

IMPLEMENTATION OF THE PENFOLD REVIEW: IMPLICATIONS FOR LOCAL GOVERNMENT

Introduction

This paper discusses out the current list of proposals for legislative and other changes to the system of heritage protection in England contained in the Penfold Implementation Plan, and their implications for local government.

The Proposals

A: Heritage Consent Reforms

The first four proposals are legal reforms which were first mooted in the Heritage Protection White Paper, which were considered in the drafting of the Heritage Protection Bill and which have been consulted on nationally. These are proposed to be dealt with by addition to the upcoming Repeals Bill, so will not be subject to further consultation.

A1: The Government will enable the extent of a listed building's special interest to be legally defined in its list entry.

What it means

- "So that only those parts of a building that contribute to its special interest are protected by regulation, removing the requirement to apply for a consent for works that impact other parts of the building"
- Definition by exception, to exclude what is definitely **not** of special interest, e.g. curtilage buildings or attached structures that possess no special interest, so that consent is not needed
- It is not intended to generate an exhaustive list of special interest for each heritage asset.
- EH needs to resource and plan this.

What it means for local government

- Clarity as to which parts of a listed building is important, and fewer LBC applications for things that aren't.
- LPA specialists can still interpret special interest according to the facts on the ground.
- The change will only be gradual – there are nearly 400k descriptions to upgrade.
- We would like to involve local authorities in the process, but are mindful of their resource constraints.

A2: Government will enable developers to seek a Certificate of Immunity (COI) from listing or scheduling at any time, valid for five years.

What it means

- Currently, anyone wishing to apply for a Certificate of Immunity from listing can only do so if they have submitted a planning application for the building in question.
- Currently COI applications are very few in number, around 20 p/a (compared to over 2 thousand listing applications).
- They have potential to expedite major developments by removing the danger of last minute spot-listing requests.
- Certificates of Immunity from Scheduling also have this potential, but the standard of evidence that will be needed for a definitive decision to be made will be very high.
- In reality, the process has been likened to Russian Roulette for developers – you get an answer, but perhaps not the one you want!

What it means for local government

- Fewer planning applications for flagpoles!
- Better understanding of the heritage constraints and opportunities relating to development proposals.
- The increased use of COIs may be limited.
- Any increase will be resourced by EH and DCMS.

A3: Government will allow owners of listed buildings and local authorities to enter into Statutory Management Agreements (SMAs).

What it means

- At the moment management agreements or Heritage Partnership Agreements can only help to improve agreement on the grey areas where it is not clear whether or not LBC is required.
- Statutory Management Agreements would allow the consenting body to formalise that agreement by pre-consenting for a period of five years small-scale or uncontentious works that will be repeated several times during that period.
- Setting up a Statutory Management Agreement would require due consultation, submission of appropriate details prior to consent, and regular monitoring.
- Breaking the agreement by any party would entail reverting to normal systems of control, e.g. enforcement.

What it means for local government

- The LPA would normally be a partner to such agreements.
- Some investment of time, resource and specialist knowledge. will be needed to set up SMA

- It has the potential to reduce the number of uncontentious, small scale and repeated LBC applications for certain assets, thereby repaying the initial investment.
- EH believes that such agreements foster good relationships with the owners and managers of major heritage assets such as universities, infrastructure providers, large estates etc.

A4: Government will remove the requirement for Conservation Area Consent when demolishing unlisted buildings.

What it means

- Removal of the need to apply for a separate consent to demolish unlisted buildings in conservation areas, allowing for their demolition to be controlled through the planning consent régime.
- This simplifies the non-planning consents landscape, and removes some costs to the prospective developer.
- It presents an opportunity to rationalise the *Shimizu* situation, whereby the demolition of significant parts of conservation areas buildings is not controlled.
- Unauthorised demolition of a conservation area building without the benefit of CAC is currently an offence – this will need to be replicated in legal changes.

What it means for local government

- Fewer applications to determine – in total an average of 3 200 per annum.
- Greater clarity about and better management of partial demolition in conservation areas.

B: Consultation on Heritage Consent Reforms

These are largely new or otherwise untried, and potentially controversial, and will need to be consulted on. The timetable is for consultation to occur over the summer. EH is currently discussing these issues informally and widely within the heritage and development sectors to gauge opinion and to collate options to inform DCMS in the preparation of the formal consultation paper.

B1: Government will consult on options for introducing a system of prior-approval for specified types of works to listed buildings.

What it means

- *"Nearly nine out of ten applications for Listed Building Consent are approved."* We are doing research to how many are straightforward, and how many require negotiation and amendment.
- Developing a lighter-touch approach for non-controversial applications would allow for focusing attention on those applications most likely to impact a building's special interest.
- The system envisaged is one where Listed Building Consent would be deemed granted if the local planning authority does not respond to a developer's notification by requesting a full application within a specified time period. This compares to various agricultural and statutory undertaker developments.

The Major Issues to explore with Stakeholders

- How clearly and consistently can we define the kind of non-controversial works that can be dealt with by such a system?
- How can we ensure that the same levels of protection remain overall for what is significant?
- Can we define the level of information that will need to be supplied which is sufficient to give clarity to the LPA, but sufficiently concise to save developer time and resources?
- Can we define a process which will make this work efficiently?

Implications for local government

- It potentially frees up LPA resources to look at more complex or contentious applications
- Can we clearly and consistently define the kind of works that can be consented in this way without an impact on democratic accountability?
- Will there be a loss of public engagement and transparency by taking certain works out of consultation arena?
- Will this process impact on locally-available conservation expertise?

B2: Government will consult on options for allowing certification of applications for Listed Building Consent by accredited independent agents.

What it means

- Government is interested in expanding the marked for conservation advice in order to increase choice and flexibility for developers.

The Major Issues to explore with Stakeholders

- Who are the Accredited Agents likely to be?
- Who will accredit them, and who will set the standards?
- How will the system be monitored to prevent abuse?
- What advantages is a developer likely to be looking for in engaging an accredited agent?
- What processes will there be to support such a system?
- Should we draw a line beyond which applications must be dealt with by the local planning authority?

Implications for local government

- What would be the implications for democratic accountability in decision making?
- Will there be a loss to transparency and public engagement by taking certain works out of the consultation arena?
- What will be the impact on local authority specialist conservation staff?

B3: Government will consult on legally defining circumstances in which minimum compensation should be payable when listed buildings are subject to compulsory purchase.

What it means

- It will be clearer to LPAs where the risks lie in pursuing Urgent Works notices, with the possibility eventually of compulsory purchase of the building in question.

Implications for local government

- They may be emboldened to pursue action to rescue buildings which have fallen into disrepair and decay, with less risk of incurring large compensations claims.

C: English Heritage will undertake a programme to update the list entries of listed buildings

What it means

- To enable a more flexible approach to be taken to re-development of listed buildings, to develop greater clarity about what is or is not important about buildings, and to facilitate the setting up of Statutory Management Agreements, a significant number of list entries will need to be revisited and upgraded.
- There are many, and to do them all will require time and resource; in the meantime, prioritisation is essential to tackle those which it is most useful to do first.
- English Heritage is developing a programme for prioritised upgrading of list entries, including C20th office buildings, which can be contentious and are subject to regular applications for adaptations, and list entries for assets and areas affected by major infrastructure schemes.

Implications for local government

- Greater clarity about what is or is not significant when making planning decisions.
- Appropriate support in setting up Statutory Management Agreements.
- We would like to involve local authorities in the process, but are mindful of their resource constraints.