

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**PLANNING and TRANSPORTATION ADVISORY BOARD**

**14 June 2007**

**Report of the Director of Planning, Transport and Leisure**

**Part 1- Public**

**Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)**

**1 THE HERITAGE WHITE PAPER, "HERITAGE PROTECTION FOR THE 21<sup>ST</sup> CENTURY" (DEPARTMENT FOR CULTURE, MEDIA & SPORT ("DCMS"), 2007)**

**Summary**

**The Heritage White Paper was presented to Parliament in March 2007. It puts forward three questions, which focus on possible further changes to the System, for response by 1 June 2007, and sets out its proposals for legislative change. The proposals are based around three core principles:**

- Developing a unified approach to the historic environment;**
- Maximising opportunities for inclusion and involvement; and**
- Supporting sustainable communities by putting the historic environment at the heart of an effective planning system.**

**1.1 Introduction**

**1.1.1 The proposals aim to achieve five key objectives,**

- 1) To promote a new holistic approach towards the historic environment by creating a single designation regime that is simple and easy to understand. It is intended to do this by:**
  - creating a single system for national designation to replace listing, scheduling and registering; and**
  - making all national designation decisions on the basis of special architectural, historical or archaeological interest; and**
  - making designation decisions easier to understand by publishing new detailed selection criteria, for national and local designation; and**
  - devolving responsibility for national designation, in England, to English Heritage.**

2) **To improve designation by involving the public in decisions about what is protected and how, and by making the process simpler and quicker, by:**

- involving the public in shaping a new programme of national designation; and
- creating new Registers of Historic Buildings and Sites of England and Wales to replace existing lists and schedules; and
- introducing simpler and clearer designation records and improving public access to these records, through new internet portals; and
- introducing new consultation and appeal processes, as a means to open up the system; and
- introducing interim protection for historic assets; and
- speeding up the system and delivering quicker designation decisions.

3) **To support sustainable communities by putting the historic environment at the heart of an effective planning system, by:**

- streamlining regulation through the merging of Listed Building Consent and Scheduled Monument Consent, and by consulting on the merging of Conservation Area Consent with planning permission; and
- introducing greater flexibility into the system through new statutory management agreements for historic sites; and
- consulting on the scope to reduce uncertainty and ensuring early consideration of heritage issues through a greater role for pre-application discussion; and
- clarifying and strengthening protections for World Heritage Sites; and
- enhancing protection for archaeological remains on cultivated land; and
- providing local planning authorities with new tools to protect locally designated buildings from demolition.

4) **Improving the heritage protection system by raising the profile of the historic environment, promoting a more joined-up approach, and increasing capacity at local level, by:**

- underpinning new legislation with new policy guidance; and
- English Heritage implementing a new programme of training, support and capacity-building for English Local authorities and local heritage organisations; and

- improving access to information, about the historic environment, through the introduction of a statutory duty upon local authorities to maintain or have access to Historic Environment Records.
- 5) **DCMS, along with Ministers in Wales, Scotland and Northern Ireland, will develop an improved UK-wide system of marine heritage protection that can work effectively alongside national systems, by:**
- broadening the range of marine historic assets that can be protected; and
  - making designation decisions on the basis of special archaeological or historic interest; and
  - making designation decisions easier to understand, through the publication of new selection criteria for marine designation; and
  - introducing interim protection for marine historic assets; and
  - considering the scope for a new, flexible consents system, including provision for management agreements; and
  - introducing a new statutory duty on the Receiver of Wreck to inform heritage bodies about marine historic assets.

## **1.2 Questions posed by the White Paper**

1.2.1 The deadline for responses to these questions was Friday 1 June 2007. The deadline having passed, at the date of this Meeting, Members are asked to endorse the following commentary in Sections 1.2.2 to 1.2.4 as the response of the Council.

**1.2.2 Should Conservation Area Consent be removed as a specific consent and merged with planning permission? The merger would be combined with amendments to the Demolition Direction to ensure planning permission would be required for the demolition of an unlisted building in a Conservation Area and amendments to the General Permitted Development Order to reinstate levels of protection pre-Shimizu.**

The merger of Conservation Area Consent for demolition into planning permission, by way of amendment to the General Permitted development Order to reinstate the need for consent to demolish a building in a Conservation Area would streamline the planning system and provide protection to this category of building, which had been eroded by the Shimizu decision (i.e. partial demolition of an unlisted building in a Conservation Area does not require local planning authority consent). The proposal is therefore supported.

**1.2.3 As a means of promoting early consideration of heritage issues in large scale developments, should there be new statutory guidance promoting pre-**

**application assessment and discussion for all major planning applications which may affect historic assets?**

The principle of early consultation and pre-application assessment is supported. This Authority does provide pre-application consultation, but further guidance would no doubt be beneficial to this process, though it is questionable whether this needs to be “statutory”. However, this would have a resource implication on local authorities and should be a consideration in the light of general development control targets.

**1.2.4 As a means of providing greater certainty to developers, should the current operation of Certificates of Immunity be expanded to enable an application to be made at any time, and for a site as well as an individual building?**

The Authority feels it is logical that if Certificates of Immunity are to be expanded, they should include sites as well as individual buildings, because of the White Paper’s proposal to amalgamate the listing of buildings with monuments and archaeological scheduling.

It, however, feels that the general principle, of expanding the current operation of Certificates of Immunity by removing the present requirement that a Certificate of Immunity can only be applied for as part of a planning application or for existing consents, would not be helpful.

Sites which are not the subject of planning permission or an existing consent could be considered through the normal listing process. Changing that procedure would again have resource implications for English Heritage.

**1.3 General response to the White Paper**

1.3.1 In addition to the three principle questions posed in the White Paper there are a number of issues that are fundamental to new conservation legislation, which have not been addressed. These issues have been highlighted below with a response given in bold type.

1.3.2 It has been proposed to unify the present system of listed buildings, archaeological sites, ancient monuments and registered parks, gardens and battlefields into a single system, of national designated assets, called the Register of Historic Sites of England.

The present grading system of I, II\* and II listed buildings is proposed to remain unaltered, but the designation of sites will be brought in line with that of buildings over future years. The criteria for designation are, at present, confusing; buildings being listed for their special architectural or historic interest, monuments for national importance and parks and gardens for special historic interest. In future, historic assets will be designated on the basis of special architectural, historic or archaeological interest, upon which it is intended that a new selection criterion will be published.

The proposals go further, in order to complement the national list, by way of encouraging and supporting the designation of local historic assets (locally listed buildings and conservation areas). Designation of nationally important assets to this new Register will be devolved from the DCMS to English Heritage; designation of local assets will be the responsibility of the local planning authorities.

***In principle the amalgamation of lists should simplify the system and make identification of historic assets less cumbersome. The unification of specifications into a single published criterion which is accessible to all, public and local authorities alike will take away the mystery of listing and enable better management of the assets. It will however create a two tier system and confusion where buildings and sites registered under the new system will have their principal assets identified, whereas those previously registered will retain a description which is only intended to identify the building. An urgent review and update of existing List entries should be undertaken, not a piecemeal amalgamation.***

***Whilst the White Paper encourages the designation of assets of local interest, it leaves locally listed buildings without statutory protection. We would strongly recommend that where buildings have been identified as being of local historic interest, legislation (protection against external alteration or demolition) should be put in place. The present proposal leads local authorities to provide protection under Article 4 Directions, which will have compensation implications.***

- 1.3.3 The designation of heritage assets will now be carried out by English Heritage, which has in the past acted as advisers to DCMS. This will remove one tier of bureaucracy. The proposal will introduce public consultation prior to the confirmation of a building being listed, which will create an open listing system and will encourage public ownership of the Register. As part of this objective, an appeal process is to be included. Interim protection for assets is to be introduced while the consultation process is under way.

***This new proposal will streamline the registration process. Providing interim protection will alleviate the danger of damage or demolition during the process of registration, it will also remove the necessity for Building Preservation Notices (BPNs) and their financial risk to local authorities. The proposals will make the system open and democratic and encourage public ownership. The appeal system will, however, create a new pressure on an already stretched English Heritage defending its designations. It is important that English Heritage is adequately resourced to deal with this new pressure.***

- 1.3.4 It is proposed that the planning system will be streamlined, through the:
- Merging of Listed Building and Scheduled Monument Consent; and
  - Consultation on merging Conservation Area Consent and Planning Consent.

DCMS consider that this will also strengthen protection for World Heritage sites, increase protection for archaeological remains on cultivated land and provide local authorities with powers to protect locally designated buildings from demolition. It is intended that merging Conservation Area Consent with planning permission would provide a timely opportunity to address issues arising from the Shimizu judgement and would raise the level of protection for buildings back to pre-Shimizu levels, i.e. full or partial demolition of an unlisted building, situated within a Conservation Area, would require planning permission whereas at present control can only be exercised over total demolition.

***Amalgamating Listed Building and Monument Consent, whilst streamlining the planning system, will require considerable additional resources from local planning authorities. Monument consent is at present the responsibility of English Heritage after consulting advisors within their own organisation, expertise which in the main local authorities do not have. Therefore additional recourses will be required to consult on archaeological and monument sites adding additional delays and putting application processing targets at risk.***

- 1.3.5 It is proposed that the new system will be underpinned with policy guidance from English Heritage and a programme of training support and capacity building for local authorities. It will introduce statutory duties upon local authorities to maintain or have access to historic environment records.
- 1.3.6 No consideration has been given within the White Paper that would alleviate the existing confusion relating to curtilage and curtilage buildings.

## **1.4 Recommendation**

- 1.4.1 The points listed under Sections 1.2 and 1.3 of the Report **BE ENDORSED** as the Council's response to the 2007 Heritage White Paper consultation.

The Director of Planning, Transport & Leisure confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

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Nil

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