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BUILDING · CONSERVATION

Making Heritage Work

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Dear Sirs

IMPROVING LISTED BUILDING CONSENT

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. We attach as Appendix B, a briefing note which gives greater detail about the IHBC and how it operates.

Thank you for inviting us to participate in this consultation. We have to say that we were very concerned at the short time allowed for responses. Whilst we accept that the normal 3 months is more than necessary in many cases, a mere single month in a holiday period makes it very difficult for respondents to produce well-considered responses, particularly in matters of fundamental change such as these.

In starting we have to say that we find many of the proposals being consulted upon as perplexing because of the lack of evidence to support them. The assumptions made in their supposed benefits and costs (particularly as regards time saving) appear to fly in the face of the normal experience of Local Planning Authorities (LPAs) in particular.

Having said that, we have been able to gather opinion from our membership which comprises Historic Environment professionals in both the regulatory public sector and the project-orientated private sector. We hope this response will be helpful.

For convenience, we offer here both a summary and a more detailed examination.

Continues/

RESPONSE SUMMARY

Principal messages

- The IHBC appreciates that the intention behind the consultation is to ensure that the main management tool in the heritage protection system, the Listed Building Consent (LBC) process, remains fit for purpose in the face of widespread concerns over the current economic climate and severe limitations in public funding. Given the 31% drop in capacity in local authority heritage services since 2006, recorded in current research by the IHBC (supported by English Heritage), the IHBC is, more than many, aware of the root of the problems, both as regards the pressures conservation services face in delivering quality outcomes that also recognise public interest, and the concerns that private sector agents face in delivering their own services when there is no credible service available to them.
- However we do object strongly to the divisive thrust of the consultation, as it fails to understand the collaborative, inclusive, proportionate and pragmatic spirit that underpins good conservation practice and services. IHBC members operate equally across the private and public sector, and often both.
- All IHBC members are bound by a common code of conduct that gives priority to securing conservation outcomes. As these outcomes are based on the informed management of a valued resource, our historic places, they should be inherently compatible with the sustainable development priorities identified at the outset of the government's current National Planning Policy Framework.
- Similarly, the skills of the IHBC's full professional members are founded on an international conservation standard, the 1993 ICOMOS guidelines on education and training in conservation, and a project management framework mapped to World Bank models. Indeed Penfold specified the value and relevance of the IHBC's own professional skills set when he highlighted the need for properly skilled practitioners to be involved in relevant consent processes (Penfold 2010, 2.48). Reinforcing existing unity among practitioners, the ICOMOS standard also underpins the full range of conservation accreditation schemes operated by professional bodies across the UK. Unfortunately, rather than build on that commonality of understanding and practice, this document has promoted an unhelpful, and damaging, polarisation of the process of listed building management and conservation.
- We are equally disappointed that the consultation seems to set aside the potential service improvements to be gained through operating quality conservation services in favour of dramatic 'headline' solutions more often predicated on presuming service failings or, worse, directed at circumventing services altogether.
- We do not support the case that the proposals respond to key recommendations in the 2010 Penfold review. While reflecting some more minor suggestions, that report emphasised the need to raise service standards in quality conservation services and outcomes, not circumvent services, and highlighted the importance of capacity as well as appropriate skills sets, not least as those adopted by the IHBC and RICS among others.
- Despite our criticism of the main substance of the Consultation we are confident that there are ways in which the Consultation's Penfold objectives can be met, in particular through the positive use of accreditation. Consequently we ask for a return to the discussion process for a constructive review of how these might be

delivered without threatening transparency, public interest and personal rights or the heritage itself. Some of these are outlined on pages 10 and 11 of this response.

Key concerns from the consultation

- Option 1. A system of prior notification could cause an unnecessary increase in bureaucratic procedure and would be likely to increase processing times rather than reduce them.
- Option 2. Standardized local and national class consents are unlikely to be able to relate adequately to the endless variation encountered in dealing with historic building issues and would not be likely to reduce significantly bureaucratic burdens without sacrificing protection.
- Option 3. Certificates of Lawful Works may be helpful in limited cases but are unlikely to have any significant effect on the underlying objective of reducing bureaucratic burden.
- Option 4. The proposal to introduce recommendations for LBC by accredited agents are fundamentally flawed as the suggestion that the LPA would normally be expected to follow the agent's recommendation and that the agents would be effectively "certifying" the works as acceptable would make it impossible for the LPA to comply with section 16 of the Planning (Listed Buildings and Conservation Areas) Act, 1990 (the Act). IHBC considers that recommendations for and decisions on listed building consent should continue to be made entirely by the LPA, as the publicly accountable body and in accordance with the Committee on Standards in Public Life's *Seven Principles of Public Life*, also known as the "Nolan principles".

IHBC MAIN RESPONSE TO THE CONSULTATION

Introduction

The Institute supports changes in process that will reduce procedural requirements for applicants and developers as well as for LPAs, so long as proper protection for the significance of the historic environment - its 'special architectural or historic interest' in line with section 16 of the Act - is retained, with no loss of protection levels, and improved. We think that the nub of the issues presented to us in the Consultation depends on the retention of this balance.

We object strongly to the proposed shift of decision-making to accredited agents employed by applicants. We believe, and we think the general public would agree, that, in the interests of transparency, public interest and personal rights, as well as maintaining proper protection of the historic environment decisions on matters of public regulation should be taken by publicly accountable persons and bodies. Regulatory decisions should be taken, and seen to be taken, in the interests of the purpose of the regulation and not in those of the matter being regulated. We say more on this in our response to Q8.

We have responded to the Consultation questions as put, but, in our discussions, a number of issues have recurred that we think might best be put as preliminary points.

1. The existing provisions are relatively straightforward in structure as operated by most LPAs and are easily understood by applicants and the public. An enquiry to the

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LPA (usually informal, with a confirmatory letter if required) establishes whether LBC is required and whether there are any matters of significance that require attention in an application. Applications are determined and there is a right of appeal in cases of disagreement between the applicant and the LPA. The keys to process efficiency are the applicant's early understanding of requirements and the familiarity of the Conservation Officer with the proposal throughout.

The proposals would complicate the procedure by creating one or more additional approaches to dealing with Listed Building issues. We are far from convinced that these will significantly improve access to the process for most applicants and developers in any way that Best Practice Guidance on procedure would not. In support of this we would refer to the circumstances of some typical cases:

- Many LBC applications arise in parallel to proposals requiring planning permission. Most LPAs deal with the two applications either as a single case with a single file or together as linked files. This aids statutory and non-statutory consultation, public consultation and, most importantly, allows issues arising from the two regulatory regimes individually to be resolved during the case review by the LPA. The same applies to Building Control and other statutory regimes. It was a Penfold objective that that regulatory controls be better co-ordinated, not fragmented.
 - But the relationship with planning permission is particularly difficult in relation to Option 4. This is because responsibility for the exercise of the statutory duty under s16 of the Act for the application for LBC would be in the hands of the accredited agent, whereas the responsibility for the statutory duty under s66 for the for the parallel planning application would remain with the LPA.
 - In the case of larger-scale proposals, the submission of Heritage Assessments (often prepared by appropriately qualified consultants) and Design and Access Statements greatly aids the application process for the LPA because they allow matters of agreement and matters requiring attention to be quickly distinguished.
 - With the exception of giving more status to the Heritage Assessment (which we support in principle – see Q8 below) we do not think that the Consultation proposals will be very helpful in such cases as they will add time-consuming processes which are normally more expeditiously dealt with through informal discussions between the developer's and LPA's historic environment (HE) professionals.
 - Many LBC applications arise through renovation projects in listed privately owned houses and other property. In these cases the lead is often the applicant him or herself, a jobbing builder or specialist installation company, or a plan-drawer with no specific HE skills. Lack of expertise in these cases is widely reported by IHBC members who work for LPAs. Significant numbers of applications and informal approaches that are so vague in their content as to be incapable of being understood. In such cases, the optimum approach from the LPA is often early inspection and advice, rather than the want of formal procedure.
2. Because significance in the historic environment and the evaluation of special architectural or historic interest in the context of proposed change are largely a matter of professional judgement rather than fact, it follows that more that differing views about proposals are frequent and that no one HE professional has a monopoly of expertise and understanding. This applies equally to HE professionals employed by LPAs and the private sector. One of the benefits of the current system (as we set

out in paragraph 1) is that such differences may ultimately be tested at appeal. The Institute is implacably against any procedure being introduced that allows the view of consultants on behalf of the developer to be incapable of challenge by the LPA. We are particularly alarmed by expressions such as "...replacing local authority conservation officer recommendations for LBC by those made by accredited agents, if LBC applicants wish to do so...", as this implies no role for the LPA or the public interest, whether or not expressed by the local community.

3. We do not think that proposed measures for listed building control to meet Penfold objectives should be compared with similar existing measures in planning and building control. This is because planning and building control deal in matters in which proper compliance can be tested retrospectively in observed outcomes. In listed building control works of removal, replacement and modification cannot be undone (or even in many cases observed) after the event. We think it follows that procedural proposals for listed building control must meet the special circumstances that exist.
4. We are very concerned that some LPAs may see the proposals as a potential reduction in workload and thus a justification for reductions in conservation advice that is in fact essential for the proper management of the historic environment. We do not see this as being in the public interest, as a proper balance of professional conservation advice on LBC applications is essential to ensuring that the special interest of our built heritage as a whole is not eroded by the cumulative effects of ill-considered proposals.

Instead the proposals should offer an opportunity for a greater proportion of works to listed buildings to benefit from the advice of conservation professionals and as an incentive for the small but significant percentage of LPAs that are currently inadequately staffed and/or resourced to move towards best practice. We hope this view would be supported in any Guidance on new procedures that may be issued.

5. We think there is some ambiguity in the way in some of the proposals are presented. While the requirement for listed building consent is often a matter of opinion, strictly speaking works to a listed building either do or do not require consent. We know that there have been complaints by some developers that some LPAs require applications for LBC "to be on the safe side" and we do not endorse this practice. But, in order to maintain the distinction, any of the proposals which may be adopted should ensure that it is clear, case by case, that either:
 - The special interest of the building is not affected and LBC is not required; or
 - The special interest is affected and LBC is required.
6. Section 16 of the 1990 Act makes clear that consent matters are founded on the consideration of 'special architectural or historic interest' in the context of the application. This demands competent advice based on appropriate skills, knowledge and understanding in conservation, balancing cultural values against the need for change. Providing encouragement and incentives for clients AND regulators to benefit from relevant conservation accreditation programmes will add both efficiency and quality to the consent process.

Accreditation programmes developed and operating in accordance with the international standards crystallised in the 1993 ICOMOS 'Guidelines for education and training in the conservation of monuments, ensembles and sites' (ICOMOS, 1993), represent the well-established, credible and recognised foundation for the kind of efficiencies that the consultation seeks. However at no point do these guidelines aspire to serve as a basis for replacing the need for public oversight.

We now turn to the questions posed by the Consultation.

Question 1: Do you agree with the proposal to introduce a system of prior notification of works to a listed building, leading to deemed Listed Building Consent if the local planning authority does not request a full application within 28 days? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

Most LPAs will offer an opinion, in writing if necessary, as to whether LBC is required and (we are assured by many) in less than 28 days. The Institute regards this as good practice as it allows advice to be given at the same time. Timely advice usually saves time and other resources for both applicant and LPA.

Formalizing this process with provisions for “deemed consent” carries risks with it:

- It blurs the boundary between the requirement for consent and the acceptability of proposals referred to earlier.
- The rate of incidence of LBC applications that are less than satisfactory for want of adequate information would tend to show that many prior notifications would not contain sufficient detail for an LPA to determine whether LBC is needed or not. With an imposed “deemed consent” deadline it seems likely that full applications will often be requested because of this and not because of a proper assessment of requirement. We would not support such practice but can see how circumstances might force LPAs to adopt it.
- In fact, in many cases notifications would be held up prior to registration by the LPA for want of adequate detail and scrutiny of this would fall to the very conservation staff the proposal is supposed to be assisting.
- The vast majority of LBCs have conditions attached relating to specific materials or techniques. These can be attached to informal advice (e.g. “You do not need LBC so long as the pointing is carried out to the specification set out on the attached sheet”) but cannot be attached to a “deemed consent”. This means that the procedure would almost certainly engender unnecessary LBC applications at least in LPAs where timely advice is currently routine.
- It is anticipated that such a process would be an open one and once in the public domain the involvement of the local community would be likely to engender interest late in the process. If the process were not open to scrutiny it could run against the open and consultative principles of control.
- When consent is required, which may be often, it would be necessary for the LPA to handle the application twice, and may have delayed the granting of LBC by the equivalent of the time elapsed so far. It is likely that many notifications will run towards the end of the time before a decision is made, which may still be that LBC is necessary, and thus add a further month to the existing process.
- It will be difficult to define the threshold of risk or maximum level of works which would go through this process and which work would be serious enough to require direct processing through the normal process requiring consultation and external input.
- In some local authorities, especially those with a single conservation specialist or using external consultants on an occasional basis it may be that 28 days is insufficient time to ensure that the notification is dealt with adequately.

- The process will introduce a further level of administrative burden in registration of notifications.

We feel that the proposal is likely to add time to the average proposal. On the whole we would favour the perpetuation of informal advice to potential applicants. We would hope that the Government could reinforce this in Best Practice Guidance.

Where a formal declaration is sought by the applicant the proposals the Certificate of Lawful Works to Listed Buildings for proposed works procedures could be used. We say more on this in our response to Q6.

Question 2: If you are commenting from a Local Planning Authority, are you able to comment on the proportion of your LBC applications which require amendment or the application of non-standard conditions prior to consent? If you are able to supply supporting information, please set it out clearly, or indicate where it can easily be accessed.

There appears to be a consensus amongst our members in LPAs that a majority of applications require some amendment before they are acceptable and most require conditions. See also our comments under the second and third bullets points to our response to Q1.

Question 3: Do you agree with the proposal to introduce a voluntary system of local and national class consents? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

The Institute thinks that this proposal has some merit and could be workable subject to some caveats:

- Many class consents would need to be subject to standard conditions on the use of materials (e.g. "the mortar be made from lime putty and shall not contain cement" or "gypsum plaster shall not be used") techniques (e.g. "the area to be pointed shall be raked out with hand tools. Disk cutters shall not be used") as well as siting (satellite antennas and "green infrastructure").
- The problem with national class consents is that it will be harder for them to pick up the great variety of traditional regional building practice that makes our built environment so vigorous.
- Local class consents might suffer from the opposite effect of creating a confusing patchwork of non-standard consents.

We think national class consents would be suitable for historic infrastructure as suggested in the Consultation. Works to railway and canal bridges, for example, require specialist engineering input which is not directly available to most LPAs. Such class consents could, subject to consultation, be worked up with the infrastructure bodies themselves but should still ensure the involvement of local authorities with an interest in the particular building type.

If local class consents are to be introduced, the Institute thinks that they could have one or two forms:

- They could be specific to an individual property or estate for dealing with repeating situations which have standard solutions and requirements. This measure would amount to much the same thing as the proposed provisions for

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Heritage Partnership Agreements and consequently are unlikely to have significant application.

- Class consents subject to “model class consents” in the manner of the “model building bye-laws” which existed before the introduction of the Building Regulations in 1971.
 - These could be formulated by consortia of LPAs (or practitioners) with an interest in a particular building type or technique with appropriate expert guidance and be endorsed (say by English Heritage) for general use.
 - They could be adopted by LPAs with local amendment. It would be hoped that local amendment could be kept to a minimum through LPA involvement in the formulation of the “model class consent”.
 - This would ensure relative uniformity of approach and would save LPAs from having to create class consents individually themselves which may be beyond the available resources of many in any event.

Question 4: If you are commenting from a Local Planning Authority, are you able to comment on the likely applicability of this option (2) within your area, in terms of the kinds of listed building and type of works to which it might be applied? If you are able to supply supporting information, please set it out clearly, or indicate where it can easily be accessed.

We are not an LPA.

Question 5: Which of the options set out in this consultation to reduce the number of LBC applications for works with limited or justifiable harm to special interest (Options 1 and 2) do you prefer? Please state the reasons for your preference.

The Institute prefers Option 2 but does not see these as alternatives in practice. In our view, subject to the provisos we have expressed and the reasons we have given, we would endorse the adoption of:

- The current widespread practice of the informal determination of whether LBC is required properly established under Best Practice Guidance. We would be happy to participate in the preparation of this.
- Allowing for formal determinations to occur through Certificates of Lawful Works to Listed Buildings, in the small number of cases in which this is required.
- A small number of national class consents where these make sense, such as the circumstances set out in the Consultation.
- A national scheme of “model class consents” for local adoption.

Question 6: Do you agree with the proposal to introduce;
a) a Certificate of Lawful Works to Listed Buildings for proposed works;
b) a Certificate of Lawful Works to Listed Buildings for works already undertaken?
If not, please clearly state your reasons and your views on the approach you consider the Government should take.

We support Option a) which is *de facto* already widely in use informally in practice. We agree with the sentiments expressed in the Consultation as to the benefits of its availability and use.

The Institute objects strongly to the introduction of Option b). In many cases it would be impossible to tell whether historic fabric and features that existed before works were undertaken contributed to significance. We think this provision would create an open invitation to malpractice and would undermine the listed building enforcement regime, particularly as unauthorized works to a listed building which affect its special character are an offence.

Question 7: If you are involved in the Listed Building Consent system either in a Local Planning Authority or any other capacity, can you provide further information on the following;

- a) possible numbers of LBC applications currently made due to the lack of a formal mechanism for LPAs to confirm whether or not consent is needed;**
- b) the numbers of informal requests received or made every year concerning the need for LBC;**
- c) how such queries are handled?**

As a professional Institute we have no direct access to data on these matters. However, we have received a great deal of comment from our members who work for LPAs and it is on the basis of this that we have informed our opinions on the other Consultation questions.

We also find it somewhat strange that this Consultation makes proposals for which answers to these questions might be expected to be vital evidence.

Question 8: Do you agree with the proposal to introduce a system whereby accredited independent agents provide expert reports on LBC applications directly to the LPA? If not, please clearly state your reasons and your views on the approach you consider the Government should take.

The Institute strongly objects to the proposals in the terms they are put for the following reasons:

- We believe, and we think the general public would agree, that decisions on matters of public regulation should be taken by publicly accountable persons and bodies. Regulatory decisions should be taken, and seen to be taken, in the interests of the purpose of the regulation and not in those of the matter being regulated, and in accordance with the Committee on Standards in Public Life's *Seven Principles of Public Life*, also known as the "Nolan principles".
- Comparisons with Building Control are invalid in our opinion because Building Control is largely a technical discipline in which compliance can normally be tested as a matter of fact.
- Listed Building Control involves finesse of judgement often in which heritage significance has to be weighed against economic and social factors.
- To put such matters largely or wholly in the hands of a single person, however well qualified, and irrespective of his or her professional integrity, fails the

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requirement that the decision must be seen to be taken entirely independently of the interests of the applicant.

- We also think that there are too many uncertainties about the workability of the Option 4. In addition to those already posed in the Consultation we would add:
 - The relationship with planning permission is particularly difficult. This is because responsibility for the exercise of the statutory duty under s16 of the Act for the application for LBC would be in the hands of the accredited agent, whereas the responsibility for the statutory duty under s66 for the for the parallel planning application would remain with the LPA.
 - The difficulties associated with setting up an accreditation scheme and the cost of doing so (see Q9, and the structures underpinning existing accreditation systems outlined in the introduction to this response).
 - The extent to which LPAs could rely legally on the recommendations (and consequences of them) being submitted by accredited agents. In particular we have concerns about legal challenges to decisions under s63 of the Act and complaints to the Local Government Ombudsman.
 - What implications there are for professional indemnity insurance were statutory reliance to be placed on accredited agents' recommendations.

However, the Institute thinks there is merit in allowing an increased role for accredited agents which would:

- Have many of the benefits of those parts of the Option 4 proposal that include making good use of private-sector expertise as set out in paragraph 6.5 of the Consultation.
- Retain the decision-making role of the LPA in line with the position set out in paragraph 6.4 of the Consultation.
- Address the challenges acknowledged in paragraph 6.6 of the Consultation.
- Remove the need for specific new accreditation which could be covered by existing professional accreditation schemes which comply with ICOMOS 1993 and thus deal with the caveats at paragraph 6.7 of the Consultation.

We think that it is wrong for the potential for an increased private sector contribution to listed building control to be presented in a confrontational way with a starting point that assumes there will be irreconcilable differences of opinion between an accredited agent and the Conservation Officer of the LPA and for each to need express their view in their own Report.

We would support a more collaborative approach, in which consensus is normally achieved.

We envisage the process as follows:

- It is currently best practice for Heritage Assessments to be submitted with applications for LBC. Where these are prepared by accredited agents they can be very helpful to the process of considering the application. Where the new process is invoked a distinguishing term for the submission might be advisable to distinguish it from an ordinary Heritage Assessment. Here we use "Heritage Statement".

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- We regard as a general analogy for the Heritage Statement the “Statement of Common Ground” prepared in appeal cases, usually in the first instance by the appellant, but subject to revision by agreement.
- Thus the Heritage Statement would be prepared by the accredited agent and would include the following, most of which one might expect to see in a Heritage Assessment in any event:
 - An appraisal of the listed building, its history and the characteristics which constitute its significance.
 - A assessment of the impact of the proposals on that significance, including the balance of weight given to heritage and non-heritage matters.
 - A description of any ameliorative or compensating proposals.
 - A summary of any discussions held with statutory amenity societies, EH, other expert advisers and the local community and how any views expressed have been taken into account.
 - A list of suggested conditions.
- The Heritage Statement would be considered by the Conservation Officer of the LPA who would make suggestions of amendments considered necessary to make the proposal acceptable to the LPA. With constructive pre-application discussions having taken place, one might hope that often such amendments would not be significant.
- If the accredited agent agreed to the amendments these would be duly made and the Conservation Officer would report to the decision-maker “I endorse the [amended] Heritage Statement and recommend LBC be granted subject to the conditions contained in it”.
- Thus in many cases there would be no need for the Conservation Officer to be put to the trouble of preparing a separate Report.
- If there remained matters in the Heritage Statement that could not be resolved in the manner suggested, the Conservation Officer would be able to Report to the decision-maker on those areas of difference.
- An aggrieved applicant would have the right of appeal as normal but the scope of any appeal would already have been reduced to the stated points of difference between the parties.
- In this model the Heritage Statement is “owned” by both parties and represents a professional consensus. In addition to informing decisions under s16 of the Act, it could also be used to inform any parallel planning decision under s66. This would be a benefit not offered by the Consultation proposals.

We think it follows from this suggestion that, if Heritage Statements must be submitted by accredited agents, responses to them by LPAs must be by equally qualified people. We think that this may create resource issues for a minority of LPAs and there should be sufficient notice of the introduction of these provisions to allow them to make suitable arrangements.

Question 9: If you are commenting from a one of the professional institutes listed, are you able to comment on the likely impact on your institute of establishing, monitoring and administering such an accreditation system to support this option? If you are able to supply supporting information, please set it out clearly, or indicate where it can easily be accessed.

The Institute believes that the costs associated with administering an *ad hoc* accreditation scheme would be great, especially in relation to likely take-up. If costs were to be covered by those applying for accreditation then the take-up might be insufficient to make the proposal viable at all.

Any such accreditation system would need to adopt core elements of the IHBC's regulatory and operational structure: inter-disciplinary and ethically focussed on practical historic environment outcomes while at the same time representing a balance of public and private interests. As such, and with more than a decade of detailed experience in operating as a professional body supporting conservation alongside mainstream built and historic environment professional and third sector interests, the IHBC considers itself is best placed to assess the potential market and economic and operational feasibility of a new 'accreditation system'.

The Institute is clear that extending inter-disciplinary, ethical and operational reach into a wholly new partnership between client interests, professional bodies (often with quite distinct ethical and operational priorities themselves), national regulators, local government and third sector parties is not realistic. The 'Edinburgh Group', hosted by COTAC, would be a natural starting point if such a scheme were to be developed, but the integrated accreditation it has been working towards is still some time away, and even then it would not address the core challenges raised by the posited 'accreditation system', of addressing public interest issues.

We think that the difficulties associated with such issues were well explored in an article by John Preston in *The Journal of Architectural Conservation* in 2006 which we attach as an extract at Appendix A with more recent updates on the slow but important progress in this area provided in our 2011 and 2012 Yearbooks (extracts in Appendix A1).

Existing accreditation schemes driven by the grant aid requirements of English Heritage have focused on repairs to historic buildings, not alterations or extensions. The pan-professional Accreditation Framework developed by the "Edinburgh Group" of professions is similarly focused on repairs, and would need significant development and re-writing to cover the skills needed for listed building consent proposals.

Even though the accreditation incentive for grant-aid purposes has been in place for 10 years, the number of conservation-accredited professionals remains tiny by comparison with the listed building workload. When the workload peaked in 2004-5, there were under 300 accredited architects and under 70 accredited surveyors in England. Heritage Counts showed there were then nearly 200,000 applications affecting historic buildings: 35,000 listed building consent applications, 3,400 conservation area consent applications, and over 160,000 planning applications with conservation implications (25% of the total, a conservative estimate). In 2010-11, the number of applications had declined by just under 30% to 142,000: 29,168 listed building consent applications, 3,210 conservation area consent, and nearly 110,000 planning with conservation implications. The current (August 2012) total of conservation accredited professionals in England totals just 617, comprising 523 architects (398 AABC, 76 specialist RIBA, 49 conservation RIBA - and excluding 31 "registrants" not recognised as able to work on listed buildings), 62 surveyors, and 32 engineers. Even with the drop in applications, there are still 230+ applications per accredited professional.

While the number of accredited professionals has increased, it is on nothing like the scale needed to up-skill the private sector and the accreditation schemes will need to be changed, with existing accredited professionals needing to be re-accredited for new skills, before the consultation proposals could be implemented.

The need for greater conservation skills in the private sector is long-established. However the private sector can complement and reinforce, but cannot replicate, the role of public sector conservation professionals. Even a massive increase in the number of private sector accredited professionals, each involved with a limited number of projects, would have far less influence on the total of projects affecting historic buildings than that provided by the LA conservation professionals who each see, and are able to influence, far more projects.

However, we think that there would be no requirement for specific accreditation if our proposals under Q8 were pursued instead. We think that existing accreditation regimes under frameworks subscribing to the ICOMOS conservation training standard of 1993, which underpins existing public processes such as grant disbursement, would provide the basis for a timely, pragmatic and effective solution. Introducing, and securing buy-in, for an entirely new concept of consent would not deliver the outcomes that the consultation seeks within a time-scale relevant to the issues at hand.

As things stand, the IHBC is a full professional institute with exacting membership standards, compulsory CPD and full disciplinary procedures. Many IHBC members are also members of other professions – particularly architects and planners – and are also subject to the regulation of those professions. We think that full membership of the IHBC is sufficient accreditation needed to enhancing service standards in the manner the consultation seeks, as our Code of Conduct requires members not to undertake work for which they are not appropriately qualified and experienced. We would treat any alleged breach of the accreditation protocol as a breach of professional discipline.

We think these terms would meet the requirements of any accreditation protocol. Similarly, other existing conservation accreditation schemes, operating under the banner of the Edinburgh Group and within the ICOMOS 1993 framework, observe standards no less fit for their own purposes. However, as conservation is by definition a collaborative process, we cannot conceive of a scheme that would be developed purposefully to exclude the interests of others in the manner suggested in the Option 4 scenario.

Question 10: How should the existing heritage accreditation scheme be modified or replaced to accommodate this proposal? What professional standards and enforcement would be needed to cope with the potential conflict of interest, and should agents scope be constrained through national government?

As stated in response to Q9, and as indicated in our opening remarks, we think that the scenario highlighted in Option 4 fails on the grounds of transparency and feasibility and so is unnecessary and inappropriate, and can be circumvented with the adoption of the approach we advocate in answer to Q8.

Question 11: Should the proposal for advice be extended further, as some stakeholders have suggested, for example allowing accredited agents to certify LBC directly themselves?

The Institute's response to this question is "no". "Self-service" LBCs would patently lead to abuse and significant losses of national heritage. It would remove the possibility of

community input into the determination and would fail the transparency test for decision-making and the ultimate possibility of legal redress. However, we do see a significant potential increase in the involvement of accredited agents in the LBC process as set out in our answer to Q8.

Question 12: If you are commenting from an authority which is able to take action under Enforcement and Compulsory Purchase powers, can you give any examples of where you have done so, or can you comment on the reasons why you have chosen not to?

The Institute has no direct experience of this. Our members' most often reported difficulties relate to the legalistic nature of the provisions and the resources required to carry them through including lack of political will; lack of heritage expertise among LPA enforcement officers; lack of clarity on roles between heritage specialists and enforcement specialists; infrequency of cases and the maintenance of expertise within local authority legal teams; unsuccessful court actions; perceptions of the length of CPO timescales; and uncertainty about recovery of costs.

Question 13: Do you consider that amending the legal powers relating to Urgent Works Notices, Repairs Notices and Compulsory Purchase could be effective in encouraging authorities to pursue cases of neglect to listed buildings? If so, please clearly state your reasons.

A number of our members have responded on this point. Detailed points are:

- The most reported problem with LB enforcement against neglect are to do with resources and cash-flow. The processes are extremely lengthy and the prospects of a significant return of money spent are often negligible. Thus there is little incentive for LPAs to embark on these processes.
- A centrally held revolving fund to support local authorities in taking statutory action would be useful if adequately resourced.
- Section 54 currently requires works to be urgent and temporary. Both of these requirements hinder works being carried out quickly and in the most cost effective way. Many buildings are left until in a very poor state in order to carry out works which are truly urgent and works which are temporary often do not last long enough to see the building through to permanent repair.
- S54 notices should also be capable of being served on occupied property. It is the stitch-in-time approach that s54 provides that can save LPAs and the owners of the building substantial sums in the long term.
- There are reported problems with the CPO provisions for compensation. It seems these rarely reflect the actual costs associated with the CPO and restoration. Thus the equation which properly should be *Valuation on restoration – cost of restoration = current value* still produces net cost to the enforcing authority.
- In order to justify payment of “minimum compensation” it would be helpful if the need to prove deliberate neglect were to be removed.
- We think that the Buildings at Risk Register might be given a statutory status such that the compensation provisions at CPO taper to £0 over time (we suggest that after 3 years on the BaRR statutory compensation reduces to 80% of

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assessed value in year 4, 60% in year 5 and so on until £0% in year 8). For owners with no realistic expectation of the resources to deal with their neglect, this would provide an incentive to to dispose of the building to someone who has earlier rather than later. This might increase the numbers of listed building rescues not reaching the CPO stage. This approach would also deal with the problems associated with off-shore ownership.

Question 14: Can you propose any further changes or amendments, including non-statutory changes, beyond those suggested here, which would provide additional benefits or improvements to protect Buildings at Risk?

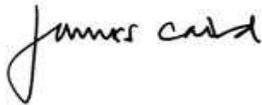
Consideration could be given to improving conservation standards by statutory specification of materials and operations that always require express LBC such as cement in mortar, use of gypsum, disk cutters and angle-grinders.

Consideration could be given to introducing National Historic Building Specifications for individual fabric types.

Without much hope of success, we continue to suggest, as we have consistently, that a reduced rate of VAT for works to listed buildings would not only help bring about the repair of buildings at risk but also secure the future of listed buildings more widely.

We hope these comments are helpful. We would be happy to participate in discussions on their implementation.

Yours faithfully



James Caird
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