

HISTORIC ENVIRONMENT ADVISORY COUNCIL FOR SCOTLAND

RESPONSE TO THE WHITE PAPER: MODERNISING THE PLANNING SYSTEM

Introduction

The Historic Environment Advisory Council for Scotland came into being on 01 June 2003 and was established by Scottish Ministers as a new advisory Non-Departmental Public Body to provide informed and independent advice on issues affecting the historic environment, which includes structures and places of historical, archaeological and architectural interest. It has twelve Members appointed in accordance with the Code of Practice for Ministerial Appointments to Public Bodies.

HEACS is charged with providing advice to the Minister for Tourism, Culture and Sport in respect of two key areas that are of relevance when considering the White Paper – heritage protection legislation, and the role of local authorities in the historic environment – and expects to report on these subjects within the course of its first term, which ends in May 2006. The Local Authority Working Group will report on the broader aspects of local authority involvement with the planning process in relation to the historic environment.

The Legislation Working Group has been looking specifically at the issue of unified consents and other issues raised in the White paper, and HEACS would expect to be included in the consultation exercise to be undertaken by Historic Scotland, recorded in Section 5.2.2. Comments in relation to these topics should be regarded as preliminary therefore, until such time as Council has had the opportunity to review and endorse the recommendations set out in papers from the respective working groups.

Main objectives of the White Paper

Although the historic environment does not figure prominently in the White Paper HEACS is broadly supportive of the aim to modernise the planning system. It agrees that the present system is inefficient and cumbersome, and at the level of the local authorities it has suffered from a serious lack of investment in recent years. The statement made in Appendix 6, of the need for the planning system *'to release the potential of the historic environment to contribute to wider objectives such as tourism, sustainable development and regeneration'* is strongly endorsed. Scotland's historic environment is undoubtedly one of the country's major assets, and it would seem to have been a missed opportunity for this not to be recognised as one of the central arguments instead of being relegated to the end of the paper in a lengthy Appendix on procedural matters. It would be of considerable concern if there was any suggestion the historic environment should somehow be decoupled from the broader planning agenda. Too often the historic environment placed in the position of being seen as a constraint on development within the planning system, rather than the catalyst for it, and an additional layer to the development management process rather than as an integral part. If the proposals set out in the White Paper can be made to work, then HEACS anticipates that there will be opportunities to redress this fundamental misconception.

Acknowledging that the proposals require improvements to be made in the delivery mechanisms, particularly by local authorities, if investment is not made in the skills required to achieve effective development management HEACS would anticipate significant risks of damage being caused to the historic environment through inappropriate development. The success of the proposed modernisation exercise, and the continuing levels of protection of the historic environment, will depend on *all* of the recommendations being implemented effectively, and not just those intended to speed up the process.

The culture of change required to achieve the desired improvements will be reliant not only upon strong guidelines from the Planning Division, backed up by appropriate legislation but, increasingly, on the performance of local authorities. However, to be fully effective, it will have implications for *all* of the participants within the system. In the case of the historic environment this must encompass

- **Scottish Executive**, recognising the wider role that the historic environment plays in economic and social regeneration of communities
- **Historic Scotland**, whose inspectors, in the light of the requirement for pre-application discussions, would need to ensure that the advice given at that stage, and at any later stages, would be relevant to the nature of the development in terms of the wider objectives, and given informally without prejudice to later, more formalised, arrangements
- **Local Authorities**, recognising their requirement to be increasingly pro-active in the delivery of policy relating to the historic environment and being able, and willing, to resource specialist services as part of a speeded up planning system
- **Applicants**, who should be able to demonstrate at the time of making the application for any proposed development having an impact on the historic environment that the proposals are based on sound knowledge of the significance of the site or building in question; evidential supporting material should be a conservation plan for larger developments and a proper archaeological evaluation and recording of sites and structures; this should be in addition to any requirements for design statements, or masterplans for the larger sites
- **The amenity societies**, who may need to move from a presumption towards protecting the historic environment against development pressures, to supporting the role of the historic environment as the agent for regeneration, but who will need an adequate time frame in which to respond

To achieve the very necessary changes in culture, any modernised system must deliver the expected improvements. The present fallback position must be averted - of having to protect the historic environment only as a last resort through existing heritage protection legislation and through a range of non-statutory, outmoded and underfunded working arrangements. HEACS sees no merit in perpetuating an adversarial approach with consequential delays to the planning system, which can lead to the unfortunate impression being given of the sector as preservationist, and therefore against development of any kind.

Broader changes to the planning process through the introduction of SEA, Action Plans, neighbour notification etc. will stretch resources of planning departments, even

with a simplified development process. Adequate funding of the planning system within local authorities is thus the lynchpin of any future prospect for change, and there must be serious doubts that radical change can be achieved through mere efficiency gains within the system. Additional funding support from Central Government would therefore seem necessary. This funding support may also be required for appropriate professional courses at further education establishments in Scotland that have seen a rundown in recent years.

National Planning Framework

While HEACS supports in principle the need for the continuation of the NPF and for its effective review, there is disappointment that the published version pays scant regard to the significance of Scotland's environment, let alone the historic environment. The planning process is about the interrelationship and interaction of different land uses, and about the effective planning of new investment that enriches existing communities and countryside. It is to be hoped that any further NPF will recognise these non-monetary benefits to the Scottish economy rather than just becoming an extension of service infrastructure programmes. The NPF is in a unique position to set the government's cross-cutting agenda between land use change, transport, environment and the social economy and the opportunity should not be wasted.

It is also evident that large infrastructure projects will take many years to plan and implement. A potential drawback could be the degree to which the system is subject to short-term political interference during the normal cycles of electioneering for terms of government – it is recognised, however, that this could also be a strength. The reality is, however, that there is an overriding need for long-term stability in dealing with changes to the historic environment and it is doubtful whether the current legislative framework provides that basis. The NPF could provide a useful vehicle for the reinforcement of its importance.

Development plans

HEACS welcomes the principle of seeking to make the development plan system more efficient, inclusive and effective within a five year timescale. It is noted this will be achieved largely through culture change both within local authority leadership and the profession rather than to rely on penalties for default that, at one point, had been suggested previously. This is unlikely to be sufficient and it appears necessary, therefore, for the Executive to have to introduce significant incentives for change to take place and to guarantee the success of a plan led system. If the system fails at this time, the opportunity to change will have been lost for many years.

While HEACS recognises that the move to single tier status for development plans, except in the four city regions, will not necessarily impact extensively on measures to improve the management of the historic environment, it is worth recording that in moving to city regions the opportunity exists for more joined up government. With new boundaries proposed for Regional Transport Authorities (that do not seem to mesh with the city regions) and concern over Enterprise Company and Health Board boundaries, the opportunity should be taken to rationalise into a coherent whole. Nor should the change to single tier plans lead to a minimalist approach to the plans themselves.

HEACS recognises that there are considerable benefits in ensuring that the local plan mechanism will be overhauled and made the effective tool that it had always intended to be; it notes and welcomes the degree to which there is to be enhanced consultation before the publication of any plan, though this must be based on a realistic assessment of the capability of communities to cope with this enhanced role. There are many aspects of the historic environment for which there is presently no statutory protection, for which the only effective protection is through the local plan. As expressions of local identity these can be of considerable importance to Scotland's many and varied communities. The contribution made by the intangible heritage to health and wellbeing, as well as the economy and regeneration, should be recognised appropriately when the development plan is drawn up. HEACS perceives a mounting risk if there continues to be a dearth of qualified, and motivated, conservation officers and archaeologists to identify the significance of the historic environment beyond what may appear only on statutory lists. It may also be necessary to consider more carefully the role and function of voluntary specialist bodies in supporting this work and of the consequential funding arrangements.

Given that there will be a presumption always in favour of development that accords with the local plan once an application has been lodged, there will be considerable pressure in the system to deliver an outcome within the specified period, in order to meet the intended improvement targets anticipated from a modernised system, especially when performance targets will be monitored by the Executive, and published. Even though pre-application discussions for some applications may become the norm, with obligations upon developers to consult widely before an application is lodged, there will be less of an incentive for an application to be rejected as being incompetent, or incomplete. It is currently the case that too many applications struggle through the system with documentation that has been poorly prepared, with consequential delay and every prospect of a less than satisfactory outcome at the end of the process. HEACS would be in favour of the Planning Division, with the assistance of Historic Scotland, issuing unequivocal guidance in relation to this issue.

Accordingly HEACS recommends that clear guidance should be issued as to what constitutes a competent application for the scale of the development, and the route that it may be expected to follow within what is being introduced now as a four-tier system – of developments that fall into the *National, Major, Local* or *Minor* categories. This will be a particular burden for those applications involving statutory designations protecting the historic environment which, in view of their complexity and the fact that some of the designations may overlap, are frequently misunderstood and misinterpreted. It will be of especial relevance in considering the introduction of simplified, standardised application forms, as is being proposed.

Role of local authorities

Subject to the concerns raised in this response over levels of qualified staff and investment in the development management system and on the matter of local appeals, HEACS welcomes the proposed levels of subsidiarity in relation to proposals for local developments, which should rest properly with local authorities. Proposals for

dealing with minor development seem sensible, provided there is an adequate protective mechanism for matters relating to the historic environment.

For effective measures to be in place there should be a requirement imposed for every local authority to have access to informed, in-house advice in relation to the historic environment. Specifically this would require qualified staff to be appointed for archaeological services, and as conservation officers. Such advice is currently not available to all local authorities, and where it is, there are levels of serious understaffing at present. Staff with the specialist skills working in development management within the local authorities will need the full support of the elected members.

The historic environment is also well served by many and varied amenity groups often with a localised and specialised knowledge unique to that area. The intention to speed up the planning system, while laudable, will put even further strain on those groups' abilities to respond. Whilst it is already recognised that financial support for training may be required for local authority staff, this may well apply equally to consultees. Consideration should therefore be given to how these bodies might be brought into a more continuous and pro-active role within the system together with commensurate education and a limited degree of funding.

HEACS is disappointed that a limited form of Third Party Rights of Appeal (TPRA) has not been proposed by the White Paper. In the previous consultation on TPRA the Executive's Model 1 was supported as providing the best solution to introducing a limited scheme without necessarily overwhelming the planning system, if necessary by initially limiting the categories of development affecting the historic environment to which it should apply. There was also a suggestion of a statutory right for amenity bodies to be notified (which we hope will form the basis of any new consultation process, anyway). HEACS remains unconvinced that a limited form of TPRA would seriously compromise the speeding up of the planning system and has concerns over the transparency of the system now proposed.

In the absence of TPRA within the system HEACS has even more serious concerns over the proposal for appeals to be conducted by locally elected members, and that they would be qualified to undertake this task. It has not always been the case that applications for development that has an impact on the historic environment have been considered adequately by local authorities against competing pressures of renewal and inward investment, with the attendant lure of instant social and economic benefits for local communities. At the very least, clear guidance on the conduct of local review bodies, and on training for those involved in them, should be a prerequisite before this proposal is adopted.

Sundry improvement measures

While HEACS welcomes in general the intention to review of Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (GPDO), together with the related mechanism of the Article 4 Directions, in terms of simplifying the legislation so that it is easier to use and interpret. There has to be recognition that current permitted development rights can already pose a serious threat to the historic environment, particularly in relation to archaeology. Extending those rights without a

consequential duty of care for the historic environment would give rise to further concerns. Conversely, although cumbersome to use, Article 4 Directions have the merit of protecting the historic environment from inappropriate and damaging development in Conservation Areas and HEACS would not wish to see these measures being reduced in any simplified arrangement.

HEACS supports the proposals for enhanced measures in relation to effective planning enforcement, and trusts that consideration will be given to extending powers to contravention of listed buildings legislation. The requirement for applicants to notify the planning authority of dates when work is commenced and completed, as happens with the Building Standards Regulations, is eminently sensible.

Very little is said in the White Paper on the detail surrounding many of the proposed changes. This will inevitably mean that, even with the current timetable, legislative change will probably be drawn out into the next decade, the development plan system will be in a considerable state of flux and political contexts and priorities will change. A clear and detailed path for achieving change is thus a prerequisite so as not to lose the impetus of the current proposals.

Conclusion

HEACS supports Scottish Ministers in their desire to modernise the planning system, and in the principal objectives set out in the White Paper. It notes that there is a considerable reliance upon local authorities to invest in the planning system, and perceives considerable risks to the historic environment in a streamlined arrangement should the assumptions upon which the White Paper prove not to be deliverable, or deliverable only in part.

Accordingly we caution Scottish Ministers to ensure that the risks to the historic environment within the framework of development management should be *no less* than at present as a result of the adoption of the recommendations set out in the White Paper. The note of caution is reinforced by the unhelpful perception gained from reading the White Paper that the historic environment is somehow peripheral to the aspirations articulated in the Partnership Agreement, recognising this to be the driving force behind these radical changes.

HEACS would wish to return to these issues in providing independent, strategic advice to Scottish Ministers once the reports of its working groups have been considered and adopted by Council, and would welcome the opportunity to consider minor changes to legislation affecting the historic environment in the forthcoming Planning Bill at the appropriate time.

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