Circular 08/2009 introduced changes to speed up the process without reducing the protection afforded to Listed Buildings. The categories of applications which have to be referred automatically to the Secretary of State has been reduced and if English Heritage and the National Amenity Societies object to an application and accordingly refer it to refer it to the Secretary of State for determination they are required to respond to a consultation by a local authority in writing within 28 days stating the objection clearly and requesting that the Secretary of State be notified. English Heritage responds to 95% of the 6,500 and 7,000 notifications received each year within 21 days or to a deadline agreed by the local planning authority. In nearly 70% of cases English Heritage does not intervene but leaves it to the local planning authority's judgment. In about 700 cases per year English Heritage makes substantive comments in a structured format. Call-ins by the Secretary of State are very rare and constitute between 0.01 and 0.02% each year.

(ii) Applications for Conservation Area Consent (CAC)

Conservation Area Consent is required for the demolition of an unlisted building in a conservation area. Following a case in the courts (the 'Shimizu' judgment) this is considered to be the substantial demolition of a building or structure, not the partial demolition. These are determined by local planning authorities, who are only required to consult English Heritage on applications in London, except for applications relating to properties owned by English Heritage and local authorities which are referred to the Secretary of State.

(iii) Scheduled Monument Consent (SMC)

These are determined by the Secretary of State at DCMS under new streamlined arrangements introduced on 1 November 2009 substantially on the direct advice of English Heritage. DCMS only now consider in substance those consents where the applicant challenges the advice of English Heritage. There are usually about 1,000 applications each year.

There are approximately 500,000 Listed Buildings and 20,000 Scheduled Monuments. Most of the Listed Buildings are in domestic ownership and would not be subject to the commercial form of development considered in the Review. It is possible for a building or structure to be both a listed building and a scheduled monument (e.g. Fort Gilkicker in Gosport), although these cases are rare. In these instances the scheduled monument regime takes precedence over the listed building regime. In general terms, listed buildings are more likely to be subject of development proposals than scheduled monuments for which there is the presumption of preservation rather than beneficial use.

Where LBC or CAC is refused the applicant has the right of appeal. In England there were 950 LBC and CAC appeals determined in the 2008-9 financial year in comparison with 21,091 appeals against the refusal of planning permission. Of those appeals 32% were allowed indicating that the initial refusal was warranted in most cases.

## Response to the Review Questions

*1. How important do you consider non-planning consents are in making decisions about whether to invest in development proposals?*



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The LBC, CAC and SMC regimes enable applicants to plan for and anticipate outcomes particularly if advantage is taken of the opportunity for pre-application discussions with local planning authorities and English Heritage. Pre-application discussions currently constitute approximately 50% of English Heritage casework.

The heritage value of a site can add value to the new development, particularly if the history of the site is incorporated into the new scheme.

2. *When applying for non-planning consents, what obstacles do developers encounter in terms of a) administrative burdens; b) costs; c) uncertainty and risk in applying for; and d) the length of time associated with obtaining such consents? Do any obstacles encountered have a particular impact on a specific sector, type of development or size of business? Which obstacles cause most difficulty and why?*

- a) The introduction of 'I app' through the planning portal which allows applications for LBC and CAC may be made on the same application form as that for planning permission has reduced the administrative burden for applicants applying for these heritage consents.
- b) The cost of developing a site, including any special considerations such as the treatment of the historic environment, are normally built into the initial appraisal undertaken by the applicant when considering the purchase of the land and the phasing of the development to maximize cash flow. Listed Building and conservation area status are registered land charges and therefore known about when land is sold. I App reduces costs in submitting additional applications for heritage consents and there is no additional work required to address the impact on heritage value for such consents over and above that required for a Design and Access Statement which is a mandatory submission for all applications for non domestic alterations, extensions and redevelopment. There is no fee for heritage consent applications.
- c) (see response to question 1)
- d) As local planning authorities determine applications for both planning and heritage consents (whereas other types of consents e.g. those related to pollution control, biodiversity and water discharge are determined by other statutory bodies) and local authorities usually consider applications for LBC and CAC in tandem with parallel applications for planning permission, in most cases there is no additional time taken to obtain heritage consents over and above that taken to obtain planning permissions.

Due to a few high profile cases there is a perception that development is frequently held up because of 'spot listing'. Whilst approximately 2000 properties are put forward annually for listing just under half of these are as a result of a planning application and the majority of those are for domestic properties. Where a property is currently undesignated, if there is an indication of any potential architectural or historic special interest this should ideally be identified at the pre-application stage. There is also the potential for the developer to obtain a Certificate of Immunity under the provisions of section 6 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended. This gives certainty to the developer because if at the time of application for the certificate the property is not considered worthy of listing immunity from listing is guaranteed for 5 years.

3. *How do those seeking consents go about identifying what additional consents are needed alongside or after planning permission? What difficulties do they encounter in doing so?*

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Most local planning authorities provide a service to developers on the need for heritage consents. English Heritage is well known within the property world and beyond as the leading expert within the heritage sector and offers guidance on the need for all three types of heritage consent through its regional and national teams. The greatest difficulties will be experience by smaller developers who are unwilling to engage with appropriate experts or who are new to the planning process and unaware of the expert advice available.

4. *Can you give examples of investment options which have not been pursued, have been delayed or have otherwise significantly changed because of non-planning consents? Which consents were integral to the decision to stop, delay or change the development? Can you quantify the impact of the changes for the business affected?*

This question does not apply to English Heritage's role within the planning system.

5. *What opportunities do you see for reducing a) the administrative burden; b) the cost; c) the uncertainty and risk in applying for; and d) the length of time associated with obtaining non-planning consents? What action can regulators take to improve the service they give to developers when dealing with non-planning consents? Which actions would bring greatest benefit and why?*

English Heritage considers there are 4 ways to assist developers.

- (i) A single unified consents regime.

There is no reason in principle that heritage issues should not be considered within the planning process. Conservation consents were previously dealt with in the planning process. It is only within the last 20 years they have been separated out. They could be put back and the potential to do this was the subject of an ODPM Review about five years ago. However there would be issues of granularity as a listed building consent might look into a level of detail such as the wallpaper hung in a room or the types of doorknocker which is usually outside the scope of a planning permission. It would also require changes to the primary legislation (Planning (Listed Buildings and Conservation Areas) Act 1990).

An alternative to moving immediately to a single unified consents process would be a stepped approach. Such an approach was to be taken in relation to heritage consents in the draft Heritage Bill which had a measure of cross-party and stakeholder support but there was no Parliamentary time to take it forward.

- (ii) Service Improvements

We have taken the following steps to improve our service:

- The introduction of case management systems to ensure timely responses to consultations and to monitor performance
- Regulatory focus to target interventions
- E-enablement of applications and consultation
- Increased availability of information and education
- Capacity building through historic environment trainee programme

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- Web site improvements including updated information to accompany the new PPS and practice guide on the historic environment

(iii) Training

English Heritage provides training to build capacity and experience in local authorities through HELM (Historic Environment Local Management). Further training of development industry professionals would help them to understand the system and navigate it successfully so that the impact of the heritage consent regime was minimised. The experience and training approved for RTPI and for RCIS accreditation could be reviewed to ensure it included training on these aspects of development as heritage led regeneration is now recognised as a significant contributor to sustainable development.

(iv) E consultations

English Heritage (with the Environment Agency) has engaged comprehensively in pilot testing of the Planning Portal 'Hub' for handling the electronic notification of statutory applications received by a sample group of local authorities. There is no reason to doubt that technical and procedural issue arising from the trail will be capable of resolution, but we have concluded that the full benefits of e-notification will only be achieved if local authority uptake is both consistent and universal – preferably with facilities for 'back office integration' to achieve genuine efficiency savings.

Rigorous definition and enforcement of PARSOL (or equivalent) standards for e-planning is essential and we urge the Review Team to recommend the pro-active intervention of government to ensure necessary standardisation among local authorities. The ability of statutory consultees to play their part in modernisation of the planning system will be impaired if there remains a bewildering array of different technical standards and working practices among 400+ local planning authorities. If compliance with adopted standards is not mandatory, the services from statutory consultees will become variable – depending upon the suitability (or otherwise) of the statutory notifications received from each authority."

(v) Pre-Application Discussions

Increased use of pre-application discussions by local planning authorities and developers would address any heritage issues at an early stage in the process. It would be helpful if more local planning authorities put links on their website to advice and guidance and contact details on our own website to facilitate the pre-application and application process.

I hope this information and evidence is of assistance to the review.

Yours faithfully

Pat Aird  
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