

National Planning Forum 04.03.11 – EH reaction to the Localism Bill (10 minute presentation)

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 work in partnership with central government departments, local authorities, voluntary bodies and the private sector

We are the UK Government's 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.

As such our interest in the Bill how it can help us deliver our core activities - conservation and enhancement of the historic environment, broadening public access to our cultural heritage and increasing people's understanding and appreciation of the past. A great many measures in the Bill will have a neutral effect. A few have the potential to impact positively or negatively. The main impact is likely to come from the provisions for neighbourhood planning.

In our experience communities are very keen to protect their heritage. As such empowering local communities can potentially lead to an increase in beneficial outcomes. However there are sometimes circumstances where a decision may have unintended consequences or, where the aspirations of one community harm the interests of another perhaps wider community. In either case it is important that heritage assets with wider than local interest are not adversely affected. Designated heritage assets in particular obviously have wider than local interest and some undesignated heritage assets with archaeological interest are of national or even international interest.

Whilst the Localism Bill proposals have been clarified through the Explanatory Notes and Impact Assessment and the debates as the Bill has progressed, much of the detail is still unclear and will be provided through the proposed Regulations and secondary legislation. It is also evident that the Minister, Greg Clark has been responsive to concerns raised at Committee both in evidence submitted and in debate – and on one issue in particular, the protection of heritage assets. This issue arose through the proposed dis-application of sections 66 and 72 of the Planning (Listed Building and Conservation Areas) Act 1990 (Schedule 12 clauses 22-24) – the general duty imposed on a local planning authority (when considering whether to grant planning permission) to have special regard to the desirability of preserving a listed building or its setting and preserving or enhancing the character of a conservation area will not apply in these cases.

Evidence has been submitted to the Bill Committee on this issue by Civic Voice, heritage sector organisations including Heritage Alliance, Institute for Archaeologists, Federation of Archaeological Managers and Employers, Institute of Historic Building Conservation, Association of Local Government Archaeological Officers and Joint Committee of National Amenity Societies, and local authorities including Westminster, Kensington and Chelsea, and Hammersmith and Fulham, and local amenity societies.

On Tuesday there was a clear statement from the Minister that it's not the government's intention to weaken protection. As drafted the government has accepted that Schedule 12 clauses 22-24 gives rise to considerable concerns on the part of the Heritage community and has undertaken to check whether a tweak needs to be made to it.

It has also become evident that the NPPF will be an important part of the planning reforms and critical for maintaining the level of protection for the historic environment in the context of the proposed planning reforms. The impact of neighbourhood development orders on undesignated, unidentified, and unknown, heritage assets with an archaeological interest is particularly at issue.

Whilst this issue can be addressed in part through early consultation there will not realistically be the same opportunity for thorough investigation and drawing up mitigation proposals for NDOs as there is with an application for planning permission.

Ultimately maintaining current levels of protection for the historic environment in the reformed planning system will depend on the content of the NPPF. We consider that policies to protect the interest of the wider community in heritage assets affected by neighbourhood planning should provide that if it cannot be demonstrated that the plans or orders are in direct compliance with the NPPF policies regarding heritage assets of more than local importance, then the plans or orders should be limited or conditioned in such a way as to ensure that either such heritage assets will be unaffected by development in accordance with the plan or order, or, that aspects of development that may affect the heritage assets are subject to later approval by the local authority. This will provide an explicit and therefore helpful guiderail for the examiner and local authority when considering the 'basic conditions' for the grant of neighbourhood measures.

The protection of the historic environment is an inherent element of any proper definition of sustainable development as it is only through the protection of what we value in our historic buildings and sites that we and future generations may continue to fulfill our cultural and social needs. (paragraph 7 of PPS5). Including historic environment protection within the definition of sustainable development in the NPPF is vital to the proper positioning of historic environment planning policies within the overall framework. Sustainability tests that may be applied to any decision might be framed as follows:

1. Has sufficient investigation been carried out and information presented for the decision-maker to be able to properly understand the significance of the heritage assets or their settings that may be affected by the proposed development?
2. Has the value of the affected heritage assets to this and future generations been given due weight in the decision, bearing in mind that any harm that may be done could be irreversible?

Given the wording of the Localism Bill a key new consideration is the need for historic environment policies to be labeled as 'strategic' if the local planning authority

believes they relate to an interest that is importance or value to the community outside of the immediate neighbourhood.

One very important point on NPPF content - Listed building and conservation area consent are not decided in accordance with the development plan. National policy, LDFs and NDPs may be material to a listed building consent decision, but only national policy has really ever dealt explicitly with the decision-making principles for listed building consent. As that consent is required for a broad range of works that would never require planning permission, there are a number of considerations that would never be covered by general planning policies. In short, national policy must contain listed building and conservation area consent policies or there will be a policy vacuum for these important consents.

Finally, as currently drafted an NDO would have the status of an extant planning permission which could lead to problems if a site is subsequently scheduled. If this issue is not addressed more sites will have to be scheduled as a pre-emptive measure than is currently the case which will increase the burden on owners and may have an implication for EH resources.

In conclusion, there is still considerable uncertainty on whether there will be the same level of protection for the historic environment once the Bill is enacted as there is at present. Much will depend on the progress of the Bill through the final stages of the Commons and subsequent consideration in the Lords. Amendment to Schedule 12 of the Bill and retaining most of PPS5 in the NPPF remain priorities. Secondary legislation will be key as Regulations will set out procedures and consultation mechanisms in more detail. In consequence EH' is ensuring our ways of working that take account of planning at the local community level.

Actions EH will be taking to ensure our objectives can be delivered after the localism Bill has been enacted

- Collecting data to assist in monitoring impact of NDOs on historic environment for input into the government 5 year review.
- Encourage Lpas to collect evidence about the historic environment in their area for communities to draw on in NPs and NDOs (as currently required by PPS5 policy HE.2) and have proactive strategic policies in their plan relating to HE ie regeneration proposals (as currently required by PPS policy HE3.1)
- Press for there to be provision within the NPPF to allow Lpas to have designate policies in LDFs as strategic
- Develop tool kits and methodology for predicting location of heritage assets with archaeological interests to assist Lpas (as currently required to by PPS5 policy HE2.3)