

# **HEACS-BEFS SEMINAR ON HERITAGE PROTECTION LEGISLATION Is There a Need to Review Scotland's Heritage Protection Legislation?**

**An update on the work of the Historic Environment Advisory Council for Scotland's Heritage Protection Legislation Working Group – findings and future options**

## **SEMINAR NOTES**

### **INTRODUCTION**

This seminar took place at the offices of the National Trust for Scotland, 28 Charlotte Square, Edinburgh on 24 May 2005. The event was attended by 41 representatives mainly from within the BEFS Membership and HEACS.

Terry Levinthal, Director of the Scottish Civic Trust, Member of the HEACS Working Group on Heritage Protection Legislation and Director of BEFS, gave a presentation on the context for change and the key issues identified by the HEACS group in recent discussions and gathering of evidence. Key issues had been previously circulated in a paper to attendees.

### **PRESENTATION**

#### **Context for Change**

- Partnership Agreement
- Current Review of Planning System – White Paper on new planning act anticipated June 2005. Various Scottish Planning Policies have already be prepared; Designing Places Agenda; new SPP on the historic environment which would amalgamate NPPG 5 and 18 informally announced.

Outlining some issues:

- Listed Buildings – Scotland does reasonably well in finding new uses. Majority of listed buildings in reasonably good condition. However, not very good at dealing with long-term deterioration.
- Concept of Site and Area. Distinction between protection of a “monument” and an “area”. Tend to concentrate on the former. Can be complex relationships between various elements of the historic environment.
- Designation of ‘outstanding’ in relation to Conservation Areas was a grant giving mechanism, however it has a different meaning in practice. Conservation Area designation seen as an underutilized management tool.
- The lack of protection for sites, monuments or buildings that are not designated, or are uninhabited, is key problem. Also is a key issue in the inter-relationship between a designated part of the historic environment and its hinterland (buffer zone).
- Intangible significance eg battlefields - problem of lack of protection/value. Also areas of national (international) cultural significance and protection (eg clearance townships).
- Lack of knowledge of damage eg in relation to coastal archaeology.
- Conflicts between administrative regimes: eg in relation to serving a dangerous building notice against listed building and conservation area legislation. Lack of communication between local authority departments. eg Lanrick Castle.

Positive developments:

- Strengthening of the Building Preservation Trust Movement, and the use of community/NGO action in areas traditional associated with local authority delivery (eg Townscape Heritage Initiatives).
- Building Acquisition Grants – available to the National Trust for Scotland and Local Authorities. Perhaps need to think more widely, given wider NGO and community interest in historic building work.
- National Parks – requirement to preserve and protect the cultural heritage – a statutory obligation. Possible opportunities to use related legislative/administrative regimes to further enhance historic environment.

### **Conceptual Issues**

Would changes be to improve management, protection, understanding, or be aimed at administrative/political convenience for gaining efficiency?

Why make change? Currently heritage protection legislation in England is under review. Is the need for change real or perceived? There is a need to consider the relationship between the legislation and best practice. This last point is a critical issue to be explored. Does not matter how good the policy is, if there is no one of competent skill to implement it. Issue is related to other HEACS working groups.

Unified Consents...Currently different types of consent application (planning, listed building, scheduled monument consent etc) require different types of information. Consider pros and cons of unifying consents – how well this could work.

State vs local function: Where is the logical level for different functions to take place? State to designate – Local Authority to regulate? Perhaps there needs to be a separation of function and value – eg national importance v. local importance.

Need for more effective monitoring. For example, Local Authorities are requested to report annually on the decisions made in relation to C(S) listed buildings (Memorandum of Guidance) – currently believed to be 100% non-compliance with this.

Decisions made on planning applications: Limited understanding of reasons given for decisions made by Local Authorities – ie the application of policy without a firm understanding of the reasons and philosophy behind the policy.

Work of statutory undertakers: This is not tied in to other objectives, and exemptions can cause significant damage. Also industry pressures which may work contrary to historic environment protection.

System is weighted towards the views of the decision makers: For example, public safety will be an overriding concern in comparison with other objectives. In accepting the position that there is no formal hierarchy of legislation, and therefore no priority given to one Act over another, this is an important issue.

There are blurred edges with regard to existing designations that should be understood and explored. For example, if a Country House is listed, would its associated Designed Landscape be considered as part of its curtilage, thereby making the protection of designed landscapes as listed building matter. Could Conservation Areas be designated to cover areas of cultural tradition/historic value (eg battlefields)? A more creative approach might yield positive results.

Issue of SITE vs AREA protection: Conservation Area designation is one of the most progressive management tools for the historic environment. Protection measures for setting of SAMS is

deemed weak. Perhaps need to think about a wider Cultural Heritage Area designation aimed at bringing other aspects into management control.

The 'shopping list' of items (previously circulated) was presented.

### **ARGUMENT FOR MAJOR CHANGE TO THE LEGISLATION**

...Was presented by Carol Swanson of the HEACS working group on heritage protection legislation.

- On the archaeological side, the legislation is very poor.
- Legislation operates at the national level, much less at the regional and local level (with the exception of C(S) listed buildings). There are elements of the historic environment that have no statutory protection – designed landscapes, battlefields, non-scheduled archaeological sites, non-listed vernacular buildings. (95% of archaeology is not scheduled).
- The infrastructure for the protection of the historic environment is not enshrined within the legislation.
- The Planning System does not cover other relevant areas: agri-environment schemes, forestry operations, work of statutory undertakers.
- Time is right to press for change.

### **ARGUMENT FOR MINOR CHANGE TO THE LEGISLATION**

...Was presented by Andrew Wright of HEACS, Convenor of the working group (on behalf of Finlay Lockie, working group member)

A comprehensive review would:

1. Extend protection
2. Simplify the legal regime
3. Reduce public confusion
4. Cater to a greater extent variations in Scottish identity

However there are many dangers:

- The existing set of laws work reasonably well
- The current political climate could be difficult to achieve a comprehensive review
- Any new law would invite legal challenges – existing precedence that has been set would be lost
- Drafting the legislation may pose problems and permit unintended consequences

Instead, amendment to the existing legislation would:

- Retain the generally strong regime that exists and make it work better
- It would avoid the uncertainty created by wholesale change
- A few important changes could achieve significant results eg preserve/enhance issue
- Failings in the present system emanate from resource and skills deficit in local authorities – rather than in legislation.
- A new Bill would still have the same complexities – combining these in one Act would only give slightly better situation.
- There is in reality limited scope for large scale amendment – instead we should focus on prioritising and putting forward amendments in batches of 3 or 5.

- There has been no comprehensive examination on the role of the historic environment – and its economic value to the country. This knowledge might encourage greater funding provision in general.

## DISCUSSION

### Gaps

The following points were raised in the discussion:

- In relation to gardens and designed landscapes, we should look more broadly at practice in other countries.  
(The group can look at international practice).  
(It is a given that the situation for gardens and designed landscapes needs to be addressed – the question is how to go about this).
- The legislation is there – Ministers can designate Conservation Areas on landscapes.
- Problem with this is that the Conservation Area was designed for a particular purpose and does not perform sufficiently well in relation to other areas of significance.
- The notion of an area based designation – developed as such from first principles – is attractive. It would be worth developing this idea further as an option.
- Other countries use a designation ‘heritage areas’.
- Last year SNH started a debate about designed landscapes – this debate is being taken forward by Scottish Environment LINK’s landscape taskforce.
- The European Landscape Convention gives us the tools to consider issues at this scale.
- There is an extraordinary imbalance in the scope of the various ‘lists’ – in terms of quantity the number of gardens and designed landscapes fare badly in comparison with numbers of listed buildings, ancient monuments, natural heritage designations. When the Inventory is complete – there will be a total of just 400 gardens and designed landscapes designated in Scotland.  
(The Historic Landscape Assessment currently being undertaken by SNH and Historic Scotland will go some way to improving the identification of areas of significance).
- Radical Review is a totally unrealistic expectation – we should instead focus on putting forward packages of amendments and relate these to other Government objectives: social inclusion, regeneration etc. To provide a framework, we need a strategy for the historic environment to get the historic environment as a whole up the political agenda as a key issue. We need to define the resource and then think hierarchically in terms of levels of significance. Local designations can be defined in Development Plans. The Planning Bill White Paper provides a significant opportunity that must not be missed.
- Radical Review is to be favoured. The system should be integrated to a greater extent – the divisions between cultural and natural heritage and archaeology and buildings is problematic.
- Philosophy: the philosophy behind what we are trying to do is not articulated well – it is out of date.

- AMAAAct 1979: this will fall by the wayside in English Review process – this will make the use of this legislation in Scotland untenable. This may precipitate change in Scotland and drive the need at least for a new Archaeology Act.
- Unification of consents: it would be possible to make one type of planning consent but this should not incorporate scheduled monument consent because the philosophy is different – SM consent has a presumption for preservation. The planning system in contrast is about making value judgements to permit appropriate use of a building.
- Protection of unprotected assets: we need to be able to offer some protection to undesignated or otherwise protected assets.
- Boundaries: have always posed a problem – World Heritage Sites use Buffer Zones.
- Managing change: certain issues are perhaps not appropriately addressed through the planning system (eg development affecting a cornice in a room – is not a landuse issue). We are talking about asset management.
- Managing change: opposite view is that development affecting a cornice is a planning issue because it is about managing change – it is the same type of decision-making process.
- Managing change: we need to be realistic and avoid being overly elitist. Managing change in the historic environment is a balancing act. If assets are sufficiently mapped – this would permit more informed decision-making.
- Resources: we need to design a system which will not require far greater resourcing – instead it should be developed adopting ‘polluter pays’ principles. The individual proposing change should be required to make the case by providing the relevant information.
- Resources: ‘tweaking’ the system will not attract the resources to the historic environment sector that are required in both local authorities and in central government.
- Resources: the development control system does not gain any fees from administering listed building consent applications – this acts as a positive disincentive to get staff into place.
- Resources/SMRs/HERs: coverage/level of information in SMRs is very patchy – much information is out of date.
- Community: in all of this we need to focus on who the historic environment is for – the community. This will help in getting political backing.  
(the group has realised the broader issues in this topic and the need to relate to Government objectives).
- There is scope to engage communities in HERs. The RCAHMS also plays a key role in providing information to the public.
- Urgent works notice: issue relates to the fact that it is not easy to recover costs – this acts as a disincentive to Local Authorities in serving an urgent works notice.  
(this is covered in the ‘shopping list’ – the issue is partly about building confidence in the system).
- Intangible Cultural Heritage: how do we address this?

(intangible aspects are very difficult to legislate for. Could there be a Cultural Heritage Act?)

- Perception: there is a perception that the current legislative system is associated with 'freezing' the historic environment. This needs to be rectified.
- National Parks: here there is scope for more joined-up thinking: LLTNPA is looking at special qualities and sense of place issues; issues being discussed within communities.
- Query regarding the extent to which the historic environment is being considered in the Planning Bill.  
(we know that Historic Scotland is using the Bill to effect changes in its system of Historic Building Grants).
- Local Authorities do not have sufficient understanding of the building materials available for use in their locality.
- Coastal Zone protection is another example of area needing area-based protection.

## Sum Up

...by Andrew Wright of HEACS, Convenor of the working group

- A show of hands at the seminar indicated that the majority of those attending would be for more substantial changes to be made to the legislation rather than minor change, however, a worry was also detected in the room about losing everything in the process.
- In presenting a case to the Minister the group will have to look at broader issues such as social inclusion and the context of streamlining the planning system.
- The group has heard that the system in England which relies more heavily on local authorities in relation to local responsibilities, is under threat as well – it may not represent a 'utopian view'.
- Relevant level of designation (national, local) needs to be articulated.
- How Local Authorities might be encouraged to take on responsibilities.
- The group will work now to develop recommendations and seek further consultation as required.
- The group would encourage any further observations from those attending the workshop for its consideration.

May 2005