

## **HEACS/BEFS SEMINAR ON HERITAGE PROTECTION LEGISLATION - An update on the review of heritage protection legislation currently ongoing in England**

This seminar took place at the City Chambers, Edinburgh, on 10 August 2004, 2-5pm and was attended by members of the Historic Environment Advisory Council for Scotland (HEACS) and the Built Environment Forum Scotland (BEFS).

Relevant documents:

Protecting Our Historic Environment – Making the System Work Better (DCMS consultation document published 17 July 2003)

The Review of Heritage Protection – The Way Forward (published 28 June 2004 – Government response to consultation)

### **Introduction (Andrew Wright, HEACS)**

Andrew Wright convenes a working group within HEACS which has been tasked by the Minister for Culture to consider the need for a review of heritage protection legislation in Scotland. This seminar formed part of the information gathering required to inform the deliberations of the group.

Andrew identified in particular, the need to:

- establish whether there are technical differences between the English and Scottish legislation, and also cultural differences between two sets of legislation.
- understand the impact of any change to the designation system.
  
- It was noted that this latest document (The Review of Heritage Protection – the way forward) forms a useful framework for the work of the HEACS working group.

### **The Review Process (Peter Beacham, Head of Designation, English Heritage)**

- The 'Power of Place' document was the foundation for the process of reviewing the system of heritage protection legislation in England; it set the context.
- The system of heritage protection in England has evolved cumulatively. The aim is not to weaken the system, however currently the system is very complex to understand and has holes. Listing doesn't serve us well; there is a perceived lack of transparency - and perceptions matter. For example, an owner does not necessarily know that there has been an application for listing. Such factors brought the Review into being.

### Process of Review

- The Review process is being driven by a partnership between Government and English Heritage; it is seen as vital to have real political engagement in the process. The process is being overseen by a project board.
- The Government hired a consultant to run the initial stages and write the consultation. This process took about nine months. There was much scepticism however the aim was to challenge presumptions straight on. The next step was, therefore, to explain the Review via a roadshow – this process of engagement was sustained over six months. This process took place prior to issue of the formal consultation document in July 2003. The 3 month consultation on the document 'Protecting our Historic Environment – making the system work better' generated 500 responses. As a result of this process, the Government's response (The Review of Heritage Protection – the way forward, June 2004) has been published with some degree of public confidence.

### Key themes arising from consultation

- The system of heritage protection legislation is too complex.
- One unified register of historic land and buildings in England was seen as a means of improving existing arrangements – this would cover lists, scheduled monuments, and registered sites (parks, gardens, battlefields, world heritage sites). The register would have a local section which would include all local designations. There was strong consensus in the steering committee that this should not be a top down process of designation.
- Responsibility for making designation decisions at national level should move to English Heritage – subject to working within published Government criteria.
- More substance should be given to the system in order to address the lack of transparency. This will be enabled by the introduction of statutory consultation and a process of formal appeal.
- A stewardship report to be submitted every year to the Secretary of State.

The ODPM is committed to unifying Scheduled Ancient Monument and Listed Building consent processes.

In the case of complex assets, management agreements will be developed to allow more effective management of the site and avoid the need for repeat applications.

The proposed system will be tested over a period of 2 years via a series of pilot projects, thereafter the White Paper will be drafted. PPGs 15 and 16 will also require revision – this will take place after the Review. The testing will ensure that the proposed new system of a unified consent regime will be applicable to all sites.

**Q:** Does this mean that the Ancient Monument system will be shoe-horned onto Listed Buildings system?

**A:** There are a number of areas where the new system will be able to build on the experience of scheduling. The aim is to build on the achievements of component parts. The challenge will be moulding together what appears in that area between archaeology and the landscape historian.

### **The Pilot Projects (Gemma Abercrombie, Heritage Protection Reform Team Leader, English Heritage)**

The pilot projects are all about applying the recommendations to real life; to work through scenarios before drafting commences on the White Paper. Principles to test are as follows:

- Concept of a unified register – how to depict this – mapping, documentation.
- Developing unified regulatory regimes.
- Developing statutory management agreements.

There is also a need to consider resource input by recording how much resource is used up front, and how much time is saved after a management agreement is put in place.

Sites for the pilot projects have been chosen to reflect a variety of locations and different types of asset. The pilot projects have been grouped as follows:

- Historic estates – private owners, very large sites (listed buildings, archaeology, management schemes, inheritance tax on plans)
- Multi designation issues – items that are layered on top of each other. There is a need for clarity at such sites on what managers of the site can and cannot do.
- Archaeological deposit on site – includes natural environment issues conflicting with historical.
- Military sites – often very extensive – the issue is how to designate and protect such sites. This is difficult within the current system given the huge pressure to develop and dispose. The MOD is a key partner in the pilot project process.

- Post war buildings – the current system was not designed with these buildings in mind. These buildings are built to be flexible. Want to be able to avoid repeat applications.
- Dispersed asset types – similar assets in dispersed location. Issue of small scale requests.

### Timescales

2004 – designations, maps and documentation. Begin work on statements of significance.

2005-7 – development management agreements. Develop unified regulatory agreements. Develop white paper.

### **Questions**

**Q:** With statements of significance, the fear is that we become too prescriptive about what may or may not be done. We should avoid this prescriptive effect.

**A:** It is not possible to be overly specific as our understanding always changes. It is important to stress the distinction between the register entry (which is a summary of importance; a simple accurate 'flag') and the management agreement (a full blown developed statement of significance which fleshes out what the management agreement is trying to address).

**Q:** Will this new system only apply to new entries, or is the intention to go back through the whole record of designated sites to date? This is clearly a resource issue.

**A:** This matter has not yet been fully resolved. At the moment the proposal is for an application for change to trigger an inspection and update of the entry.

**Q:** Is this not rather reactionary way of doing it – not very transparent?

**A:** It is a positive step even so. It will create a level playing field for the future; for assessment once change is triggered.

**Q:** Is it not inappropriate to change a designation when an application is live? An application should be made on the basis of existing information. Heritage assets have a mapped boundary – how will this be dealt with?

**A:** 80% of responses to the consultation were positive to the approach. The main area of uncertainty is over resourcing issues. An assessment of how much time the new system will take to set up will be required.

**Q:** Have you considered third party right of appeal against failure to list?

**A:** TPRA was considered but rejected – it was thought unlikely that the applicant would be able to engage fully with the process.

**Q:** Shouldn't the applicant prepare the statement of significance?

**A:** With the management agreement route, statements of significance could be constructed in partnership. However, validation of the 'flag' statement on the register still needs to be given by a statutory authority.

**Q:** Will it be possible to involve multiple owners within the one agreement? How would this be enforced?

**A:** Statutory management agreements are very important – the aim is that they will be self-regulating, based on validity of partnership. It is hoped that the process will become more flexible; the pilot management agreements are working to develop shared understanding at the sites. This, it is hoped, will cut down the overall resource time for site management. If too prescriptive, go back over and over again.

**Q:** How much are you working with GIS?

**A:** Working with GIS at pilot projects, however open to advice on best practice elsewhere (GIS work in the NE of Scotland and at the geological survey mentioned).

**Q:** This is a huge exercise – how will it be undertaken? All in-house at English Heritage?

**A:** It is a forward process; the new proposals relate to a forward system. It is not yet clear how past designations will be handled.

**Q:** Is it anticipated that the same results will arise from the various pilots? Will the outcomes be widely applicable?

**A:** the results should have a level of consistency eg the management of city walls would most likely be applicable to all city walls.

**Q:** What about the possibility of combining natural heritage designations with cultural heritage designations?

**A:** there is much evidence on management agreements from the natural environment; the systems could be complementary.

**Q:** How it will be possible to unify the varied consent regimes?

**A:** The only way into this process is to amalgamate listed building consents and SAM consents. The new system will comprise one single regulatory system with one single type of designation – this will enable more positive management of sites that currently have more than one type of designation.

**Q:** Doesn't conservation area status already cover much of what is being discussed?

**A:** It is important to stress the distinction between designations that originate locally and nationally. Conservation areas originate at the local level. Below the layer of protection afforded by Conservation Areas is the requirement for another layer of protection.

**Q:** Concern that there will be less control.

**A:** Disagree – the level of protection will remain the same but will be more flexible.

## **Summing Up**

- We have much to learn from this process.
- We need to understand where the system is different.
- The testing of the proposed system through the pilots is a pragmatic approach.
- The situation differs in Scotland to some extent due to tenement ownership.
- The report is very clear; it provides us with a clear framework for considering issues further.
- There is much to learn about what can be seen to be competing designations.
- Role of RCAHMS is important eg the landscape survey and work on layering.
- HEACS will continue to take evidence and consult widely.

BEFS notes 31/08/04