

HISTORIC ENVIRONMENT FORUM

CONSULTATION: HEF HERITAGE PROTECTION REFORM PROPOSALS

THIS CONSULTATION

The Historic Environment Forum (HEF) in 2014 set up a working group, the Historic Environment Protection Reform Group (HEPRG), to devise solutions to address the continuing reduction in heritage resource in local authorities (see Chapter 1).

HEF consulted key heritage stakeholders on 15 proposed reforms at workshops in October 2015. These proposals have been worked up in more detail, and HEF is now seeking further input from a wider group of stakeholders.

This consultation is being run by HEF. It applies only to England. This is a heritage sector (not Government) consultation, and these are heritage sector proposals, though Government is aware of them and has taken a positive approach. The consultation is open to anyone, and responses are especially welcome from heritage and planning stakeholders including local planning authority staff and applicants.

The purpose of the consultation is to keep stakeholders informed, to seek feedback in general terms, and to seek answers to more specific questions.

There is a consolidated list of consultation questions at the end of this paper. You are not necessarily expected to answer every question, and some stakeholders may wish to answer only the final question (Question 12), which gives an opportunity to comment on the proposals more generally. HEF is however particularly interested in answers to the more specific questions which precede it.

This consultation **opens on 22 July and closes on 19 September 2016**. Responses should be sent to The Heritage Alliance acting as the Secretariat to the Historic Environment Forum: kate.pugh@theheritagealliance.org.uk or Kate Pugh, The Heritage Alliance, 10 Storeys Gate, London SW1P 3AY.

HEF would like to thank you for your help.

22 July 2016

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LIST OF ABBREVIATIONS

CDTG	HEF Skills Client Demand Task Group
D&AS	Design & Access Statement
DCLG	Department for Communities and Local Government
DCMS	Department for Culture Media and Sport
HE	Historic England
HEF	Historic Environment Forum
HEPRG	HEF Historic Environment Protection Reform Group
LA	Local authority
LBC	Listed building consent
LBCO	Listed building consent order
NPPF	National Planning Policy Framework
PPG	Planning Practice Guidance

CHAPTER 1

INTRODUCTION

- 1.1 The Historic Environment Forum (HEF), the heritage key-stakeholder group, has been concerned by the continuing reduction in heritage and planning resourcing in local authorities (LAs) over many years. LA conservation staff resourcing has fallen by a third in the last decade¹. Current public spending plans (unless there are significant changes) suggest continuing LA resourcing reductions, implying further impacts on heritage and planning. This background, and its consequences for heritage protection, are set out in more detail in the October 2015 HEF consultation papers which can be downloaded at <http://www.theheritagealliance.org.uk/historic-environment-forum/>.
- 1.2 HEF has taken a view that it is better for the heritage sector to play a proactive role in identifying and developing appropriate solutions from within the sector, rather than reactively awaiting further cuts and reforms.
- 1.3 HEF therefore set up the Historic Environment Protection Reform Group (HEPRG) in 2014 to devise solutions to the continuing reduction in heritage resource in LAs². HEPRG began by setting out three fundamental principles, that any reform must:
- (i) be effective, by addressing the actual problems on the ground, as quickly as realistically possible; and
 - (ii) be safe for heritage, by reducing, not increasing, current levels of risk to heritage in the heritage protection system; and
 - (iii) be realistic, in particular by being implementable mainly by the heritage sector itself; by requiring little work, no new money and no significant primary legislation from Government; and by not conflicting with cross-party agendas like localism or growth.
- 1.4 HEPRG devised 15 proposals which comply with these principles. These are:
- (i) 'supply-side proposals' (see Chapter 2), designed to increase resourcing in LAs, and/or increase its effectiveness, and
 - (ii) 'demand-side proposals' (see Chapters 3-9), designed to increase heritage protection while at the same time reducing the workload it places on LAs.
- 1.5 These principles and proposals were put to HEF, to heritage sector workshops in London and Birmingham in October 2015, and to other heritage stakeholder groups like the Heritage Alliance's Spatial Planning Advocacy Group and the Joint Committee of National Amenity Societies, using consultation papers which

¹ See Historic England/ALGAO/IHBC annual survey of local authority staff resources <https://www.historicengland.org.uk/images-books/publications/seventh-report-la-staff-resources/>

² There are some overlaps in the remits of HEPRG, HEF Sub Groups on skills, and the new Heritage 2020 Working Groups. These groups all report to HEF, and are liaising so as to avoid duplication of effort or unfilled gaps.

can be found at <http://www.theheritagealliance.org.uk/historic-environment-forum/>. HEF and these other stakeholders endorsed the principles and the proposals in outline, ie not in detail but as ideas to be worked up in more detail for subsequent wider consultation. HEPRG has used this feedback in working up the 15 proposals into the form in which they appear in this consultation document.

- 1.6 The proposals have been discussed with DCLG and DCMS who are interested in helping us take them further.
- 1.7 HEPRG members work in a personal capacity, and do not necessarily speak for their organisations. There is a list of HEPRG members in Annex 1.

Next steps and subsequent consultations

- 1.8 HEPRG will use the feedback from this consultation in working up these proposals further. It may consult stakeholders further on detail if appropriate.
- 1.9 HEPRG will continue to talk to DCLG and other stakeholders on the 'supply-side' proposals (see Chapter 2), informed by responses to this consultation.
- 1.10 The 'demand-side' listed building consent proposals in Chapters 7, 8, and 9 require changes to secondary legislation and may be subject to Government consultation as or when they are taken forward.

CHAPTER 2

'SUPPLY-SIDE' PROPOSALS

- S1: Better defining the heritage work which needs to be done by LAs
- S2: The provision of better information on resourcing at LA level
- S3: Service re-organisation in local planning authorities
- S4: Process improvements in local planning authorities
- S5: Supporting the heritage and planning work carried out by LAs by introducing robust systems for monitoring delivery, with incentives and sanctions to encourage effective resourcing
- S6: Potential greater use of applicant fees

Introduction

- 2.1 The aim of these 'supply-side' proposals S1-S6 is to increase heritage and other resourcing in the planning system³, and/or to increase the effectiveness of that resourcing on the ground.
- 2.2 More specifically, these proposals should (i) improve systems and processes, (ii) define and monitor outcomes, and then (iii) incentivise good heritage and planning outcomes, so that LAs with good heritage and planning outcomes would be recognised, and those with poor outcomes incentivised to improve by upgrading their resourcing or processes or otherwise.
- 2.3 This is an area largely outside HEF or heritage sector control, because many other non-heritage stakeholders are involved. HEPRG met DCLG's planning system resourcing team in 2015-16. It appears that Government's overall objectives are broadly consistent with HEPRG's objectives in 2.2 above⁴.
- 2.4 Crucial to the objective of defining and monitoring outcomes is defining good and bad outcomes. Government now focuses on two specific measures, (a) speed of decision-taking, and (b) the percentage of refused applications which are overturned at appeal. These alone cannot fully capture the quality of planning or heritage outcomes. Government may be willing to trial further outcome measures over the next 3-5 years, so there is a potential opportunity to suggest further measures. That might include, for example, customer satisfaction measures, both for applicants and for other stakeholders.

³ The annual Historic England/ALGAO/IHBC surveys of LA conservation and archaeological provision provide data on heritage resourcing in LAs (see <https://www.historicengland.org.uk/images-books/publications/seventh-report-la-staff-resources/>). As part of the HEPRG initiative, Heritage Counts now annually sets out data at a LA level, on both resourcing (numbers of historic environment staff) and demand (numbers of listed buildings, of LBC applications, etc, see <http://hc.historicengland.org.uk/local-authority-profiles/>).

⁴ See also *Technical consultation on implementation of planning changes*, DCLG, February 2016 <https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation>

- 2.5 HEPRG therefore seeks outcome quality measures which go beyond the two current Government measures and (a) measure heritage and planning outcomes, identifying LAs with inadequate heritage and planning outcomes and encouraging these LAs to improve their resourcing and/or processes; and (b) are realistic, practicable, adequately robust, hard to avoid, and minimise unintended consequences. Suggestions are especially welcome from LA staff, from applicants, and from other planning stakeholders like amenity or civic societies.

Question 1: Do you have specific suggestions of measures of heritage and planning outcome quality which fit the criteria set in paragraphs 2.4-2.5 above?

- 2.6 HEPRG has considered higher fees (proposal S6), but has not taken a view on this. While fees might increase resourcing, fee income might be diverted directly or indirectly to non-planning expenditure, and fees (for example for LBC) could have unintended consequences which could reduce heritage protection.
- 2.7 More efficient processes and systems within LA planning departments, and better structures, are likely to be very important in creating a planning and heritage protection system which is financially-sustainable and works effectively. HEPRG is aware of some initiatives in this field like the Planning Quality Framework, but has not had the resource to investigate these in detail.

Question 2: How can HEPRG or other heritage sector initiatives work with other stakeholders to identify and implement improvements to LA planning processes, systems, and structures (see S3, S4)? Are you able to help in this process?

- 2.8 HEPRG proposes to continue its dialogue with DCLG, and other stakeholders, (i) to help to ensure generally that heritage sector interests are taken into account in this resourcing debate, (ii) to seek to achieve a system based on defined and measured outcomes, and (iii) to seek to secure outcome quality measures that ensure effective handling of heritage and planning issues/decisions.

- 2.9 Timescales inevitably are largely set by Government and other stakeholders.

CHAPTER 3

THE 'DEMAND-SIDE' PROPOSALS: INTRODUCTION

- D1: Improving heritage-related guidance and advice, in consultation with key stakeholders
- D2: Highlighting the value of the NPPF approach of positive heritage management (constructive conservation)
- D3: Making it easier for owners/applicants to find heritage-skilled consultants
- D4: Making it easier for owners/applicants to assess heritage skills, including a greater use of conservation accreditation
- D5: Incentivising owners/applicants to make greater use of heritage skills
- D6: Using expert guidance, drafted by Historic England and other stakeholders, to better inform the listed building consent (LBC) process
- D7: To encourage or require LBC applicants to provide a sufficient and proportionate analysis of heritage significance and impacts, either by finding some way of making Design & Access Statements more effective, or by requiring a heritage statement which would require that information much more explicitly
- D8: To make the carrying out of sympathetic routine work easier by using the expertise of Historic England and other stakeholders to draw up, for specific categories of routine work, forms of listed building consent order which would confirm that LBC is not required for the defined work, provided that specific conditions were complied with
- D9: To allow applicants, for non-standard works to listed buildings, to use independent accredited experts to devise proposals 'acceptable in conservation terms'⁵, including full expert statements of significance and impact, which would in some way receive more predictable or quicker treatment than proposals drawn up without such expertise

Introduction

3.1 These 'demand-side' proposals D1-D9 are concerned with improving heritage protection while also reducing demand on LAs, primarily through reversing the ongoing loss of heritage skills in the heritage planning process.

3.2 More specifically, they aim:

- (i) to provide better advice to owners, LAs, and other stakeholders;
- (ii) to handle lower-risk applications more effectively where possible; and

⁵ The term used in the original 2015 proposal was 'no-harm proposals'.

- (iii) to encourage and incentivise applicants to take heritage-skilled advice, from the beginning of a project, so as to improve the quality of proposals and applications, and to make applications easier for LAs to handle.
- 3.3 Proposals D1-D5 (see below and Chapter 4) concern the heritage planning system generally. Proposals D6-D9 (see Chapters 6-9) are specific to the LBC system.
- 3.4 Proposals D1 and D2 are covered under D6 (see Chapter 6 below), because the October 2015 heritage sector workshops suggested that the main advice gap relates to listed buildings.

CHAPTER 4

'DEMAND-SIDE' PROPOSALS D3-D5: GREATER USE OF EXPERT ADVICE

D3: Making it easier for owners/applicants to find heritage-skilled consultants

D4: Making it easier for owners/applicants to assess heritage skills, including a greater use of conservation accreditation

D5: Incentivising owners/applicants to make greater use of heritage skills

Introduction

4.1 The decline in skilled heritage resource in LAs has not been matched by an increase in the use of expertise by owners/applicants, so skills input on average has reduced. The D3-D5 proposals seek to encourage and incentivise owners/applicants to take expert (especially accredited) historic environment advice from the beginning of a project, help them find such advice, and help them employ it effectively. The aim is to use that greater expert input (i) to improve the heritage quality of proposals, (ii) to improve the quality of applications, making them easier for LAs and others to handle, and (iii) to improve outcomes on site.

Progress on D3-D5

4.2 Proposals D3-D5 are being taken forward primarily by the HEF Skills Client Demand Task Group (CDTG), one of the two heritage skills groups set up by HEF after its 2013 Heritage Skills Summit. CDTG is steering a research project, funded by Historic England (HE), into the use of expertise by heritage clients, current barriers to that, and how these barriers could be overcome.

4.3 CDTG is also beginning to draft proposals, which might include:

- (i) mapping existing activity, and meeting relevant stakeholders
- (ii) developing rationales/incentives for clients to use skilled/accredited professionals⁶, and for professionals to seek further heritage skills and accreditation
- (iii) working with the publishers of existing online and/or printed directories
- (iv) seeking to produce generic advice for clients
- (v) seeking to establish a new online accredited heritage skills portal, as a single 'front end' to the 'find a conservation-accredited surveyor/architect/engineer/craftsperson etc' pages of professional/accrediting bodies
- (vi) working with 'influencers' like insurers and lenders

⁶ The word 'professionals' is used here for brevity, and is intended to include craftspeople etc as relevant.

- (vii) specifically promoting historic environment-accredited professionals and accreditation, as opposed to promoting non-accredited practitioners. Formal accreditation should (a) ensure, and show clients and others, that professionals have known and defined heritage skill levels; (b) make it easier to find professionals; (c) ensure that professionals comply with codes of conduct (for example on not taking on work outside their field of competence, or conflicts of interest); and (d) provide effective mechanisms for clients and others if things go wrong. On the other hand, many heritage practitioners (including some with high skill levels) do not now have formal accreditation; some published directories do not now distinguish between accredited and non-accredited practitioners; and it is thought that governments would be likely to be reluctant to compel owners/applicants to use accredited professionals, partly because of possible perceptions of anti-competitive effects.

Question 3a: Do you see the use of accredited professionals as paramount (see the issues in paragraph (vii) above), and if so how could that 'step-change' on both the demand and supply sides be achieved?

Question 3b: Should the sector promote only those with formal historic environment accreditation, or should it also (either permanently, or as an interim measure) promote those without formal accreditation?

Question 3c: Can you think of further ways of incentivising and helping owners/applicants to use heritage expertise?

- 4.4 The feedback from this consultation and the results of CDTG's market research should be available in autumn 2016. CDTG with HEPRG/HEF will then develop these proposals for potential implementation by the heritage sector from 2017.

CHAPTER 5

'DEMAND-SIDE' PROPOSALS D6-D9: LISTED BUILDING CONSENT – INTRODUCTION

Introduction: listed building consent reform

- 5.1 LBC is a core part of the heritage protection system, intended to conserve and protect England's c600,000⁷ listed buildings from harmful change. The current LBC system generates some 30,000⁸ LBC applications a year, imposing a substantial workload on LAs, and reduced resourcing in LAs is making it difficult to apply appropriate levels of conservation expertise in the LBC process⁹.
- 5.2 HEPRG looked at a number of 'deregulatory' measures, like merging LBC into the planning process, but considered that these would not meet the three fundamental principles set out in paragraph 1.3 above.
- 5.3 HEPRG's four LBC proposals D6-D9 therefore are intended to focus available resource on proposals which might have harmful impacts, to bring in new expertise to identify which these are, to encourage outcomes acceptable in conservation terms, and to enable proposals with acceptable impacts to be handled more efficiently. To an extent this follows approaches used in the rest of the planning system, but a key difference is that the proposals are based on heritage impact, not on the scale of the proposal.
- 5.4 The four proposals are intended to improve the current LBC system, but change it as little as is consistent with that objective, and to leave all existing enforcement powers in place.
- 5.5 They have been developed in greater detail since October 2015, and are described in Chapters 6-9 below.
- 5.6 Although they could be implemented separately, the four proposals are designed to work together as a package, and would be more effective in combination.

Benefits and costs

- 5.7 The potential benefits of the four proposals overlap and are therefore set out here to avoid repetition:
 - (i) For heritage, improved outcomes from persuading owners and LAs of the benefits of the NPPF process and helping them to follow it, ie of understanding the special interest/significance of listed buildings from an early stage, taking that significance into account before and during the process of drawing up proposals, and from the greater use of expert

⁷ There are c376,000 list entries (*Heritage Counts*, 2015), but many cover more than one building. The total number of listed buildings is not known, but research by IHBC and others suggests perhaps 600,000.

⁸ *Heritage Counts*, 2015.

⁹ Some changes like Heritage Partnership Agreements and Local Listed Building Consent Orders were made under the Enterprise & Regulatory Reform Act 2013, but these have not been enough to solve the problem.

advice. All these factors should improve understanding, proposals, applications, application-handling, and physical outcomes on the ground.

- (ii) For LAs, significant benefit from reduced enquiry workload, and from better proposals which are easier to approve, and better applications which are quicker and easier to process, significantly reducing the burden of LBC applications on LAs. There is unlikely to be any ability to reduce staff levels, because staff levels have already been reduced to well below the levels the current LBC system requires; the purpose of the proposals is to reduce the burden on LAs so that listed buildings can be more effectively protected with the staff levels LAs will actually have in practice.
- (iii) For heritage, benefits from the diversion of LA resource from routine application-handling to other work like monitoring and well-targeted enforcement.
- (iv) For heritage, an enhanced ability to make an effective case for LA heritage resourcing, because it would be clear that LA LBC resource was being focused on cases where heritage-skilled resource is essential, rather than on routine application-handling.
- (v) For owners/applicants, significant benefits from greater clarity, reduced uncertainty, better explanation of the LBC process and information needs, reduced risk, fewer unnecessary applications, a smoother design and application process, less abortive work, better proposals and outcomes, and improved building end-values.
- (vi) For heritage professionals and craftsmen, and for heritage, benefits from greater use of, and greater demand and supply of, heritage-skilled professionals and craftsmen. The proposals should encourage existing professionals and craftsmen to seek further skills, professional memberships, and accreditations, and attract new entrants.

5.8 Potential costs are likely to include:

- (i) The initial costs of drawing up and promulgating advice, LBCOs, additional accreditation, etc, probably mainly from existing budgets; together with any ongoing costs.
- (ii) For applicants, the costs of better advice and analysis need to be set against the benefits set out above.

Archaeology

5.9 The proposals in Chapters 5-9 relate primarily to the LBC process, but some principles may apply to the management of planning applications for development with archaeological implications, and if taken forward (eg heritage statements) would need to cover both the built historic environment and all heritage assets with archaeological interest.

CHAPTER 6

PROPOSAL D6 – IMPROVED LBC ADVICE

D6: To use expert guidance, drafted by Historic England and stakeholders, to better inform the whole LBC process.

The aim

- 6.1 The provision of improved advice on LBC should reduce demand on LAs by cutting the number of unnecessary applications, and by encouraging better proposals and better applications, giving improved outcomes on the ground and producing cost savings both for owners and for LAs.

The proposal

- 6.2 There was a widespread view in the HEF Workshops in October 2015 that the provision of better advice on LBC was desirable, and that effective advice had real potential to reduce workloads and improve outcomes. There was a particular view that the most effective use of resources would be a LBC advice document aimed at owners of residential listed buildings, who are the majority of listed building owners, and a main source of LA enquiry workload.
- 6.3 The proposal therefore is for the heritage sector to publish improved advice on LBC, aimed primarily at residential listed building owners, and at other stakeholders concerned with residential listed buildings.
- 6.4 This proposal can be implemented by the heritage sector itself.

Impacts

- 6.5 The potential benefits and costs are set out in paragraphs 5.7-5.8 above.

Content

- 6.6 The content should include practical advice on:
- (a) analysing the significance and setting of listed buildings
 - (b) finding expert advice
 - (c) drawing up proposals which respect significance
 - (d) whether LBC is required
 - (e) the LBC process
 - (f) the information which effective applications require
 - (g) decision-taking under the NPPF/PPG
 - (h) implementing consents
 - (i) avoiding common problems
- 6.7 The tone of this advice will be important to its effectiveness, as will following HE's 'constructive conservation' approach (from Proposal D2). The advice should be as self-sufficient as possible, so that users do not routinely have to refer to other documents in order to use it.

- 6.8 Proposals D7-D9 would obviously affect the LBC process and would need to be taken into account when drafting this advice.

Taking this forward

- 6.9 This advice would need to be endorsed by HE, and probably by DCLG and DCMS. It could also be endorsed by HEF or other stakeholders.
- 6.10 HEPRG and HEF do not have the resource required to draw it up, and this will need to be done by HE, or perhaps alternatively as a funded project reporting to HE and HEF. Relevant stakeholders including owner stakeholders need to be involved from an early stage.
- 6.11 The October 2015 Workshops suggested that LBC advice on residential buildings could be extended to cover other listed building issues, or advice could also be provided on non-residential listed buildings. Some Workshop delegates suggested further ideas, like an online logbook for listed buildings. For resource reasons, HEPRG does not feel able to take any of these forward in the short term.

Question 4a: Do you support the proposals for further LBC advice in Chapter 6?

Question 4b: What should be the format of this advice, and who should draft it, publish it, and endorse it?

CHAPTER 7

PROPOSAL D7 –USE OF HERITAGE STATEMENTS IN LBC APPLICATIONS

D7: To encourage or require LBC applicants to provide a sufficient and proportionate analysis of heritage significance and impacts, either by finding some way of making Design & Access Statements more effective, or by requiring a heritage statement which would require that information much more explicitly.

The aim

- 7.1 Competent heritage analysis is fundamental to good listed building proposals, applications, and outcomes. A requirement to provide this encourages owners/developers to investigate and analyse special interest/significance from an early stage, and to devise proposals which take this into account. It also makes it easier for the LA to identify the issues and assess applications.
- 7.2 The NPPF (paragraph 128) requires this, asking an applicant “to describe the significance of any heritage assets affected. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on that significance”.

The problem

- 7.3 The tool currently used to elicit this analysis is a Design and Access Statement (D&AS). Every LBC application (and some applications in conservation areas and World Heritage Sites) requires a D&AS¹⁰. These are now (following a review and consultation in 2013), the only remaining types of non-major¹¹ application which still require a D&AS.
- 7.4 There are acknowledged problems in the way D&ASs are used and their effectiveness in heritage-related applications, primarily that most D&ASs in practice do not contain adequate heritage information. Some LAs require a ‘heritage statement’ in addition to the D&AS, but the quality of the resulting information is variable. Some applicants voluntarily provide a heritage statement, but again quality is variable.

The proposal

- 7.5 The D7 proposal above contains two options.
- 7.6 Option (a) implies the provision of better advice. The guidance¹² is now brief, and adding more detail could be helpful. However, detailed guidance was

¹⁰ The requirements are set out in secondary legislation, the Town and Country Planning (Development Management Procedure) (England) Order 2010 <http://www.legislation.gov.uk/uksi/2010/2184/contents/made>, as amended in 2013 by the Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2013 <http://www.legislation.gov.uk/uksi/2013/1238/article/2/made>. The post-2014 guidance is in PPG paragraphs 29-33 http://planningguidance.planningportal.gov.uk/blog/guidance/making-an-application/validation-requirements/national-information-requirements/#paragraph_029.

¹¹ ‘Major’ applications are for more than 10 houses, 1,000m² of floorspace, etc (as set out in these Orders).

¹² in the Planning Practice Guidance (PPG); see footnote 10 above.

provided¹³ when the system of D&ASs for LBC applications was created, but that has not ensured D&ASs of consistently adequate heritage quality.

- 7.7 If better advice would not by itself produce substantial improvement in the quality of analysis, option (b) is to require that information more specifically in a heritage statement/analysis. Specifically including the word 'heritage' and putting it first should make it clear to applicants that heritage analysis is required, which the term 'Design and Access Statement', which makes no reference to heritage, does not.
- 7.8 A requirement for a heritage statement/analysis in addition to a D&AS would be likely to be seen by applicants and Government as a burden. This proposal (b) therefore would, on a 'one-in, one-out' basis, remove the requirement for a D&AS (other than for 'major' development, for which it would still be required). A similar proposal is being implemented in Wales (subject to a further consultation) in 2016-17.
- 7.9 This would need to be taken forward in the context of the next DCLG review of wider planning information requirements, likely to begin in 2017.
- 7.10 The accompanying advice needs to make it clear that heritage and wider design issues are interconnected and need to be covered, with access issues where relevant. It would also need to stress the need for proportionality.

Impacts

- 7.11 The potential benefits and costs are set out in paragraphs 5.7-5.8 above.

Archaeological impacts

- 7.12 Whichever approach is chosen should cover the historic environment as a whole, so that it is clear that a heritage statement/analysis needs to cover archaeological as well as other heritage impacts, where archaeological interest may be present. Archaeological interest may need to be established through desk-based assessment and field evaluation as appropriate, the results of which may then be included within the heritage statement/analysis.

Question 5a: Do you think that publishing more advice on the heritage content of D&ASs (ie proposal (a)) would be enough to achieve the 'step-change' in heritage information and analysis HEF is seeking? Or is an explicit requirement for a heritage statement/analysis (ie proposal (b)) more likely to achieve that?

Question 5b: If so, should the term used be heritage statement, heritage analysis, heritage impact analysis, heritage and design analysis, etc?

Question 5c: Do you think the replacement of a D&AS by a heritage analysis should also be applied to those conservation area and World Heritage Site applications which now require a D&AS, on the same 'one-in, one-out' basis?

¹³ this was replaced by less detailed guidance in 2010, which in turn was cancelled (alongside other national planning guidance) when the PPG was published in 2014.

CHAPTER 8

PROPOSAL D8 – ROUTINE WORK: LISTED BUILDING CONSENT ORDERS

D8: To make the carrying out of sympathetic routine work easier by using the expertise of Historic England and other stakeholders to draw up, for specific categories of routine work, forms of listed building consent order which would confirm that LBC is not required for the defined work, provided that specific conditions were complied with.

The issue

- 8.1 This proposal focuses on everyday routine work to listed buildings like repair work and the updating of services, kitchens, and bathrooms.
- 8.2 In principle, much or most of this routine work does not require LBC, because it does not affect the building's special interest. In practice, however, it is often unclear whether work requires LBC, and failing to get LBC for works which require it is a criminal offence. This creates uncertainty for owners, and a considerable enquiry workload for LAs, a workload which can be difficult to handle because there may be no clear answer: work requires LBC if carried out in one way, but not if carried out in another. The owner can go ahead at a degree of risk¹⁴, or can make an LBC application, which involves cost and delay, and adds to the LA resourcing problem.

The proposal

- 8.3 The proposal is to draw up a series of national 'listed building consent orders' (LBCOs), for each of specific and common categories of work, like repointing, or rewiring, or refitting kitchens or bathrooms or heating systems. Each LBCO would have its own conditions, based on good conservation practice; a LBCO for repointing walls for example would stipulate the use of lime mortar and prohibit power tools. The LBCO would grant any required LBC for the work, subject to the conditions. The owner would not have to apply for consent for works covered by the LBCO, but the LA could enforce or prosecute in the normal way if the conditions were not met.
- 8.4 The owner would be encouraged to incorporate the need to comply with the LBCO conditions into the building contract, passing the compliance liability primarily to the contractor¹⁵, giving contractors a strong incentive to have, and develop, listed building skills, and discouraging inappropriate or illegal work.
- 8.5 These LBCOs would be drawn up by the heritage sector, potentially by HE with stakeholder input, and would be gathered together to facilitate easy use, with accompanying advice. LBCOs would require careful drafting. The choice of LBCOs should prioritise (a) types of work that are most frequently carried out, and (b) types of work for which HE/heritage stakeholders feel the LBCO

¹⁴ The owner could make an application for a certificate of lawful work, but that requires an application which may not be very different to an LBC application, and has significant workload implications for the LA also.

¹⁵ If the owner did not employ a contractor, the burden of complying with the conditions would lie with the owner.

approach can be used safely. They do not have to try to cater for every situation (eg an owner who felt that an alternative kind of pointing was appropriate could, if it fell outside the LBCO conditions, apply for LBC as now).

- 8.6 DCLG and DCMS are interested in exploring this. Statutory provision for LBCOs already exists in primary legislation¹⁶, requiring formal public consultation and Parliamentary approval for each LBCO.

Impacts

- 8.7 The following potential benefits are in addition to the benefits and costs listed in 5.7-5.8 above:

- (i) For heritage, improvements in the quality of work on the ground, by setting out good conservation practice on paper in LBCOs, by enabling owners to tie contractors into carrying work out in that way, by making it easier to do work which is not harmful (for example, an owner told by a builder that “nobody uses lime now” is less likely to give way if the LBCO he/she is relying on requires the use of lime), and by reducing the amount of illegal work.
- (ii) For LAs, the removal of perhaps 10-15 per cent of LBC applications, significantly-reduced enquiry workload, and reduced enforcement workload.
- (iii) For owners, substantial financial and risk-reduction benefits from greater certainty, a reduced need for advice, and fewer LBC applications. Owners could be sure that they have any required LBC provided they comply with the conditions, and would be less likely to have subsequent arguments with the LA or purchasers about whether LBC had been necessary. The ability to pass the primary compliance liability to the contractor should give greater certainty that works will be properly carried out on site.
- (iv) For skilled contractors, greater certainty that they are not carrying out illegal work, and a greater flow of listed building work driven by owners’ desire to follow LBCO conditions, encouraging contractors to build up skills in these areas. Some contractors might package work around LBCOs, eg a draughtproofing and insulation LBCO might encourage contractors to offer draughtproofing and insulation services.

The drafting and implementation of LBCOs

- 8.8 A list of points which might be included in an LBCO follows below.

- 8.9 The overall benefit from LBCOs will obviously depend on the proportion of work to listed buildings which they cover in practice, and the extent of take-up by owners. LBCOs thus need to be brief, clear, and practical, with the conditions based on accepted good conservation practice, kept to a minimum,

¹⁶ Planning (Listed Buildings and Conservation Areas) Act 1990, clause 26C.

and explained in or alongside the LBCO, so that users can see why they are being asked (and usually why it is in their own interest) to comply. Mechanisms for tying contractors into compliance with the LBCO conditions need to be clear and practical. The LBCO system needs to be effectively 'marketed' to users, LAs, and contractors, by HE, HEF, and by owner and other stakeholders.

- 8.10 LBCOs could also (but do not have to) go beyond routine work. For example, an LBCO could grant consent for the replacement of uPVC windows with appropriate traditional windows, subject to carefully-considered conditions. That would enable the LBC system to be seen to encourage work seen as beneficial, and reduce the perception that it puts hurdles in the way of such changes.

SCOPING LISTED BUILDING CONSENT ORDERS

- 8.11 The scoping points below have been drafted to illustrate the LBCO concept. Actual LBCOs would require further technical input and discussion before being drafted and issued for consultation.
- 8.12 In considering LBCOs, it will be important to compare the LBCO not with a hypothetical situation in which all work to listed buildings is supervised carefully by the local authority and accredited conservation experts, but with what happens now on the ground. The suggested LBCO conditions, with their implication of unlawfulness if they are not followed, are likely to make owners and contractors consider carefully the materials and approaches which should be used, as well as any areas where work might not be necessary.

Key points to consider in scoping and developing Listed Building Consent Orders:

1. Defining the works for which consent is granted

An LBCO for example could allow repointing work to a building or structure in lime mortar, subject to conditions set out in the LBCO as below.

2. Defining the conditions

These would set out the exceptions to the general grant of LBC, for example in this case requiring the use of lime mortar; requiring the colour, texture, style, and finish of the new mortar to be as close a match as reasonably practicable; prohibiting the use of power tools to remove existing mortar; and/or only allowing repointing to the extent that it is necessary in the interest of the long-term conservation of the building.

3. Setting out further information and 'informatives'

These could explain:

- (i) the purpose of LBCOs, ie to encourage and facilitate work which is necessary or desirable in the interest of the long-term conservation of the building.
- (ii) how the LBCO works, and that it needs to be read with [the LBCO advice document].
- (iii) that carrying out work not in accordance with the LBCO conditions may be an offence, and the need for photographic/other records.
- (iv) how owners can incorporate the provisions of LBCOs into their contracts with contractors.
- (v) that the LBCO conditions are intended to reflect good conservation practice, and reasons for the conditions in each specific LBCO (for example the damage which can be caused by cement mortar or the use of power tools).

Question 6a: Do you have any comments on this summary of the issues to be considered in drafting LBCOs (please focus comments on the principles and approach, rather than technicalities of repointing)?

Question 6b: Do you have suggestions on accompanying advice?

CHAPTER 9

PROPOSAL D9 – NON-ROUTINE WORK: THE USE OF INDEPENDENT ACCREDITED EXPERTS

D9: To allow applicants, for non-standard works, to use independent accredited experts to devise proposals ‘acceptable in conservation terms’¹⁷, including full expert statements of significance and impact, which would in some way receive more predictable or quicker treatment than proposals drawn up without such expertise.

The issue

- 9.1 Application statistics (about 90 per cent of LBC applications which reach the point of decision are granted¹⁸) suggest that most LBC applications are for work which either is acceptable in conservation terms, or is being made acceptable in conservation terms before the decision stage by the intervention of expert(s) either inside or outside the LA.
- 9.2 There are (as already noted) some 30,000 LBC applications each year. Streamlining approaches have been widely adopted in other areas of regulation, like the natural environment, and a Government LBC consultation¹⁹ in 2012 included draft proposals for deemed LBC to be granted if a LA did not respond to a LBC application within 28 days, and for “agents” to have a greater, though not precisely specified, role in the LBC process.
- 9.3 HEF feels that the heritage sector should seek to bring more heritage expertise to bear on applications, and to handle LBC applications in a more proportionate and efficient way. For non-routine work, expertise has to be site-specific. The aim should be to incentivise LBC applicants to employ conservation expertise, so as to improve proposals, applications, and understanding of listed buildings, and drive demand for and supply of heritage expertise.

Summary of proposal

- 9.4 The D9 proposal²⁰ is to allow owners who need LBC to opt to use a heritage-accredited independent expert who would first assess special interest/significance and then (with the owner and other professionals where relevant) devise a proposal which is ‘acceptable in conservation terms’ because it is beneficial to, or would not cause harm to²¹, heritage significance. If the independent expert is satisfied that the proposal is ‘acceptable in conservation terms’, he/she would then prepare a detailed (and proportionate) application, including an expert statement of significance and impact, conditions, and a formal declaration that in his/her professional opinion as an independent expert the proposal is ‘acceptable in conservation terms’.

¹⁷ The term used in the original October 2015 proposal was ‘no-harm proposals’.

¹⁸ *Heritage Counts* 2015.

¹⁹ *Improving listed building consent*, DCMS, 2012.

²⁰ This D9 proposal is here called the ‘D9 procedure’, but in practice could be called the ‘independent expert LBC procedure’, or similar.

²¹ See 9.13 to 9.14 below.

Applications which used this D9 procedure would then receive more predictable and quicker treatment (see 9.18 below) than applications which did not. If the expert was not able to devise a proposal 'acceptable in conservation terms', the standard LBC procedure would have to be used instead.

- 9.5 This proposal contains rigorous safeguards (see 9.11 to 9.27 below) to ensure that the independent expert is expert, that the expert's obligation is incontrovertibly to the building not its owner, and that LA and public scrutiny would expose any breach of this obligation. The final determination would always remain with the LPA²². Advice would protect experts and owners acting in good faith. All existing enforcement mechanisms would remain in place. Where planning permission was required, the D9 procedure would not remove that requirement. These safeguards are there to ensure that D9 meets HEPRG's objective (see 1.3(ii)) of increasing listed building protection above current levels, not reducing it.
- 9.6 The D9 procedure also needs to be attractive to owners and experts (see 9.30 below), because if it was not widely taken up in practice its benefits could not be achieved.
- 9.7 It is important to note that D9 is not aimed at every LBC application, but at the everyday, low-impact, non-routine works to listed buildings which could not be covered by D8, like residential kitchen extensions or works to low-significance parts of shops. Many will be internal works and many will not require planning permission²³. Although usually unseen and unremarked by anyone other than the applicant and the LA, these are a high proportion of the 30,000 LBC applications each year. Conversely, works which might have real effects on significance or be controversial will not be covered by D9, because independent experts will not be willing to certify them as 'acceptable in conservation terms'.
- 9.8 Similarly, D9 is unlikely to be used in the minority of cases in which applicants currently use heritage professionals, because these are likely to be the higher-impact, higher-complexity cases in which a LBC application will still be needed. Cases in which D9 would be used are likely to be those in which owners are not now using specific heritage expertise.

Impacts

- 9.9 The following potential benefits are additional to the benefits listed in 5.7 above:

²² This D9 proposal should not be confused with the 2016 Government proposal to 'test competition in the processing of planning applications'. In this D9 proposal processing the application after it is made remains with the LA; D9 is concerned with improving the quality of proposals and applications before an application is made.

²³ About 30 per cent of LBC applications are accompanied by a planning application (Green Balance report).

- (i) For heritage, and for heritage professionals, greater involvement of heritage experts in proposals would encourage existing experts to become accredited (and to join professional bodies), would differentiate heritage-skilled experts from other professionals, and attract new entrants. It would also stimulate demand for craft skills. Overall, the proposal should create a series of demands for heritage skills which are largely absent now, creating a virtuous circle of skills improvements.
- (ii) For owners, a simpler process enabling them to easily identify an expert who then guides them through the LBC process, greater certainty of a successful application, and the likelihood of reduced risk, shorter timescales, and a more satisfactory and financially-valuable outcome.

9.10 The potential costs (above those noted in 5.8) are:

- (i) For experts, the costs of obtaining and maintaining accreditations, though the additional cost of D9 accreditation (ie above the costs of existing accreditations) should be low.

The D9 procedure would be optional for applicants

9.11 Applicants could opt to use the standard LBC procedure instead.

The independent expert would be under an express obligation to the public interest

9.12 The independent expert would have an express obligation to the public interest, in this case primarily the heritage significance of the building(s), not a client²⁴. This independent expert role is a different role to that of an advocate hired to argue a case to an LPA or Inquiry. This would be clearly explained in the D9 advice, but importantly would have teeth, via LA scrutiny, public visibility, and robust sanctions. If an independent expert appeared to be breaching the obligation to be independent, the LA would (if appropriate) refuse LBC or treat the application as a normal LBC application, so LBC would not be obtained for the work under the D9 procedure. If it became apparent that the expert had breached the obligation to be independent, the LA or others could report this to the appropriate professional body or the D9 accreditation panel (see 9.24 below), and if appropriate the expert would suffer reputational and commercial damage, and could be reprimanded, penalised, suspended, or expelled (see 9.21 to 9.27). Given the express obligation to the public interest, the certainty of scrutiny by the LA (9.20) and the public (9.16), and the clear threat that sanctions could pose to their livelihoods, it seems unlikely that many independent experts would act inappropriately.

All proposals in the D9 procedure should be acceptable in conservation terms

9.13 To use this D9 procedure, the expert would have to certify that, in his/her opinion as an independent expert, the application was 'acceptable in

²⁴ Built environment examples of such an obligation include Agreed Surveyors in the Party Wall system, and Approved Inspectors in the Building Regulations system, where in each case the expert's primary obligation is to the integrity of the building(s), not to a client or clients.

conservation terms'. That would be defined in advice, based on NPPF/PPG criteria, as meaning that it would not cause harm overall to heritage significance. If the expert could not devise a proposal 'acceptable in conservation terms', the D9 procedure could not be used. This would give the expert some leverage, if necessary, in encouraging the owner to agree an acceptable proposal.

- 9.14 The expert's decision on acceptability could only be based on heritage considerations. Cases in which a balance had to be struck between harm to heritage significance and non-heritage public benefits would require a conventional LBC (and usually planning) application.

All D9 proposals would be clearly explained

- 9.15 Every D9 application would be required to be expertly-prepared, including the detail of the proposal, photographs, and a full and proportionate analysis of heritage significance and impacts, so that it should be straightforward for the LA, and anyone else, to understand and assess.

Transparency is at the core of the D9 procedure

- 9.16 Every D9 application would be publicised and consulted on in the usual way, with all its details available on the internet. Anybody (including for example civic or amenity societies) could object to the proposal. Every D9 application is thus under the spotlight of public as well as LA scrutiny.

The handling of D9 applications in LAs

- 9.17 D9 applications would be submitted using normal procedures including 1APP, and the LA would undertake normal notification and consultation procedures.
- 9.18 Some changes to the normal process are likely to be necessary to encourage take-up of the D9 procedure by applicants (see also 9.30 below):
- (i) The national PPG and D9 advice need to set out a strong indication that D9 applications should be approved unless they fail to comply with the rules of the D9 procedure, and require the LA to give reasons for rejection which fall within those rules. It will be important that outcomes are monitored.
 - (ii) D9 applications should be easy to understand and process, and will have been certified by the independent expert as 'acceptable in conservation terms'. They should therefore be quick to handle, be for uncontroversial work, and generate few or no material objections. A reduction in the normal 56-day time limit would therefore seem appropriate, and should not cause substantial practical problems. The consultation period (usually 21 days) would not be reduced.
- 9.19 The LA would then determine the application, following its normal delegated-decision-making procedures.

- 9.20 If an application did not follow the rules, because it was inadequately explained or not 'acceptable in conservation terms', the LA could (if appropriate) either (a) tell the applicant that the application would be treated as a normal LBC application, and if relevant seek appropriate changes, or (b) reject the application. If the LA considered that the application breached the D9 rules, it could report this to the appropriate professional body/accreditation scheme or D9 accreditation panel (see 9.24-9.25).

Question 7a: To what extent (if at all) could the total time from logging/validating the D9 application to determination (usually eight weeks) be reduced?

Question 7b: HEPRG has not proposed any reduction in the timescale for consultation (usually 21 days from notification). Do you think there is scope to reduce this as well? Is the normal stage of formal validation by the LA still necessary?

Accreditation

- 9.21 It is essential that the expert has specific skills in (i) accurately assessing the significance of listed buildings, (ii) developing proposals which respect that significance and maximise the likelihood of the long-term conservation of the building, and (iii) explaining those proposals in a way which is accessible to all stakeholders. The best way of ensuring that experts have these specific skills is effective accreditation.
- 9.22 Several relevant and well-established heritage/conservation accreditation schemes already exist, some more than 20 years old. D9 accreditation should use and build on these.
- 9.23 These schemes do not completely meet D9 requirements in terms of testing the specific skills outlined in 9.21 above, ensuring that the candidate has specific practical experience, having sanctions open to third parties, and ensuring that the candidate understands D9 and the independent expert role.
- 9.24 HEPRG's initial proposal therefore is that candidates (individuals, not firms) would firstly have to be members of a specific list of existing heritage accreditation schemes willing to participate. This also builds on those schemes and encourages participation in them. Secondly, candidates would need to apply to a new D9 accreditation panel, whose purpose would simply be (a) to check that the candidate has specific listed building skills and practical experience, (b) to check the candidate understands D9, including the role of an independent expert, and (c) to ensure that there will always be a specific overlying complaint/sanction mechanism which can be used by anyone who feels that an expert has acted improperly (in addition to the other options like objecting to a D9 application).
- 9.25 The requirement for membership of an existing conservation accreditation scheme reduces the burden on the D9 accreditation panel, ensuring that the candidate has already-tested skills, so the D9 listed building skills assessment can be a relatively light-touch 'top-up'. The D9 panel should be able to deal

with complaints by asking the 'underlying' accreditation scheme or professional body to investigate them (but could act itself and, probably very rarely in practice, investigate and apply its own sanctions if it felt the underlying scheme/body was not handling the complaint effectively).

- 9.26 It may be possible for current heritage accreditation schemes/professional bodies to add their own 'top-up' schemes, which could reduce the work of the D9 accreditation panel, or perhaps remove the need for it.
- 9.27 Further D9 rules might be needed, eg to prevent conflicts of interest, and prevent professionals acting beyond their own field of expertise (though the current accreditation schemes/professional bodies all have rules of this kind).

Question 8: Do you think it would be enough for the independent expert in D9 to be a current member of one of a specific list of conservation accreditation schemes/bodies? Or do you think that the D9 'top-up' suggested in paragraphs 9.24 to 9.25 above is needed in addition?

Question 9: Which schemes/bodies/grades of membership should be on this list? Should the list be limited to wider conservation accreditations (like for example the Register of Architects Accredited in Building Conservation (AABC), the RIBA Conservation Register, RICS Building Conservation Accreditation Scheme, or IHBC full membership)? Should it also cover narrower accreditations which are subsets of a historic environment discipline (like the Conservation Accreditation Register of Engineers (CARE))? Should it include wider/different historic environment accreditations (like ClfA)?

Implementation

- 9.28 This proposal involves change to guidance, advice, and procedures, but can be implemented under existing primary legislation.
- 9.29 Taking D9 forward requires further consultation of key stakeholders, the drafting of a more detailed proposal, and further consultation. It requires discussion with LA stakeholders, the Planning Portal, and stakeholder groups representing experts, owners, and developers. It requires the accreditation criteria/scheme to be drawn up, in liaison with the professional bodies which operate existing accreditation schemes; HEPRG is exploring this with professional bodies. It also requires discussion with CLG and DCMS, minor change to the PPG, and the drafting of appropriate advice.

Ensuring takeup by owners

- 9.30 The benefits of the D9 procedure can obviously only be achieved to the extent that owners use it. That requires them to believe that the benefits (financial or otherwise) of employing an expert outweigh the costs. There are a number of ways in which the owner can be convinced of this:

- (i) that using an expert will better conserve the building. Most owners care about this²⁵, but persuasion in advice and elsewhere has not yet driven widespread take-up of experts.
- (ii) that an expert will devise a proposal with a greater end value, better capital growth, or lower costs. That may usually be true, and may explain why many professional developers are using experts, but has not yet driven uptake among most applicants.
- (iii) that using an expert will make it very likely that LBC will be obtained. This may be the most important potential incentive, given the widespread owner perception (whether accurate or not) of the current process as having an insufficiently high probability of success. If and when D9 applications have a demonstrably high success rate, owners are likely to believe that, provided they are willing to listen to the expert, they are very likely to obtain LBC.
- (iv) that using an expert is easier than not using an expert. D9 would be clearly-packaged for users, with accompanying guidance and advice, lists of accredited experts, and advice on fees and contracts, so it would be easy to find and employ the expert, know what the expert should do, be guided by the expert through the whole process, and know what to do if any problem arose. As the ease of the process and its quality of outcome become widely known, word of mouth should encourage wide take-up.
- (v) that D9 applications would be determined more quickly because the decision deadline would be shorter than usual (see 9.18(ii) above).

Ensuring that the supply of experts meets demand

9.31 The D9 procedure could be promoted to owners by HE, LAs, and owner organisations, and to experts by professional bodies. Some experts for whom D9 accreditation would be easy could become D9-accredited quickly, others should follow as owner demand built up, and the promotion of D9 could be adjusted to keep supply and demand in balance.

9.32 Take-up by owners would build up over time, so it is not necessary for large numbers of experts to be D9-accredited immediately, but as demand builds D9 should encourage non-accredited experts to seek conservation accreditation as the main step to D9 accreditation, and non-experts to acquire expertise as a precursor to accreditation. Further discussion is needed with professional bodies on accreditation, effective ways of promoting D9 to professionals, and other issues.

Question 10: Can you suggest further ways of promoting take-up by owners, and by experts?

²⁵ See for example the *Survey of listed buildings owners* (2015), Ecorys/Alastair Coey for HE, especially section 3.1 (<http://hc.historicengland.org.uk/content/pub/2015/listed-building-owners-survey-2015.pdf>).

Local authorities

9.33 The D9 procedure would not be optional for LAs²⁶, but it is important that they understand and buy into the process. Experience of receiving D9 applications and their ease of handling, and the ability to redeploy resource into other areas like enforcement, are likely to convince LAs of the advantages of encouraging D9 applications. Discussion will be needed with LA stakeholders about the detail of D9 and to ensure that its rules work effectively for LAs. LAs will also need clear advice and some training, and may need to adapt systems for monitoring outcomes.

²⁶ If it were, some LAs might opt out. Even if only a few opted out, a procedure only available in some areas would be more difficult to promote than one available everywhere.

CHAPTER 10

CONCLUDING QUESTIONS

10.1 HEPRG has not added further proposals since its previous consultation in October 2015, largely because the October 2015 workshops did not produce many proposals outside the 15 put forward by HEPRG. There may however be other solutions which HEPRG (or other heritage sector initiatives) should pursue.

Question 11: Do you have any other suggestions for solutions or reforms which (importantly) would comply with HEPRG's three fundamental principles set out in Chapter 1, paragraph 1.3?

Question 12: Do you have any general comments on these HEF proposals as a whole, and/or specific points which you have not already covered? (If your comments relate to specific parts of the proposals, please identify them with chapter or paragraph numbers)

ANNEX 1

List of Historic Environment Protection Reform Group (HEPRG) members

The current members of HEPRG are (in alphabetical order) John Brazier (Historic Houses Association), Mike Brown (Institute for Historic Building Conservation), Lucie Carayon (Ancient Monuments Society, and Joint Committee of National Amenity Societies), Quinton Carroll (Association of Local Government Archaeological Officers), Duncan McCallum (Historic England), Richard Morrice (Historic England), Ingrid Samuel (National Trust), Jonathan Thompson (Country Land & Business Association), Victoria Thomson (Historic England), and Jan Wills (Chartered Institute for Archaeologists). Email members are Mike Heyworth (Council for British Archaeology, and Heritage 2020), Peter Hinton (Chartered Institute for Archaeologists), and Kate Pugh (Heritage Alliance).

Members are involved in a personal capacity, and do not necessarily speak for their organisations.

CONSULTATION QUESTIONS AND RESPONSE FORM

Name (and position): **Frances Marley, Policy, Public Affairs & Communications Officer**

Organisation(s) (if any): **Chartered Institute of Building (CIOB)**

Is this a response on behalf of this organisation? **Yes**

Email address (or postal address): policy@ciob.org.uk

Consultation questions

All responses are welcome. You are not necessarily expected to answer every question, and some stakeholders may wish to answer only the final question (Question 12), which gives an opportunity to comment on the proposals more generally. HEF is however particularly interested in answers to the more specific questions which precede it.

This consultation **opens on 22 July and closes on 19 September 2016**. Responses should be sent to The Heritage Alliance acting as the Secretariat to the Historic Environment Forum: kate.pugh@theheritagealliance.org.uk or Kate Pugh, The Heritage Alliance, 10 Storeys Gate, London SW1P 3AY.

Question 1: Do you have specific suggestions of measures of heritage and planning outcome quality which fit the criteria set in paragraphs 2.4-2.5 above?

Local authorities (LA) should promote the use of accredited professionals with genuine expertise and experience of both analysing and managing heritage impact assessments. Whilst the CIOB believes it is incredibly difficult to accurately measure quality of outcome, it considers it much easier to gauge the quality of each professional involved in the decision-making process. Given the conduct expected from professionals, the CIOB believes chartered membership of a relevant professional body in the built environment sector should be seen as a facilitator of both quality and better outcomes in the historic built environment.

As part of the process to restore the environment, professionals must be able to demonstrate their expertise through qualifications and experience. Given the inherent risks involved in building conservation, the CIOB considers professionals should be certified in the field in which they chose to operate and work.

Question 2: How can HEPRG or other heritage sector initiatives work with other stakeholders to identify and implement improvements to LA planning processes, systems, and structures (see S3, S4)? Are you able to help in this process?

A cross sector Working Group should be set up which has the remit to provide practical recommendations to government and wider industry. Members of the group should all have appropriate backgrounds in conservation and local government.

Question 3a: Do you see the use of accredited professionals as paramount (see the issues in paragraph (vii) above), and if so how could that 'step-change' on both the demand and supply sides be achieved?

We do see the use of accredited professionals as paramount, provided the accreditation properly assesses competence in the areas requiring calculation. Building a greater demand for accredited professionals should also help to encourage a greater number of individuals to become accredited in the first instance.

Question 3b: Should the sector promote only those with formal historic environment accreditation, or should it also (either permanently, or as an interim measure) promote those without formal accreditation?

Yes, we believe only those with formal historic environment accreditation should be promoted. This would help to ensure that individuals are assessed against particular criteria and are not judged purely on the basis of their current - or previous - employer.

Most importantly, all accreditation schemes should be based on the International Council on Monuments and Sites (ICOMOS) guidelines for education and training. This is to ensure that each accreditation scheme has some degree of quality assurance among clients looking to hire conservation professionals. Each scheme should comprise a process for re-accreditation to ensure those working in the built environment engage with training opportunities, undertake Continuous Professional Development (CPD) and keep up-to-date with their knowledge of the sector. This requirement would go hand-in-hand with a CIOB conservation register which would be open to the public.

Currently, the CIOB is in the process of devising an accreditation scheme for building conservationists. The scheme is expected to launch in 2017 and will be based on the ICOMOS guidelines. The Institute's certification would have three tiers to it - encouraging chartered members who begin under the lowest classification of registrant to progress through to the levels of specialist – eventually reaching the highest level of accredited. The scheme is intended to cover chartered surveyors, construction managers, design co-ordinators, works supervisors and site managers.

Question 3c: Can you think of further ways of incentivising and helping owners/ applicants to use heritage expertise?

There are numerous ways in which applicants could be incentivised to source heritage expertise. One would involve detailing the risks of failing to use professionals who hold some kind of formal historic environment accreditation. These risks would likely include errors in the decision-making process, failure to obtain consent or delays in the application. Another incentive would require local authorities to charge a small fee for applications that do not involve an accredited professional. Local authorities could also consider lengthening the process for applications which have been compiled without a heritage expert.

Question 4a: Do you support the proposals for further LBC advice in Chapter 6?

Yes.

Question 4b: What should be the format of this advice, and who should draft it, publish it, and endorse it?

As the public body responsible for the UK's historic environment, we believe English Heritage should publish this advice. It should be online in an easy-to-read, accessible format. Members of the Historic Environment Forum (HEF) may also wish to consider making their own contributions to ensure the advice is wide-ranging and covers an array of professions and interested parties.

Question 5a: Do you think that publishing more advice on the heritage content of D&ASs (ie proposal (a)) would be enough to achieve the 'step-change' in heritage information and analysis HEF is seeking? Or is an explicit requirement for a heritage statement/analysis (ie proposal (b)) more likely to achieve that?

We believe an explicit requirement for a heritage statement or analysis would be more likely to achieve the desired 'step-change'.

Question 5b: If so, should the term used be heritage statement, heritage analysis, heritage impact analysis, heritage and design analysis, etc?

We consider the term heritage impact assessment may be more appropriate.

Question 5c: Do you think the replacement of a D&AS by a heritage analysis should also be applied to those conservation area and World Heritage Site applications which now require a D&AS, on the same 'one-in, one-out' basis?

Yes.

Question 6a: Do you have any comments on this summary of the issues to be considered in drafting LBCOs (please focus comments on the principles and approach, rather than technicalities of repointing)?

We believe the outlined proposal carries too many risks and could result in a number of unintended consequences. The CIOB also considers there to be an insufficient number of builders with the necessary skills to restore listed buildings. Therefore, whilst sign-off by a conservation officer may not be the best option, it certainly is the next best alternative when it comes to managing risk throughout the restoration and conservation process.

Question 6b: Do you have suggestions on accompanying advice?

Regrettably, we do not support this element of the proposal.

Question 7a: To what extent (if at all) could the total time from logging/validating the D9 application to determination (usually eight weeks) be reduced?

Owing to the complexities involved, the CIOB does not consider it feasible to reduce the period for logging and validation.

Question 7b: HEPRG has not proposed any reduction in the timescale for consultation (usually 21 days from notification). Do you think there is scope to reduce this as well? Is the normal stage of formal validation by the LA still necessary?

The CIOB is not convinced there is scope to reduce the consultation timeframe, but believes the normal stage of formal validation *is* still necessary.

Question 8: Do you think it would be enough for the independent expert in D9 to be a current member of one of a specific list of conservation accreditation schemes/bodies? Or do you think that the D9 'top-up' suggested in paragraphs 9.24 to 9.25 above is needed in addition?

We believe membership of a specific conservation accreditation scheme or professional body offering conservation accreditation may be sufficient. A panel at Historic England should only be necessary in the sense that it would help to ensure the various accreditation schemes are properly managed and are subject to appropriate oversight.

Question 9: Which schemes/bodies/grades of membership should be on this list? Should the list be limited to wider conservation accreditations (like for example AABC, the RIBA Conservation Register, RICS Building Conservation Accreditation Scheme, or IHBC full membership)? Should it also cover narrower accreditations which are subsets of a historic

**environment discipline (like the Conservation Accreditation Register of Engineers (CARE))?
Should it include wider/different historic environment accreditations (like ClfA)?**

The CIOB considers that any accreditation scheme should focus primarily on conservation. Each scheme should also ensure it has a proper process for re-accreditation - at intervals of no more than five years. Whilst the CIOB recognises the important contribution archaeologists make to the built environment, it is not convinced that the subject of archaeology should form the primary basis for accreditation.

As noted previously in this response, CIOB is in the process of devising a building conservation accreditation scheme which will be launched next year. As a three tiered system, which is designed to encourage chartered members to upskill from one level to the next, we believe the CIOB accreditation scheme should also feature on this list. Like other schemes on the list, CIOB's accreditation scheme will be based on the ICOMOS guidelines and will feature an open register of chartered professionals.

Question 10: Can you suggest further ways of promoting take-up by owners, and by experts?

As already noted in our response to question three, we believe the introduction of a fees structure would help to incentivise clients. Local authorities could also consider lengthening the process for applications which have been compiled without a heritage expert.

Question 11: Do you have any other suggestions for solutions or reforms which (importantly) would comply with HEPRG's three fundamental principles set out in Chapter 1, paragraph 1.3?

N/A

Question 12: Do you have any general comments on these HEF proposals as a whole, and/or specific points which you have not already covered? (If your comments relate to specific parts of the proposals, please identify them with chapter or paragraph numbers).

No further comments.