

HERITAGE PROTECTION REFORM

To: Buckinghamshire Historic Environment Forum

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Authors: Report by the County Archaeologist

A. PURPOSE OF THE REPORT

- 1 To update the Forum on progress with reform of Heritage Protection legislation, including the publication of the Draft Heritage Protection Bill which was presented to Parliament in April 2008. The report identifies five recommended actions for itself and constituent bodies.

B. PROPOSED ACTION

2 The Forum is invited to:

- a **ENDORSE the Recommended Actions set out in paragraph 10.**

C. RESOURCE IMPLICATIONS

- 3 The Government's assessment of the Draft Bill's resource implications is set out in a DCMS Regulatory Impact Assessment which estimates that there will be a one-off (transition) cost of £2.26 million over 5 years and an average annual cost of £1.02 million which is offset against an average annual benefit of £1.04 million. It is said that Government and English Heritage will incur the majority of costs through providing extra funding to local authorities to enable them to take on new responsibilities. Savings are to be made through stream-lined administrative procedures and new voluntary management arrangements. The Regulatory Impact Assessment also states that "DCMS would be responsible for securing funding to meet new burdens on local authorities arising from the legislation ...".
- 4 The Draft Bill has been scrutinised by the Culture Media and Sport Select Committee which noted evidence from heritage organisations that the cost of HPR had been under-estimated and urged the Government to make a more realistic assessment. It is understood that further work on this is being undertaken by DCMS and English Heritage.
- 5 It is understood that transitional costs would be met through English Heritage grant aid and therefore 'ring-fenced' to historic environment services but that annual costs will form part of the local authority SSA, so need not necessarily be passed on.

D. SUPPORTING INFORMATION

- 4 The Draft Heritage Protection Bill was published in April 2008 and considered by the Culture Media and Sport Select Committee which reported in July 2008. The Draft Bill sets out the Government's proposed reform of the system of heritage protection in England and Wales. It is understood that the Bill will be put before Parliament before Christmas with a view to it coming into force by autumn 2010. The Bill follows on from the White Paper *Heritage Protection for the 21st Century*, which was itself the product of a long consultation process initiated by the Government in 2000.
- 5 The Heritage White Paper opened with a welcome positive statement from Ministers on the importance and public value of the historic environment. It went on to say that people want reform of the heritage protection system and to see the historic environment at the heart of planning, regeneration, environmental stewardship and building sustainable communities. These broad aims are to be addressed through three core principles: a unified approach to the historic environment; maximising opportunities for inclusion and involvement and supporting sustainable communities by putting the historic environment at the heart of an effective planning system. The following specific changes to primary legislation are being taken forward through the draft Heritage Protection Bill:
 - Designation system: A single unified Register of Historic Buildings and Sites in England and Wales will replace existing lists and schedules with designation devolved to English Heritage; accompanied by a faster designation process and simpler, clearer and more easily accessible designation records. There will be a consultation and appeal process for new designations and interim protection whilst a decision is being made.
 - Designation criteria: All national designations to be made on the basis of special archaeological, architectural, artistic or historic interest, with new detailed selection criteria for national and local designation. These criteria will also apply to the designation of conservation areas.
 - Consent regimes: A heritage asset consent regime administered by local authorities will be created by merging listed building consent and scheduled monument consent. There will be provision for statutory management agreements. There will be a statutory duty to have regard to registered heritage structures and open spaces in the exercise of planning functions.
 - Enhanced protection: New measures will be brought in to enable local planning authorities to designate structures and open spaces of 'special local interest'. The White Paper suggested mechanisms to help protect locally listed buildings from demolition and to remove the automatic "class consent" for cultivation of archaeological monuments on arable land.
 - Role of local authorities: The County Council will have a statutory duty to maintain an Historic Environment Record whilst all local authorities will have a duty to consult the record. Local authorities will administer the heritage asset consent regime. The new legislation will be underpinned with new guidance and supported by English Heritage through a new

programme of training, support and capacity-building for local authorities and local heritage organisations.

- Other matters: various powers are provided for (inter-alia) giving grants, compulsory purchase, enforcement, guardianship and provision of public access and interpretation.

6 National reaction:

The proposals within the White Paper and Draft Bill have been the subject of wide consultation over some years and have gained the general support of the historic sector. However, concern has been expressed in a number of areas. The CMS Select Committee highlighted the incompleteness of the Draft Bill; unrealistic cost estimates; staff and skills shortages amongst conservation officers; inadequate consideration of enforcement issues; caution over Heritage Partnership Agreements and the urgent need to revise Planning Policy Guidance 15 (Planning and the Historic Environment) and 16 (Archaeology and Planning) .

7 Implications for heritage in Buckinghamshire:

The Draft Heritage Protection Bill contains proposals which potentially offer improvements to the existing heritage protection system which would benefit the county, most notably:

- The unified approach to the historic environment is a positive step that should enable the multi-faceted interests of many heritage assets to be recognised and managed together rather than requiring multiple overlapping designations and consent applications. Heritage Partnership Agreements would be available to provide the flexibility needed to handle special cases but are perhaps unlikely to become widespread.
- Greater emphasis on local designations with improved protection from demolition for unlisted buildings in conservation areas and potentially for locally listed buildings should help protect our built heritage, although details of the arrangements depend on secondary legislation.
- The extension of designation to sites of early human activity (including palaeo-environmental remains) without structural remains is to be welcomed as plugging a loophole and could help protect nationally important sites found in the Colne Valley.
- New arrangements for managing ancient monuments under cultivation could help reduce or eliminate plough damage to designated sites on arable land, although the number of scheduled monuments at risk from cultivation in the county is relatively low.
- The County Council already maintains an Historic Environment Record which has been developed from the former Sites and Monuments Record. A statutory Historic Environment Record (HER) would provide a single point of access to a wide range of heritage resources enhanced to give broader and deeper coverage of built heritage.

There are no explicit negative effects on the county's heritage; although some specific areas require clarification as depending upon interpretation they could give rise to negative effects.

8 Implications for local authorities in Buckinghamshire:

The White Paper and Draft Bill see local authorities as key partners with English Heritage in the delivery of the new system, a role which has significant implications:

- Operation of the unified heritage asset consent regime will entail extra costs for planning authorities and their specialist archaeological advisors in dealing with what would currently be scheduled monument consent applications handled by English Heritage and DCMS.
- Negotiation of new Heritage Partnership Agreements will represent an additional responsibility.
- Powers to designate conservation areas on archaeological or artistic grounds and increased emphasis on local heritage asset registers, would also increase costs.
- Delivery will require greater cross-disciplinary skills development and working between buildings professionals and archaeologists; greater cross-boundary, cross-tier working, information sharing and potentially use of service level agreements. This will provide challenges for the 2-tier county authorities like Buckinghamshire where existing informal networking may need to be given a formal and more structured footing (e.g. through Service Level Agreements) in order to meet the new statutory obligations. *Mechanisms for delivering historic environment services in a more integrated manner need to be explored further in consultation with English Heritage.*
- Placing a statutory duty on the County Council to maintain an Historic Environment Record (HER) and on local planning authorities to consult it raises questions of accessibility, procedure and resourcing. Further detailed guidance on the expected composition and responsibilities of HERs has been provided to help cost this development.
- The proposed duty to have regard to registered heritage structures and open spaces in the exercise of planning functions and the new Planning Policy Statement may have significant effects on local planning authorities although it is not possible to be specific until the PPS is available.

9 Other matters:

A number of significant matters are either not covered or unclear:

- It is still not clear what is going to happen to grading and how grading will be introduced for archaeological monuments. Archaeological sites are already under-designated compared to buildings so there is concern that an exercise of simply reviewing existing schedule entries will effectively lead to a down-grading of protection.

- The proposed extension of Certificates of Immunity to all assets could impose significant administrative burdens on English Heritage. It would be problematic for archaeology as a field evaluation is often necessary to determine the presence and significance of buried remains.
- There is only passing reference to the relationship of the historic environment to nature conservation and landscape, for example in the role of AONBs.
- Despite emphasis on communities, the educational role of the historic environment is barely mentioned except in the regulatory assessment where a reduction in activity is seen as a possible unintended side-effect of clearer definition of statutory responsibilities.
- Reference could usefully be made to green infrastructure planning as one mechanism for capturing the historic environment's contribution to creating sustainable communities.

10 Conclusion and Recommended Actions:

The Draft Heritage Bill offers significant benefits for protecting and managing Buckinghamshire's historic environment, which are worthy of support. However, there are significant areas where further consideration is needed, particularly in relation to the division of roles and responsibilities in 2-tier authorities and allocation of sufficient resources to implement the new system. Assuming the Bill is passed there are still two years to prepare for full implementation. In order to prepare, it is suggested that the following actions could be taken over the next six months:

1. The Chairman to write to Buckinghamshire MPs at an appropriate time to draw their attention to the Bill and the Forum's views on it.
2. The Chairman to respond to any consultation on a new draft Planning Policy statement in collaboration with HEF members.
3. The County Council to prepare a costed IT Appraisal for making the HER accessible to District Councils (work on this has commenced with a draft report expected by end December 2008).
4. County and District Councils to agree a charging policy for the archaeological planning advisory service and monitor its effect (work on this has commenced).
5. County and District Councils with advice from English Heritage to consider the desirability and scope of Service Level Agreements for Historic Environment Services. This would include assessment of the roles, responsibilities and resources required to discharge future statutory responsibilities (an exploratory meeting was held on 22nd September).

E. BACKGROUND PAPERS

Consultations on the Review of Heritage Protection and Historic Environment Records. Report to Buckinghamshire Historic Environment Forum, 24th September 2003

Draft Heritage Protection Bill. DCMS (April 2008)

Draft Heritage Protection Bill. Culture Media and Sport Select Committee (July 2008)

The historic environment : a force for our future. Government Policy Statement.

Heritage Protection for the 21st Century. DCMS White Paper (March 2007)

Heritage Protection for the 21st Century. Regulatory Impact Assessment DCMS (March 2007)

Historic Environment Records Consultation. DCMS (July 2003)

Impact Assessment. Draft Heritage Protection Bill. DCMS (April 2008)

Protecting our historic environment: Making the system work better. DCMS (July 2003)

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