



Revised Historic England advice: *Historic England Advice Note 1 - Conservation Area designation and management*

Historic England consultation

Date: 17 May 2018

Preface

1. This is a proposed revision of the Historic England (HE) conservation area (CA) advice, aimed at owners, local authorities, and others. As a Historic England Advice Note (HEAN), it will sit alongside other HEANs, including *Making changes to heritage assets*, and other HE advice. All this sits beneath HE's three over-arching Good Practice Advice Notes, drawn up in consultation with stakeholders including the CLA. These in turn sit below the National Planning Policy Framework (NPPF), and the relevant legislation, mainly the two 1990 planning acts.
2. This consultation can be found at or from <https://www.historicengland.org.uk/about/what-we-do/consultations/guidance-open-for-consultation>.

The CLA

3. CLA members manage at least a quarter of all heritage, including tens of thousands of buildings and much land in conservation areas. The CLA is by far the largest stakeholder body of heritage managers and owners. CLA members are also extensively involved in change to heritage assets of all types, making thousands of heritage-relevant planning and listed building consent applications each year.

Summary

4. The CLA was highly critical of the consultation draft of the previous 2015 version of this document.
5. This 2018 draft is considerably improved, but needs further change – set out below – if it is to help to achieve effective outcomes in CAs.

Introduction: the protection of conservation areas

6. There are now over 10,000 CAs, covering several million buildings – a much greater number than the number of listed buildings.
7. Many of these CAs are in a good and improving state, but others are declining, and HE lists more than 600 as ‘at risk’. The primary factor which determines the health of a CA is – unsurprisingly – public and owner support, or lack of support, for its conservation and improvement. Where people – especially owners – care, CAs tend to be healthy. Where people care less, they are not (and this has little to do with legislation or policy: no amount of ‘tough’ new legislation would change that, not least because it would not be used). The new Civic Voice report *What is the future for our conservation areas?*¹ comes to similar conclusions, and its recommendations focus not on legislation or policy, but on improving community involvement and its effectiveness.
8. HE advice by itself cannot guarantee the health of a CA, or public support (and seems so far to have little place in Civic Voice’s recommendations), but it has a very important role.
9. Firstly, although CAs are designated by local authorities and local authorities are supposed to manage them, in practice few can do that effectively without community involvement. This advice needs to help local authorities secure that help (see 32-34 below).
10. Secondly, CAs need effective and proportionate protection, and this advice needs to help to provide that. Every time anyone needs to do anything external to any building (significant or not) in a CA they will be subject to this advice, and deficiencies in it have real implications in terms of the effectiveness and costs of the processes, and the effectiveness of protection.
11. **Fundamental to this is articulating clearly HE’s policy of constructive conservation (see 36-38 below).** Much of this is about proportionality. At one extreme, many CAs are scarcely managed as CAs at all, and plastic windows spread across the CA without any consents or enforcement. At the other extreme, many CAs are now perceived as conversation areas, constipation areas, or contradiction areas: to quote former National Trust Chair Simon Jenkins², “London’s conservation areas have collapsed into absurdity. Those who live in these areas are barely allowed to repaint a front door without pernicky permission. If they try to overlook their neighbours with a new bathroom window, forget it. But if they want to overlook them with a 20-storey tower... they will have no problem.” Obsessive policies about “the dangers of cumulative change” lead some local authorities to make almost any change impossible, but others to give up. The second self-evidently does not protect the CA, but neither does the first, partly because the policy loses public support, and partly because an approach which is unsustainably good at stopping change inevitably leads to workarounds, like expansions of permitted development and housing policies which allow Jenkins’s 20-storey tower. **HE advice needs to suggest a much more nuanced view of change, encouraging local authorities to resist more firmly**

¹ Civic Voice, May 2018, https://docs.wixstatic.com/ugd/70a99b_70f244d02fd0441bb9f8bc2f1943d021.pdf

² writing in the *Evening Standard*, October 2017.

what is harmful, and to be much more accommodating of change which is not, especially where it is not publicly-visible and/or makes buildings more usable and habitable.

Specific comments on the draft text

Summary

12. The Summary is excellent. It sets out the scope and issues clearly, including a realistic and positive approach to conservation and to change. Especially welcome is the use of “conserves” (rather than the traditional “preserves”) in line one.

Preface and Introduction

13. These are generally good. We would suggest some changes:
14. In paragraph 2, after “...proportionate to the importance of the asset”, add “...and to the impacts of the proposals”.
15. At the end of paragraph 2, put the wording of the statutory duty in quotation marks to make it clear that it is a quotation from the Act, referring to the boxes on the following pages.
16. The text in the boxes on pages 5-6 should quote the legislation and guidance more precisely, using quotation marks.
17. In paragraph 8, the findings of the research into the effects of CA designation are much more nuanced than the draft suggests. Crude statements that CA designation always increases value are inevitably unconvincing, and are likely to annoy rather than reassure owners in CAs or potential CAs. **This needs to be amended: a more nuanced approach would be more convincing.**
18. Paragraph 11 and part of 17 imply (perhaps unintentionally) that CA designation should be ‘threat-based’, but **that is surely not the best approach**: it may encourage too-rapid and poorly-explained designation, or the mis-designation of areas which do not meet the criteria because this is seen as a tool to stop some ephemeral development proposal.

Identifying potential conservation areas

19. References to designation are much too scattered around the document, in paragraphs 6, 8, 11, 15, 16, 17, and 71-74, and much of this is still inconsistent. On the one hand, paragraph 6 says that designation is rare and unlikely to rise, and paragraphs 7 and 16 quote NPPF paragraph 127 which warns against the designation of areas of insufficient interest. On the other hand, in between these is paragraph 15, which implies that designation in fact is appropriate in a wide range of situations, and much later in the

document there is paragraph 72, at first sight identical but followed by a wholly different list of cases in which it implies CA designation might be appropriate.

20. **This needs a consolidated and much clearer and more consistent approach.** The designation and management of CAs is a regulatory activity, and the general principles of regulation are of course as applicable to this as to any other kind of regulation. These are that it should be evidence-based, proportionate, consistent, accountable, effective in its use of resources, and transparent in deliberation and outcome. PPG15 covered this effectively, but this advice has never done that, probably because PPG15 was still in force when it was first written, and it was not revised when PPG15 was cancelled. **These important points need to be reinstated.**
21. Firstly, a sentence should set out the context, ie that local authorities have a duty under the 1990 Act to designate CAs, and that over 10,000 have been designated to date.
22. Secondly, **the advice should give a brief and balanced assessment of the benefits but also the disbenefits of CA designation, as PPG15 did.** On the one hand, CA designation should (a) encourage owners to protect heritage significance by considering it when contemplating change, and thus reduce damaging change in CAs; (b) protect owners from damaging changes to neighbouring property; and (c) safeguard townscape etc value more generally. On the other hand, as PPG15 said³, CA controls also increase costs and bureaucracy for the local authority (the need to prepare plans and policies⁴, to service more enquiries from the public, and to handle more applications); and for owners and managers (greater planning uncertainty, inflexibility, higher costs, and delays).
23. **This should therefore encourage local authorities to weigh up properly the merits and demerits of further designation.** Of course there are further areas which could benefit from CA designation, but given (i) that nationally over 10,000 CAs have been designated; (ii) that each individual local authority probably already has many CAs, some of which are likely to be inadequately managed or at risk; (iii) that the most significant areas have probably already been designated, and (iv) that the effort of designating new CAs and managing them thereafter is likely to divert scarce resources from the management of existing CAs, it is not self-evident that fresh designation is always a good thing. The advice should not simply quote NPPF paragraph 127, but also stress the principle Historic England uses in its own designation, that heritage needs to reach a set and quite high threshold of significance before it should be designated. (Probably, as the Civic Voice report suggests, new CA designation should look mainly at the best examples of C20th development which would have been disregarded when most CAs were designated in the 1960s to 1980s).
24. **This section should also say that each kind of heritage designation has a specific purpose, that CA designation should be used where it is the appropriate tool and not otherwise, and that designations should not be combined unless there is a**

³ PPG15 paragraph 4.5 for example said that “in deciding whether it is desirable to designate, a local authority may take into account the resources likely to be required, not only for the administration of CA controls, but also for consultation...and the formulation of policies...”

⁴ PPG15 4.5 added that “without follow up, designation is unlikely to be effective in itself”, presumably to discourage casual designation which the LPA did not intend to follow up effectively.

convincing reason to do this. Layering designation upon designation, a “there’s no such thing as too much red tape” and “we need belts as well as braces” approach is the antithesis of the principles of good regulation and HE’s constructive conservation policy. It creates only an illusion of protection; actually it is likely to reduce the real protection of heritage, which often needs sympathetic change if it is to survive. Layering designations inevitably creates a perception among decision-takers that change is being strongly discouraged and should be resisted (“it’s in a Registered Park and a Conservation Area and an Area of Great Landscape Value – surely it would be safer to say “no”!”)

25. The treatment of rural areas and landscapes in paragraphs 72-74 is unclear. Parts say rightly that CA designation “is not generally an appropriate means of protecting the wider landscape”, and that tree preservation orders, not CAs, are the appropriate designation tool for trees, but other parts seem to advocate designation, for example of registered (and indeed un-registered) parks and gardens. **This needs to be made much clearer: CA designation is not a landscape protection tool, but a tool for protecting built structures and their settings**, and it is pointless for landscapes or parks unless (a) there are structures of enough significance to deserve protection, and (b) those structures are not listed, and cannot be listed or protected in other ways, and again (c) the benefits outweigh the costs. Outside those specific circumstances, the CA designation of parks or rural land is at best pointless, and often worse than pointless, because pointless designation is likely to gratuitously annoy owners, especially where there are only one or two owners.

3. How to appraise CAs

4. Content of CA appraisals

26. These long sections are sound in the sense that this should produce robust appraisals, and this is certainly the approach which should be used before designation or significant extension of CAs.
27. This approach however is much too resource-intensive to be realistic for existing CAs. It would be excellent if every existing CA had an up-to-date appraisal to this standard, but very few do, few if any local authorities have the resource required to do this, and this is unlikely to change, leaving most CAs without any substantive appraisal or plan at all.
28. **Something needs to be done about this, and this advice needs to take that forward.** There is a little advice in paragraph 82 about stripped-down management plans, but this needs to be developed further and applied to appraisals also. This ought to be discussed with other stakeholders, especially Civic Voice. The outcome might be (say) a template approach producing combined appraisals and plans totalling 5-10 pages, with adaptable generic policies, and in which most of the work is carried out by volunteers (see 33 below).
29. This will not happen overnight, so **it is also important that this advice includes management principles based on the NPPF/PPG which can be used where there is no up-to-date appraisal or plan** (see 38 below).

30. Paragraph 67 is a non-sequitur – the problems listed obviously need better and more proactive management, not ‘additional controls’.

Community and owner consultation and involvement

31. Paragraph 29 is considerably improved from the previous version, seeing communities and owners as valuable partners rather than as irrelevant or simply a source of free survey work.
32. Community and owner involvement is vital if CAs are being designated or extended, because designation is unlikely to be effective in practice if the community and especially owners have not feel fully involved in the designation process: the greater the public support that can be enlisted for designation before (and after) it takes place, the more likely it is that policies will be implemented voluntarily (or indeed at all)⁵. **The advice needs to say this much more specifically, and also to be wholly clear that community and owner consultation is essential good practice, not an optional extra.** CA designation should not be something done to a community or owners by unseen bureaucrats: basic principles of democracy and accountability require them to be (proportionately) involved and consulted. The advice also needs to cater for the (not infrequent in rural areas) cases in which a conservation area has only a few owners, stressing the need to consult these owners. Finally, it needs to point out that poor process, or ill-considered scoping (like the designation of a conservation area when the real aim is to protect only one building) may lead to challenges to and the quashing of conservation area designations⁶. **Some general advice is therefore needed on how that should be carried out (the HE advice on local listing is helpful as a model, including its specific advice about the consultation of owners).**
33. **This advice should then add that public and owner involvement is vital in the management of existing CAs.** That is partly again because CAs are unlikely to be managed well or to prosper if the community and especially owners are not involved, and any appraisals and management plans drawn up without effective consultation are likely to be ignored, ineffective, or resented. But it is also vital because few local authorities have the resource to manage their CAs properly, and they are unlikely to be managed properly without community or volunteer input. **Again it would be sensible (see 28 above) to discuss this with Civic Voice and other stakeholders, to work out effective ways of generating appraisals and plans and advice on management and decision-taking, and to cover this in this advice.**
34. **It is very important however to add that the local authority must not abdicate all responsibility to others, and still needs to be in overall control of the process,** because otherwise there is a danger of distortion by special interest groups: a vernacular buildings group might include only vernacular buildings, or an anti-development group

⁵ PPG15 paragraph 4.7 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”.

⁶ see for example <http://www.out-law.com/en/articles/2015/february/high-court-quashes-hounslow-conservation-area-designation-due-to-inadequate-consultation/>

might recommend designation of an area or the refusal of a planning application in order to forestall a specific development it disliked, not because of heritage significance.

6. Managing proposals in conservation areas

35. There are two crucial elements missing here.
36. Firstly, and very importantly, although the draft has references to change being “inevitable” and being beneficial in some instances, **there is as yet no systematic statement of Historic England’s principle of constructive conservation, and no general statement that CA designation is not intended to prevent change, that CAs are not simply heritage theme parks and are (or should be) living and working parts of urban and rural areas and economies, that sympathetic change is desirable and essential where it ensures the viability and vitality of the area and buildings within it, that the history of most CAs is a history of successive changes, and that changes and new development are usually crucial to a sustainable long-term future for the area. It is of vital importance that this is included.** In addition, as noted in paragraph 11 above, HE advice needs to suggest a much more nuanced view of change, suggesting what matters and what does not, and encouraging local authorities to resist more firmly change which is harmful and to be much more accommodating of change which is not, especially where it makes buildings more usable and habitable.
37. Without these key principles, there is likely to be a (i) presumption among LPA staff that change might be dangerous and should be resisted, and (ii) a perception among owners and others that the sympathetic changes needed to give heritage a future will not be allowed, meaning that proposals for change are not even taken forward, threatening the long-term vitality of the CA and survival of buildings and spaces within it.
38. Secondly, again, few CAs now have an up-to-date appraisal or management plan, and the assumption in paragraph 77 that there will be a recent appraisal and plan and policies is not therefore helpful. As above advice on stripped-down appraisals and plans would be helpful. **But this also needs to cater for situations where there is no appraisal or plan, or where they are out of date, especially by setting out the general principles set out in paragraph 36 above.**
39. Paragraph 92 does and should suggest the use of LDOs and LLBCOs, but for resource reasons these are very unlikely to be used on a significant scale.
40. In paragraph 100-101, the use of statutory powers to enforce repair in conservation areas is vanishingly rare in practice. HE should publish wider advice on heritage at risk, but so far has not⁷. In the absence of wider HE advice, there ought to be a statement here that using statutory powers against owners of buildings which are simply redundant and have conservation deficits is likely to be ineffective at best, and usually actively counter-productive; the solution in these cases is to work with owners to find viable new uses. It should then add however that local authorities should use these statutory powers proactively in the specific cases where it is clear that (i) there is a financially-viable

⁷ apart from Good Practice Advice Note 2, paragraph 46, which encourages working with the owner.



solution for the building, and (ii) the owner is refusing to implement this, and that HE's *Stopping the Rot* gives advice on this where applicable.

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