



· INSTITUTE · OF · HISTORIC ·
BUILDING · CONSERVATION

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Dear Sir

**Law Commission Consultation Paper No 228
PLANNING LAW IN WALES
Scoping Paper**

The Institute of Historic Building Conservation (IHBC) is the professional body for building conservation practitioners and historic environment experts working in England, Northern Ireland, Scotland and Wales, with connections to the Republic of Ireland. The Institute exists to establish, develop and maintain the highest standards of conservation practice, to support the effective protection and enhancement of the historic environment, and to promote heritage-led regeneration and access to the historic environment for all.

We are very pleased to have the chance to comment on the Scoping Paper on Planning Law in Wales. In responding to the consultation we have concentrated on questions 6.1 to 6.3 which covers the area we are most concerned about.

Q 6.1 Consultation question 6-1: We consider that drawing together consents as set out in this chapter is likely to deliver a system that is more open, accessible and consistent. We seek stakeholders' views on the practical benefits which might be derived from the exercise.

Q 6-2: We seek stakeholders' comments on whether we should be looking at the merging of consent regimes into one statutory process, or instead retaining the separation between the processes but presenting these together in the proposed Planning Code.

Q 6-3: Do stakeholders consider that any (and if so, which) of the statutory consents identified in this chapter are appropriate for unification?

We are pleased that in suggesting any change to the consent system you set aims to ensure that it maintains the current level of protection. We also support the aims of making the system more accessible and reducing bureaucracy. But we do not support the proposal to merge individual heritage consents into the mainstream planning system. A system in which historic environment controls remain distinct from general planning controls enables decisions about change to nationally designated historic assets to take place with a full consideration of the special interest or importance of the asset. A merged consent process would lead to a dilution of heritage considerations in any decision-making.

Under the current legislation local planning authorities must have 'regard' to planning considerations but should have 'special regard' to heritage considerations and so heritage considerations have and should retain greater importance in the relevant circumstances.

We do not consider that Listed Building consent is suitable for unification with planning permission. The two approvals exist for entirely different reasons and each is considered on a different basis. It is possible for heritage aspects in planning considerations to be overruled, possibly rightly, by considerations of public benefit. This should not be the case with listed building consent. The wider considerations at large in Planning applications do not apply to the specialist consideration of Listed Building Consent.

The merger of two consents would make the definition of "development" and associated provisions unnecessarily complex and difficult to understand. The definition already covers

1. building, mining, engineering or other operations
 2. The making of a material change in the use of land or buildings
 3. The demolition of an unlisted building in a conservation area.
- If LBC were to be merged with PP, "development" would also need to cover:
4. The demolition of a listed building
 5. Altering or extending a listed building in a way that affects its character/significance.

Currently breach of Listed Building Consent is a criminal offence and this does not apply to Planning Permission. This difference should remain by retaining the separation of the processes, even if within a single Code.

If breaches of control were to be merged this would require either the criminalisation of breaches of planning control or the decriminalisation of listed building control. We would strongly oppose any move to decriminalise breaches relating to Listed Buildings. Listed building control is fundamentally different to planning control of development. The enforcement provisions for listed building breaches are different and it is essential that unauthorized work to Listed Buildings continues to be a criminal offence.

The emphasis on the protection of heritage assets developed in the Historic Environment (Wales) Act 2016 and the emerging on Technical Advice Note 24 should not be lost.

We are concerned that the consequence of this will be a loss of quality decision making as Local Authorities could see this as an opportunity to further reduce costs

by stripping out conservation expertise, leading to more erosion of heritage protection.

We are also concerned about the implications to the fee structure. Applicants who presently require Listed Building Consent but not planning permission could lose their fee exemption. This could be an introduction of fees on Listed Building Consent, which is a major issue requiring detailed debate, without the appropriate discussion.

If the intention of merging the two consents is to avoid double handling of applications in certain cases then an alternative solution could be proposed which removes the need for additional planning permission in cases where Listed Building Consent is already required rather than a complete merger. The Advertisement Consent regulations confer Planning Permission on anything that has advertisement consent, and opportunities of doing the same through the Listed Building regulations could be explored, excepting changes of use.

The recent Historic Environment (Wales) Act did not, as a consequence of representations opposing it, include the proposed merger of Planning Permission and Conservation Area Consent. The current proposal suggestion being scoped appears to only over merging Listed Building Consent into Planning Permission leaving scheduled Monument Consent and Conservation Area Consent outside the merged system. The proposal would divorce a single aspect of the current unified system of Historic Environment management. At present there is a comprehensive system of designation, change control, enforcement, grant and ancillary matters. By removing one important aspect from this unified system it potentially undermines the whole and lessens the value and importance of understanding significance and properly managing change.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Fiona Newton', written in a cursive style.

Fiona Newton
Operations Director