

Better heritage laws, but what about the workers?

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The Draft Heritage Protection Bill 2008 proposes the first significant heritage legislation since 1990. Much of its content is to do with rationalising and tidying-up existing measures, but there are some significant changes.

There are to be four categories of 'heritage assets', all set out in a 'heritage register for England' to be maintained by English Heritage:

- 'Heritage structures'. This will be the new name for listed buildings and scheduled ancient monuments, to be brought together in a new unified register (my guess, though, is that the term 'listed building' will stay with us for a long time, like the MOT Certificate).
- 'Heritage open spaces'. A separate category will cover registered parks, gardens, battlefields etc.
- World heritage sites. Surprisingly, these do not have statutory recognition at present.
- Marine heritage sites.

The register will be available on-line.

Decisions about new listings will in future be taken by English Heritage, rather than by a DCMS minister on the advice of EH as at present. Two new measures accompany this change:

- Buildings put forward for listing will have provisional protection until a decision is made.
- Once a listing decision is made by EH, interested parties may appeal to the Secretary of State.

The definitions of what can be included in new listings are widened to include, for example, field systems. New listings will define clearly what structures on a site are and are not listed, avoiding arguments about what is included in the 'curtilage'.

Heritage partnership agreements, already trialled by EH in a number of cases, are put on a legal footing. They allow building owners to agree with local authorities that certain classes of work to heritage structures can be carried out without the need for further consent. This will be useful on large complex designated sites (the Barbican, for example) where at present any work however minor may technically need listed building consent.

This is an example of a important development which underlies various aspects of the new legislation, and other recent documents such as 'Conservation Principles – Policies and Guidance' issued earlier this year by EH: the increased emphasis on understanding, and explaining in designations, what it is about heritage assets that is significant. This is reflected in more recent listings, where the information given about what is being listed is far more detailed and helpful than with older examples.

Changes to conservation area legislation are dealt with only sketchily in the Bill – details will follow - but the Government's intentions are explained. Two anomalies that have arisen from case law are to be dealt with. First, the consequences of the *Shimizu* ruling are to be addressed, so that in future, conservation area consent will be required to demolish part of a building in a conservation area, not just for total demolition. Secondly, the Bill deals with the outcome of the *South Lakeland* case, so that planning applications in conservation areas will have to demonstrate that they benefit the area, not merely leave it unharmed.

The Bill also sets out the intention to give teeth to the system of designation of locally listed

buildings – at present, local authorities can make such lists, but in law, buildings so listed, if not in a conservation area, have virtually no more protection than any other building.

The Bill is welcomed, in general terms, in a detailed response to the draft which has been made by the RIBA jointly with several other professional bodies including the RTPI and IHBC. The response observes, neatly, that this reflects the joined-up thinking that the subject matter requires.

In Government, though, the competing needs and pressures of heritage protection and regeneration and economic development will no doubt continue to be played out in the conflicts, or creative tensions, between different departments; and this will be mirrored as it always has been at local authority level.

It remains to be seen how the proposals contained in the Bill will affect the working life of the architect. The new Act (probably next year) will be followed by a revised version of PPG15 ('Planning and the historic environment'), likely to be combined with the present PPG16 on archaeology. The wording of this new document will be worth looking at closely when drafts are published, as it can be expected to have more practical effect than the law on how projects which affect the historic environment are dealt with.

There are many problems with the planning system for architects working in this area, and many of these reflect wider problems to do with capacity and skills within planning departments. Before determining an application for 'heritage asset consent' (listed building consent as was), a local authority will now be obliged by the new Act to take expert advice. New legislation is supposed to be brought in only with a clear understanding of the resource implications of enacting it. Taking the optimistic view, perhaps the new set of laws and guidance will lead to the refreshing and re-energising of what are often Cinderella departments within planning

authorities. Such an outcome would however be a triumph of hope over experience.