

SUPPLEMENTARY RESPONSE TO THE DRAFT HERITAGE PROTECTION BILL: CONSERVATION AREAS

Incorporating views from
the Royal Town Planning Institute (RTPI)
the Institute of Historic Building Conservation (IHBC)
the Royal Institution of Chartered Surveyors (RICS)
the Royal Institute of British Architects (RIBA)
the Planning Officers Society (POS) and
the Chartered Institute of Building (CIOB)



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1 August 2008

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1. Introduction

This response to the Conservation Area provisions of the Draft Heritage Protection Bill builds on joint working undertaken in 2008 to ensure a joined-up professional response to the Draft Heritage Protection Bill itself¹.

It unites six professional and corporate bodies that together account for nearly 250,000 members², and includes the great majority of the many and diverse practitioners that together shape, manage and enhance the historic environment.

The Royal Town Planning Institute (RTPI) is the leading chartered professional body for spatial planners in the United Kingdom. It is a charity with the purpose to develop the art and science of town planning for the benefit of the public as a whole. It has over 21,000 members who serve in government, local government and as advisors in the private sector. Many spatial planners are closely involved in the development of policy for and the management of the historic built environment. Corporate Membership (MRTPI) is the peak mark of professionalism for town planning professionals, with Associate Membership and the capacity to participate in a wide range of built environment related networks available to a broader range of professionals.

The Institute of Historic Building Conservation (IHBC) is the professional body for building conservation practitioners and historic environment experts working in the United Kingdom. It exists to establish, develop and maintain the highest standards of historic built environment conservation practice, to support the effective protection and enhancement of the historic built assets, and to promote heritage-led regeneration and access to the historic environment for all. Many members are spatial planners, surveyors, architects and/or other specialists with conservation expertise, while a significant body have the IHBC as their main professional affiliation.

The Royal Institution of Chartered Surveyors (RICS) is the world's leading professional body dealing with land, property and construction issues. It has 130,000 members world wide, working in both the public and private sectors and in large and small organisations. Under the terms of the Royal Charter RICS is obliged to act in the public interest in all aspects of its work. RICS firmly believes that it is vital to make the historic environment accessible to all, but that it is equally important to ensure that the built and natural heritage is protected. More specifically, RICS has a Building Conservation Forum dedicated to dealing with conservation issues.

The Royal Institute of British Architects (RIBA) is one of the most influential architectural institutions in the world, and has been promoting architecture and architects since being awarded its Royal Charter in 1837. The Institute represents 85% of registered architects in the UK through its regional structure and has 40,000 members. The RIBA has a Conservation Architecture Group who specialise in conservation architecture; whilst the majority of the RIBA's members have professional experience in designing within and around the historic built environment. The architecture profession's knowledge is vital in understanding historic buildings and how they can successfully be preserved and utilised.

¹ <http://www.rtpi.org.uk/download/4327/Heritage-Bill-response-RTPI-IHBC-RICS-RIBA-POS-CIOB-Final-240608.pdf>

² Current membership numbers are RTPI: 21,000; IHBC: 1800; RICS: 140,000; RIBA: 40,000; POS: 500; CIOB: 40,000.

The Chartered Institute of Building (CIOB) represents, on behalf of the public, the most diverse set of professionals in the construction industry. Its role is to:

- promote the importance of the built environment;
- lead the industry to create a sustainable future worldwide;
- encourage leadership potential;
- promote the highest standards in quality, safety and qualification; and
- create an industry where excellence prospers.

CIOB has over 40,000 members around the world, and are considered to be the international voice of the building professional, representing an unequalled body of knowledge concerning the management of the total building process. CIOB members are skilled professionals with a common commitment to achieving and maintaining the highest possible standards. Chartered Member status, represented by the designations MCIOB and FCIOB, is recognized internationally as the mark of a true professional in the construction industry.

The Planning Officers Society (POS) represents the most senior professionals and managers of planning functions in the English Local Authorities. It sets out to:

- act as an advocate and promoter of Local Government planning;
- assist and advise the Government and the Local Government Association on planning matters and related issues;
- act as a centre of excellence, undertake research and promote best practice in planning matters; and
- promote all aspects of the built and green environment by working closely with other organisations and professions.

The Society's aim is to ensure that planning makes a major contribution to achieving sustainable developments, from national to local level, in ways which are fair and equitable and achieve the social economic and environmental aspirations of all sectors of the community.

This document represents a joint response to the proposed Conservation Area provisions from the heritage and built environment professions, working together. The response has been formed drawing together internal consultations and the results of meetings with members and stakeholders.

The response has two main parts:

- a statement of our collective concerns about the draft Conservation Area provisions; and
- detailed commentary on the content of the draft provisions including those items which in our view require change.

2. Response in Principle

The joint professions explained extensively in our submission to the main draft Bill how we felt it was not dealing adequately and appropriately with planning controls in Conservation Areas. We had hoped that the publication of the specific Conservation Areas clauses would help to address some of these issues, but are disappointed that this is not the case. The Bill contains no clearer protection system nor any stronger vision for the future of Conservation Areas than can be found in the current legislation. In some respects it reduces the effectiveness of designation and conservation management.

The Conservation Area is the historic 'place' to which most people relate, in which they live, work and play and where they want to see clear, logical and easily understood controls. Conservation area grant schemes have delivered substantial social and economic benefits, especially in under-performing areas. However, we believe that these additional clauses do not cover this area adequately.

Variations in Conservation Area controls from area to area, and even street to street do not help the image or reality of conservation and undermine public confidence in the system. The standard Conservation Area controls do not adequately provide for the management of areas in the public interest, and so widespread use has to be made of special controls: Article 4 Directions. The public do not easily understand Article 4 Directions and for local authority conservation professionals they are complex, time consuming and highly political to develop and manage. Nor are article 4 Directions consistently and transparently documented (e.g. as a Local Development Document, part of the Local Development Framework). There is a pressing need to make Conservation Areas simpler, more consistent, more open, and understandable and for Conservation Area designations to give the kind of protection expected by the public.

We still consider that the initial designation of a Conservation Area should reduce or remove certain kinds of permitted development as a matter of course, without the need for additional designations. There is also an argument for a standard tool that enables local variations to the portfolio of reduced or removed permitted development rights to be transparently documented, in a way that Article 4 Directions are not. Measures such as the ability to create a local schedule of development rights may be the way forward. We once again urge serious reconsideration of these issues before the publication of the final Bill.

If on reconsideration it is resolved that the Bill will not deal with Conservation Area reform as described above, we are very strongly of the view that there should now be a clear parallel explanation by government of how GPDO and related planning system reform will deliver the future for Conservation Areas envisaged in the White Paper and supported by the heritage professions. To give effect to changes of this type, it will be essential to amend the Town and County Planning (General Permitted Development) Order 1995 (the GPDO) to ensure that an appropriate suite of conservation development rights are established.

3. Specific points on the draft clauses

Designation of Conservation Areas (clause 1)

The proposed revisions to designation requirements are welcome in principle and strengthen the existing wording so that local planning authorities 'must' designate areas rather than 'shall'.

The proposed criteria for Conservation Areas are to be widened to be based on special historic, archaeological architectural or artistic interest. We expressed our concern in the response to the White Paper about the future of the current areas of Archaeological interest and we believe this aspect of the draft bill may be the answer to this query. This is an interesting and potential welcome approach but we would like further explanation of how this is likely to work in practice.

We note that Conservation Area designation can now be carried out by English Heritage as well as the Secretary of State and believe this is appropriate given the other powers awarded to English Heritage by the remainder of the draft Bill.

We would suggest that a process of temporary protection should be given to areas going through what could be a lengthy designation process, much in the same way as that to be given to spot listing. We understand such a system is operative in Holland.

Consultation (clauses 3 - 5)

The introduction of appropriate levels of public consultation into the designation process is welcome but we feel that what is required by the draft clauses fall far below what is currently happening in practice and what is emerging from practice in respect of a range of related local government consultations, including those in respect of Sustainable Community Strategy or Local Development Framework documents. The management clause 5 includes a requirement for a local meeting to discuss the management plan. Whilst this is still some way short of good consultation practice we can see no reason why equal levels of consultation should not apply to both designation and management.

It is important that the local population is made fully aware of the implications and benefits of designation. Given that most breaches of conservation legislation are made 'in ignorance', this awareness raising at the outset is critical. Many designations are already carried out following extensive local consultation in a variety of proactive formats. Wider community consultation is much more appropriate and would bring conservation area designation in line with other modern consultation practices.

We welcome the abandonment of the archaic practice to advertise designations in the London Gazette and one local paper as we believe this did not further community consultation. However some guidance on where the new form of notice should be published would be helpful to ensure best practice and widen local knowledge and awareness. It is essential that third parties, including in particular amenity societies, have easy access to any such notices, in line with procedures for advertising other designations.

Publication of management plans for conservation areas (clause 5)

The additional requirement for publishing management plans is welcomed but we do feel that some aspects require further consideration.

We believe that it is considered best practice to base proposed amendments to conservation areas boundaries on a Conservation Area Appraisal. The draft text describes the Management Plan process which should be carried out following designation but does not describe the role of the appraisal before and during designation or more pertinently extension.

The consultation and local involvement in the management process is vital to the local value of conservation. We would urge that appropriate levels of wider community consultation are included to bring conservation area designation in line with other modern consultation practices especially those found elsewhere in the planning process. A public meeting as described does not always achieve this: it is not necessarily the best way of involving and empowering local communities, especially hard-to-engage groups; it is unlikely to include the kind of training and capacity building necessary for meaningful engagement, and a public meeting could favour the articulate and confident. The publish-and-defend approach is not constructive to early engagement, is unlikely to achieve buy-in to the plan by local stakeholders and more likely to generate conflict. This approach fails to recognise how consultation and involvement techniques have moved on over the past 40 years. We believe this requirement should be replaced by a requirement to involve local residents and other interests in the area in a *participative* form of consultation, without trying to specify precisely what form this consultation should take.

In some authorities local groups are already involved in local assessment and management processes through conservation area working groups, advisory committees, design review panels or similar. This type of community working reinforces local awareness and helps develop a local network and should be encouraged.

The 1990 Act refers in section 71(1) to the duty to "formulate and publish proposals for the preservation *and* enhancement of any parts of their area which are conservation areas" the new clause in section 5(4) (b) changes this to *or*. Since most conservation areas will require proposals for both preservation and enhancement it seems appropriate to retain the word *and*.

The additional duties of preparing a management plan should be taken into account when establishing the level of additional funding available as this will be a substantial new burden on Local Authorities arising from the Bill.

Duty to have regard to conservation areas in exercise of planning functions (clause 6)

We are delighted that the opportunity has been taken to reinstate the presumption in favour of enhancement for conservation areas. Enhancement is about contributing to the future of the area positively and should not be used to reject high quality and original design.

We consider that the setting of a conservation area may need perhaps needs addressing. It is unclear as to whether 'character or appearance' applies whether viewed from within or without. Applications affecting the setting of conservation areas could also be advertised in the same way as those inside the conservation area.

Power to carry out preservation works to registrable structures in conservation areas (clause 8)

The maintenance of the ability to carry out what were formally urgent (now preservation) works is welcomed but the process for local authorities to carry out these works needs clarification. The proposed wording includes only for the national authority to carry out such works and it is not clear how this would be filtered down to local authorities.

Offence of failing to obtain planning permission for certain development in conservation area (clause 9)

We welcome the clarification provided in this clause on the reversal of the Shimizu decision and the transfer of conservation area consent to planning permission but retaining the link with this proposed legislation.

Other Matters

Loss of grant powers in Conservation Areas

Clause 185 of the draft Bill did not replicate the wording under Section 57 of the current Act. This makes provision for local authorities to make grants to buildings that are not listed but which appear to them to be of architectural or historic interest. This clause has not been included in this draft either so preventing the making of grants to contributory but unlisted buildings in Conservation Areas. Grant giving to buildings in Conservation Areas is an important aspect of both conservation-led regeneration and tackling buildings at risk, and this anomaly needs to be addressed.

The role of other agencies in Conservation Areas

We believe that the legislation should have concern for the negative impact which certain other statutory works can have within conservation areas. We would point to the example of the protection given to Areas of Outstanding Natural Beauty through the Countryside Access & Rights of Way Act 2000 which states that "In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty." We see very strong parallels in Conservation Areas which like AONB's are Article i(v) land and feel that such an approach would assist in dealing with many of the careless or ill informed decisions by in Highway authorities, statutory undertakers which can destroy the character of the conservation area.

4. Conclusions

Our institutes and corporate bodies are glad to see publication of the Conservation clauses of the Heritage Bill but are disappointed that the draft Bill appears to contain no clearer protection system nor any stronger vision for the future of Conservation Areas than can be found in the current legislation. We have identified, this, our principal concern along with a number of more detailed areas that we feel will require further clarification, amendment or expansion for the legislation to achieve its ambitions for the protection of conservation areas.