



· INSTITUTE · OF · HISTORIC ·
BUILDING · CONSERVATION

Making Heritage Work

Penfold Review of non-planning
consents
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Department of Business, Innovation
and Skills
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London
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Dear Sirs

PENFOLD REVIEW OF NON-PLANNING CONSENTS

The Institute of Historic Building Conservation (IHBC) is the professional body of the United Kingdom representing conservation specialists and historic environment practitioners in the public and private sectors. The Institute exists to establish 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.

Thank you for inviting us to participate in this consultation. We are pleased to be able to contribute to it and are grateful for the opportunity given to three of our leading members, Bob Kindred, Mike Brown and Dave Chetwyn, to give you oral evidence.

We have categorised our comments under 6 headings as set out below.

1. Listed building consent

We suspect that you will receive evidence from the development industry about the additional difficulties posed by the need for LBC in certain cases. We would ask you to see the requirement for LBC in a proportionate light.

Most applications for LBC by commercial organizations are for developments that also require planning permission. Almost all planning authorities use computer administration systems that allow LBC applications to be treated in concert with the associated planning application. Increasingly the Planning Portal is being used to make business-related applications electronically and this facilitates the application process considerably for both applicants and local planning authorities.

The real issue is, therefore, not so much that an additional process need be gone through but that special considerations apply to commercial developments involving LB consents. ***Because of the statutory requirement "to have special regard" to listed building considerations, applications for LBC require a different skill set from those for planning permission and a clear distinction between the two is***

useful. As with all applications, the special issues attaching to them merit exploration with the LPA in advance of the application as "pre-application discussions". This process is recommended by the CLG and all relevant development industry professional bodies including the IHBC. The worst outcome for all participants is an **inadequate or** unacceptable application which is pursued by the applicant only because of the cost of abortive design work.

Another aspect of the process which benefits both developers and LPAs is the submission of good quality Design and Access Statements. These benefit LPAs because they give the confidence that the developer has considered the design and listed building issues properly. They benefit the developer because they provide evidence supporting the case for approval should the matter ultimately run to appeal. We would like to suggest that the Review endorses both pre-application discussions and Design and Access Statements as parts of the process which help to resolve development and listed building issues.

The Institute would also like to point out that the numbers of commercial developments affected by listed building issues is relatively small. Whilst there are about 28,000 applications for listed building consents each year in England, 70% of these are domestic ones, **few of which are by developers**, and only a small percentage, 15% or so, relate to commercial proposals. 90% of listed building consents are granted in time-scales comparable to planning applications for minor commercial developments (because developers approach the heritage issues sensibly) and considerably better than for planning applications for major commercial development. In addition, the spread of LB applications is by no means uniform. They are far more prevalent in places where business interests coincide with the incidence of heritage property in historic city centres such as London, Westminster, Bristol, and Newcastle where the protection of heritage as a tourism interest is at its highest.

2. The benefits of heritage-led development

Studies have repeatedly shown that the value of business developments is best maintained where there is certainty that new developments in the area will be controlled. This is particularly true of areas of heritage interest. In July 2004 the ODPM Select Committee agreed with the evidence submitted to it that heritage-led regeneration added to value rather than detracting from it¹ as previously argued. In the Institute's view it is all the more important in these times of investment uncertainty that developers past, present and future should be given the confidence that their investment in quality will not be undermined by **a poor standard of adjacent development or** unregulated alterations to the public realm that ultimately benefit no-one.

The historic environment is a finite resource which provides long term benefits to economic performance at both a national and a local level, as succinctly summarised by English Heritage in "The Heritage Dividend". Any gains made in the short term through reducing controls can be detrimental in the long term, and can precipitate the decline of a neighbourhood.

The heritage protection system does not prevent alteration and adaptation to suit new uses, rather it enables development in a manner that minimises harm to the historic environment, both culturally and economically, particularly in the long term.

3 Enforcement

A major benefit of having a system of listed building control separate from the planning system is in the area of enforcement. There is widespread agreement that criminal sanctions are sometimes needed to ensure the preservation of the nation's heritage in

¹ *The Role of Historic Buildings in Urban Regeneration*, ODPM Select Committee, Eleventh Report of Session 2003-04, Report HC 47-1

the face of ***inappropriately applied*** strong commercial and financial forces. But, like most criminal law, its existence is sufficient to ensure compliance in an overwhelming majority of cases. The case for criminalizing general planning control is far less strong as Parliament has repeatedly decided. In our view the benefits remain clear and any attempt to unify the two codes should be done extremely cautiously to ensure that the most important interests are protected ***including those the community most values.***

4. Repairs notices etc.

There are powers under the Listed Buildings Act to allow ***legislation to enable*** LPAs to intervene directly where listed buildings are deliberately allowed to decay. With the exception of powers to undertake a limited range of "urgent works", these revolve around CPO action preceded by a "repairs notice" to allow the building owner an opportunity to avoid CPO action. ~~These procedures are costly to implement and they are rarely used by most LPAs.~~ ***These procedures can be long drawn out, are weighted in favour of the owner and are powers uncommonly used by most LPAs. Nevertheless, the preliminary formal stages leading to CPO action are usually sufficient to ensure repair or disposal to others for repair.*** This is an area in which a review of the law might be beneficial, but the case load is so small as to have little bearing on the overall issue of facilitating the planning and listed building consent process for commercial proposals. ***Where major development sites have a minor heritage constraint, and also involve questions of land assembly, it is much more customary for CPO powers under planning legislation to be invoked.***

5. The role of conservation officers and other heritage professionals

Developers proposing works to listed buildings often struggle more with the fire and building regulations than with conservation issues. Conservation officers employed by LPAs are trained and accustomed to help with the resolution of conflicts between the heavy strictures of modern regulations designed to improve safety and access for all and reduce carbon emissions, which can affect proposals for many traditional buildings whether listed or not. Quite often such conflicts are caused by building control and fire safety officers not being fully aware of the wide range of heritage-friendly solutions to these issues because their incidence is too specialist for them to encounter them normally. ***Sometimes the need for LBC can be obviated altogether by reduction in the need for alterations.*** ~~Admittedly, conservation officers are in short supply and not all authorities have them. However, the relevant skills are available in the private sector and encouragement should be given to developers to employ suitable expertise when dealing with potentially problematic historic property.~~

The IHBC regularly monitors the provision of conservation officers in local authorities and has found that their numbers have been declining in recent years from a starting point of already incomplete local authority coverage. The same skills of balance and resolution can be available from specialist conservation professionals in the private sector. Encouragement should be given to developers to employ suitable expertise when dealing with potentially problematic historic property.

As mentioned in the opening paragraph, the IHBC represents the interests of historic building conservation in all its differing aspects and including those of the specialist architects, surveyors and developers in the private sector as well as those employed by LPAs on the regulatory side. The Institute represents the cause of best practice which allows an industry-wide consensus on the way the problems attaching to modern commercial aspirations in the heritage sector can be achieved. We would hope that the Review could endorse this broad approach in its findings.

6. The state of heritage protection legislation

It has to be said that this has been a bit of an issue recently. The Heritage Protection Bill failed to gain Parliamentary time and is currently parked. Notwithstanding this, the CLG and DCMS have been forging ahead with a remodelling of the advice that would have followed the Act but in a form that is not helping the administration of the planning and listed building systems under the current legislation. The Government's intentions for the Bill in the medium term is not known, nor is the extent to which a new Government might take a different approach.

Some aspects of uncertainty which the Bill was intended to rectify (the aftermath of the Shimizu case² for example) are not axial to the main issues facing the Review although, ideally, some consideration of the operation of the system through legislation is undoubtedly merited **but has not been identified as a priority for a long time..**

However, we suspect much of what happens in the foreseeable future will be constrained by financial pressures. We support the broad intentions of the Heritage Protection Bill in its support for the value of historic assets and the general principles for their conservation. We did have concerns about implementation costs which we did not consider properly resolved. Similarly we would urge you to consider that all change gives rise to implementation costs **and professional resources which** and that, at present, these are not merited by the limited gains that might accrue from partial deregulation of the sector.

Another casualty of the Bill was the proposal for heritage protection agreements which would allow owners of heritage property, by formal agreement with the LPA, to manage their estate in accordance with agreed principles without the need for LBC for works covered by the agreement.

7. Conclusion

The Institute hopes that you will agree with the Institute that:

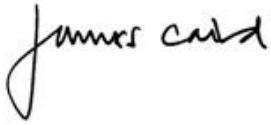
- heritage protection has not only intrinsic cultural **and community** value, but also helps to maintain development industry and employer confidence in the community's desire to maintain **and enhance** property values through urban design, conservation and place-making;
- statutory mechanisms are needed to ensure this;
- whilst some process changes might be merited these should be undertaken in a measured way, such as that recently adopted in the heritage protection review **so that all their consequences can be assessed**;
- the fact of separate consents being required for planning and listed building consents is merited by the special nature of heritage cases, **the different skills sets involved** and the need to avoid imposing special **unduly onerous** procedures on ordinary planning cases;
- most LPAs facilitate the process of obtaining listed building consent through unified procedures and specialist staff who are also able to help resolve conflicts between developer aspirations and other controls applying to historic property;
- there is little evidence that listed building control imposes unnecessary complication to the development process in the vast majority of cases **and the Review should not rely on unsubstantiated anecdotal evidence or special pleading by vested interests**;
- there is still a need for wider promulgation of advice on the use of specialist procedures and tools such as pre-application advice and Design and Access

2 This has been a reform to which the government has been committed since 1997

Statements which can help developers and LPAs to work together to produce optimum outcomes.

We should be grateful if you would take these points into account in coming to your findings.

Yours faithfully

A handwritten signature in black ink that reads "James Caird". The signature is written in a cursive style with a large initial 'J'.

James Caird
Consultant Consultations Co-ordinator