

Housing and Planning Bill Committee
House of Commons
London
SW1A 0AA

scrutiny@parliament.uk

24 November 2015

Dear Sir / Madam,

The Housing and Planning Bill

This evidence

Thank you for the opportunity to provide evidence to this inquiry. Written evidence submitted on behalf of the Chartered Institute for Archaeologists is attached.

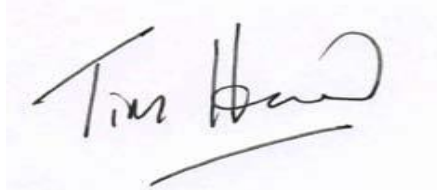
The Chartered Institute for Archaeologists

The Chartered Institute for Archaeologists (CIfA) is the leading professional body representing archaeologists working in the UK and overseas. CIfA promotes high professional standards and strong ethics in archaeological practice, to maximise the benefits that archaeologists bring to society, and provides a self-regulatory quality assurance framework for the sector and those it serves.

CIfA has over 3,350 members and more than 70 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

If there is anything further that I can do to assist please do not hesitate to contact me.

Yours faithfully,



Tim Howard
CIfA Senior Policy Advisor

The Housing and Planning Bill

Evidence of Chartered Institute for Archaeologists (CifA)

Executive Summary

1. CifA strongly supports reforms to the planning system which facilitate the timely delivery of sustainable development in accordance with the National Planning Policy Framework (NPPF).

2. However, CifA has significant concerns about the planning proposals in part 6 of the Bill and, in particular, about the proposals for permission in principle (clause 102). The details of the proposed reforms are not clear, with much remaining to be resolved in secondary legislation. Nevertheless, If careful consideration is not given to their implications for the historic environment and appropriate safeguards are not secured at this stage, there is a risk that such reforms will reduce the level of protection for heritage assets and run contrary to the principles of the NPPF (including the presumption in favour of sustainable development) and of localism.

CifA

3. The Chartered Institute for Archaeologists (CifA) is the leading professional body representing archaeologists working in the UK and overseas. It promotes high professional standards and strong ethics in archaeological practice, to maximise the benefits that archaeologists bring to society, and provide a self-regulatory quality assurance framework for the sector and those it serves. CifA has over 3,350 members and more than 70 registered practices across the United Kingdom.

4. In responding to the proposals in the Productivity Plan and in this Bill, the Institute has worked closely with other bodies in the archaeological sector and in particular with the Association of Local Government Archaeological Officers of England (ALGAO: England) and the Council for British Archaeology (CBA).

Background

The nature of archaeological evidence

5. Archaeological evidence (sites, features, artefacts and burials) is often difficult to detect, is very vulnerable to physical disturbance and is unpredictable in terms of its character and level of significance. Specialist surveys are therefore invariably required to identify the presence of archaeological evidence. The techniques range from desk-based research to various methods of non-intrusive survey (e.g. geophysics, Lidar, aerial photography) and physical archaeological investigation (e.g. geoarchaeological survey, trial-trenching and test-pitting). Where archaeological evidence has been identified, survey and physical intervention will also be required to determine its likely

significance and from this the level of protection that it should be given via the planning process.

6. These characteristics of archaeological evidence have been encapsulated within the concept of archaeological interest, as defined in the NPPF. Archaeological interest goes further than historic interest (an interest in what is already known about past lives and events that may be illustrated by or associated with the asset), because it is the prospects for a future expert archaeological investigation to reveal more about our past which need protecting. This embraces not only those assets (both designated and undesignated) that are currently known, but also those whose identity, nature or extent are as yet unknown, which is why pre-determination assessment and evaluation are key elements in the timely delivery of sustainable development.

7. Designated heritage assets (defined in the Glossary to the NPPF) are a very small proportion of the total archaeological resource; the majority of assets managed through the planning process are undesignated and may be of equivalent importance to those which are designated (see paragraph 139 of the NPPF). Previously unknown assets of this significance may be identified by archaeological assessment/evaluation of the type set out above during the plan-making or development management processes.

Current position as regards the consideration of heritage assets in the planning process

8. The NPPF provides at paragraph 128:

‘Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.’

9. Post-determination, archaeological interest is safeguarded in accordance with paragraph 36 of *Historic Environment Good Practice Advice in Planning Note 2*:
‘A requirement to record the significance of a heritage asset with archaeological interest that will be harmed may be made enforceable through conditions, a planning obligation or a combination of the two (see Paragraphs 203-206 of the NPPF).’

10. In local plans *‘Site allocations should be informed by an evidence base and an analysis of potential effects on heritage assets’* (paragraph 18 of *Historic Environment Good Practice Advice in Planning Note 1*).

11. This formulation of policy, guidance and advice (through the NPPF, NPPG and the recently-published GPAs) provides a generally effective framework for considering and safeguarding heritage assets with archaeological interest in development management. This framework, however, can be by-passed or begin to break down in the absence of an application for permission. This is the major concern of the archaeological sector in respect of the proposals for permission in principle for local

and neighbourhood plan allocations and for sites identified in brownfield registers (clauses 102 and 103).

Implications for archaeology of Permission in Principle generally

12. Any planning reforms which seek to separate the principle of permission from the detailed consideration of the implications of the development to be permitted must ensure that

(1) any in-principle archaeological objections to development are assessed prior to the granting of permission in principle

(2) legally-binding requirements for archaeological mitigation and/or compensation can in appropriate cases be imposed either at the in-principle stage or at the 'technical details' stage.

Implications for archaeology of Permission in Principle for local and neighbourhood plan allocations

13. If local and neighbourhood plan allocations for housing automatically receive permission in principle, all pre-determination archaeological assessment and evaluation should be done prior to the adoption of the plan. This is not currently the case with local or neighbourhood plans, where often archaeological issues are 'flagged up' by local authority archaeology services as matters which will require attention at the application stage¹. This typically would include requirements for archaeological desk-based assessment and, where appropriate, field evaluation which can subsequently give rise to in-principle archaeological objections to development.

14. Even if archaeological issues do not give rise to in-principle objections but rather require mitigation and/or compensation, there needs to be an opportunity to impose legally-binding conditions or obligations to secure such mitigation and/or compensation. The provisions in the Bill for permission in principle deliberately do not allow for conditions to be imposed at the in-principle stage, but it is not clear that that the 'technical details' stage will encompass archaeological issues or that it will allow the imposition or acceptance of the full range of archaeological conditions or obligations as is currently available in dealing with an ordinary planning application. There needs to be some certainty in this regard before the Bill is passed.

Implications for archaeology of Permission in Principle for land identified in brownfield registers

15. The above concerns apply equally (if not more so) to sites proposed to be included on brownfield registers and thereby automatically receiving permission in principle. Desk-based assessments and/or field evaluations are not routinely carried out when undertaking strategic housing land availability assessments².

16. Furthermore, there is a risk that some development receiving permission in principle will subsequently be found not to be viable by reason of the requirements for archaeological mitigation / compensation (provided there is the opportunity subsequently to impose such requirements). In the current system there are cases where the scale and extent of archaeological remains (including those that are less than nationally important) are such that a requirement to make proper NPPF provision through conditions and/or planning obligations can make a development unviable in terms of additional costs and/or delays. This is more likely with sites on brownfield registers which may not have been through the full local plan process.

17. The time and cost involved in carrying out all necessary pre-determination archaeological assessment and evaluation in advance of entry of sites on a brownfield register or allocation in a plan needs to be considered. It is wholly unrealistic (and contrary to the NPPF – see paragraph 128) to expect local authorities to bear this burden. It is fair to say that guidance could make clear that developers promoting sites for allocation in plans are required to submit an appropriate archaeological desk-based assessment or, where necessary, a field evaluation, but this may not be possible in all cases with brownfield registers. The onus will be upon local authorities to produce such a register and identify land in accordance with Strategic Housing Land Availability Assessment (SHLAA) methodology and, particularly given the relatively small sites threshold envisaged for brownfield registers, not all sites are likely to be actively promoted by developers.

18. The detail of brownfield registers and the procedures necessary to add sites to them is not clear. Clause 103 proposes to add section 14A(4) to the Planning and Compulsory Purchase Act 2004 to allow regulations to *‘require or authorise a local planning authority to carry out consultation and other procedures in relation to entries in the register’* but the extent of any consultation which may ultimately be required is not clear. Unless there is a meaningful opportunity for communities and other stakeholders and consultees to comment and, if appropriate, object to entry on a register, there is a potentially significant democratic deficit in the process.

19. There is also potential to undermine the plan-led system if larger brownfield sites can by-pass consideration through the local plan process.

Potential Consequences

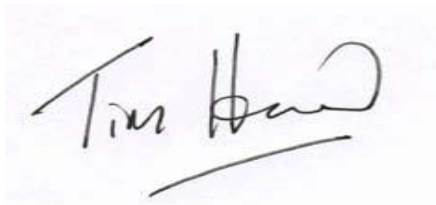
20. Unless the above issues are addressed, it is likely that some development will be permitted which is

- objectionable in principle by reason of its harmful impact upon heritage assets including nationally-important assets
- not viable by reason of the requirements of archaeological mitigation / compensation (provided such requirements can be imposed at the technical details stage)

Suggested Revisions to the Bill / Further Measures to Safeguard the Historic Environment

21. Given the vulnerability of the historic environment as identified above

- the Bill should seek to introduce a duty of care in relation to the historic environment (similar to those duties applying to statutory undertakers seeking to exercise permitted development rights) for those seeking to implement permission in principle or promoting sites for inclusion in brownfield registers or allocation in local or neighbourhood plans
- clause 102(2) of the Bill should be revised to seek to add a further sub-sub-paragraph to section 59A(2) of the Town and Country Planning Act 1990 as follows:
 - “qualifying document” means a plan, register or other document, as it has effect from time to time, which—*
 - (a) is made, maintained or adopted by a local planning authority,*
 - (b) is of a prescribed description,*
 - (c) indicates that the land in question is allocated for development for the purposes of this section,*
 - (cc) indicates that all necessary pre-determination archaeological assessment and evaluation has been carried out in relation to the land in question and*
 - (d) contains prescribed particulars in relation to the land allocated and the kind of development for which it is allocated.’*
- guidance should make clear that those promoting housing sites for allocation in local and neighbourhood plans and identification in brownfield registers are responsible for submitting an appropriate archaeological desk-based assessment and, where necessary, a field evaluation and the provisions of the Bill as regards permission in principle should only be passed on that understanding.



Tim Howard
Senior Policy Advisor,
Chartered Institute for Archaeologists

24 November, 2015

¹ This was confirmed by the evidence of members of ALGAO: England

² Evidence provided by members of ALGAO: England. Further information can be provided if this would be helpful.