



Constructive conservation

Constructive conservation. This encapsulates what is at the heart of “Heritage Protection for the 21st Century”, the White Paper published by the Department for Culture, Media and Sport setting out its proposals for reform of the heritage protection system. Years of research by English Heritage lie behind this paper. Its aim is simple: to create the best possible heritage protection system. This means a system that recognises the importance and value of our historic environment, whilst being simple to understand and use and within which the voice of local communities is heard.

Central to the proposals are three fundamental principles:

- To develop a unified approach to dealing with the historic environment;
- To maximise opportunities for inclusion and involvement;
- To link the historic environment to the planning system in order to support sustainable communities.

Developing a unified approach

One national system of designation

The historic environment is enormously diverse. Over the years unhelpful distinctions have arisen which the existing heritage protection regime has reinforced.

It is proposed to replace the current systems of listing, scheduling and registration with a single national system that will designate all historic buildings, archaeological sites and historic sites. So listed buildings, scheduled monuments, registered parks, gardens and battlefields will be amalgamated under one regime, which will be underpinned by one overarching statutory definition of historic asset. Responsibility for national designation will transfer from the Department of Culture, Media and Sport to English Heritage, who will operate a single set of statutory selection criteria. These criteria will be wide, simple and flexible, and supported by other non-statutory criteria, all of which are aimed at making the designation process easier to understand. Grading, which will be retained, will be clarified and extended to all nationally designated assets.

Conservation areas are strongly valued and their designation at local level will remain. New criteria and good practice guidance will be published to assist local authorities.

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A new right for an owner to appeal a designation will be introduced.

How the new designation system will work

Currently, each designation system is independently maintained and is based upon records of varying quality. Timescales for dealing with applications can be anything from two months to several years and consultation is often non-existent.

The new system proposes a register of historic buildings and sites in England upon which every designated historic asset in England is recorded. Each record will be in the same format using an historic asset record. This has been designed to record enough information to aid understanding of the reasons for designation, but being short enough to be workable. All new designations will be mapped, which will help clarity, particularly the identification of linked registrations, for example, the gardens surrounding an historic house.

Maximising opportunities for inclusion and involvement

A standard on-line application form will be introduced, and any individual or community will be able to nominate an asset for designation. Upon receipt of a designation application formal consultation will start. For the first time this will take place with the owner, as well as the local planning authority and relevant national societies, enabling representations to be made simultaneously with research by English Heritage. This is subject to English Heritage's power to reject an application at the outset on the basis that the asset does not meet the criteria for designation (approximately 25% of applications are rejected on this ground). The consultees will be asked how they consider the asset in question fits with the statutory designation criteria.

When public consultation commences an asset will be placed under interim protection, effectively treating it as if it were designated. Interim protection continues until the end of the designation process. Where an asset is not designated this means to the end of the period within which an appeal can be brought or, if an appeal is lodged, a final decision made upon an appeal. Building preservation notices will become obsolete.

A new right for an owner to appeal a designation will be introduced. An appeal against English Heritage's decision must be brought within 28 days. Appeal is to the Secretary of State, who will have appointed an independent panel. The Secretary of State will either select a panel member with particular expertise or ask for the recommendation of the panel as a whole.

Links with the planning system

30% of planning decisions have heritage implications¹. There is unquestionably scope for greater integration of the differing consent regimes, albeit a degree of distinction between heritage and planning controls should be retained, concludes the White Paper. It is proposed to remove the distinction between listed building consents and scheduled monument consents, and replace these with a new unified consent for registered buildings and archaeological sites called "historic asset consent", which will be determined by local planning authorities. Historic sites such as parks, gardens and battlefields will continue, as presently, to be dealt with in the planning system.

¹ Heritage under Pressure, English Heritage, 2002

It is proposed to abolish the separate conservation area consent and merge it with the planning process. Satisfactory levels of protection will be maintained by the issue of statutory guidance clarifying that conservation professionals should be involved in planning applications and pre-application discussions for sites within conservation areas. The power to designate conservation areas will remain with local planning authorities.

Heritage Partnership Agreements

Management agreements between the stakeholders in the asset (owner/manager/local authority/English Heritage) have proved they have the potential to significantly ease dealings with complex sites. It is therefore proposed to make statutory provision for management agreements, to be called historic partnership agreements. They will be a voluntary option, most suited to complex sites in single ownership. By permitting local authorities to give advance consent and encouraging a dialogue between all interested parties heritage partnership agreements should reduce the number of unnecessary consent applications. English Heritage intends to produce guidance on the use of these agreements, in advance of legislation.

Comment

This bulletin sketches only an outline of the major proposals of the White Paper. The Paper is researched, measured, balanced and positive. Successfully managing the historic environment in the 21st Century is an enormous challenge. We place great importance on our historic environment in this country and few dispute our duty to future generations to preserve irreplaceable assets. But this shouldn't mean ossifying them. This White Paper recognises the need not just to adapt to change, but to proactively and positively manage that change, engaging the energies of communities in the process.

Mayer, Brown, Rowe & Maw LLP advises AIB on financing of The Gate in Newcastle



Iain Thomas

Mayer, Brown, Rowe & Maw LLP's London real estate finance team has advised Allied Irish Banks plc London Capital Markets Real Estate team on its recent financing of the purchase by Glenn Maud's PropInvest of The Gate in Newcastle for £76.5 million.

Formerly owned by Land Securities, The Gate, which opened in 2002, includes restaurants, bars and clubs, an Aspers Casino and an Odeon cinema.

The Mayer, Brown, Rowe & Maw team was led by London real estate partner Iain Thomas and finance partner Nigel White assisted by finance associate Sahba Akhavan.

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