



## **Draft Historic England advice note: *Local Heritage Listing: Identifying and conserving local heritage***

### **Historic England consultation**

Date: 18 December 2020

#### **A. Preface**

1. This is a consultation draft of a new edition of existing Historic England advice, aimed at owners, consultants, local authorities, and others. It is a Historic England Advice Note (HEAN), one of about 15 HEANS. These sit beneath Historic England's three over-arching Good Practice Advice Notes, which in turn sit beneath the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG), and the relevant legislation.
2. This consultation can be found at or from <https://www.historicengland.org.uk/about/what-we-do/consultations/guidance-open-for-consultation>.

#### **B. The CLA and heritage**

3. The CLA's c28,000 members manage and/or own at least a quarter of all heritage (and a higher proportion of monuments), including a large but hard-to-estimate number of local-heritage-listed heritage assets. The CLA is by far the largest stakeholder organisation of managers and owners of heritage. Our members believe strongly in heritage protection, but are concerned that it works effectively and proportionately, and safeguards heritage by allowing it to be changed in sympathetic ways to ensure that, as far as possible, it is financially viable and valued in the future. This approach is of course the same as Historic England's 'Constructive Conservation' policy.
4. CLA members are extensively involved in the maintenance of and change to heritage assets of all types, and make many thousands of heritage-relevant planning applications and listed building consent (LBC) applications each year.

#### **C. General comments**

5. It is important that there is published advice on local heritage listing, given the number of local heritage lists which already exist, and the Government's intention to expand local heritage listing in future.

6. Subject to the points below, we welcome this draft revision of this advice, first published in 2012.
7. We have some comments, some of significant importance, as follows:

## D. Specific comments

### Principles

8. **A vital component missing from the Summary and Part 1/Part 2 is a brief general statement, in line with the NPPF and with Historic England’s Constructive Conservation policy, that local heritage listing is not intended to ‘freeze’ local heritage, and that sympathetic change is acceptable, indeed encouraged: the purpose of local heritage listing is not to prevent change, but simply to ensure that heritage significance is taken into account, alongside other material considerations, in planning decisions.** The absence of this contrasts with (for example) the draft HEAN on listed building consent, which says explicitly on the first page of its main text that “Listed building consent was originally introduced both to protect historic buildings of significance and to allow change to them”. Does Historic England really mean that statutorily-listed buildings can be changed, but that that local-heritage-listed heritage assets must be frozen? The equivalent Welsh Government guidance <sup>1</sup> stresses the need to allow “local historic assets to remain responsive to present day needs and contribute to the vitality of the area without an adverse impact on their character”; adds that “the purpose of maintaining a list of historic assets of special local interest is not to prevent change, but to ensure that the significance of local assets is taken into account in a proportionate way when change is being considered”; and reaffirms that local heritage listing “is not a barrier to change”. **A sentence on these lines needs to be added.**

### Process

9. We particularly welcome the draft document’s emphasis on a sound approach, a sound (but not over-prescriptive) process, and transparency. Lists compiled (for example) on a ‘drive-by’ basis, or on a dilettante basis without properly-considered criteria, or designed to prevent some development by listing things on its site which have no real heritage significance, would obviously not be sound, and should not be material in the planning process. The draft does stress the need for a sound approach, for example in paragraphs 3, 16 and 19, and throughout Part 2 on local heritage list creation. **It is very important that these points continue to be made consistently in the final document.**
10. **As part of this, it is particularly important, as paragraphs 19, 28, 40, 44, 51, 53, and 54 say, that local heritage lists require adequate local planning authority involvement and confirmation.** Even if some or much of the work is done by others, **it is vital that the local authority has ultimate ‘ownership’ of the process and of the local heritage list, and that it takes the lead and is seen to do so,** because otherwise this is likely to reduce

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<sup>1</sup> See [Managing lists of historic assets of special local interest in Wales](#), Cadw, 2017, pages 2, 9, and 10.

the credibility of the end result, and open it up to challenge. The local authority has a duty to act impartially, which other participants do not. It is inevitable that not all of the community will be engaged, and again there is a danger if the job is passed to special interest or lobbying groups that the result is, or is perceived as being incomplete, inconsistent, or biased. For example if the process was passed to (say) a local archaeological trust or vernacular buildings society, it might give disproportionate weight to heritage in these categories; or handing it to an organisation which primarily lobbies against development might lead to vexatious local heritage listings in places where it expects development proposals of which its members might disapprove.

11. **Local advice and guidelines on local heritage listing need to discourage vexatious nominations**, because they have been common in some cases, a source of disputes and dissatisfaction with the process, and a debilitating waste of scarce resources. Local authorities which have been through the process often, as a result of experience, stress this point in their guidance.
12. In the second paragraph of the Summary, the wording gives the (presumably unintended) impression that a consistent process is only to the benefit of “owners and developers”. **It would be better to say “...to the benefit of all, including owners and developers...”**.
13. **Here, or elsewhere, this document should definitely refer to the Civic Voice Local Heritage Listing Toolkit<sup>2</sup>**, which provides complementary advice on local heritage listing.

#### Partnership and consultation

14. **Paragraphs 30-32 on partnership and consultation are vital.** The document should say more clearly that community (including owner) involvement is vital in local heritage listing, because it is unlikely to be effective in practice if the community (including owners) have not felt fully involved in the process: the greater the public support that can be enlisted for local heritage listing before (and after) it takes place, the more likely it is that policies will be implemented voluntarily (or indeed at all)<sup>3</sup>. Local heritage listing should not be something done to a community by unseen bureaucrats, or other unseen players: basic principles of democracy and accountability require them to be (proportionately) involved and consulted. The advice needs to be wholly clear that community and owner consultation is essential good practice, not an optional extra.
15. **In particular, as paragraph 31 says, it is of paramount importance that owners and occupiers of property being considered for local heritage listing are involved:** they need to be given opportunities to contribute information, and to be involved and comment, alongside the rest of the community. Local heritage listing will be far more effective on the ground if it has the support of the owner, wherever possible, and the owner needs to be fully informed beforehand of the implications of local listing so that he/she does not later feel misled. The demotivating effect on owners of imposing listing without consultation and transparency is considerable, and can poison relationships for decades. The Civic Voice

<sup>2</sup> [Civic Voice Local Heritage Listing Toolkit](#), 2018.

<sup>3</sup> of the pre-2014 policy in PPG15 paragraph 4.7, which said that “the greater the public support that can be enlisted for designation before it takes place, the more likely it is that policies will be implemented voluntarily”.

Toolkit as above also stresses the need for owner consultation “...the owner should be given at least six weeks to let the local authority know whether they think their building deserves inclusion on the Local Heritage List or not. Owners can often provide valuable information which can influence the decision...”. Consultation of course does not mean that owners must have a right of veto: if a heritage asset clearly meets properly-considered selection criteria, and an effective and transparent consultation process has been followed, including of the owner, local heritage listing may be justifiable even if it does not have the current owner’s support.

16. A sound local heritage listing process should minimise the number of cases in which assets are wrongly included, though of course there will be some cases in which a mistake of fact is made, and of course in some instances the decision to list or not to list may be marginal. **Natural justice however requires some form of appeal/objection process, and this needs to be covered in the advice**, but of course (given that local-heritage-listed heritage is less significant than nationally-designated heritage) the system should be proportionate, with an informal procedure. The Historic England advice should discourage vexatious objections by stressing that they need to be based on mistakes of fact, or inadequate significance to meet the criteria for local heritage listing (vexatious appeals, like vexatious nominations as above, are a waste of resources and need to be discouraged).
17. As paragraphs 32 and 49 say, community consultation and outreach should “go beyond the usual communities and groups that participate in heritage”.

We would be happy to comment further on anything in this response.

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