

cuttingredtape@bis.gsi.gov.uk

28 April 2016

RE: Cutting Red Tape – Local Authority burdens

Dear Madam or Sir,

Thank you for the opportunity to provide information in response to the above review on cutting red tape burdens within local authorities. Our comments reflect our interests in ensuring that the planning system provides adequate protections for the historic environment, enables the creation of public benefit and upholds the core principles of sustainable development as defined in the National Planning Policy Framework.

We understand and support the aim to cut unnecessary burdens which stand as impositions to growth and recognise that this is an ongoing ambition of the Government. However, we are concerned that the continued focus on reducing ‘red tape’ has the effect of unhelpfully associating regulation with being a barrier to growth. This is an unfair association, as the majority of regulatory mechanisms currently fulfil vital purposes. The cause of ineffectiveness is more often the result of insufficient resourcing than it is to do with unnecessary regulation. In addition, there are many market-derived factors which are equally responsible for restricting housebuilding. It is wrong, therefore, to assume that simply reducing regulation will have the effects that the Government desires. There is no evidence to suggest this will be the case.

This response recognises that it is absolutely right to channel effort into making processes of local authority advice, assessment, and monitoring relating to historic environment protections more efficient. However, we also strongly defend the purpose of regulatory processes which are designed to enable safeguards for the historic environment and are in line with the wider aims of sustainable development.

The Chartered Institute for Archaeologists

The Chartered Institute for Archaeologists (CIfA) is the leading professional body representing archaeologists working in the UK and overseas. We promote high professional standards and strong ethics in archaeological practice, to maximise the benefits that archaeologists bring to society, and provide a self-regulatory quality assurance framework for the sector and those it serves.

CIfA has over 3,200 members and more than 70 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial

archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

General comments

Local authorities undertake various activities in order ensure the necessary protection of the historic environment. These protections contribute to the achievement of sustainable development, lead to a higher quality built environment, create social benefits such as local pride and community sense of place, and create economic benefits in terms of tourism, as well as in terms of wider local growth through heritage-led regeneration, higher business rates and property prices. Practices which limit the opportunities to ensure that the historic environment is protected are therefore often counterproductive. Indeed, the Government has committed to this principle of ensuring that there is no loss of protection for the historic environment on many occasions¹.

It should not, however, be assumed that the sole purpose of these regulatory processes is to protect heritage assets and produce wider public benefits. Rather, these processes are also vital to reducing risk to the developer, as potential problems are more likely to be identified early in the process, ensuring that archaeological mitigation can be accurately costed, making it less likely that development will become unviable once the development budget has already been agreed.

Increasing efficiency

The sector, along with government, is committed to making the systems of planning protections more efficient. In the last parliament, the Penfold Review examined various aspects of the designation system and implemented (through the Enterprise and Regulatory Reform Act) changes to the systems for listing and scheduling to make them more efficient. These changes included stating clearly which elements of a listed building are included/excluded from the listing and better defining curtilage buildings, instituting heritage partnership agreements, instituting systems of local and national consent order for listed buildings, replacing conservation area consent with planning permission, and allowing owners to apply for certificates of immunity at any time. The sector is continuing this process through the Historic Environment Forum, which is conducting a further audit of options for further changes to the system of national protections which will enhance efficiency further.

Local authorities are responsible for carrying forward these national protections and have a recognised role in ensuring that the system delivers effective results. This role is particularly related to the following:

- Ensuring that an appropriate level of understanding of heritage assets which are to be affected by proposed development is reached prior to the granting of planning permission

¹ E.g. Letter from the Rt. Hon. George Osborne to the Heritage Alliance dated 31 August 2015

- Ensuring that appropriate investigation of the archaeological potential of a site which may contain undiscovered assets is undertaken, prior to the granting of planning permission
- Making a balanced judgement on whether development is appropriate and advising on necessary steps to mitigate harm to the historic environment, such that the development proposal can be granted, and
- Monitoring this mitigation and signing-off conditions.

Broadly, it is important that these roles are undertaken in a way which is proportionate, consistent, and efficient, ensuring that the amount of information requested is proportionate to the significance of the assets and to the level of harm; that requests and responses are made in a timely manner; that advice is useful and thorough, and therefore that mitigation work is likely to be understandable, proportionate, and predicted early in the process.

Whilst there is always room for improvement in these respects, it is the position of ClfA that these processes are generally effective where specialist historic environment staff work closely with planning departments to ensure that advice is given to developers early in the process and where staff have the necessary skills and capacity to advise effectively.

Nonetheless, ClfA does recognise that there is a potential to look at the following regulatory improvements:

- 1) Local authorities and developers should be encouraged to make better use of pre-application discussion in order to facilitate good understanding of the particular need for information relating to the historic environment. Some authorities could benefit from clearer pre-application guidelines which, among other things, should stress the importance of involving specialist historic environment advisors at an early stage.
- 2) In order to ensure consistency in terms of what information is required local authorities should have clear guidance on what type of information to include in heritage statements and archaeological assessments and evaluations.
- 3) Local authorities should ensure that they have access to an appropriate level of specialist expertise to ensure they have the necessary skills and capacity to facilitate effective decision-making.

Balancing responsibilities

The Government has frequently cited the high percentage of planning applications granted permission as evidence for the bureaucracy of the planning process. However, this assertion belies the fact that the vast majority of those applications have been subject to scrutiny, and have been changed and developed through discussion and through the attachment of planning conditions in order to make them acceptable and sustainable. The elements which facilitate this process are not 'red tape', but rather are important elements of a strong planning system.

In addition to improving regulatory efficiency it is also necessary to enable local authorities to maintain an onus on developers to adequately discharge their requirements to provide proportionate information on the historic environment in the form of heritage statements and archaeological reports, as set out within paragraph 128 of the NPPF. Currently a significant number of planning applications are submitted without the necessary archaeological survey, or with key parts of the heritage value being unassessed. It is therefore common for local authorities to need to request further information, thus slowing the process. To minimise the risk of this occurring, ClfA strongly promotes the use of accredited professionals to undertake archaeological survey work and produce heritage statements in order to reduce the likelihood that developers will be required to go back and produce extra information. However, it will still sometimes be necessary to request extra information where new discoveries come to light, or new questions are raised in the light of plans.

It is also important to recognise that in the current climate of government funding the effectiveness of this system of advice is being eroded by the decline in specialist historic environment staff in local authorities, as staff are less likely to be able to engage in pre-application discussions and have less time to devote to each case. This is another reason why further deregulation is not the answer to current inefficiency in the system.

Other aspects of current Government reform, such as the new systems being currently debated as part of the Housing and Planning Bill are likely to increase pressure on local planning authorities: For example, it is implied that under the new system there may be extra requirements on local authorities to undertake sufficient ecological and archaeological survey prior to inclusion of a site on a Brownfield Register or Strategic Housing Land Availability Assessment, such that Permission in Principle can be safely granted – previously a responsibility of a developer to undertake. Furthermore, changes which will allow third parties to compete with local authorities for planning fees to process applications will lead to a reduction in funding for planning departments and create needless double handling of cases, with planning officers coming to cases at determination stage without the prior knowledge obtained through communication at the processing stage. These processes are arguably creating new bureaucracy and red tape which will further undermine the effectiveness of the system.

ClfA believes that the NPPF currently provides a system which does a good job of balancing both public and private interests. In reality, it is not simply regulatory factors which lead to low productivity and growth, but rather a wider range of market factors outside the control of local authorities: for example, issues such as developer land-banking and a lack of capital to bring forward permissions, or the effects of higher rates of development on house-prices and therefore on the commercial viability of projects must also be weighed.

If there is anything further that we can do to assist, please do not hesitate to contact us.

Yours faithfully,



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