

CIfA Submission to the Raynsford Review

Introduction

1.1 The Chartered Institute for Archaeologists (CIfA) is a professional body for the study and care of the historic environment. It promotes best practice in archaeology and provides a self-regulatory quality assurance framework for the sector and those it serves.

1.2 CIfA has over 3,500 members and around 80 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.

Background

2.1 *'[T]he historic environment is an asset of enormous cultural, social, economic and environmental value [which] makes a very real contribution to our quality of life and the quality of our places.'* (The Government's Statement on the Historic Environment for England 2010¹.)

2.2 The planning system plays a key role in the management and protection of the historic environment (which includes archaeological remains both above and below ground). That role is not confined simply to designated assets. Over 90% of the historic environment is undesignated (i.e. not specifically protected by listing, scheduling or some other statutory designation) and is, for the most part, solely protected as a 'material consideration' in the planning process. The management and protection of the historic environment is an integral part of sustainable development as recognised by the National Planning Policy Framework (NPPF)².

2.3 Archaeological remains (or more precisely in planning terms, heritage assets with archaeological interest³) are a finite and vulnerable resource⁴. Their precise nature and extent (and in some cases their very existence) are often unknown before sites are targeted for development. Consequently, dealing with sites which may have archaeological interest can be complicated in the planning process by the need to deal with the unknown. The application of expert judgement on a case-by-case basis is required if heritage assets with archaeological interest are to be properly managed and protected in the planning regime.

2.4 The following evidence addresses the planning system insofar as it affects the historic environment and, in particular, heritage assets with archaeological interest.

The English planning system and sustainable development

Does the planning system contribute to achieving sustainable development in the long-term public interest?

3.1 The achievement of sustainable development in the public interest should be the primary objective of the planning system. The current regime does contribute to that objective in relation to the historic environment but its contribution is being increasingly undermined by deregulation and lack of

¹ http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/images/publications/Acc_HeritageVision_Part1.pdf

² NPPF paragraph 7

³ Such assets include buildings, landscapes and other features which may yield evidence of our past.

⁴ See Appendix 1: CIfA Briefing Paper (2015) paragraphs 11-14

resources. In some quarters there is a failure (or reluctance) to recognise that development which does not address the need properly to manage and protect the historic environment is unsustainable.

3.2 Furthermore, recent improvements in national policy regarding delivering public benefit as a result of planning-led historic environment management have not always been effectively translated into planning norms. There are numerous examples of good practice, but the mind-set of many is still influenced by out-dated principles such as ‘preservation by record’ as the standard approach to quickly and cheaply removing and archiving archaeological material. The huge potential for analysis, dissemination, publication, and public engagement is still, on the whole, not commonly capitalised upon in much planning-led archaeology and conservation work.

Does the National Planning Policy Framework provide an effective framework for the delivery of sustainable development?

3.3 In theory, yes. Policy and guidance for the historic environment includes the following provisions for assets with archaeological interest (a concept, itself, helpfully defined in the NPPF – see Appendix 1):

- the starting point is paragraph 128 of the NPPF:

‘Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation’

- post-determination, archaeological interest is safeguarded in accordance with paragraph 36 of Historic Environment Good Practice Advice in Planning Note 2:

‘A requirement to record the significance of a heritage asset with archaeological interest that will be harmed may be made enforceable through conditions, a planning obligation or a combination of the two (see Paragraphs 203-206 of the NPPF)’

- in local plans ‘Site allocations should be informed by an evidence base and an analysis of potential effects on heritage assets’ (paragraph 18 of Historic Environment Good Practice Advice in Planning Note 1).

3.4 This formulation of policy, guidance and advice (through the NPPF, NPPG and GPAs) provides a generally effective framework for considering and safeguarding heritage assets with archaeological interest in plan-making and development management. This framework, however, can be by-passed or begin to break down in the absence of an application for permission (which provides the opportunity for expert assessment).

How can effective changes be made to national policy on key issues such as the viability test?

3.5 Such changes need to be made with full appreciation of the delicate balance required to be maintained between the three dimensions of sustainable development (economic, social and environmental). Changes to the NPPF to promote housing development cannot be viewed in isolation and it is disingenuous to argue that the weight given to policies protecting the historic environment will not be altered when, in a balancing exercise, counter-balancing considerations are proposed to be given extra weight.

3.6 So far as policy relating specifically to the historic environment is concerned, one effective change to policy in the public interest would be to indicate that all planning-related archaeological work

should be carried out by accredited practitioners⁵ (albeit with a strong emphasis on public engagement – an emphasis which has often been lacking in the past).

The scope of the planning system

How effective is the application of the plan-led planning system?

4.1 In archaeological terms, the plan-led system provides a coherent basis for dealing with assets with archaeological interest, but, crucially, this requires an application for permission for sites allocated for development in local and neighbourhood plans. It is at this latter stage, in many cases, that any necessary archaeological desk-based assessment or field evaluation is required in accordance with paragraph 128 of the NPPF.

4.2 Furthermore, the effectiveness of the plan-led system in this regard is largely dependent upon the availability of archaeological expertise (within or relied upon by a planning authority). In practice this can no longer be guaranteed as local authority services come under intense and increasing financial pressure (see *Local government authority archaeology services: A briefing paper*⁶).

Would a zonal planning system based on systems in the EU be more transparent and effective?

4.3 Such a system might be more transparent but it would not be more effective in relation to the management and protection of heritage assets with archaeological interest. The absence of an application for permission is the major concern of the archaeological sector in contemplating zonal systems as well as automatic permission in principle for land on brownfield registers, local and neighbourhood plan allocations and more generally and the continuing extension of permitted development rights⁷.

4.4 If a zonal system were to be introduced, archaeological practice would have to change fundamentally⁸. There would need to be very significant front-loading of the system with all land within potential zones archaeologically assessed and evaluated in order to determine:

- whether there is an in-principle objection to development on archaeological grounds
- even if there is no in-principle objection, whether the extent of archaeological mitigation required makes development unviable.

Although this may be achievable in theory, without a huge increase in resources available to local authorities, this would not be feasible given that the developer funding available at application stage and on a site specific basis would not be available earlier in the process and when considering areas more generally.

Should land use control apply to all land uses, including agriculture and forestry, in the light of the social and environmental challenges that we face?

4.5 Yes, particularly given the extensive damage which occurs to heritage assets with archaeological interest through agricultural activity (see *Saving sites from the plough*: http://www.archaeologists.net/sites/default/files/ifa_yearbook04_plough.pdf). However, such an

⁵ ClfA accredits individual members (<http://archaeologists.net/regulation/accreditation>) and operates a Registered Organisations scheme (<http://archaeologists.net/regulation/organisations>)

⁶ http://www.archaeologists.net/sites/default/files/Briefing_Paper_Local_authority_archaeology_services.pdf

⁷ See Appendix 1: ClfA Briefing Paper (2015) The relaxation of planning regulation

⁸ Currently full pre-determination assessment and (where necessary) evaluation is not routinely carried out for land availability assessments (such as Strategic Housing Land Availability Assessments (SHLAAs)) or local or neighbourhood plan allocations of land for development.

extension of jurisdiction would need to be accompanied by a commensurate increase in resources available to local authorities to deal with such matters. One possible source for such funding might be monies currently payable under the Common Agricultural Policy once the United Kingdom leaves the EU, but ClfA would not wish in any way to undermine the excellent work to support the historic environment which currently is financed by agri-environment schemes (currently Countryside Stewardship in England).

To what extent has the greater use of permitted development for the conversion of buildings met the objectives of sustainable development?

4.6 The greater use of permitted development rights not only for the conversion of buildings but for a wide variety of development has not furthered the objectives of sustainable development in relation to the historic environment. On the contrary, it provides a very real threat to the significance of heritage assets whether through effect on settings or direct impact on the assets themselves when operational development is involved.

Effective implementation

What skills and expertise are appropriate for planners?

5.1 Planners need to have the ability to recognise issues relating to the historic environment but not necessarily to resolve them. That is the role of archaeologists, building conservation specialists and other historic environment practitioners who need to be able on an ongoing basis to acquire and demonstrate competence for the role which they play. Training for planners should nevertheless, include acquiring a broad understanding of heritage protection and management and its implications for the planning system.

The way forward

General

6.1 In addressing the issues raised above it is necessary to recognise the close relationship between the operation of the planning system and of heritage legislation such as the Ancient Monuments and Archaeological Areas Act 1979. The current approach involves flexible management of heritage assets through the planning regime in parallel with selective designation, for instance, through the scheduling of ancient monuments. If deregulation continues to constrain the ability to manage and protect the historic environment through the planning system, a more rigorous approach to scheduling and other designations may be necessary. Such an approach is unlikely to facilitate the prompt delivery of development.

6.2 Whatever approach is adopted, the emphasis needs to be on the delivery of public benefit. The Institute, as part of the Southport Group, produced a report on *Realising the benefits of planning-led investigation in the historic environment: a framework for delivery* (2011)⁹ at the heart of which was the delivery of public benefit. A clearer explanation of the value of the historic environment and of the planning system's role in delivering that value would hopefully foster public engagement and support and might in turn strengthen the political will to commit resources (or at least not further to reduce funding) for the management and protection of the historic environment. A good start would be for the Government's Statement on the Historic Environment for England 2010 to be retrieved

⁹ <http://www.archaeologists.net/sites/default/files/SouthportreportA4.pdf>

from its currently archived status, endorsed by the current administration and promoted as a clear statement of support for the historic environment.

6.3 It would also be helpful (not just in relation to the historic environment but in all areas in which planning relies on expertise) to counter the pervasive sentiment expressed by Michael Gove in the Brexit debate: *'people in this country have had enough of experts ...'*. A new understanding of the role of expertise and how experts and communities can and should work together for the public good should increase buy-in from a wary public.

Short term solutions

6.4 If the planning regime is to remain essentially in its current format there are a number of specific changes which would help to ensure that the impact of development upon heritage assets with archaeological interest is adequately addressed in the process. These include

- inserting further specific and express safeguards for the historic environment in the system and particularly in any deregulatory changes to the system. For example,
 - greater use could be made 'sites of archaeological interest' as defined in article 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 to exclude permitted development rights. This mechanism is used in England in relation to mining and mineral exploration but is more widely used in Scotland
 - further consideration could be given to improving the operation of article 4 directions and prior approval mechanisms to ensure that they provide meaningful protection for the historic environment
 - specific exclusions or exemptions could be inserted in new legislation to safeguard the historic environment. The archaeological sector sought this in relation to the limitations on the imposition of conditions in section 14 of the Neighbourhood Planning Act 2017 (which were avowedly not aimed at archaeological conditions) but without success, to the detriment of the historic environment
- introducing a statutory duty for local authorities to maintain a historic environment record (HER) supported by appropriate expertise. This has been done in Wales through sections 35-37 of the Historic Environment (Wales) Act 2016 (albeit with the duty upon Welsh Government rather than local authorities) and would cement the role of HERs and their advisors in the system
- consistently defining 'the environment' in statutes, policy and guidance to include the historic as well as the natural environment
- making requirements for developers and local authorities clearer in guidance. Most readers understand the status of guidance (and this can be explained for those who do not) and couching good practice in terms such as 'developers / local authorities *may wish* to consider ...' does little to recommend it
- adopting new guidance on how to maximise public benefit within the current frameworks for archaeological mitigation and compensation/offsetting and stimulating greater use of the existing toolkit for public engagement.
- doing as much as possible to future-proof environmental regulation and, in particular, EIA and SEA provisions in the system. Environmental Impact Assessment is a key safeguard for the historic environment (particularly in the light of the relentless extension of permitted development rights and other deregulatory measures) and is felt to be vulnerable to post-Brexit deregulation

- Government accepting and promoting the need for planning-related archaeological work to be carried out by accredited practitioners to ensure that, so far as possible, such work is carried out in accordance with professional standards¹⁰ and maximises public benefit.

Radical solutions

6.5 The short term solutions envisaged above do not address the funding crisis which local and national government continue to experience. Were taxation to capture a realistic proportion of land value increases resulting from planning permission, this could be used, amongst other things, to provide much-needed resources for local authority historic environment and archaeological services which provide advice to local planning authorities in the planning process. ClfA strongly supports the work of such local authority services and considers that the local connection and knowledge provided by those services is of immense benefit.

6.6 Nonetheless, if radical change is to be made, then it might be an appropriate time to consider whether any better vehicle or vehicles could be developed for delivering such services in accordance with professional standards¹¹.

6.7 With additional funding (and perhaps some further funding that formerly came through CAP) the planning system could be extended to agriculture and forestry (see paragraph 4.5 above).

6.8 If changes to the planning system effectively reduce the oversight of development impacting upon the historic environment, significant changes to the heritage protection system may be called for, including more extensive designation but with more responsive and nuanced designation mechanisms. For instance, scheduling could be reformed to apply to a wider range of heritage assets¹²; to reflect different grades of importance in monuments (as in listing) and to respond to the needs of the specific monument in question more readily and flexibly. There is some scope for assimilating natural and historic environment designations as has occurred in Scotland where historic marine protected areas sit alongside marine protected areas designated on natural environment grounds and provide a more flexible mechanism than scheduling and protected wreck status with site-specific preservation objectives¹³.

6.9 Other designations which might be adapted to supplement heritage protection, were the planning regime to offer less protection for the historic environment, include areas of archaeological interest under Part II of the Ancient Monuments and Archaeological Areas Act 1979.

6.10 A more general solution to the problem of ensuring that the historic environment is properly managed and protected by public bodies in the exercise of their duties would be to impose a statutory duty of care on such bodies in relation to the historic environment.

Conclusion

7.1 There are a number of short-term and longer-term solutions to the twin threats of deregulation and shortage of resources affecting the management and protection of the historic environment in

¹⁰ <http://archaeologists.net/codes/cifa>

¹¹ See ClfA's Standard and guidance for archaeological advice by historic environment services (2014):

http://archaeologists.net/sites/default/files/ClfAS&GArchadvice_2.pdf

¹² See, for example, section 22 of the Historic Environment (Wales) Act 2016 and section 14 of the Historic Environment (Amendment) (Scotland) Act 2011

¹³ <https://www.historicenvironment.scot/media/2869/historic-mpa-leaflet.pdf>

the planning system. We would be pleased to discuss these further with the Town and Country Planning Association and other stakeholders.