



**REPORT OF THE CORPORATE DIRECTOR FOR POLICY, PLANNING AND
CORPORATE SERVICES**

**CHANGES TO ENGLISH HERITAGE AND THE ENTERPRISE AND
REGULATORY REFORM ACT**

Purpose of the Report

1. To note the comments appended to this report, which were sent in February in response to two Governmental heritage consultations to meet the consultation response timetable:
 - Changes to English Heritage and
 - Enterprise and Regulatory Reform Act 2013

Information and Advice

Changes to English Heritage

2. English Heritage is the government's principal heritage advisory service that provides expertise to the Secretary of State, local planning authorities and others across the heritage sector. It is also responsible for England's national collection of heritage sites and buildings held by the government. The national collection includes some sites that are under the guardianship of English Heritage, such as the medieval monastic remains at Rufford Abbey Country Park.
3. The government is proposing to separate the advisory expert services from the management of the national collection. A new charitable trust is to be created to manage the national collection sites and this will retain the 'English Heritage' branding and be provided an endowment of £80 million to deal with identified backlog of repairs. The professional advisory services will remain as a non-governmental advisory body funded directly by central government, and will be known as 'Historic England'.
4. The response to the changes to English Heritage is provide in Appendix 1, the main points are set out below:
 - The new charity English Heritage will be a major player in the heritage sector visitor economy with significant membership income.
 - The intention with regards to sites in guardianship, like Rufford Abbey medieval remains, is not set out and requires more consultation with the owners of these sites.
 - The £80 million endowment is unlikely to be sufficient to pay for all identified conservation needs.

- Bids to the Heritage Lottery Fund (HLF) for match funding from the new charity, using the £80 million endowment, could tie-up the availability of funds for other organisations.
- The success of the new charity should take into account its impact on other heritage sites and organisations that are not in the national collection.
- There must be resourcing for 'Historic England' sufficient to ensure that the present advisory services are not compromised.

The Enterprise and Regulatory Reform Act 2013

5. The Enterprise and Regulatory Reform Act 2013 introduced several heritage reforms that require secondary legislation to enact. These reforms are intended to provide a suite of new, light-touch mechanisms for managing change to listed buildings. The secondary legislation will introduce the following:
 - Conservation area consent is replaced with planning permission.
 - Heritage partnership agreements may be entered into between local authorities and owners setting out works for which listed building consent is granted (excluding demolition).
 - Extent of protection of a listed building can be better defined by excluding attached buildings and structures and those within the curtilage of the principal listed building from protection, and by stating definitively that some feature of a listed building is not of special architectural or historic interest.
 - A system of local and national class consents under which works of the type described in the local or national class consent order will not need listed building consent.
 - A certificate of immunity from listing may be applied for at any time.
 - A certificate of lawful proposed works is introduced (valid for 10 years) that categorically confirms that the works described in it do not affect the character of the listed building and do not therefore require consent.
6. The response to the Enterprise and Regulatory Reform Act 2013 is provided in Appendix 2, the main points of interest are set out below:
 - This legislation affects the procedures for managing change to listed buildings that are dealt with through the 'listed building consent' application process. Listed building consents are dealt with by the local planning authorities, not County Councils, but the replacement of conservation area consent with planning permission will impact on county council planning work.
 - The County Council owns a number of listed buildings and will be able to benefit from the new legislation, if it so desires. For instance, time-saving benefits would arise if 'Heritage Partnership Agreements' were entered into with the appropriate district planning authority. These would set out where future alterations can be approved without listed building consent thereby saving time involved in preparing applications and awaiting the local authority's decision.

Statutory and Policy Implications

7. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION

8. That the report be noted.

**Jayne Francis-Ward,
Corporate Director for Policy, Planning and Corporate Services**

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Constitutional Comments

Culture Committee has authority to consider the recommendation by virtue of its terms of reference. (NAB 12.03.14)

Financial Comments (SEM 12/03/14)

There are no specific financial implications arising directly from this report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

Electoral Division(s) and Member(s) Affected

- All

Appendix 1 - response to proposed changes to English Heritage

Consultation Questions

Chapter 3: The Charity

Are there any further benefits that could be delivered by this model?

The new charity should acknowledge that it will be in a privileged situation with a major funding endowment and membership income not matched by the rest of the sector (except for the National Trust). It will be one of the best resourced charities focused on heritage collections and can use that role to engage with others attempting to do similar and lead by example. It is likely to become a major applicant to the Heritage Lottery Fund and this may well impact on HLF's ability to support other projects (prepared by non-professional heritage groups). It is hoped that the new charity can ensure that it uses its position within the sector to benefit the sector as a whole.

Are there any other key opportunities for the charity to increase earned income in addition to those outlined in the consultation? YES

If yes what are they?

Opportunities to work in partnership with other like-minded organisations to mutual benefit (such as complementary funding applications). Opportunity to utilise the National Heritage Collection to promote, sponsor and develop training events and holidays that can deliver the conservation repairs and create income at the same time.

What aspects of the current service provided to the public by English Heritage in relation to the National Heritage Collection is it important that the charity maintains?

English Heritage is the official 'guardian' of the medieval remains within Nottinghamshire County Council's Rufford Abbey Country Park site. It is important that sites of this type, managed in partnership, are included within the new charity's remit and that the implications of the new model are discussed directly with the owners. It is unclear whether sites managed in this way will be funded through the proposed endowment and it would be unfortunate if such sites were unable to benefit. It is also important that the best practice solutions for heritage protection, restoration and management that are developed for the Collection continue to inform the advisory work of Historic England.

What are the opportunities to further enhance the services that will be offered by the charity?

With reference to the answers provided to questions 4, 5 and 6, the new charity will be in a strong position within the heritage industry to lead by example. Its remit might include to promote and develop partnerships with other site owners and operators with the goal of enhancing the overall impact that heritage has for the UK visitor economy. Could key organisations like the National Trust, CRT, Local Authorities have representation on the board of the new charity? A model such as that adopted for the Canals and Rivers Trust might be an appropriate way to ensure local expertise and knowledge is available to the Charity.

Do you agree that the suggested charitable objectives are broadly the right ones? NO

If no, what changes to them do you think should be made?

The objectives of the charity need to be broadened to reflect a privileged position of governmental funding/endowment and considerable income from membership. The charity must be operated in a way that is complimentary to the other heritage offers and those providing them. In particular, the new charity must consider the impacts of its business on the ability of other not-for-profit organisations to operate. The overall goal should not be the preservation of the National Heritage Collection alone - rather it should embrace a wider objective to benefit all of the country's important heritage sites where visitors are encouraged and welcomed. The National Heritage Collection is a catalyst both for wider public appreciation of the country's heritage and the increasing income from the visitor economy.

Are the proposed success criteria to measure the performance of the charity and to ensure that the benefits are realised the right ones? NO

If not what else should be included in the success criteria?

The success criteria are very narrow, focused largely on the likely benefits arising from budgetary independence. The new charity will be a major player within the heritage sector and visitor economy and the measure of success must be reflective of this. It would be fair to expect performance to be viewed in the broader picture. Partnerships and shared objectives that have been met could be measured in a variety of ways and dovetail with the aims of Historic England. Surplus from the running of the National Heritage Collection could be a key funding source to unlock Heritage At Risk issues for instance. Nottinghamshire County Council has extensive experience of B@R, running a county-wide register for over 20 years. We have assisted owners from all sectors in developing solutions that often focus on the visitor economy and hope that the new charity and Historic England would be proactive supporters of any future projects.

Chapter 4: Historic England

We are interested in the views of respondents to the proposed future opportunities and priorities for Historic England. Are these the right priorities and opportunities? Is there anything missing?

We are concerned that the proposed model makes reference to the functions of Historic England being "largely" funded through government grant. It is imperative that Historic England retains sufficient capacity and resources to enable it to provide advice and guidance on planning and other matters through staff with relevant local knowledge and expertise. With reference to Heritage @ Risk, we agree that this should remain a priority for Historic England, but wonder if the forecasted benefits arising from the charitable management of the National Heritage Collection should be seen as a more active opportunity for the resolution of @ risk sites by Historic England. The 'owner of last resort' approach to acquisition is not the only model to follow. An expansive approach to the acquisition of H@R would be more likely to encourage others to invest in similar sites. This is an approach long associated with Building Preservation Trust activity and investment as a catalyst for regenerative outputs has many successful precedents.

Are the proposed success criteria to measure the performance of Historic England the right ones? YES

Should the National Heritage Protection Plan form the basis of the business plan for Historic England? YES

Are there any further points you would like to add in relation to the consultation?

There is a concern that the National Heritage Protection Plan will be too narrowly focussed. The implied focus on protection should be broadened to ensure that England's heritage is able to maintain its key role in supporting locally distinctive and economically sustainable communities. A change of name to, for example, England's Heritage Plan, would help to emphasise this broader focus.

With reference to the forthcoming NHPP consultation, the County Council hopes that its own heritage expertise will be viewed as key local resource. We hope that the opportunity for Local Authority input into action plan development and delivery will be realised, particularly acknowledging the role of the local Historic Environment Record and the Council's lead on Heritage @ Risk and heritage tourism at the local level. Success should be measured against the degree in which local expertise has influenced the action plan.

Appendix 2 – response to Enterprise and Regulatory Reform Act 2013, Secondary Legislation:

1. Do you agree that the duration of a Listed Building Heritage Partnership Agreement should be left to the discretion of individual local planning authorities?

- **Yes**
- **No**
- Don't Know

If no, should the maximum duration of the Agreement be set at three, five or ten years? Can you briefly summarise the reasons for your answer.

Yes and No: Maximum duration should be 10 years – default duration should be shorter, say 3 years, with the LPA able to set the duration within these limits at their discretion.

2. Do you agree that local planning authorities should only consult English Heritage on the proposed grant of listed building consent included in draft Listed Building Heritage Partnership Agreements where they cover Grade I and II* listed buildings?

- **Yes**
- No
- Don't Know

3. Do you agree that local planning authorities should only be required to specifically notify known owners of the listed building who are not party to the draft Agreement of the proposed listed building consent, with any further notification being left at the local authority's discretion?

Note: owners also include any tenants with not less than seven years of a term certain remaining unexpired.

- **Yes**
- No
- Don't Know

4. Do you have any other comments on the draft regulations for Listed Building Heritage Partnership Agreements?

No

5. Do you agree that local planning authorities should only consult English Heritage on draft Local Listed Building Consent Orders where they cover Grade I and II* listed buildings?

- Yes
- **No**
- Don't Know

If no, what do you think would be appropriate and why?

All proposed LLBCOs should be sent through to English Heritage in order to ensure that there is a consistent approach to the content and extent of the works they propose to cover. In the absence of clearly laid out benchmarks across the country that reflect regional variations and vernacular architectural traditions, there is very considerable potential for diverging approaches to the management of the local listed building stock between neighbouring authorities and consequential confusion for all. This is especially likely to be unhelpful for owners who are responsible for more than one building within different LPA areas.

6. Should local planning authorities only be required to notify known owners of listed buildings of the draft Local Listed Building Consent Order? The need for any further notification would be at the local authority's discretion.

Note: owners also include any tenants with not less than seven years of a term certain remaining unexpired.

- Yes
- No
- Don't Know

If no, who else should be notified as a minimum requirement and why?

7. Do you agree that the duration of a Local Listed Building Consent Order should be left to the discretion of individual local planning authorities?

- Yes
- No
- Don't Know

If no, should the maximum duration of an Order be set at three, five or ten years? Can you briefly summarise the reasons for your answer.

Yes and No: Maximum 10 years, standard minimum 3 years, with LPA discretion to set the duration between these limits.

8. Do you have any other comments on the draft regulations for Local Listed Building Consent Orders?

With reference to the comments of The Institute of Historic Building Conservation raised concerns 18 months ago, it is clear that the operation of these Orders is a recipe for confusion for owners and LPAs alike. Extensive guidance to ensure conservation standards are maintained, and in some cases improved, must be provided by English Heritage. For instance, the approach of all LPAs to re-pointing and re-rendering of historic masonry should be guided by statutory specification of materials and operations.

Recording any 'intervention' on a listed building, beyond that which is basic like-for-like maintenance, ought to be a goal of all LPAs. It is a basic necessity to ensure long-term protection of their historic building stock. Official 'list descriptions' are not constantly kept up to date with regards to approved works to listed buildings. The LPA should keep this information on record and preferably make it available to the local Historic Environment Record, the present system of LBC provides for that. Consent Orders make no provision for ensuring that the works can be accurately identified thereafter. This is likely to lead to uncertainty with regards to the extent and scope of previous works and any remediation required. Lack of recording will affect the viability of enforcement as a tool for ensuring that owners act responsibly and within the law.

Differing approaches to the use of these Local Consent Orders between neighbouring authorities will increase the likelihood of confusion for owners/applicants and may encourage abuse.

The compensation provision is likely to discourage LPAs from reversing Orders that prove problematic to the authority in discharging its duties under the 1990 Act.

9. It is proposed that Certificates of Lawfulness of Proposed Works should be determined by the local planning authority within six weeks. Do you agree?

- Yes
- **No**
- Don't Know

If no, what alternative timescale would you propose and why?

In cases where it becomes clear that more information is needed in order to judge the application properly, the 6 week period should accommodate the time it takes to prepare and submit that information.

10. The procedures that are being proposed for Certificates of Lawfulness of Proposed Works are intended to be 'light touch' to avoid creating any unnecessary burdens while still ensuring an appropriate level of protection for listed buildings. Do you agree that the draft regulations are sufficiently 'light touch'?

- **Yes**
- No
- Don't Know

If not, how and why should they be amended?

11. Do you have any other comments on the draft regulations for Certificates of Lawfulness of Proposed Works?

With reference to section 2 (5) (below), this should include a provision that the 6 week determination period is frozen in circumstances where the LPA has required further information from the applicant:

Application for a certificate of lawfulness of proposed works

2. (5) The local planning authority may by notice in writing require the applicant to provide such further information as may be specified to enable them to deal with the application.

12. Do you consider that this new system of Certificates of Lawfulness of Proposed Works will encourage applications from people who would otherwise have, correctly, not applied for listed building consent and gone ahead with the proposed works?

- Yes
- No
- Don't Know

If yes, what steps might be taken to address this point and how might they be helpful?

This is not necessarily an issue if the owner/applicant feels they prefer to have the certificate for 'security', for instance so as to provide during a future conveyancing process. This might have some of the benefits that certificates covering 'works already undertaken' were suggested to help with. The filing on the Certificate will benefit the understanding of the history of interventions on the building (in contrast to National or Local Consent Orders that will have the opposite effect).

Regarding resourcing, the increased formality of a system that presently occurs at an informal level is likely to lead to extra burden on LPAs. This is a considerable 'price to pay' for the 2 week 'benefit' in time saved for the applicant to receive a decision (i.e. the difference between a LBC and Certificate processes).

13. Are there any other steps that could be taken to provide greater certainty about when listed building consent is or is not required. For example, improved guidance?

YES – the old PPG 15 annex C was always a useful guide to owners and LPAs – it has not been replicated in either the NPPF or the EH Practice Guide. Many LPAs have their own very useful guides for owners, but not all, so national guidance would be of assistance. Clarification on the issue of thermal improvements, especially double-glazing would be worthy of development but would require very considerable consultation and examination of recent case law.

14. Do you have any comments on the proposed approach for making National Listed Building Consent Orders?

What mechanisms would there be to resolve local/regional issues that a National Order cannot (by definition) accommodate?

15. Do you agree that the compensation procedures which there are powers to prescribe through regulations for National Listed Building Consent Orders should mirror those put in place for Local Listed Building Consent Orders?

- Yes
- No
- **Don't Know**

If no, please briefly explain why.

End.