



## Averting Crisis in Heritage:

CLA REPORT ON REFORMING A CRUMBLING SYSTEM



Country Land &  
Business Association

[www.cla.org.uk](http://www.cla.org.uk)

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## FOREWORD

CLA members care greatly about heritage and always have done. Our predecessors had been looking after it – and indeed creating it – for centuries before William Morris founded the Society for the Protection of Ancient Buildings in 1877, or before legal protection of monuments and buildings began in the 1880s and 1940s.

Nearly all the CLA's more than 34,000 members, in the private or charity sectors, still look after heritage, mostly the "everyday" heritage of houses, gardens, barns, mills and ancient earthworks. Collectively, they manage at least a quarter of all listed buildings, more than half of all monuments and huge amounts of other designated and undesignated heritage.

**This makes the CLA by far the biggest stakeholder group of managers and owners of heritage and, unquestionably, one of the top half-dozen key players in the heritage field.**

Like most people, we think heritage is important. We strongly believe it needs to be conserved and protected, and CLA members prove this in the most convincing way of all, by organising and paying for much of it.

Unfortunately, all this commitment is under growing threat. In common with many others in the heritage world, the CLA feels that government and the heritage protection system increasingly are hindering, rather than helping, the management of our heritage. This is mostly unintentional, but if people feel that the costs and difficulty of managing heritage are greater than the benefits, they will increasingly choose not to manage it.

More and more buyers are questioning whether to invest in heritage, and businesses are thinking twice about occupying it. This means repair projects are being abandoned because policy increases costs which are no longer assisted by grants but are liable to 20 percent VAT. It means Building Preservation Trusts giving up rescuing heritage because it has become just too difficult. All this is ever more dangerous for our heritage.

This is the reason for this Report. It is not a partisan owners' report, because the interests of owners are almost identical to the interests of everyone else. And we have deliberately made its recommendations realistic and possible to implement, with few substantive actions or costs for the Government.

With intelligent reform, our heritage could have an exciting future. What's important is that the Government and all of us recognise that heritage is in crisis and act to fix the system before it is too late.



A handwritten signature in black ink that reads "William Worsley". The signature is written in a cursive style and is positioned above a horizontal line that extends to the right.

William Worsley FRICS  
President, CLA

## NOTE ON HERITAGE IN WALES

The CLA actively lobbies on heritage and advises members in Wales, as we do in England. The Welsh heritage protection system has always operated differently to the system in England, and devolution has increased these differences. For example, the Welsh system tends to be somewhat better resourced; Cadw, the official guardian of the built heritage of Wales, is more involved in individual cases than English Heritage, and designation and documentation of Welsh heritage is more comprehensive.

A detailed CLA heritage report for Wales would, therefore, need to be a significantly different document. However, although this Report focuses on England and does not set out separate recommendations for Wales, many of the problems and conclusions are relevant in Wales, and many of the recommendations for English Heritage are relevant to Cadw, although the details are different. Cadw does plenty of good work in Wales, but could be more proactive in seeing its core role as steadily improving the overall state of Wales' heritage, particularly by helping the private and voluntary sectors to achieve this, as Historic Scotland traditionally has done in Scotland.

Cadw produces much good guidance, but the CLA recommends that it sets out a clear Constructive Conservation policy for Wales (see pages 12 and 22) and ensures that forthcoming planning policy in Wales is fully consistent with this.

## ACKNOWLEDGEMENTS

This Report incorporates the input and ideas of a very wide range of people over a considerable period of time. It draws particularly on two sources: the practical heritage issues experienced by many hundreds of CLA members and the views of many people from all parts of the heritage world. We are particularly grateful to the CLA members, officers and staff who commented on drafts and, above all, to the members of the CLA's Heritage Working Group. The contributions – direct or indirect – of all these many people are gratefully acknowledged.

## LIST OF ABBREVIATIONS

AES	Agri-Environment Schemes
ALGAO	Association of Local Government Archaeological Advisers
BPF	British Property Federation
CAC	Conservation Area Consent
CBA	Council for British Archaeology
CLG	Department for Communities and Local Government
DCMS	Department for Culture, Media and Sport
EH	English Heritage
EPC	Energy Performance Certificate
HHA	Historic Houses Association
HLF	Heritage Lottery Fund
IfA	Institute for Archaeologists
IHBC	Institute for Historic Building Conservation
LBC	Listed Building Consent
LDF	Local Development Framework
NHPP	National Heritage Protection Plan
NHTG	National Heritage Training Group
NPPF	National Planning Policy Framework
PPS5	Planning Policy Statement 5: Planning for the Historic Environment
SAVE	SAVE Britain's Heritage
SMC	Scheduled Monument Consent
SPAB	Society for the Protection of Ancient Buildings
THA	The Heritage Alliance

# Averting Crisis in Heritage: CLA Report on Reforming a Crumbling System

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## EXECUTIVE SUMMARY

Our heritage – houses, barns, mills, commercial buildings, hillforts and other archaeology, stone walls, parks and gardens – is important to all of us. It defines much of the world in which we live, shapes our identities, has huge public support, and is a surprisingly important part of our economy.

Heritage, however, is not like the paintings in the National Gallery. It is under constant attack, mainly from the weather and, if it is not looked after, it quickly decays. Looking after it is very expensive. This means that its long-term survival depends on it being used and appreciated, and, in most cases, generating an income. All this requires careful management, an understanding of what makes it important and an acceptance of the need for sympathetic change so that it remains relevant to the future we all want for it.

This approach to heritage, “Constructive Conservation”, is the key to its long-term survival. This is the heritage policy of the CLA, and of English Heritage, and is widely accepted as good practice. Indeed, government policy defines conservation as the intelligent management of change.

### The problems

Unfortunately, this is often not what happens in practice. This is not through ill will or incompetence, but because the big teams of skilled and experienced people who are supposed to be present in local authorities to apply these policies are not being funded by government, and are not there.

The system requires local authorities to get fully involved in each case, but they cannot. This makes it

difficult for Constructive Conservation to work. Frequently, this mismatch between the current system and its resources means that desirable proposals run into the ground, creating a growing perception that managing and changing heritage is “too difficult”. Equally seriously, the resources are not there to stop heritage from being damaged. This makes desirable change too hard and undesirable change too easy – the exact opposite of what should be happening. It threatens the future of heritage and, as resourcing is further cut, the situation is becoming even worse.

*‘When there are cuts to be made by national or local government, heritage is always the soft option, as we can see in the cut in support for English Heritage, and the savage cuts currently being made in the number of conservation officers employed in local government. Loss of expertise on this scale will be devastating’*

**Professor Sir Barry Cunliffe, former Interim Chairman, English Heritage, *Heritage for the taking?*, British Academy, 2011**

There are other problems too (see page 8), such as the huge disincentive of 20 percent VAT. There are also several destructive heritage myths: heritage is neglected by governments because it is wrongly assumed to swallow public money and to sway no voters; and that there is an irreconcilable clash between heritage and development. These myths lead to misunderstanding and conflict where there could and should be agreement.





### **What we did**

Before the CLA thought about the solutions to these problems, we went back to first principles and looked in detail at what is wrong, and why. We also looked at best practice in other areas, for example environmental consents and building regulations, on which the ongoing Penfold Review of non-planning consents proved extremely helpful.

Next, we set six “key tests” (see page 14) which our solutions had to pass, to avoid recommendations which would change little, cause harm or prove impossible to implement. Finally, we also discussed many of our ideas informally with others in the heritage sector. While, naturally, we did not find agreement on every detail, there seemed to be a clear feeling not only that change is needed but also that many of the “official” answers proposed in the longstanding Heritage Protection Review, such as merging the listed building and scheduled monument regimes, are either not going to happen or would not solve the problems. New thinking is needed.

### **The solutions**

There is no single solution. Different and detailed actions are needed, which explains the length of this Report’s Recommendations section (see Part Two). These are not crude “deregulation”: it is vital we do not dismantle heritage protection. In essence, as can be seen in the summary on page 15, the CLA is suggesting intelligent and carefully targeted reform to establish a system which can be operated with the available resources, making desirable change much easier and undesirable change much harder, setting out effective policy and systems to allow people to get on with looking after heritage. Much of this is simply

implementing the principles of better – not just less – regulation set out recently in the Penfold Review. It also involves debunking some of the heritage myths mentioned above, developing skills, and revisiting other policies – for example on climate change – which have unintended impacts on heritage.

### **Implementing the solutions**

The Government has no new money to spend, but that is not a hurdle because one of our “six tests” is that our recommendations must (with one exception) require no substantial extra spending. The Government is also busy, but that is not a hurdle here either because our recommendations require it to do very little, beyond agreeing that reform is needed, adding some clauses into a non-heritage Bill, and making some amendments to actions it would be taking anyway. Most of the required action is for English Heritage and the rest of the heritage sector to implement. English Heritage already has additional resources allocated to improving heritage protection, and the CLA and others in the heritage sector are very willing to get involved in the detailed implementation.

Our recommendations are not vague talk of “partnership working” or “efficiency savings”: they are concrete, detailed and implementable. And they are not about cutting heritage protection, but about boosting it, by changing the system so it works. Implementing them, or an agreed development of them, would give us something different from what happens now: a system which would fit the resources we can realistically provide and would protect our heritage effectively. Now is the time to act to avert the crisis in heritage.



# Part One

## What's wrong and why

What has gone wrong with England's heritage protection system, and how and why has it happened? Why have most of the answers put forward so far not worked? How can we identify the solutions which *would* work, and could actually be made to happen?

# 1. PROBLEMS AND CONSEQUENCES

The single most important – though not the only – problem is that the current heritage protection system needs a great deal of resource but is less and less adequately resourced.

Over more than a century, England has developed some of the world's most comprehensive heritage protection legislation. It has done a lot of good, but has a dangerous flaw: its assumption that almost any change to heritage needs expert examination when, in practice, government is unwilling to fund the expertise required.

Any planning application affecting, directly or indirectly, any “heritage asset”; any change to any listed building which could be argued to affect, even marginally, its “special interest”, even if the change is clearly and wholly beneficial; any demolition in a Conservation Area; and any work whatsoever to any scheduled monument are all assumed to need detailed expert scrutiny.

England's 750,000 listed buildings<sup>1</sup> generate an average of 30,000 listed building applications each year. And of the half a million or so planning applications each year, a third<sup>2</sup> – more than 150,000 – have heritage implications. Legislation and policy also require a lot of other work, such as creating appraisals and policies for each of 9,800 Conservation Areas.

Nearly all of this work falls to local authorities. In an ideal world, there would be unlimited funds, local authorities would be full to the brim of skilled and experienced conservation staff and the heritage system would be a good one. But in reality we do not live in a world of unlimited funds. In practice, this resource-hungry system has never been properly resourced; indeed, heritage is almost certainly the worst-resourced part of the entire planning system.

*'We are very fortunate to have a sympathetic conservation officer'* **A CLA member**

*'The understanding conservation officer has gone – and has not been replaced by a competent person'* **A CLA member**

A skilled, experienced and pragmatic conservation officer is extremely valuable to heritage, but in practice many local authorities have no skilled conservation staff at all, and none has all the staff needed to deal with all the heritage work imposed by

## CASE STUDY: New post office and farm shop delayed by cost-increasing hurdles

The closure of a post office in Essex created the opportunity to convert a redundant 17th Century listed barn nearby at Greenstead Farm into a new post office, farm shop and café. The owners first asked 100 local people what facilities they wanted, and the finished complex employs 22 part-time staff and stocks goods from 85 local producers. It won a national CLA best rural conversion award.

The local planning authority was enthusiastic about the new use, though highway concerns took time to overcome. Listed building issues, however, were much more problematic. Much time was wasted because the conservation officer left and a new conservation officer did not immediately accept the scheme agreed by his predecessor, meaning that many of the details needed to be renegotiated from scratch. Worse, though the owners were keen to replace the asbestos roof with reed thatch, they were told that consent would be refused unless they used straw thatch. This increased the roofing cost because straw is more expensive. More seriously it will also, because straw thatch has a short life, dramatically increase the building's medium- and long-term running costs.

legislation. Resources have been cut over several years, especially in recent times, and now there is a big and fast-widening gap between the resources required and provided by the system<sup>3</sup>.

There are other real problems, some of which have been widely discussed. These include the collapse of grant funding for the private sector over the past 20 years, private sector skills shortages and VAT increasing to 20 percent on heritage repairs but remaining at zero on new builds – a huge disincentive to look after heritage.

The problems also include a number of damaging myths and misperceptions. First, there is the myth that heritage is a cost to government, overwhelmingly funded from the public purse. The opposite is true (see page 34): heritage is overwhelmingly funded by those who own and use it. Public cultural funding makes up a tiny proportion, hugely exceeded by tax revenue from heritage. However, in the continuing absence of any research on this subject, this myth

1. It is not known how many listed buildings there are, but there are 370,000 list entries, many relating to several buildings, and studies of this ratio suggest 750,000 is a reasonable estimate.

2. Barker Review Interim Report, 2008. If the “setting” of heritage becomes more broadly defined, this proportion could increase.

3. The 2011 EH/IHBC/ALGAO report on local authority conservation resourcing is imminent as at June 2011.



© Simon Bull Images

## CASE STUDY: Planning hurdles take 25 years to overcome

The Hathersage Hall Business Centre (above) in Derbyshire is a £3million conversion of redundant farm buildings to high quality offices. It appeared as a model rural development in the Rural Coalition Report in 2010, is quoted by the national park authority as a triumph of public and private sector cooperation and was shortlisted for an RIBA architectural award in the East Midlands.

Unfortunately, however, it took around 25 years of frustrating effort to get the planning and heritage and other consents that the project required. Being in a national park and a conservation area and involving Grade II listed buildings, it naturally required a careful approach. However, it faced an apparently interminable series of hurdles.

The plan was always to create well-paid jobs, rather than the minimum-waged tourism jobs provided by most development in national parks. The planning authority was not enthusiastic and although planning permissions for conversion

were eventually granted in the 1980s and 1990s, these were subject to unsatisfactory conditions, such as the need to operate a farm shop.

The applicant had painstakingly to show that these were not viable (one condition proved to be illegal). In 2007 the planning authority finally agreed an all-office development was acceptable, but there was then a protracted disagreement within the authority itself about the design of the scheme. This further delay very nearly cost the project all of the Regional Development Agency funding essential to its viability, and indeed half of the grant money could not be claimed because deadlines could not be met.

This well-designed scheme was finally completed – including a bat roost costing £10,000 – in 2009, but even now it is not fully tenanted, underlining the risky and low or no profit nature of much rural heritage development.

*'Twenty percent VAT on repairs but zero percent on new build clearly encourages change rather than conservation'* **A CLA member**

*'Extensive negotiations have already cost more than £30,000 and the council requires even more surveys ... the project is not viable now and I will abandon it'* **A CLA member**

*'Is listing achieving its purpose at a reasonable cost to the taxpayer and without making the owner's life impossible? Definitely not!'* **A CLA member**

continues to cause huge damage because, combined with a political assumption that heritage does not sway voters, it has caused heritage to be one of the most neglected of all public policy areas.

Second, there is the myth that there is an inevitable and irreconcilable conflict between heritage and development which only one side can win: that looking after heritage means stopping change and, conversely, that economic progress means getting rid of heritage. This is false. In truth, irreconcilable conflict is rare. For individual heritage assets, a little effort can usually achieve both objectives, and exactly the same is true of policy and regulation. Creating “win-win” outcomes like this is a particular focus of this Report.

### **The consequences: a system approaching crisis**

All these problems have unfortunate consequences:

- Most heritage-related enquiries and applications are not handled by skilled conservation staff but by other staff, with little or no heritage training or experience, in overworked planning departments. Not unreasonably, these staff do not want to have to deal with enquiries to which they do not have the answers; they do not have the time or skills to give pre-application advice and they do not want more applications to process. They also do not want to have to take complex decisions, which might be criticised or appealed, on issues they do not fully understand. Would-be applicants with sensible proposals therefore often find that their calls are not returned, or that advice is not forthcoming, or they are told a policy presumption against changing heritage means there is no point in applying. If they persist, they are told their application cannot be validated or determined unless they provide a lot of information, such as archaeological surveys of the entire building, at disproportionate expense. The result is that many – probably most – proposals do not become applications and many of those which do are withdrawn prior to validation or before a decision is made.
- Decisions with important heritage and financial consequences are often being taken by people without the required skills, which further erodes confidence in the system.
- Users sometimes have to deal with a succession of different people with conflicting views, reducing confidence in the system as proposals expensively produced as a result of one set of comments are then rejected by someone else.
- The unvarying advice to users to “consult your conservation officer” on all heritage issues creates a wholly unrealistic perception that users can safely leave conservation aspects of a proposal to the local authority. Many applicants therefore do not

*‘I have no desire to allow this lovely historic building to become a ruin, though that seems to be the desire of English Heritage’* **A CLA member**

*‘Our farm buildings are expensive to maintain and of no economic benefit, but the planners are very reluctant to consider any sort of alternative use’*

**A CLA member**

employ skilled advisers or do not take heritage fully into account or justify their proposals, compounding the problem by reducing the quality of applications and making it more difficult for local authorities to handle them.

- There is a widespread perception that the system is inefficient, inconsistent and unreliable. Much heritage is decaying or losing value because its owners believe they cannot get consent to alter it, and unnecessary delays and costs reduce the funding available for maintenance.
- Despite draconian penalties, there is much unauthorised work to heritage because local authorities do not have the resources either to advise or to enforce, and many owners either do not understand the complexities of the law or, illegally, decide to sidestep what is widely seen as “impossible heritage bureaucracy”<sup>4</sup>.
- There are not enough members of staff even to deal with the application workload and much of the work local authorities are supposed to do is not being done. For example, although there is a statutory duty to produce appraisals for every Conservation Area, in practice probably less than one tenth of Conservation Areas have comprehensive and up-to-date appraisals and policies, and there is seldom a sensible timetable for producing them. Unresolved issues such as these leave applicants in a state of policy limbo.
- Importantly, all this is not just a problem for owners and developers and for heritage. It also greatly demotivates local authority staff, many of whom care about heritage. Conservation has a low status in many local authorities, the staff generally have more work than they can possibly handle and large and key parts of their jobs are not being done.

Unsurprisingly, therefore, the recent Penfold Review of non-planning consents<sup>5</sup> found heritage was (with environmental consents and highways) among the three most problematic groups of consents and, therefore, one of the three highest priorities for reform. It said respondents “identified heritage consents as an area of particular concern” and that “perceptions of problems were ... consistent and widespread, coming from large and small businesses [and] recognised by consenting bodies”.

4. No statistics on this exist (anecdotal evidence suggests that CLA members are more than averagely law-abiding, persisting with applications in the most unpromising circumstances).

5. Penfold Review of non-planning consents, *Final Report*, July 2010, see especially the Foreword, and 1.7, 1.8, 2.46, 2.48, 2.49.

Clearly, all this is bad for our heritage and for those responsible for it. And, counter-intuitively, the picture is worse for smaller proposals and for less important heritage – that is, for the great majority of proposals – because skilled staff are less likely to be involved<sup>6</sup>, and the owner is less likely to pay consultants the £1,000 or more required to justify the changes. Average changes to average heritage – an extra bathroom in a Grade II listed house, for instance – can be almost impossible to get consent for.

This unhappy picture is worsening because for years local authorities have been reducing planning and conservation staff.

### Using existing resources effectively

The problem is primarily one of resourcing. There are insufficient resources to operate the current system. An obvious solution to a resourcing problem is to provide more resources, in this case an additional, say, 1,000 skilled conservation officers and 1,000 skilled planning officers across England, as well as repair grants and tax concessions. But this is completely unrealistic. If it did not happen in the years when public spending was rising rapidly, it certainly is not going to happen in a long period of economic austerity.

The CLA believes we need to adopt the other, equally obvious, solution.

6. Skilled local authority staff (if any) and English Heritage get involved in detail in, perhaps, one fifth of cases: the seven percent of listed buildings which are Grade I or II\*, and some others.

**If we are not able to resource the current system, then we need to change the system so that it can protect heritage effectively with the resources we have.**

This Report explores how this could be done.



## CASE STUDY: Marquees dismissed as “inappropriate” in heritage settings

Dorney Court is a 450-year-old Grade I listed house in Buckinghamshire whose owners are struggling with a backlog of expensive repairs. Sensibly, they decided to apply for permission for a marquee nearby to generate a significant income from weddings and events to cover maintenance costs without increased wear on the fragile fabric of the house.

Unfortunately, the planning system decided otherwise. There were no local objections, but the local authority and then an inspector at appeal casually dismissed all heritage viability arguments, deciding that a marquee must be “inappropriate” anywhere near a listed building in the green belt. There are few other potential sources of income and the family are left to struggle on.

Similarly, at Lyme Park, Cheshire, the National Trust wanted an income-generating marquee, to be concealed in a stable courtyard. The planning authority rejected its application, claiming “a vinyl,

cream-coloured marquee would be completely out of keeping with a gritstone, slate-roofed Victorian building”. Whether a slate-coloured marquee would have been in keeping was not explained, but the authority followed up its refusal with an enthusiastic press release.

These are not isolated examples: in the absence of any written policy, marquees and similar developments have almost always been seen as “inappropriate” near heritage. In late 2010 however, English Heritage – after much persuasion by the CLA and others – issued new guidance which, in accord with English Heritage’s Constructive Conservation policy, now stresses the heritage benefits of marquees. In particular, it says “there should not be a presumption against temporary structures simply because they are visible in the historic environment” – a complete reversal of previous unwritten policy. This should now make such consents much easier to obtain.

## 2. HOW HERITAGE PROTECTION SHOULD WORK

Heritage protection is only partly about legislation. Legislation is essential, because there are still people who are happy to damage heritage in the pursuit of profit; they need to be stopped and prevented from outbidding those who intend to treat it with respect. But they are now a small minority. There has been a huge change since the widespread wrecking of heritage in the 1950s to 1970s which was the background to current legislation. Owners of heritage know and care far more about their property than they did in the past. All respectable developers have stopped seeing heritage as something to demolish and realised that they can make money from treating it properly. Polling evidence in the last decade refutes the idea that heritage is a minority middle class interest: it enjoys almost universal appreciation by the public.

Heritage protection needs to catch up with these changes. The current assumption that every proposal must be presumed to be bad until proven, under detailed examination, to be good does not work and is so time-consuming that no resource is left to deal with true transgressors. Those with desirable proposals are being made to jump hurdle after hurdle while others wantonly wreck heritage and get away with it because the local authority is too busy managing the system for the law-abiding that it has no resource left for enforcement. Rather than putting obstacles in the way of the benign majority, the system needs to trust them more and put real muscle into targeting the minority with bad intentions. This is routine best practice in other fields of regulation.

### **The key to heritage protection: Constructive Conservation**

Moreover, legislation on its own is insufficient. Simply listing a redundant building does not prevent it from falling down, as tens of thousands of cases around England prove. The main threat to heritage is not bad developers, but decay. Heritage is under constant attack from countless, mostly natural enemies: rain, wind, rot, rust, vandalism, burrowing animals, plant growth, flooding and coastal erosion. Preventing and repairing this decay is extremely costly. We estimate the bill in England runs to many billions of pounds every year.

If we do not pay those costs, heritage decays – and fast. The state does not, and cannot be expected to, pay for more than a small part of the cost. Nearly all of it has to be paid by the people who own, work in or visit heritage. This is only going to happen if they want to own, work in or visit heritage, and that means it must be viable and relevant. This in turn means that the system must allow and, indeed, encourage sympathetic and intelligently managed change. This

### **CASE STUDY: One inspector's vague view delays a minor change for four years**

The owners of a small-scale accommodation and conference business in the Midlands wanted to bring into use an unventilated room in a Grade II\* listed house, by inserting a small new window opening in a rear elevation.

The proposed window was in a much-altered part of the building and the proposals were drawn up by a specialist conservation architect in conjunction with an archaeologist. The local authority's Conservation Officer agreed that Listed Building Consent should be granted, but for four years an English Heritage inspector prevented this, making objections to each of a series of different proposals. These objections were difficult to deal with because they were couched in vague terms (such as "loss of legibility"). Because of the unwavering opposition of this inspector, this minor and sympathetic application was eventually referred to the Government Office.

The owners said: "Even if we get permission for the window, we will not now be able to carry out the work until next winter. We need to have the house and conference room open at the start of the season, without yet more weeks of uncertainty, distraction and disruption which impact on every aspect of our business."

The Government Office sensibly decided not to intervene and the local authority eventually was able to grant consent.

In the meantime, the owners watched another Grade II\* listed house nearby being substantially altered without planning permission or Listed Building Consent. Despite letters from the Parish Council to the local authority and English Heritage, no enforcement action has been taken.

*'It is undoubtedly true that change can constitute a risk to heritage. However, it is also true that sympathetic development can be the saving of such sites. In general, it is far better to have a sympathetic site owner and a site in continuous use with a sustainable use going forward – it then has a continuing purpose and is likely to be invested in and well maintained'*

**John Penrose, Minister for Heritage and Tourism, November 2010**



*'Planning officers are not reasonable about sensible changes'* **A CLA member**

*'After previous experiences, I feel like just letting the next building crumble'* **A CLA member**

is common sense and a core part of sustainable development. It is also English Heritage's core policy of "Constructive Conservation"<sup>7</sup> and the heritage policy of the CLA.

Constructive Conservation does not welcome all change. Too little regulation would be dangerous. But too much regulation is as risky. Protecting heritage is not about preventing all change. If people think heritage is impracticable, frozen or unnecessarily expensive to look after, they will stop looking after it. And, equally fundamentally, if people think the whole system is incompetent or unfair, they will not support it.

### **Getting the system right**

There is an important point here. If we can get the heritage protection system right, the market, with some important help at the margin from philanthropy and the Heritage Lottery Fund, will look after most of our heritage. "Market failure" should be relatively rare so, perhaps, five percent of heritage would be an issue, crumbling in "heritage at risk" registers and needing the more specific solutions suggested in Chapter 8.

However, if the system is going wrong, as is increasingly happening, the market will not keep our

heritage in good order. Many more people will decide that owning heritage is more trouble than it is worth. Market failure will become more common and more of our heritage will be under threat. No rule says that market failure can only be five percent: this could increase two, three or four-fold. Decaying heritage would become a much more common sight in England. This would be inefficient and embarrassing. Crumbling buildings are photogenic and often prominent, so pressure would grow on local authorities and the Government to do something about them. This would be expensive.

Owners – both not-for-profit and private – are willing to look after heritage if the system is fair, efficient and effective and costs are proportionate but, understandably, will be much less keen to deal with the resulting problems if the system itself is seen to be causing them. By not sorting out the system, we would be inadvertently "nationalising" a growing part of heritage protection, transferring a problem from the non-government sector to the state.

This additional problem for the state would hardly fit well with government policy. But this does not need to happen. We can and must stop pretending there is not a problem or that it will somehow solve itself. We need to solve it.

**The solution is *not* to reduce heritage protection. It is to increase it by changing the system so that it works.**

7. See English Heritage website, at [www.english-heritage.org.uk](http://www.english-heritage.org.uk), putting "Constructive Conservation" into the search engine box.

### 3. THE SOLUTIONS

It would be pointless to make recommendations which would make no real difference or which would not be implemented. Therefore, the CLA began by setting up a crucial hurdle, requiring our solutions to pass **six key tests**.

#### The six key tests

**Test One:** Solutions must address the real problems and make a significant difference in practice.

**Test Two:** Solutions must increase, not weaken, the effectiveness of heritage protection.

**Test Three:** Solutions must not require any substantive new public expenditure<sup>8</sup>.

**Test Four:** Solutions must require little effort from government and not require a major Heritage Bill.

**Test Five:** Solutions must not conflict with deregulation, localism or other mainstream political agendas.

**Test Six:** Solutions cannot be mere aspirations, such as “we need to promote partnership working” or “Government should do more for our heritage”. They

must be substantive and workable and spelt out in enough detail to be clear and measurable.

Many of the solutions proposed in the past decade do not pass these tests. In particular, the post-2000 *Heritage Protection Review* focused from an early stage on four “solutions”: the merger of the Listed Building Consent (LBC) and Scheduled Monument Consent (SMC) regimes which was the centrepiece of the abandoned 2008 Heritage Protection Bill (this fails Tests One and Four); developing comprehensive Historic Environment Records, which is desirable in principle, but fails Test Three and probably Test One; more pre-application advice, which fails Tests Three and One; and Heritage Partnership Agreements, applicable in only a minority of cases, which fail Tests One and Three.

Similarly, the new National Heritage Protection Plan's<sup>9</sup> preoccupation with research and new designation draws vital resources away from the real issues and conflicts with Tests One, Two and Five.

8. We allowed one exception to this, the VAT recommendation, because the VAT anomaly is hugely damaging and heritage is only one of many areas which would benefit from this change (see Recommendation 28c).

9. See paragraph 34.



## Summary of solutions

Therefore, realism and effectiveness are the main focus of the CLA solutions set out in detail in Part Two of this Report.

In summary, they are:

### A. Improving the heritage system without legislation (see Chapter 5)

Local authorities need to be strongly discouraged from cutting conservation resourcing even further, but there will never be enough resource to operate the current heritage protection system.

We must therefore change the system so it can operate with the resources we have. The normal principles of good regulation should be applied, as suggested by the Penfold Review, especially by targeting resources on the relatively small number of cases which matter most.

This means, for example, explaining clearly what needs and does not need consent. It also means having effective heritage policy and guidance – the only practical way of helping people at a sensible cost. Even more importantly, all policy and guidance must be based on current best practice and on Constructive Conservation, ensuring heritage has a future by managing change to conserve what makes it important while also making sure it remains useful, relevant and appreciated. English Heritage must apply this more consistently both in guidance and in decision-making. Enforcement is also important, but it must be well-targeted. We also make specific suggestions on conservation areas, heritage designation and heritage at risk.

### B. Legislation (see Chapter 6)

Although a major Heritage Bill is not urgent, targeting scarce resources more effectively requires some changes to current legislation: potentially some clauses added to the next Planning Bill. The

Government has already agreed to find a legislative opportunity for this. At the same time we should also deal with a number of current anomalies, including introducing rights of appeal, consultation and interim protection.

### C. Skills and information (see Chapter 7)

We need to investigate heritage skills shortages of all kinds to find cost-effective ways of filling skills gaps, not least unglamorous low-level skills, and to make it easier for owners and developers to find the skills they need.

### D. Helping the market to pay for heritage (see Chapter 8)

Urgent research is needed to establish the costs of heritage and who pays them (and how much more revenue the Government receives from heritage than it pays out), so we know what is currently happening and can have a mature debate about the limited but important role of the state. In addition, to tackle problems the market does not currently solve, we also call for changes to English Heritage and Heritage Lottery Fund priorities, and for more effective solutions for heritage at risk, especially the up to a million redundant agricultural buildings.

### E. Tax issues (see Chapter 9)

Reduced-rate VAT for work to domestic buildings, permitted by European Union VAT rules, is needed to reduce, alongside other economic benefits, the very damaging effects of the anomaly between 20 percent VAT on heritage repairs and the zero-rating of new build.

### F. Climate change mitigation (see Chapter 10)

Current climate change mitigation policy for existing buildings, based on little more than insulation values, is proving ineffective and causing unjustified harm, especially to heritage. Future policy must be based on whole-life carbon impacts.

## 4. CONCLUSIONS: THE NEED TO ACT

Heritage planning guidance in PPS5 rightly stresses the need for heritage to be “managed intelligently”. This approach must also apply to heritage protection itself: we need to look intelligently at the heritage protection system as well.

The current system does not emerge well from such examination. Its problems are serious and worsening. They threaten our heritage and we need to stop pretending everything is all right or that new resources will appear from nowhere or that the problems will somehow solve themselves. We need to acknowledge and take action to solve them.

This Report suggests considered and detailed solutions, solutions which have met our six tests to ensure they are effective and realistic.

Some people – perhaps those whose contact with heritage is more theoretical – may see some of the

ideas here as risky. However, this misses the point. The under-resourced way we currently handle heritage is already risky: it carries a high – and rapidly increasing – level of risk.

The CLA does not have perfect knowledge of all aspects of heritage, or a monopoly of ideas. We have discussed many of these solutions with others in the heritage sector. Some of the solutions are not controversial and could be readily implemented. Others need research, debate and refinement.

We need to act, and soon. If we can get this right, we will have a healthy and valued heritage to pass on to our children and grandchildren. If we cannot get it right, all of us – and not least the state to which much of the challenge would pass by default – will have a problem.





## Part Two

# Putting it right: the details

We decided at an early stage there was no point in the CLA merely setting out general aspirations. Even if everyone agreed with them, being vague and impossible to measure it would not be possible to implement them. We therefore set ourselves the six key tests listed on page 14, so that our recommendations would address the problems and be workable. Test Six in particular requires a degree of detail. For example, there is limited value in saying that national planning policy must include the key principles of heritage protection unless you make it clear what these are. This recommendations section is therefore long and detailed. A summary of all our recommendations can be found in Chapter 11.

## 5. IMPROVING THE HERITAGE SYSTEM WITHOUT LEGISLATION

This section looks at the many things which can be done to make heritage protection work better without, or in anticipation of, new legislation.

### 5.1 National planning policy and the National Planning Policy Framework<sup>10</sup> (NPPF)

1. National planning policy is the logical place to begin. The 2010 Planning Policy Statement 5: Planning for the Historic Environment (PPS5) was a real step forward, setting out as national planning policy the key principles of heritage protection and current best practice. The process beforehand was not without controversy and it is not perfect (see Recommendation 1c). However, PPS5 has been broadly accepted by almost everyone involved with heritage.
2. The new NPPF must contain the core policies in PPS5 because it is vital to the future of our heritage that local communities preparing local or neighbourhood plans and taking development management decisions have access to sensible, well-tested and adequately detailed policy for the historic environment. This could in theory be devised and set out at any level – nationally or in every individual street and hamlet but local people will be primarily interested in local questions (such as, “What could we do about derelict site X?” or “How could we improve run-down Conservation Area Y?”). Few will want to have to set out policy on heritage, or other equivalent policy areas, from scratch, which would be time-consuming and pointless, trying to create policies which already exist after years of debate. In most areas communities will not do this, which means that if there is no national policy there will be no policy at all, causing time-wasting uncertainty for everyone involved.
3. If localism is to work, national planning policy needs to do more than set out a few bland paragraphs about “the importance of our heritage”. For heritage, it needs to provide local communities with the tools and templates to make their communities better places to live and work. This is exactly what sensible, non-prescriptive national policy can do. It does not fetter local communities – it empowers them. Without it, they would be lost: it is depressing to be told “we’ve torn up all the national policy, to

give you a free hand”. However, given the right tools, local communities could use their time effectively. They could choose simply to let the national policy operate in their areas (as is sensibly happening in draft local plans: for heritage policy, most just refer readers to PPS5), meaning that they do not need to spend time reinventing it or repeating it and can concentrate on real local issues. Or, if they want, they can decide to overwrite some or all of the national policy for parts or all of the area they are dealing with<sup>11</sup>. If they do this, they are at least starting from a position of knowledge because they know what they are rejecting.

4. None of this means that national planning policy must preserve PPS5 as it is. It can be improved and shortened:

**(i) RECOMMENDATION 1a: The Government, English Heritage (EH) and other stakeholders should ensure that the NPPF incorporates all of the 10 fundamentals of heritage protection which underlie PPS5.**

These are:

- (a) **The need to balance differing impacts** which underlies the whole planning system, ie that adverse impacts (if any) must be weighed against beneficial impacts, including any non-heritage benefits and disadvantages. It also means that the remaining principles in this list may need to be weighed against each other in some cases.
- (b) **The importance of heritage to all of us** as an all-pervasive part of our cultural and social identity and a key part of our economy<sup>12</sup>.
- (c) **The importance of heritage in helping to shape the future of the places in which we live.**
- (d) **That if heritage is lost, it is difficult or impossible to recreate it.**
- (e) **The need for economic reality**, ie most heritage decays rapidly if it is not maintained, is very expensive to maintain, and will not be maintained unless it is relevant to the future and provides some direct or indirect stream of income to cover its maintenance and management costs. **For the vast majority (not all<sup>13</sup>) of our heritage, this implies an**

10. The Government intends the new NPPF to replace existing planning policy, including PPS5, from 2012.

11. Except in so far that Government decides that parts of it *should* be prescriptive.

12. The £115 billion tourism industry, and repair, maintenance and improvement (RMI) activity, which in total now makes up 57 percent of the construction industry, are only parts of the economic value of the historic environment.

13. This point, for example, applies less forcibly to buried archaeology, but on the other hand its maintenance and management costs are usually lower.

appropriate use which is sustainable for its owner and compatible with reasonable conservation standards. This clearly includes the need for intelligently managed change.

- (f) **That we are not protecting every component of our heritage robotically, but in a way that considers its architectural, historic, social and other value.** Some parts will be highly significant, some less so, and some can be of negative significance.
- (g) **That heritage conservation is the process of creating a sustainable future for our heritage;** its primary skill is in mediating between the reality of the need for change and the proportionate protection of heritage's significance. When dealing with heritage conservation through the planning system, **we are not usually preserving everything exactly as we find it but, to quote PPS5, "managing change in a way that sustains and where appropriate enhances significance"**.
- (h) **Conservation should be proportionate, ie the degree of protection should depend on the significance of the asset,** with more significant assets or parts of assets having more protection (and, importantly for heritage, less significant assets or parts of assets having less protection). In particular, **the loss of or real harm to assets of high significance should be exceptional.**
- (i) **The significance of heritage needs investigation before change is planned, and the impact of the proposed changes must be examined and any harm justified. In both cases this should be proportionate, so that the level of detail required is no more than is needed to understand the impact of the proposals on significance.**
- (j) **That recording the significance of an asset is not a substitute for the survival of the asset itself. If or where significance must be lost, it should be recorded in a proportionate way.**

Agreeing and setting out these heritage fundamentals in the NPPF, with some supporting detail, should also have the benefit of making the heritage section of the NPPF significantly shorter than PPS5.

- (ii) **RECOMMENDATION 1b: The Government should allow, and preferably endorse, higher-level guidance sitting beneath the NPPF, and**

**agreed by the heritage sector with the support of EH, all in close consultation with key stakeholders.** This implies a consultation on and rewriting of the PPS5 Practice Guide and a strategic and tactical review of other EH guidance (see Recommendations 3-5).

- (iii) **RECOMMENDATION 1c: The NPPF and this new guidance need to address some significant, if perhaps inevitable, snagging issues with PPS5 and its Practice Guide.**

Particular areas include:

- (a) PPS5 fell short of one of the "fundamentals" above in that its statement about the desirability of properly considered change is rather ambiguous compared to the more balanced and positive statements in PPS5's accompanying Government Statement<sup>14</sup>. National policy needs to be made clearer.
- (b) Some key terms are worryingly ill-defined. Clarification is needed in guidance on the term "heritage asset", taken sometimes to mean almost anything that is not new, which was clearly not the intention and wastes scarce resources in argument. More importantly, "public benefit" needs more precise definition in policy: it was, the CLA believes, intended to say there is public benefit in using heritage assets and bringing them up to date, but it does not make that clear. For example, as PPS5 stands it is easy to claim that internal changes to heritage assets "are incapable of generating public benefit" and therefore "unjustifiable" simply because they are not physically visible to the public, even though the change, such as adding a second bathroom, may be an improvement important to the longer-term viability of that heritage.



14. PPS5 merely says (on page 2) that "intelligently managed change may sometimes be necessary ..." [our italics], a weaker and less balanced statement than in the accompanying and over-arching *Government Statement on the Historic Environment*, which says "... [we must] recognise the contribution [the historic environment] can make to our collective aims ... we must [also] recognise that change is inevitable. While it is right to provide protection and support for our past, this must be managed intelligently, with an appropriate balance of priorities ...". See also paragraph 16 of this Report.



(c) The concepts of “harm” and “substantial harm” to designated heritage assets (PPS5 HE9.2 and HE9.4) need to be rethought. At best this looks like a rather complex restatement of the principle of proportionality (ie that the greater the harm, the greater the justification needed). At worst, the vagueness of the new concept of “substantial harm”, combined with the lack of definition of “public benefit”, makes it potentially impossible to justify desirable changes to designated heritage unless they unequivocally improve something that is visible to the public.

(d) There is an unintended lack of clarity about the status of unlisted buildings in Conservation Areas which has already proved contentious in planning appeals.

(e) The definition of “archaeological interest” is too all-embracing to accord properly with the proportionality principle and there is inadequate guidance on proportionality in investigation and recording policies.

(f) PPS5’s Practice Guide is too prescriptive in some places, ignoring its own principles of significance and proportionality. It also needs an index.

5. If all this is done, heritage protection would have a sound basis in the future and localism would stand a real chance of working for the historic environment. If this were not done, heritage protection may go rapidly backwards in ways which would acquire wide unpopularity with almost everybody from developers to local amenity groups. Action needs to be taken by CLG and EH, with DCMS and, importantly, other stakeholders.

## 5.2 The paramount need for conservation skills in local authorities

6. Almost all the 150,000-plus<sup>15</sup> planning and heritage consent decisions each year which affect heritage are taken by local authorities with little or no EH involvement<sup>16</sup>. To a varying extent, all require a degree of skill. Decision-making is not the only important area of work: the heritage protection system cannot be effective without enforcement (see paragraphs 29-30), and there is other important proactive work including Conservation Area Appraisals which are a statutory duty, (see paragraphs 25-27) and heritage at risk (see paragraph 32).

7. The current system – in which local authorities are assumed to have conservation skills in abundance when they do not – is becoming, as the number of skilled people falls further and further, increasingly dysfunctional. Few local authorities are able to handle their decision-making workload properly, let alone more proactive work. Neither do they have the number of skilled staff needed to protect and enhance heritage as they should.

8. The recommendations in this Report would, vitally, make the system considerably more efficient, not least by separating out the cases where the skills requirement is low from those where it is high. But the need for skills will still be there. The 2010 Penfold Review of non-planning consents<sup>17</sup>, endorsed by the Government<sup>18</sup>, is very focused on the need for functions such as heritage conservation to work effectively regardless of scarce resources. It recognises that there should be a skills base, identifying the need “to examine the resource and skills

15. Around a third of planning applications have heritage impacts.

16. EH is not involved in 90-95 percent of these (even in listed buildings cases, it is not involved in about 80 percent). Scheduled Monument Consent in contrast is dealt with wholly by EH, but this is only 1,000 applications a year.

17. Penfold Review of non-planning consents, *Final Report*, July 2010.

18. *Government Response to the Penfold Review*, BIS, November 2010.

requirements in ... consenting [bodies]" and "to identify opportunities for more efficient use of resources" – a key theme of the rest of these recommendations – as well as the need to "address potential shortfalls"<sup>19</sup>. Page 21 says that "respondents to the Review identified heritage consents as an area of particular concern, in terms both of absolute resource levels and of availability of expertise". Page 22 adds that "the Review strongly supports greater recognition of the need for appropriately trained and qualified professionals to deal with ... applications. This will ensure the right quality of advice is in place, reduce the need for rework of consent matters and lessen the likelihood of important issues not being identified at the outset".

9. In reality, however, local authorities have been cutting their conservation capacity and skills base for many years, through good times as well as bad. It has long been seen as a "soft target", especially because it is (incorrectly<sup>20</sup>) seen as non income-producing. Since the Government's autumn 2010 Comprehensive Spending Review announcement the rate of attrition of the conservation skills base has increased dramatically<sup>21</sup>. Even with the reformed system recommended below, further cuts in the skills base would have ever-worsening consequences.

**RECOMMENDATION 2a: Local authorities need to be convinced of the danger of further cuts to their conservation skills base.** Given current pressures, this will not be easy. The Institute for Historic Building Conservation (IHBC) has pointed out the statutory duties local authorities are under and the potential for authorities to be embarrassed when things go wrong. Localism, if it encourages local communities to think hard about the future of the areas in which they live, may have a positive effect, as might EH's intention to persuade every local authority to appoint a Heritage Champion. More crucially, agreement on a programme of reform like that in this Report would have a real impact because it would show that people (including those in the Government) care about this, are taking account of the problems faced by local authorities, and that in a reformed

system it should be possible to perform this function adequately, which is not the case now. Action needs to be taken by IHBC, EH, CLG, DCMS and the heritage sector.

10. While there is no perfect organisational structure, some structures may be better than others. For example, some local authorities have worked with neighbouring authorities to create small conservation teams covering somewhat wider areas. This can allow a skilled senior person to deal with complex cases, less-skilled people to deal with less-complex cases and non-specialist staff with the rest. It also creates a career structure. Partial outsourcing may also be possible, though it has disadvantages.

**RECOMMENDATION 2b: Local authorities should be encouraged to find the most effective structures.**

This is already being pursued by a heritage sector initiative "Historic Environment: Local Authority Capacity" (HELAC)<sup>22</sup>. The CLA wishes it success, especially at the implementation stage.

### 5.3 Defining what needs Listed Building Consent (LBC)

11. Though PPS5 was a major step forward, it could do little to solve the fundamental mismatch between the current system and its resourcing.
12. Part of the reason for the large workload of LBC applications is that what requires LBC is often so unclear, and the potential consequences of getting it wrong are so severe<sup>23</sup>, that law-abiding owners make large numbers of applications for proposals which either do not require consent or will quite clearly not, overall, have any harmful effect. Many – perhaps even most – LBC applications probably fall into this category<sup>24</sup>, which wastes resources. Asking the local authority whether you need consent rarely helps because local authority staff can seldom be unequivocally confident that consent is not needed, particularly if they have not seen the heritage asset or the proposals, and if asked tend, following the precautionary principle, to require applications for almost everything<sup>25</sup>.

19. Penfold Review of non-planning consents, *Final Report*, July 2010, pp ix and 28. See also p7 ("Resources within consenting bodies are limited and in some areas there is lack of dedicated expertise. This problem is likely to become more acute, given current spending pressures.")

20. Much heritage work is closely related to planning applications for which fees are charged.

21. The 2011 EH/IHBC/ALGAO report on local authority conservation resourcing is imminent as at June 2011.

22. This is a partnership involving EH, the LGA, IHBC, ALGAO and the Planning Officers Society.

23. Fines are unlimited, the cost of reversing changes is unlimited, imprisonment is possible, property with unconsented work can become unsaleable, and there are no time limits. The CLA has seen cases in which action was threatened 40 years later.

24. Through 11 years of the Heritage Protection Reform process, the LBC process has never been researched. It would be very desirable to research a sample of listed building proposals and LBC applications.

25. Despite the resource implications, most local authorities ask for LBC applications for all work to listed buildings, other than very minor like-for-like repair, very strictly defined.



13. **RECOMMENDATION 3: EH should support the drawing up, with key stakeholders<sup>26</sup>, of new guidance on the need for LBC which should indicate clearly where consent is required, specifying where there could be a material and potentially adverse impact on “special interest”<sup>27</sup>**, and then illustrate in clear English, in sufficient detail, what that means in practice in different cases. This must be done carefully because the wording is important. This should cut the number of LBC applications by at least a quarter<sup>28</sup>, and partly because these would almost all be applications which get consent under the current system<sup>29</sup>, risk should be low<sup>30</sup>. The document should also give guidance on issues such as fittings and “curtilage” which cause considerable uncertainty in practice.
14. This is part of the impact threshold approach which is now standard good practice<sup>31</sup>, for example, for environmental consents under the Environment Permitting Programme. It would help to implement for listed buildings Recommendation F of the Penfold Review<sup>32</sup>: “... substantially increase the number of small scale<sup>33</sup>... developments that are treated as ... falling below designated thresholds requiring a consent application”. The Government’s response to Penfold asks<sup>34</sup> DCMS and EH to “work together to ensure that the existing heritage consent regimes operate as effectively and efficiently as possible ... in the absence of legislation”. This recommendation and others in

this Report would be important elements of implementing this. Action is needed by EH and other stakeholders.

15. To reduce abuse, this needs to be combined with better enforcement (see paragraphs 29-30).

#### 5.4 Applying Constructive Conservation

16. The fundamentals of conservation set out in Recommendation 1a – understanding what makes heritage assets important and, where appropriate, changing them in a sympathetic and intelligent way – are crucial to the long-term future of our heritage. They recognise that well-managed change will bring with it the investment and care necessary to keep heritage relevant and appreciated in future, and the alternative is likely to be neglect and decline. Provided it is carefully expressed, this is common sense, an approach with which owners and conservation professionals are familiar from daily experience and accepted good practice<sup>35</sup>. It is certainly not an “all change is good” policy, nor “a developers’ charter”, and in no sense does it suggest that development profitability automatically trumps all other considerations.
17. EH played a substantial role in developing this philosophy and has embodied it in an excellent policy it calls “Constructive Conservation”. Unfortunately, EH does not seem to apply it routinely, or in a fully balanced way, only using it in cases in which it is keen to demonstrate it is

26. Especially stakeholders who are involved with LBC applications and decisions on the ground.

27. See the related Recommendation 12a. If current legislation is amended, “significance” should replace “special interest” to accord with accepted current good practice.

28. Estimate; again research would be desirable.

29. Eighty-five percent of LBC applications which are actually submitted, and validated, and pursued to a decision, are approved.

30. The vital point is that the growing under-resourcing of the current system already creates a high degree of risk. Provided we get these changes right, risk in the new system will be lower.

31. For more on this, see Recommendation 12.

32. Penfold Review of non-planning consents, *Final Report*, July 2010, p46.

33. “Small scale” is a potentially dangerous term for heritage because physically small changes may have high impacts in some cases. “Low impact” would be more appropriate.

34. *Government Response to the Penfold Review*, BIS, November 2010, pp 8 and 16.

35. In individual cases, of course, given that the judgments involved are sometimes subjective, there may not be universal agreement about solutions.

not “anti-development”. This, especially because these tend to be controversial high-profile cases, can give a distorted impression of what EH, and indeed the conservation sector, is seeking to achieve.

**RECOMMENDATION 4a: EH needs to communicate, promote and apply Constructive Conservation more consistently and effectively and in the balanced way set out in the previous paragraphs, so that it is always used in its own casework and routinely recommended to local authorities and others.**

A new plain-English explanation of Constructive Conservation and the principles of heritage protection is essential<sup>36</sup>. The ability for owners and developers to quote this in meetings and in Heritage Statements is a check on non-sustainable thinking and decision-making (for example, “it’s not our problem that it’s falling down and we won’t allow you to change any part of it”). **Constructive Conservation must explicitly be one of the key strategic points in all future EH corporate strategies, and EH must communicate it better, especially on its website.** Action needs to be taken by EH.

18. **RECOMMENDATION 4b: All heritage policy and guidance needs to be compatible with Constructive Conservation** and it should be universally used within EH. Not all EH guidance yet passes this test. **Every piece of current and new guidance needs to be tested and, if necessary, updated.** Action needs to be taken by EH, with stakeholders.
19. **RECOMMENDATION 4c: As an important part of its Constructive Conservation policy, EH needs to apply significance and proportionality tests much more thoroughly in its guidance.** Guidance needs to deal fully with major changes to Grade I buildings, but most applications are for minor change and very little heritage is Grade I listed. Guidance needs to point this out and stress the need for it to be applied in a proportionate way. Action is needed by EH and stakeholders.
20. **RECOMMENDATION 4d: As an example of this, guidance needs to say that for less significant parts of heritage a less than completely perfect solution may be better than disinvestment or dereliction.** While almost nobody would suggest re-roofing a Grade I tithe barn in artificial stone, most heritage is not as important or prominent, and many proven alternative or new materials are

available<sup>37</sup> which reduce costs substantially. In reality, there may be a choice between, say, using high-quality artificial stone on less prominent parts of Grade II heritage or not repairing at all<sup>38</sup>, or between re-thatching in reed or allowing existing straw thatch to rot. Therefore, policy and guidance which insist on a supposedly perfect solution in every single case, irrespective of significance or visibility, can be very counter-productive. A sensible balance is needed. In cases where much cheaper but technically and sustainably appropriate methods would be wholly concealed and would not damage the building structurally, the argument becomes compelling. Action is needed by EH and stakeholders.

## 5.5 The key role of guidance

21. Publishing guidance is a highly effective use of resources because, if properly signposted and publicised, it is a vastly more efficient and less expensive way of reaching people than pre-application discussion, or handling appeals after rejection. Pre-application discussion may seem to be the ideal<sup>39</sup>, but it is simply not realistic for most applications. Good guidance helps less-skilled staff to take sensible decisions and to identify the cases which need to be passed to the limited number of skilled staff. It is also extremely helpful to owners, other specialist practitioners and developers and, if everyone is using the same guidance, the potential for conflict is greatly reduced. Good guidance becomes more and more crucial as staff resources are cut.
22. **RECOMMENDATION 5a: EH needs to conduct a comprehensive review of available guidance to make sure that up-to-date guidance exists wherever it will add value. This review needs to be published, with priorities and timings. The prioritisation should be based on user need and on numbers of cases. Guidance also needs a more logical structure** to reduce the number of documents which need to be consulted in individual cases, and the validity of the claim that there is “too much guidance”. The CLA believes English Heritage intends to do this and hopes it appreciates how very important this is, and the need (see Recommendation 5c) to involve key stakeholders fully. Action is needed by EH and stakeholders.

36. EH’s 2008 publication *Conservation Principles* does not do this because it is too theoretical to be of practical help to users and is little used outside EH. In particular, EH should abandon its abstract language of “values” in favour of readily understandable terms such as “architectural significance” and “social significance”.

37. This does not of course mean that *all* new materials and methods are appropriate: many are destructive to the building or a false economy or both.

38. For example, the owner of a barn facing a repair bill of £100,000 using “correct” materials – instead of £30,000 – is likely either to cover the extra cost by seeking consent for a higher-value conversion, or have to abandon the project and watch the building crumble.

39. In practice, however, there are often real problems with pre-application discussions even where they happen, which again arise mainly from lack of resourcing.

23. A key example is that around half of all heritage is dwellings, yet there is almost no policy or guidance specifically covering them. This creates uncertainty and causes time-wasting argument.

**RECOMMENDATION 5b: New guidance is needed explaining Constructive Conservation in a residential context.** Action is needed by EH and relevant stakeholders.

## 5.6 The importance of stakeholder consultation

24. **RECOMMENDATION 5c: Before issuing new or reviewed guidance, English Heritage should always work with and consult appropriate key stakeholders, in a proportionate manner, especially those with experience of how things work on the ground<sup>40</sup>.** This needs to begin at an early stage, not only after an approach has already been decided. These stakeholders can also advise on whether wider public consultation is needed. Action is needed by EH and stakeholders.

## 5.7 Conservation Areas

25. England's 9,800 Conservation Areas should protect key parts of our heritage. However, although they absorb much local authority resource, they are not very well protected. The protection they give is complicated (for example, it is almost impossible to explain to people what is, and is not, allowed in a Conservation Area). Actual protection is limited unless permitted development rights are withdrawn using an Article 4 Direction. But Article 4 Directions are rare because they are bureaucratic for everyone involved and not understood by the public. The "one-size-fits-all" approach does not work well for both Millionaires' Row and dilapidated 19th Century terraced housing. Many Conservation Areas have already been degraded by uPVC windows and other changes – some greatly so<sup>41</sup>– but, at the same time, Conservation Areas often prevent desirable change.
26. We need to get to the root of these problems and to devise solutions which will work better in future.

**RECOMMENDATION 6a: English Heritage, along with key stakeholders, needs to examine Conservation Area policy and**

**guidance to ensure that there is effective and proportionate protection of what matters in Conservation Areas, primarily specific aspects of external appearance.** This needs to include a proportionate policy for Conservation Area designation, and for policy-making, with consultation in both cases, including consultation of owners whose goodwill is essential if Conservation Areas are to be effective<sup>42</sup>. Revised guidance is then needed. Action is needed by EH and stakeholders.

27. **RECOMMENDATION 6b: This revised guidance might encourage local authorities to grade their Conservation Areas** into, say, three grades, based on overall significance and on degree of risk. Some local authorities already use grading informally, and years ago some Conservation Areas were graded as "outstanding", so this is not a new idea. This would provide a rational basis for focusing resources on the most important and/or most threatened Conservation Areas, both in policy formation and at the casework stage. Furthermore, concentrating on this smaller number of Conservation Areas should mean that producing appraisals for them should actually be achievable. The current approach, that the local authority should produce appraisals and policy for every Conservation Area, is unachievable. An option would be for each grade to have its own standard and clearly explained permitted development regime, set out in the General Permitted Development Order<sup>43</sup>, so that Conservation Areas would be proportionately protected without having to resort to the confusing, resource-hungry and little-used Article 4 Direction system.

## 5.8 Local listing

28. Much heritage is not significant enough for national designation, but that does not mean that its significance should be ignored. Local listing can protect it proportionately through the planning system, but this currently happens inconsistently.

**RECOMMENDATION 7: Guidance is needed on local listing, explaining how it works, and ensuring that it is based on significance, carried out with adequate consultation<sup>44</sup>, and used in a proportionate way in decision-making.** English Heritage is already

40. EH should particularly consult IHBC and private sector historic building consultancy firms on buildings issues, and the CBA, IfA, ALGAO and private sector archaeological consultancy firms on archaeological issues. Skills and training issues are likely to involve the NHTG. Almost all issues will involve owners and/or developers, so the CLA and often the BPF and HHA will be key stakeholders. The Heritage Alliance and the Joint Committee of Amenity Societies are also likely to be in this key stakeholder category on almost all issues.

41. See: [english-heritage.org.uk/caring/heritage-at-risk](http://english-heritage.org.uk/caring/heritage-at-risk), though the CLA suspects the estimate of only one in seven Conservation Areas being at risk understates the problem.

42. This does not mean owners should have a "right of veto", simply that imposing a Conservation Area or an appraisal without effective consultation will have much less positive results.

43. At least as a template from which local authorities could choose to depart if they wished.

44. Including owners; again this does not mean a "right of veto" but imposing local listing without consultation would have much less positive results.



implementing this recommendation with the help of stakeholders and should continue to do so.

### 5.9 Enforcement and prosecution

29. **It is important in any system of regulation that enough resource is put into enforcement to encourage compliance and to ensure that work which should need consent is not carried out illegally.** This does not appear to be happening effectively – or sometimes at all. The changes suggested in this Report reduce resource demands on local authorities significantly, at least partially to free up resource for enforcement.

**RECOMMENDATION 8a: English Heritage, with CLG, needs to issue improved and proportionate guidance on enforcement and prosecution and encourage local authorities to use it. EH also needs to help local authorities directly in appropriately chosen cases.** Action is needed by EH, CLG and local authorities.

30. **RECOMMENDATION 8b: The targeting of enforcement, however, is also very important.** What enforcement currently takes place is focused on those who have made inadvertent technical breaches, because those whose offence was unintentional are easier to deal with, with a good “clear-up rate”. But there are two major problems with this approach: firstly that there is less public interest in pursuing essentially technical breaches, and secondly that it maximises the chance of unsympathetic publicity for the local authority. This makes local authorities much less ready to enforce at all in the future and reinforces stereotypes of heritage protection being about interfering busy-bodies

obsessing over irrelevant details. **Real incentives must be created to target enforcement instead on those who have deliberately flouted the rules, causing real damage, even though this is more difficult to achieve.** Action is needed by EH, CLG and local authorities.

31. It is disproportionate for listed building enforcement action to be initiated, say, 30 to 40 years after the alleged breach, often involving subsequent owners who are not responsible for or not even aware of the alleged offence. This becomes a weapon used by purchasers of listed buildings to drive down the price. It is also one of the many factors which discourage the purchase of listed buildings. There should, therefore, be a time limit on enforcement action. However, four years (the time limit for planning enforcement after physical breaches) would be too short, potentially encouraging illegal work.

**RECOMMENDATION 8c: There should be a time limit of 10 years between an alleged offence and enforcement after which listed building enforcement action or prosecution can no longer be initiated.**

### 5.10 Heritage at risk

32. Heritage at risk (see also page 34) is a complex problem with few easy solutions. For example, though the results may be superficially similar, the CLA believes a hard-up, elderly woman who inherits a crumbling listed barn with no potential for economic use requires very different treatment to a tax haven-registered company which encourages a listed building to collapse to create a valuable development site.

**RECOMMENDATION 9a: English Heritage and others should continue the Heritage at Risk programme, assess the effectiveness of EH's "Stop the Rot" initiative and give increased direct assistance to local authorities in carefully chosen cases.**

**RECOMMENDATION 9b: It is extremely important (as with enforcement) to target aggressive action very specifically on those with malign intentions, despite the added difficulty involved.**

33. A possible solution in some heritage at risk cases is "enabling development", in which planning permission for a profitable development is granted to fund repair. Potential cases need close examination to prevent abuse, but current EH guidance raises so many expensive hurdles that – though they do not seem to deter speculators – it is almost impossible to take forward benign proposals.

**RECOMMENDATION 9c: English Heritage and key stakeholders should review EH's 2007 enabling development guidance.**

heritage protection. Five years of such work would add to our knowledge and add another, say, three percent to the amount of designated heritage. The danger is that this use of resources, not focusing on heritage protection as a whole, threatens the management and long-term future of the other, mostly more important, 97 percent of heritage which is already designated, and of undesignated heritage, too.

**RECOMMENDATION 10: The NHPP needs to be transformed into a genuine plan for heritage protection**, not just research and designation. It is not too late to ask these questions: the NHPP could take on board the paramount threat posed by the local authority resourcing problem, instead of seeing it merely as one of hundreds of threats which can be researched, and it could look at issues like those raised by the Penfold Review and those raised in this Report. If the NHPP can play a key role in devising and implementing the answers to these problems, we would look back on it in 10 years' time as a highly valuable exercise.

## 5.11 The National Heritage Protection Plan (NHPP)

34. The stated aim of EH's 2011 "National Heritage Protection Plan" is to provide appropriate and effective protection for the historic environment. Producing a plan for heritage protection – its core function – is exactly what EH should be doing. There are some good elements in the Plan, such as the intention to involve the rest of the heritage sector<sup>45</sup>, or the intention to identify the risks posed by sales of defence heritage.
35. However, there seems, at least so far, to be a fundamental gap in the NHPP: it only covers a small part of heritage protection. Heritage protection is about the long-term welfare of our heritage, but the NHPP's focus is almost solely on research and designation (listing, scheduling and so on). A heritage protection plan should begin with the obvious questions asked in this Report, especially: "Is our heritage protection system working properly?", to which the answer is clearly "no", and then "What should be changed?" From this should spring a strategy and the tools for using the finite resources available to protect heritage effectively.
36. The NHPP does not seem yet to have asked these questions. Instead, it is saying in essence: "There is a lot of heritage out there, some under threat, so let's research and designate it." This is not intrinsically bad but is not the same as

## 5.12 New designation

37. This is not to say there should be no new heritage designation. Systematic designation largely ceased around 25 years ago, mainly for cost reasons, and there are many heritage assets which meet current designation criteria but have not been designated. Current practice is to "spot-list" (or schedule) these if they are perceived as being under imminent threat.

In principle, this is a poor approach for many reasons: it may miss important heritage; it gives owners no certainty as to whether their heritage is suitable for designation<sup>46</sup>; it can at a late stage stop proposals on which the owner has spent a lot of money; it is often done without consultation; and it is done case by case and is, therefore, not cost effective. Only a thorough across-England designation programme would provide both protection where it is needed and certainty for owners, but this is not currently feasible because of its cost.

38. **RECOMMENDATION 11a: The current focus largely on risk-based "spot" designation will unfortunately need to continue but to use resources better English Heritage needs to be tougher on vexatious applications**<sup>47</sup>. Some additional thematic and geographical listing exercises may also be appropriate.

45. The NHPP's new Advisory Board is made up of heritage sector representatives (including the CLA).

46. Owners can now apply for a Certificate of Immunity from Listing, but very few do so because of a belief (by no means always correct) that this will inevitably result in the building being listed.

47. Only around a third of current listing proposals result in listing. A significant proportion seem to be made vexatiously as a tactic to stop developments, or even simply by neighbours bearing grudges.



39. **RECOMMENDATION 11b: Designation guidance should say that all heritage designation needs to be proportionate, remembering that it has costs, especially to the local authority and owner, which need to be outweighed by the benefits. In particular, adding layer upon layer of designation (such as designating Registered Parks as Conservation Areas) conflicts with the principles of good regulation and with Constructive Conservation, so this should not be done unless there are genuine and site-specific justifications.**
40. **RECOMMENDATION 11c: Future, and recent, listings should be definitive (ie they should only cover the elements shown on a plan and indicated in the description) to eradicate the expensive uncertainty as to what is included in “curtilage” which afflicts so many older listings.** Other ideas should also be investigated. For example, subdividing Grade II would save
- resources on a large scale because Grade II listings are 93 percent of the total and everyone (owner, EH and/or a natural amenity society, such as the Victorian Society, which might be hundreds of miles away) would then have an upfront indication of whether a Grade II building was close to II\*, meriting considerable attention, or only just merited listing. There is also a case for replacing the current grading system (Grade I/II\*/II is incomprehensible to outsiders) with a simple, say, Grade A, B, C, D, E. But these ideas would only affect new or recent designations, so would have limited immediate impact.
41. In the longer term, and *after* the system has been reformed, English Heritage should be funded to carry out a geographical programme of new listing<sup>48</sup> and to improve the huge legacy of existing designations.

48. This has already been done in Wales. Streamlining the research and writing involved could reduce unit cost, and implementing reforms like those set out in this Report would reduce owner opposition to new designation.

## 6. LEGISLATION

### Introduction

42. Much can be done without legislation<sup>49</sup>, but there are some areas where legislation needs to be changed. Some of it does not match current historic environment policy and best practice, like the absence of rights of appeal when heritage is listed or scheduled, and there are specific problems such as Shimizu (see paragraph 60). Above all, there is the mismatch between the resource demands that current legislation imposes and the resources provided, a key part of the current problems which greatly reduces the effectiveness of heritage protection in practice.
43. The Government is already committed to proportionate legislation: in its response to the Penfold Review<sup>50</sup>, it says it will “look for legislative opportunities to simplify existing consent regimes in the areas of heritage, conservation and environmental permitting”.

### 6.1 What form should legislation take?

44. While there is an argument for a major Heritage Bill to consolidate heritage legislation, we believe there is no prospect of parliamentary time being found for it for many years. Heritage legislation needs to be part of another Bill. This is, therefore, not simply a matter of reviving the 2008 draft Heritage Protection Bill.
45. An obvious solution is to add some heritage clauses to a Planning Bill. Most heritage protection has been part of the planning system and there is almost certain to be another Planning Bill within two to three years.
46. Only a limited number of clauses would be required. The key components would be as follows<sup>51</sup>.

### 6.2 A more impact-based Listed Building Consent system

47. These heritage clauses would need, above all, to refocus resources in the Listed Building Consent system away from benign cases onto the minority which could have more dangerous implications.

48. **RECOMMENDATION 12a: The first main change is that the law should require Listed Building Consent (LBC) only for changes which materially and adversely affect the significance of the heritage asset, so that changes which are clearly beneficial, or not material, do not require consent. Guidance (see Recommendation 3) would clarify what that means.** In conjunction these changes would probably cut the number of LBC applications by at least a third. These would almost all be cases in which consent is granted – or sidestepped – under the current system.
49. It is vital to ensure that these changes are made in such a way they will not be dangerous to heritage. This also implies a need for a rapid programme of research into LBC applications, so that the changes are evidence-based.
50. **RECOMMENDATION 12b: The second main change would be to create a streamlined system for medium-impact changes which should still require consent (ie are not excluded by the previous recommendation) but which are not in the “higher-impact” category (see Recommendation 12c).**

Again, this is similar to the impact threshold approach already followed under the Environment Permitting Programme, and it implements another part of Recommendation F of the Penfold Review, ie “identifying those current consent requirements suitable for a process below formal consent application, [eg] simple registration ... [or] ‘deeming’ consent or where the use of self-certification or prior authorisation would reduce the need for applications ...”.

The Penfold Review specifically suggests self-certification for listed building consent: “Self-certification – the use of approved inspectors within the building regulations regime provides a model that the Review believes could be applied more widely. In particular, in ... [cases where] ... technical expertise is important and in short supply, such as Listed Building Consent, this approach could ease some of the pressures on decision-makers, while making sure standards are maintained.”

49. There may indeed be recommendations in this section which can be achieved without legislation.

50. *Government Response to the Penfold Review*, BIS, November 2010, p16.

51. We do not include in these Recommendations the merger of the now-separate LBC and Scheduled Monument Consent regimes which was the centrepiece of the 2008 draft Heritage Protection Bill. The heritage protection system is undoubtedly complex, but this separation is only part of that complexity, and is rarely a problem in practice. Merger could even make things more complicated rather than less, particularly for archaeology. Even if overall there might be a case for merger, in current circumstances this is a peripheral issue, and concentrating resources on this would divert them from more urgent priorities and – because it implies a comprehensive Heritage Protection Bill – prevent legislation being enacted at all.



51. How this would work clearly needs detailed consideration. It could, for example, involve (a) a variation of the Approved Inspector self-certification system used in Building Regulations approval, and/or (b) notification of the local planning authority including a proportionate heritage statement, with a period for it to comment and deemed approval if it does not, and/or (c) delegated powers for qualified conservation officers to grant certain types of consent. This raises the qualification issues mentioned in Chapter 7, but these are not insurmountable.
52. **RECOMMENDATION 12c: Thirdly, these clauses therefore also need to set an upper threshold, above which the detailed scrutiny would still be needed.** This might simply be the current threshold at which EH has to be consulted (all LBC applications for Grade I and Grade II\* buildings, and major changes to Grade II buildings, probably about 20 percent of all applications); or this could be reviewed. Reviewing it would seem a good idea since many proposals involving this 20 percent must also be inoffensive or beneficial, but particular care is clearly needed over these most significant heritage assets.
53. The key benefit of these changes is that local authorities should be able to cope with this reduced workload and the required additional enforcement (see paragraphs 29-30). Resource would be saved, firstly by the streamlined system for the, say, 50 percent of medium-impact applications under Recommendation 12b and, secondly, on not handling at all the, say, 30 percent of current LBC proposals which no longer become applications under Recommendations 3 and 12a.
- These saved resources could be used much more effectively, putting more resource into handling the estimated 20 percent of potentially

higher-impact LBC cases, and into implementing other recommendations of this Report, particularly improved enforcement.

**Overall, these changes should considerably enhance the protection of listed buildings by making undesirable change harder and desirable change easier – the opposite of what often happens now.**

### 6.3 Terminology

54. **RECOMMENDATION 13: The terminology in current heritage legislation needs updating so as to be compatible with current good practice,** in particular using the term “significance” instead of “special interest” and “national importance” and “conservation” in place of “preservation”. These changes were accepted in principle in the 2008 draft Heritage Protection Bill.

### 6.4 Scheduled Monuments

55. **RECOMMENDATION 14: Wording equivalent to that in Recommendation 12a should also be used for works to Scheduled Monuments** (by amending the 1979 Ancient Monuments Act). At present all work to Scheduled Monuments – even minor like-for-like repair, such as relocating a single slipped tile, or a stone in a bridge knocked by a lorry – requires a Scheduled Monument Consent (SMC) application, which is very wasteful. Only material change which would adversely affect significance would then require consent, reducing the number of applications by a quarter to a half<sup>52</sup>. The principle for this was accepted in the 2008 draft Heritage Protection Bill and, implicitly, more recently by the Penfold Review<sup>53</sup>. **In addition, a right of appeal is needed where SMC is refused.**

52. Again, this does not seem to have been researched.

53. Penfold Review *Final Report* recommendation D5 and *Government Response* p16.



## 6.5 Designation issues

### 6.5.1 Consultation and appeal

56. **RECOMMENDATION 15: The designation (listing, scheduling, registration and so on) of heritage must have a statutory right of consultation beforehand, and one of appeal afterwards.** The current lack of these rights is incompatible with natural justice. This is already the unofficial policy of EH and, as regards consultation, of most local authorities for the Conservation Areas and local heritage assets they designate or list, so the additional resource implications are limited. Again, the principle was accepted in the 2008 draft Heritage Protection Bill.

### 6.5.2 Interim protection

57. **RECOMMENDATION 16: These rights of consultation need to be combined with a proportionate and reasonable system of interim protection** to prevent a small minority of owners demolishing or altering heritage being considered for designation before the process is completed. Once again, the principle was accepted in the 2008 draft Heritage Protection Bill.

### 6.5.3 Discretion not to list

58. **RECOMMENDATION 17: English Heritage should have the discretion not to designate assets which meet the criteria for designation.** This discretion already exists for Scheduled Monuments, but not for listed

buildings, where EH has a statutory duty to list anything which meets listing criteria. The general principle would still be that designation depends on significance, not state of repair; the point is there is a small minority of cases in which designation clearly serves no public interest, perhaps because building work is underway and forcing it to stop pending a LBC application would not be a proportionate measure, or because the building clearly has an inherently short physical lifespan, is already in poor repair, has no viable use and LBC for demolition would eventually be inevitable<sup>54</sup>.

## 6.6 Conservation Area Consent

59. **RECOMMENDATION 18: The now-separate Conservation Area Consent (CAC) for the demolition of unlisted buildings in Conservation Areas should be abolished by being carefully merged into the planning application system.** This was proposed in the 2007 Heritage White Paper and endorsed recently by the Penfold Review<sup>55</sup>. It would remove around 2,000 CAC applications a year, though it would be necessary to find evidence-based ways of ensuring the saved resource is not completely replaced by increased workload in the planning application system.

54. Therefore increasing the number of demolition consents granted, and thus the incentive to others to apply for LBC for demolition.

55. Penfold Review *Final Report* recommendation E2 and *Government Response* p16.

## 6.7 Shimizu and Mitchell's Brewery

60. **RECOMMENDATION 19a: New legislation also needs to deal with the longstanding Shimizu problem – that in some cases the partial demolition of buildings in Conservation Areas is allowed without consent.** To avoid an explosion of planning applications, this needs to be sensible and proportionate, requiring consent only for external demolition, and only where what is to be demolished is clearly of material significance<sup>56</sup>. Similarly, although the 2011 SAVE v CLG (Mitchell's Brewery) case should help to protect undesignated heritage, in requiring planning permission for almost any demolition it will potentially lead to many more planning applications (in heritage cases, often duplicated by applications for LBC or SMC).

**RECOMMENDATION 19b: A replacement of the "demolition circular", Circular 10/95, should be provided so that resources are not wasted on pointless applications for non-damaging demolitions<sup>57</sup>.** Action needs to be taken by CLG.

## 6.8 Heritage Partnership Agreements

61. **RECOMMENDATION 20: Heritage Partnership Agreements should be given a statutory basis,** as proposed in the 2007 Heritage White Paper, so that local authorities and owners can agree in advance that formal consents would not be needed for certain works. But it should be noted that the cost of setting up these agreements would be significant, so they are only likely to be used in a small minority of cases and their impact is likely to be fairly marginal.

## 6.9 Fees as a possible part of a reformed LBC system

62. Fees are payable for most planning applications but not for LBC (or CAC). A Government consultation in late 2010 explicitly said that these would remain fee-free, though a subsequent campaign led by the London Borough of Westminster has lobbied for fees to be applied.
63. The heritage sector has always opposed fees for many reasons, particularly that (i) listing is not chosen by owners/developers but imposed upon them, and imposes substantial additional

costs; (ii) the welfare of listed buildings depends on the goodwill of owners and that fees would disproportionately damage this; (iii) fees would deter work which is desirable in the public interest, especially where, as is often the case with heritage, it provides no commercial return; (iv) fees would be likely to increase the already-significant proportion of work in which the owner ignores the need for consent; and (v) fees in practice would simply be another tax, since there is no guarantee all or any of the revenue would be spent on local authority conservation services.

64. CLA soundings also suggest intense opposition to fees among owners of heritage as they are seen as a fundamental breach of an unwritten covenant between the Government and heritage owners, and the LBC system is seen as working so badly that charging for it is wholly unjustifiable.
65. The Penfold Review recommended that fees should not be applied unless an acceptable level of service is clearly set out, and achieved, with appropriate sanctions<sup>58</sup>. **Under no circumstances therefore should fees be imposed within the current system.** However, it might be possible to develop a consensus in favour of fees which contributed to the cost of running a reformed system like that recommended in this Report.

**RECOMMENDATION 21: As part of a reformed system (but not otherwise), fees could be considered for at least the more expensive-to-handle applications,** perhaps (a) those where the value added by the development exceeds, say, £100,000<sup>59</sup>, and/or (b) where the applicant has made no effort to assess significance or the impact of the proposals, so that the local authority (which has less knowledge of the building than the applicant) has to do this work itself. If a fee were chargeable in these cases, the owner would have an incentive to produce a heritage statement so as to avoid the fee, greatly reducing the LPA's workload and also, incidentally, often producing a more effective scheme and a better application.

56. The approach taken in the 2008 draft Heritage Protection Bill seemed to require a planning application for any alteration, external or internal, to any part of any building in a Conservation Area.

57. This is unlikely to require legislation, but is most logically dealt with here.

58. Penfold Review of non-planning consents, *Final Report*, July 2010, pp 26-8 especially Box 5.

59. Therefore, there is a profit from which a fee can be paid, and the fee can be much greater than the cost of collecting it, which would not be the case if, say, £100 was charged for every LBC application. There would, of course, be a need to decide which applications would be above the threshold, but this is a minority of applications and the problem should not be insuperable.

## 7. SKILLS AND INFORMATION

66. Major and longstanding problems exist with skills and information. These are:

- (a) A perceived and real lack of heritage skills of many kinds, from professionals to craftsmen and less-skilled tradesmen familiar with traditional buildings.
- (b) Even where people with these skills do exist, owners, developers and others find it difficult to identify skilled people and then assess their competence.
- (c) Although the knowledge of owners and developers is much greater than it was 10 to 20 years ago, there are still cases in which they do not appreciate the skills required. In particular, because a perception persists (still encouraged by local authority and EH guidance) that all local authorities employ skilled conservation officers who will deal with all the conservation aspects of building proposals, many applicants do not employ conservation specialists and make little attempt, at least on paper, to assess significance or justify their proposals. This contributes substantially to the problems identified in this Report, because applications, and often proposals as well, are not as good as they could be, and most local authorities are then simply unable to assess them because they no longer have the supply of skilled staff needed.

67. Solutions are likely to include the following<sup>60</sup>:

**RECOMMENDATION 22a: The heritage sector should assess and measure these skills problems as far as practicable.**

**RECOMMENDATION 22b: The sector needs to find cost-effective ways of developing skills of all kinds and at all levels, professional as well as craft skills.** There is a particular need for larger numbers of general tradesmen who are familiar with buildings of traditional construction (especially those competent with lime) but not much more expensive than other tradesmen, so that working on historic buildings ceases to be routinely much costlier than other kinds of building work.

**RECOMMENDATION 22c: The heritage sector needs to find ways of measuring and proving skills, probably using an accreditation system.** However, this is not wholly straightforward – dangers include the least-skilled becoming accredited first, and creating “closed shops” – but these problems are probably soluble in the longer term.

**RECOMMENDATION 22d: Although some tools such as the annual Building Conservation Directory already exist, the sector needs to make it much easier for owners and developers to find skilled people.** As long as it is far easier, say, to call a plastic window company than it is to find a joiner to repair historic windows, then unskilled or damaging work will be done. This is partly a matter of providing information via directories and websites and signposting these so they are easier to find. In addition, the heritage sector needs to develop more proactive solutions, such as the Anglican Diocese of London’s very effective Gutter Maintenance Scheme, which makes it easy and inexpensive to have gutters cleared and maintenance work carried out regularly by reliable private contractors, preventing minor defects developing into hugely expensive repair problems<sup>61</sup>. In the longer term, such schemes might operate at a profit, but substantial start-up funding is generally needed to get them to work, to become well-known and trusted, and to be used on a wide scale.

**RECOMMENDATION 22e: The heritage sector needs to convince owners and developers that specific heritage skills are proportionately necessary if they are to maintain buildings effectively and to get consent for change and, in particular, that these skills are not provided by the local authority.**

There is a role here for the CLA, whose members are generally knowledgeable about heritage maintenance and significance, but nevertheless often do not realise that they need to provide heritage statements themselves because the local authority does not have the resources to do this work<sup>62</sup>.

60. The CLA also endorses the general aspirations in the Memorandum of Understanding on Maintaining Standards and Best Practice in the Built Heritage Sector in England, issued in March 2009 by EH, NHTG and the organisation constructionskills.

61. See: [www.london.anglican.org/gutters](http://www.london.anglican.org/gutters) and [www.gutterclear.org](http://www.gutterclear.org)

62. The CLA already provides advice, including a free-to-members Guidance Note *Getting Heritage and Planning Consents under the new PPS5* which covers these points in detail.



**RECOMMENDATION 22f: The heritage sector must stop telling owners to “consult your conservation officer” as if local authorities had roomfuls of skilled experts with the time to deal with casual enquiries.** They do not, and constantly suggesting in guidance that they do creates stress for local authority staff and unmet expectations for owners. Preliminary advice needs to be sought from other experts, mainly in the private sector<sup>63</sup>.

63. Or from helpful bodies such as the SPAB, but their resources are inevitably limited.

## 8. HELPING THE MARKET TO PAY FOR HERITAGE

### 8.1 The costs of heritage

68. **Heritage is funded by its users and is a revenue source, not a cost, for the Government.** The costs of looking after heritage are high but – unlike many areas of “culture” – these costs are overwhelmingly paid by the market or informal and often-unseen philanthropy, rather than public funds. People maintain their houses, and business users pay the costs out of their turnover. The National Trust maintains its properties from entrance fees, trading, membership and legacies. The Department of Justice maintains its heritage court buildings, and so on. Even where there is no such commercial rationale, owners often cross-subsidise from other income<sup>64</sup>: for example, farmers, if they can afford to, often pay to maintain traditional farm buildings even where they are commercially of no use.

Almost every kind of tax is levied directly or indirectly on heritage, generating tax revenue which in total greatly exceeds public subsidy.

69. **RECOMMENDATION 23: English Heritage, working with the heritage sector, must quantify and understand better the costs of heritage and who pays them<sup>65</sup>.** Lack of knowledge here perpetuates an apparently widespread myth that heritage is just another cultural sector which survives on public funding. If it became clear that heritage is 90 percent to 95 percent funded by those who use or own it, and that the state takes far more out of heritage than it puts in, a more effective debate could take place about the limited but important role of the state in heritage. It also cannot be impressive to those outside the sector, or to government, that (despite the otherwise very useful annual publication *Heritage Counts*) the obvious questions, “What does heritage in England cost to maintain each year?” and “Who pays?”, have never been answered. Action needs to be taken by EH and other stakeholders, probably via *Heritage Counts*.

### 8.2 Heritage at risk

70. There is a small but significant minority of cases where market mechanisms and private and commercial philanthropy are not enough to fund

heritage. The problem is generally where there is a “conservation deficit”, in other words the value of the building once repaired would be less than the total cost of putting it into repair. This is a classic case of an “externality”: the repair of heritage appreciated by the public is a “public good” because it brings public benefit, but the market may not provide it unless benefit accrues to the person who has to pay the costs.

71. There are some mechanisms to deal with this, but they do not work as well as they should. They tend to be available only to not-for-profit bodies and are of ever-declining help to the three-quarters of heritage which is in the private sector. Traditionally, EH and local authorities provided grant funding, which was often used to sweeten the pill when conservation repair increased costs, but this has been reduced by at least 75 percent in real terms over the past 20-30 years.

**RECOMMENDATION 24: EH should concentrate its limited repair grant funding on the private sector.**

### 8.3 Heritage at risk: the Heritage Lottery Fund

72. The Heritage Lottery Fund (HLF) expects in future to be providing around £300million a year<sup>66</sup> for heritage. The HLF has an all-important role in underpinning and developing public support for heritage, without which much heritage would have no long-term future at all. However, it should be noted that (a) the HLF has a much broader definition of heritage than this Report, and other areas like museums absorb much of its £300million; (b) the HLF funds not heritage as such but access to heritage, which rules out a great many projects if internal access is unrealistic; (c) the HLF does not, with minor exceptions, fund the three-quarters of heritage in private or commercial hands; (d) it is ruled out for some applicants because it is funded by gambling; and (e) justifiably or not, it has a series of high hurdles that applicants have to clear if they are seeking significant sums.

**RECOMMENDATION 25: The HLF with the Government and others should consider what, and whom, it funds, and how, and also whether there are ways in which by balancing**

64. The 2005 CLA heritage survey showed respondents had been spending £34,000 a year each on listed buildings. Given that listed buildings are only a minority of all heritage, this implies that CLA members are collectively spending many hundreds of millions of pounds, and possibly more than £1billion, each year on heritage. A high proportion – perhaps a quarter or more – of this huge sum has little or no commercial justification.

65. Of course this could not be done with precision; the aim would be to establish the general picture.

66. HLF consultation *Shaping the Future*, January 2011, p4.



**risks differently it could use its funding more effectively.** This also involves government because the HLF is unlikely to substantially reassess its risk tolerance, accept any substantive funding of the private sector or change its procurement requirements (see paragraphs 73-75) unless the Government makes it clear that this is acceptable. The HLF potentially has an important role in the development and signposting of skills (see Chapter 7). The HLF has been investigating some of these issues in its 2011 *Shaping the Future* consultation.

#### 8.4 Heritage at risk: increasing the outputs

73. A real problem – though not one particular to heritage: public sector defence and IT procurement may be the most glaring examples – is that risk aversion can considerably increase the costs of projects, especially the smaller ones. Where a private owner might just contact some experienced craftsmen with a scaffold tower, publicly accountable funding bodies, charities and sometimes even commercial bodies often feel they have to “do things properly”, and to be seen to do things properly, by following a far more involved process.
74. On the face of it “doing things properly” sounds reasonable. The problem is that even small projects are seen as requiring a team of consultants and detailed assessment (like a £5,000 photogrammetry project) before any work is done. EU procurement rules or being seen to get the lowest price require formal qualification and tender processes, which

means that only big contractors with high overheads will tender, so tender prices are high. Watertight documentation and close supervision, and the need to be seen to record everything in detail, increase costs further. The result is a large increase in project costs, often by a factor of two to (for smaller projects) four times what it could have cost. That means that a given sum of funding may only fund half or less of the work it could have funded with a more risk-balanced approach.

75. An irony is that this approach may well not be low-risk because projects can still go wrong. The accredited and carefully selected contractor might use cement mortar because of poor subcontractor supervision, contractors still go bankrupt and litigation is common. The outcome in practice depends mainly on the quality of the craftsmen and site supervision, not on large teams or mountains of paper, and most work to heritage is roofing, walling and lime pointing and is not time-critical.

**RECOMMENDATION 26: The relevant parts of the heritage and construction sectors, and funders such as the HLF and Defra, should look closely at procurement and project management processes, especially for projects under £150,000 in budget. The aim is to separate real risks from perceived risks for different kinds of project, and establish better procurement methods so that given amounts of funding can buy more work without any real increase in risk.** If this is to work, the Government will need to confirm, before and after this process, that this approach is acceptable. In the current economic climate



there may be more readiness to accept this risk-balanced approach than there was in the bureaucratic and high-cost culture of recent years.

### 8.5 Heritage at risk: traditional farm buildings and other rural heritage

76. Traditional farm buildings are a crucial part of rural landscapes, but almost all are redundant in the sense that agricultural use can no longer generate the income needed to maintain them. Many have disappeared over the past century, and they now form the largest single category of building at current or potential risk. Losing the remainder would cause real harm to our landscape. The large amount of rural archaeology is also under varying degrees of threat. There is strong public support for rural heritage<sup>67</sup>.
77. A useful and largely market-based solution for traditional farm buildings is sympathetic conversion and reuse. This is not a panacea, because some of these buildings are too sensitive, physically unsuitable or too remote, but there are widespread opportunities for viable long-term reuse as dwellings, holiday cottages, workshops, rural shops and so on. A key – but soluble – barrier is poor planning practice.

**RECOMMENDATION 27a: The heritage and economic value and threatened nature of these buildings need greater recognition in the planning system so that conversion proposals are not dismissed as “unsustainable” merely because they are “outside the village envelope” or “not on a bus route”.** Next, where reuse is a good and sustainable long-term solution but repair costs are too high for immediate viability, capital subsidy under the Rural Development Programme for England (RDPE) has worked very effectively, but has become much less available since the system changed in 2005.

67. Demonstrated both by tourism and in surveys; for example, in the EFTEC Uplands survey for Defra in 2006, cultural heritage emerged as the public good most valued by the members of the public, significantly ahead of biodiversity.

68. See *Agri-environment schemes in England 2009: A review of results and effectiveness*, Natural England, 2009.

### **RECOMMENDATION 27b: Capital subsidy for conversion needs to be reinvigorated**

especially during the period responsibility is being transferred from the Regional Development Agencies to Defra.

78. Where reuse is not practicable, as for archaeology, the primary tool needs to be targeted payments under the well-established agri-environment schemes (AES).

### **RECOMMENDATION 27c: The heritage sector should remind Defra that the historic environment is rightly one of the five key priorities for AES funding.**

The “natural” and cultural elements of landscape are indivisible, and mutually supportive, and managing them in an integrated way has been a feature of the UK’s AES from their inception, making them acknowledged “brand leaders” in the EU. Heritage outcomes are widely acknowledged as one of the most successful elements of AES so far<sup>68</sup>.

### **RECOMMENDATION 27d: The heritage sector and the Government should lobby in the EU to ensure the post-2014 Common Agricultural Policy (CAP) focuses as much as possible on paying for rural “public goods”, and that these include heritage and landscapes.**

Action needs to be taken by Defra, EH, the CLA and relevant heritage organisations including the Heritage Alliance Rural Advocacy Group.

### 8.6 Other heritage at risk

79. Other areas such as places of worship and urban regeneration might benefit from comparable approaches, but these are not considered in this Report because they are outside the CLA’s field of expertise and interest.

## 9. TAX ISSUES

### 9.1 The taxation of heritage

80. The total tax take from heritage hugely exceeds public cultural funding for heritage, and this excess has probably increased substantially in the last 10 to 15 years, with less recognition in the tax system of heritage's public benefits.
81. In the short term, one area which would benefit from review is the tax treatment of Heritage Maintenance Funds (HMFs), devised decades ago as a useful way of encouraging planned maintenance of nationally important heritage open to the public, but little used in practice because anomalies in the rules prevent them working to their full potential.

**RECOMMENDATION 28a: HMRC, with relevant heritage organisations, should examine the HMF rules to enable HMFs to work more effectively.**

**RECOMMENDATION 28b: In the medium term, the overall tax treatment of heritage should be reviewed in the context both of its very significant public benefits and of the total tax take from it being far greater than total public cultural funding for it.**

### 9.2 Tax problems: VAT

82. The total amount paid in VAT by the heritage sector, even ignoring other taxes, is probably three to six times greater than all public cultural funding for heritage<sup>69</sup>.
83. Given that new-build construction<sup>70</sup> is zero-rated, VAT at 20 percent is a colossal distortion and disincentive to repair and maintain heritage.
84. Reduced-rate VAT on heritage repair per se is not permitted by EU VAT rules, but reduced-rate VAT on work to residential property explicitly is allowed.

**RECOMMENDATION 28c: The Government should apply reduced-rate VAT to works on residential property**, as recommended and costed<sup>71</sup> by the Cut-the-VAT Coalition, of which the CLA and several heritage organisations are members. This would have a variety of advantages outside the scope of this Report, including a major boost to the recession-hit construction industry. It would have major positive effects on heritage, because half of all heritage is residential<sup>72</sup>.

85. Although places of worship are outside the CLA's expertise and interest, we would also favour the continuation of the Listed Places of Worship Scheme, the grant scheme which refunds most of the VAT paid on church repairs.

69. Unless and until the work suggested in Recommendation 23 has been done, it is hard to suggest a more precise figure.

70. There is also a concession for some approved alterations to listed or scheduled residential buildings.

71. *The opportunities and costs of cutting VAT*, report by Experian for the Cut-the-VAT Coalition, February 2010.

72. Much of the rest is occupied by organisations which can reclaim VAT.

## 10. CLIMATE CHANGE MITIGATION

86. The CLA supports the objective of reducing the carbon impacts of buildings, including heritage buildings. However, there is a major flaw in current UK (and EU) policies, which particularly afflicts heritage. The supposed goal is “low carbon” or “carbon neutrality”, but this is really just energy performance. Our buildings may become highly energy efficient, but we achieve this by using materials such as glass, plastic and concrete with high initial carbon impacts which are ignored in energy performance equations. Worse, these components and buildings made from them have short lives, perhaps 20 to 40 years before they reach a point at which continuing repair becomes uneconomic. The building then has to be demolished or extensively refitted, most of its components bulldozed into landfill, and replaced by another building – which, unless the policies change, will also have high initial carbon impacts, which again are left out of the calculations.
87. This highly illogical policy has damaging consequences generally and two malign consequences for heritage. Firstly, if all new 21st Century buildings have 20 to 40-year lifespans, then author and journalist David Dimbleby’s prediction (in *How we built Britain*<sup>73</sup>) that our generation is likely to be the first in history that in the long term will leave almost no built heritage behind is likely to prove correct. We believe this will matter a great deal to our descendants. Secondly, it encourages people to make bad changes to buildings of traditional construction. For example, it promotes plastic windows despite their high carbon and financial costs and short lives. In many cases, Part L of the Building Regulations compels harmful actions (there are limited and qualified heritage exemptions – see Recommendation 29e – but these are often ignored in practice).
88. A related and important problem is that the measurement tools prescribed by current policy – particularly the SAP (and similar) appraisal methodologies which underlie Energy Performance Certificates (EPCs) – are designed for modern buildings and give substantially misleading results and often physically damaging recommendations for buildings of traditional construction. An assumption that traditionally constructed buildings are energy-inefficient is actually built into these methodologies. They ignore factors important in the performance of traditional buildings such as thermal mass and window shutters, and many of the measures used to make them energy efficient, such as draught proofing and floor insulation. Moreover, the resulting EPC recommendations are often physically inappropriate because they lead to fundamental damp problems, are less cost-effective than claimed and/or are damaging to heritage significance.
89. Fortunately, the “energy performance is the only thing which matters” approach is now facing increasing criticism. The 2010 RICS report *Redefining Zero* concludes that “legislation and practice [ignore] the significant amounts of carbon used to make and maintain a building, [leading to serious] misallocation of environmental and financial resources ... [and] much of [what is proposed] may not achieve the environmental goals it was designed to”<sup>74</sup>. Following this and other work, the recently published Government Low Carbon Construction Innovation and Growth Team *Final Report* stresses the need to take proper account of overall whole-life carbon impacts, not just day-one energy performance: “the search for zero operational emissions may be at the cost of uneconomically raised embodied emissions. Whole-life emissions must be the assessment basis”<sup>75</sup>.
90. This suggests a number of crucial recommendations.
- RECOMMENDATION 29a: A more sophisticated and considerably more balanced approach is needed to climate change mitigation policy for buildings (including, but not only, heritage buildings), based on overall whole-life carbon impacts, not merely on energy performance.**
- RECOMMENDATION 29b: A re-examination of Energy Performance Certificates (EPCs) and especially their underlying SAP (and similar) methodologies is essential if EPCs are to give more accurate information and recommendations for buildings of traditional construction, and to begin to be seen widely as effective and non-damaging**<sup>76</sup>.

73. *How we built Britain*, David Dimbleby, BBC, 2007.

74. *Redefining Zero*, RICS Research, May 2010, Key findings.

75. BIS, November 2010. See references throughout, but especially section 2.7.

76. Research suggests that EPCs are now widely seen as flawed and that relatively few people act on them. See especially *Energy Performance Certificates: Seizing the Opportunity*, National Energy Foundation, December 2009, which found that of a sample of 300,000 new purchasers of existing dwellings – people very likely to be carrying out work anyway – only 22 percent had implemented or were intending to implement any of their EPC recommendations, often because they saw the recommendations as flawed.



**RECOMMENDATION 29c:** Until this re-examination has been successfully achieved, owners of traditional buildings should be allowed to use an approved standard caveat alongside their EPC ratings (for example, “EPCs may give misleading results and recommendations for buildings of traditional construction”).

**RECOMMENDATION 29d:** The Government’s forthcoming Green Deal (planned for 2012) should follow a common sense approach, focusing on sensible cost-effective measures such as loft insulation, cylinder lagging, draught-proofing and cavity wall insulation. Its “golden rule” that savings must exceed costs must be maintained so that the Green Deal does not simply become a sales opportunity for the window replacement industry.

**RECOMMENDATION 29e:** It is vital that the qualified exemption from Part L of the Building Regulations<sup>77</sup> is maintained – the last Government proposed its removal – and also extended to all buildings of traditional construction<sup>78</sup>.

77. This exempts listed buildings, scheduled monuments, buildings in conservation areas, and arguably locally listed buildings from Part L, but only where and in so far that compliance would unacceptably alter their character or appearance. EH research in 2009 showed that most local authority conservation staff thought that ending the exemption would be catastrophic for heritage, primarily because building control staff do not have time for debate and that without the exemption inappropriate solutions would become impossible to resist.

78. Any negative carbon impact from this extension would be small, because (a) the exemption is (see paragraph 87) only partial, (b) the least efficient buildings are mainly of modern construction, (c) many traditional buildings are already energy efficient, (d) many owners are keen to improve the carbon impacts of their buildings anyway, and (e) the exemption is widely ignored in practice.

# 11. SUMMARY OF RECOMMENDATIONS

To avert the crisis in heritage the CLA recommends the following actions. Crucially, they are designed to meet the CLA's 'six key tests' (see page 14): they must both address and help to solve the true problems, be possible to implement rather than vague aspirations, and not require new public expenditure, major legislation, or substantial input from Government.

## CHAPTER 5. IMPROVING THE HERITAGE SYSTEM WITHOUT LEGISLATION

### 5.1 National planning policy and the National Planning Policy Framework (NPPF)

- 1a: The Government should ensure that the new NPPF incorporates all of the fundamentals of heritage protection which underlie current policy in Planning Policy Statement 5 (PPS5).
- 1b: The Government should allow, and preferably endorse, higher-level guidance sitting beneath the NPPF, and agreed by the heritage sector and English Heritage (EH).
- 1c: The NPPF and this new guidance also need to address the current imperfections in PPS5 and its Practice Guide.

### 5.2 The paramount need for conservation skills in local authorities

- 2a: Local authorities need to be convinced of the danger of further cuts to their conservation skills base.
- 2b: Local authorities should be helped to find the most effective structures for their conservation and planning services.

### 5.3 Defining what needs Listed Building Consent (LBC)

- 3: To reduce the considerable number of LBC applications made where LBC is not needed, new guidance is needed soon to show more clearly where consent is required and where it is not.

### 5.4 Applying Constructive Conservation

- 4a: EH needs to communicate and apply its sensible "Constructive Conservation" policy more consistently and effectively, so that it is always used in its own casework and always recommended to others.

- 4b: All current and new heritage policy and guidance needs to be compatible with Constructive Conservation.
- 4c: As an important part of its Constructive Conservation policy, EH needs to apply significance and proportionality tests much more thoroughly in its guidance.
- 4d: As an example of that, guidance needs to say that for less significant parts of heritage a less than completely perfect solution may be better than disinvestment or dereliction.

### 5.5 The key role of guidance

- 5a: Guidance is increasingly important as resources are cut. EH needs to conduct a comprehensive review of available guidance and ensure that up-to-date guidance exists wherever it will add value. This review needs to be published, with priorities and timings.
- 5b: Specific guidance is needed on residential heritage.

### 5.6 The importance of stakeholder consultation

- 5c: Before issuing new or reviewed guidance, EH should always work with and consult appropriate key stakeholders, in a proportionate manner, especially those with experience of how things work on the ground.

### 5.7 Conservation Areas

- 6a: The key stakeholders including EH need to examine Conservation Area policy, to ensure that what matters in Conservation Areas is effectively and proportionately protected. Revised guidance is then needed.
- 6b: To direct resources more effectively, this might also encourage local authorities to grade their Conservation Areas.

### 5.8 Local listing

- 7: Guidance is needed on local listing, ensuring that it is based on significance, carried out with adequate consultation, and used in a proportionate way in decision-making.

## 5.9 Enforcement and prosecution

- 8a: EH, with CLG, needs to issue improved and proportionate guidance on enforcement and prosecution and encourage local authorities to use it.
- 8b: The targeting of enforcement is just as important. It must be targeted on those who have deliberately flouted the rules and in doing so have caused real damage.
- 8c: There should be a time limit of 10 years between an alleged offence and enforcement after which listed building enforcement or prosecution can no longer be initiated.

## 5.10 Heritage at risk

- 9a: EH and others should continue the Heritage at Risk programme, assess the effectiveness of EH's "Stop the Rot" initiative, and give increased assistance to local authorities in carefully-chosen cases.
- 9b: It is extremely important (as with enforcement) to target action very specifically, on those who deliberately threaten heritage to generate profit.
- 9c: EH and key stakeholders should review EH's 2007 enabling development guidance.

## 5.11 The National Heritage Protection Plan (NHPP)

- 10: Instead of its narrow focus on research and new designation, the NHPP needs to be transformed into a plan for heritage protection, asking whether protection is working properly and devising and acting on solutions to the many problems identified by the CLA and others.

## 5.12 New designation

- 11a: The current focus largely on risk-based "spot" designation unfortunately will need to continue, but EH should discourage vexatious applications.
- 11b: Designation guidance should say that all heritage designation needs to be proportionate, remembering that it has costs, especially to the local authority and owner, which need to be outweighed by the benefits.
- 11c: Future, and recent, listings should be definitive (ie only cover the elements shown on a plan and indicated in the description) to eradicate the expensive uncertainty as to what is included in listing and "curtilage" which afflicts so many older listings.

## CHAPTER 6. LEGISLATION

### 6.2 A more impact-based Listed Building Consent system

- 12a: To focus limited resources on where they are most needed, LBC should be required only for changes which materially and adversely affect significance, so that changes which are beneficial or not material do not require consent. The implementation of this obviously needs careful handling.
- 12b: As recommended by the Penfold Review, there should be a streamlined system for medium-impact changes which are not excluded by 12a but which are not in the "higher-impact" category in 12c.
- 12c: Detailed scrutiny would still be needed of higher-impact changes.

### 6.3 Terminology

- 13: The terminology in current heritage legislation needs updating so as to be compatible with current good practice.

### 6.4 Scheduled Monuments

- 14: Wording equivalent to that in 12a should also be used for works to Scheduled Monuments, removing the need for many minimal-impact applications.

### 6.5 Designation issues

#### 6.5.1 Consultation and appeal

- 15: The designation of heritage must have a statutory right of consultation beforehand, and of appeal afterwards.

#### 6.5.2 Interim protection

- 16: These rights of consultation need to be combined with a proportionate and reasonable system of interim protection.

#### 6.5.3 Discretion not to list

- 17: EH should have the discretion not to designate heritage assets in appropriate cases.

### 6.6 Conservation Area Consent (CAC)

- 18: CAC for the demolition of unlisted buildings in Conservation Areas should be abolished and carefully merged into the planning application system.

## 6.7 Shimizu and Mitchell's Brewery

- 19a: New legislation also needs to deal with the longstanding Shimizu problem, that in some cases the partial demolition of buildings in Conservation Areas is allowed without consent.
- 19b: A replacement of the "demolition circular", Circular 10/95, is needed so that resources are not wasted on pointless applications for non-damaging demolitions.

## 6.8 Heritage Partnership Agreements

- 20: Heritage Partnership Agreements should be given a statutory basis, though they will be useful in only a limited number of cases.

## 6.9 Fees as a possible part of a reformed LBC system

- 21: Despite overwhelming opposition to fees for LBC, as part of a reformed system (but not otherwise), a consensus might be found for fees for more expensive-to-handle applications.

## CHAPTER 7. SKILLS AND INFORMATION

- 22a: The heritage sector should assess and measure current heritage skills problems.
- 22b: The sector needs to find cost-effective ways of developing skills of all kinds, including low-level skills.
- 22c: The sector needs to find ways of demonstrating skills, probably using accreditation.
- 22d: The sector needs to make it easier for owners and developers to find skilled people.
- 22e: Owners and developers need to be convinced that specific heritage skills are (proportionately) necessary if they are to maintain buildings effectively and to get consents for change, and in particular that these skills are not provided by the local authority.
- 22f: The heritage sector must stop telling owners to "consult your conservation officer" as if local authorities had scores of skilled experts with the time to deal with casual enquiries.

## CHAPTER 8. HELPING THE MARKET TO PAY FOR HERITAGE

### 8.1 The costs of heritage

- 23: To destroy the damaging myth that heritage largely subsists on public funding, EH working with the heritage sector must quantify and understand better both the full costs of heritage, and who is paying them.

## 8.2 Heritage at risk

- 24: EH should concentrate its limited repair grant funding on the private sector.

## 8.3 Heritage at risk: the Heritage Lottery Fund

- 25: The HLF with the Government and others should consider what, and whom, it funds, and how, and also whether there are ways in which by balancing risks differently it could use its funding more effectively.

## 8.4 Heritage at risk: increasing the outputs

- 26: The sector including funders should look closely at separating real risks from perceived risks and establish better procurement and project management strategies, so that given amounts of funding can buy more work without any real increase in risk.

## 8.5 Heritage at risk: traditional farm buildings and other rural heritage

- 27a: The heritage and economic value and threatened nature of rural heritage needs much greater recognition in the planning system: re-using a heritage building must no longer be seen as "unsustainable" just because it is "outside the village envelope".
- 27b: One-off capital subsidy for non-profitable re-use needs to be reinvigorated.
- 27c: Defra must remember that the historic environment is rightly one of the five key priorities for Agri-Environment Scheme funding, and has widely-acknowledged benefits.
- 27d: The heritage sector and the Government should lobby to ensure the post-2014 Common Agricultural Policy focuses as much as possible on paying for rural "public goods", and that these include heritage and landscapes.

## CHAPTER 9. TAX ISSUES

### 9.1 The taxation of heritage

- 28a: In the short term HMRC, with relevant heritage organisations, should examine the Heritage Maintenance Fund rules to enable these to work more effectively.
- 28b: In the medium term, the overall tax treatment of heritage should be reviewed in the context both of its very significant public benefits and of the total tax take from it being far greater than total public cultural funding for it.

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29a: A much more logical approach is needed to climate change mitigation policy for all buildings, based on overall whole-life carbon impacts, not merely on energy performance.

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29c: Until this has been achieved, owners of traditional buildings should be allowed to use an approved standard caveat alongside their EPC ratings.

29d: The Government's forthcoming Green Deal (planned for 2012) must focus on sensible cost-effective measures such as loft insulation, cylinder lagging and draught-proofing.

29e: It is vital that the qualified exemption for heritage from Part L of the Building Regulations is maintained, and extended to all buildings of traditional construction.



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## Averting Crisis in Heritage: CLA Report on Reforming a Crumbling System

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