

## Position statement briefing

# Archaeology and the relaxation of planning control

### Key points:

- In recent years, numerous **changes to the planning system** have been made in order to de-regulate and streamline the system with a view to **promoting housing and economic growth**.
- For the most part, this involves **removing the need to apply for planning permission** (for instance, by the extension of permitted development rights) or making the requirements for the granting or implementation of planning permission less onerous.
- This **de-regulatory shift is continuing** and threatens seriously to undermine the framework for the management and protection of the historic environment provided by the National Planning Policy Framework (NPPF) and, as a result, **to produce unsustainable development**.
- That threat is magnified by the **chronic under-funding of local authority historic environment and archaeology services** without which it is difficult, if not impossible, adequately to implement the historic environment section of the NPPF.

CIfA's advocacy position is therefore that it

- **supports improvements to the planning system which facilitate the prompt delivery of sustainable development**
- **recognises that changes to the planning system which promote housing and other development at the expense of the historic environment or other environmental considerations are unsustainable**
- **opposes changes to the planning system which are likely to reduce the level of protection currently afforded to the historic environment**
- **seeks to ensure that the implications for the historic environment are fully addressed in the consideration of any proposals for change**
- **supports such changes only where there are adequate safeguards for the historic environment.**

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**This briefing considers changes to the planning system in England although there is pressure to de-regulate elsewhere in the United Kingdom and similar issues arise**

## **1. Planning and archaeology**

- 1.1. The planning system is central to the management and protection of the historic environment and provides the only effective protection for many heritage assets with archaeological interest. Much of the archaeological resource is undesignated and its precise nature and extent (and in some cases, even its existence) can be unknown prior to the consideration of development proposals.
- 1.2. Archaeology has been recognised as a material consideration in the planning process since the 1970s<sup>1</sup>. Building on the foundation provided by *Hoveringham Gravels*, planning policy has been developed over the years to define
  - heritage assets<sup>2</sup> (which are not dependent upon designation)
  - significance<sup>3</sup> and
  - archaeological interest<sup>4</sup>and to provide decision-makers with a coherent framework for consideration of the impact of development upon the significance of heritage assets with archaeological interest.

## **2. Planning reform**

- 2.1. That framework generally remains fit for purpose<sup>5</sup>. However, its effective operation is being undermined by changes in the wider planning system. Planning reform is presented in the guise of 'streamlining' and 'simplification'. Nonetheless, it represents a remorseless programme of de-regulation over the last 10 years fuelled by a perception in Whitehall and town hall that planning and environmental regulation are part of the problem and not part of the solution when meeting the challenge of recession.
- 2.2. Much (though not all) of the planning reform agenda focuses on removing the need to make an application for planning permission or lessening the requirements to obtain and implement permission. Broadly, this can be achieved in three ways (given that planning permission is only required for 'development' as defined within the Planning Acts), namely
  - removing the operation or use from the definition of 'development' in the Planning Acts
  - altering the Planning Acts so that the operation or use in question, although constituting 'development', no longer needs planning permission
  - accepting that the development in question requires permission, but removing the need for a specific application (for instance, by providing a general permission through the operation of permitted development rights) or making permission easier to obtain and implement (for instance, by allowing the principle of development to be established by a less onerous mechanism).
- 2.3. The deregulation of planning thus far has predominantly involved the third of these options, but the underlying threat to archaeology remains the same in each case. Many of the safeguards for the historic

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<sup>1</sup> *Hoveringham Gravels v Secretary of State* [1975] Q.B. 754

<sup>2</sup> 'A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest.' NPPF Glossary

<sup>3</sup> 'The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic.' NPPF Glossary

<sup>4</sup> 'There will be archaeological interest in a heritage asset if it holds, or potentially may hold, evidence of past human activity worthy of expert investigation at some point.' NPPF Glossary

<sup>5</sup> It must be remembered that the purpose is a planning purpose, i.e. to ensure the appropriate consideration of the historic environment in the regulation of the development of land. It is not intended to, and does not, regulate impacts upon the historic environment which do not involve development.

environment currently enshrined in the National Planning Policy Framework<sup>6</sup> (NPPF) assume an application for planning permission which will allow the decision-maker to require information and analysis before the application is determined and to impose conditions on any permission granted.

2.4. Without an application for planning permission the mechanisms legally to impose archaeological safeguards are often lacking and heritage assets are vulnerable to loss and damage. For example, the key policy requirement in paragraph 128 of the NPPF:

*'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'*

This key requirement is unenforceable in the absence of an application for permission.

### 3. By-passing the application process

3.1. The application process is increasingly being by-passed in a variety of ways including

(1) *the extension of permitted development rights*

The continuing, wholesale, extension of permitted development rights is removing an increasingly large amount of development from the scrutiny that accompanies a planning application. It is fair to acknowledge that much permitted development is small-scale and unobjectionable; that it can be, and often is, subject to general conditions and exclusions and will not override EIA requirements. Nevertheless, there remains real scope for loss or damage to nationally important but undesignated archaeological remains and wider damage to the historic environment generally.

(2) *local and neighbourhood development orders*

It is intended that concerns about the historic environment would be addressed before the making of such orders, but in most cases archaeological consideration is likely to be less than that accorded to a site-specific application.

(3) *the increased use of simplified planning zones*

Any move towards a zonal system of planning provides a serious challenge for the historic environment in England and would require more extensive 'front-loading' of the planning system.

(4) *parliamentary bills for major infrastructure*

Care needs to be taken to see that all heritage assets affected by development receive the same consideration that would be accorded to them through the ordinary planning process.

(5) *automatic granting of permission in principle to housing sites allocated in local and neighbourhood plans and on brownfield registers*

The granting of permission in principle<sup>7</sup>, itself, is of concern since it envisages the principle of development being established without full information and the ability to impose planning conditions. This concern is even greater in relation to the provisions of the Housing and Planning Act 2016 which automatically confer permission in principle for housing development on sites identified in appropriate registers. Full pre-determination assessment and (where necessary) evaluation is not routinely carried out for the land availability assessments (such as Strategic Housing Land Availability Assessments (SHLAAs)) which inform local and neighbourhood plan

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<sup>6</sup> See paragraphs 128 to 141

<sup>7</sup> See section 150 of the Housing and Planning Act 2016

allocations and are intended to be used to populate brownfield registers. Consequently, there is a real risk that sites will be granted permission in principle in the absence of appropriate archaeological desk-based assessment and field evaluation<sup>8</sup>.

#### *(6) planning freedoms schemes*

Section 154 of the Housing and Planning Act 2016 also empowers a local authority (following appropriate consultation) to disapply or modify 'specified planning provisions in order to facilitate an increase in the amount of housing in the planning area concerned'. The potential for a local authority by this means to by-pass the need for a planning application in a given area cannot be discounted.

## **4. Conditions**

- 4.1. Planning conditions (or obligations) are crucial to ensure that appropriate and binding archaeological safeguards are in place and public benefit is delivered when development proceeds<sup>9</sup>. Even where an application is required, further limits have now been set upon the ability of local authorities to impose conditions. Section 14 of the Neighbourhood Planning Act 2017 (a) allows the Secretary of State to proscribe conditions of a defined type and (b) prevents a local authority from imposing a pre-commencement condition without the agreement of the developer.
- 4.2. Given the importance of pre-commencement conditions to the management and protection of the archaeological resource, the sector has focused primarily upon the latter provisions. Although an authority can refuse to grant permission if a developer does not agree to a necessary condition this provides a further 'turn of the screw' for local authorities already under intense pressure to grant permission for housing and other necessary development. Furthermore, the refusal of permission in such circumstances can only serve to undermine local authority decision-making and produce planning by appeal.
- 4.3. The Secretary of State's new power to proscribe certain types of condition has received less attention, but also has the potential adversely to impact upon archaeology. It has been suggested that conditions which render a scheme unviable should be prohibited. That is all well and good provided that it is always remembered that, where a condition is necessary to overcome a legitimate planning objection (for instance, where significant archaeological work is required), the planning application should be refused in the absence of such a condition. That, however, is not the intention of this provision, which is to allow development to proceed without having to comply with onerous and 'toxic' conditions (to use the rhetoric of Government in promoting the Bill).

## **5. Planning policy**

- 5.1. The indications from Government to date are that the historic environment section of the NPPF is unlikely to change significantly in the near future. That is heartening, although with an ever-changing political landscape nothing is guaranteed. What is alarming, however, is the stream of proposals to revise other parts of the NPPF, most notably by increasing the weight to be accorded to policies promoting the provision of housing and other related development. Planning is ultimately an exercise in weighing counter-balancing factors and it would be facile to suggest that greater weight can be given

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<sup>8</sup> Although Regulations have been published which require authorities to be satisfied that the impact on heritage assets is acceptable before including a site on a brownfield register, the pressure for local authorities to populate brownfield registers with sites remains intense.

<sup>9</sup> See paragraph 36 and 37 of Historic England's Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision-Taking in the Historic Environment

to one side of the equation without affecting the considerations on the other. The direction of travel is inexorably one way.

## 6. Brexit

6.1. Nor can the implications of Brexit be overlooked. The Great Repeal Bill may ironically (given its name) achieve its desired result of maintaining the status quo in the short term, but the United Kingdom's retreat from the European Union makes much of our environmental regulation (particularly those parts relating to environmental impact assessment) vulnerable to change in the longer term.

## 7. Resources

7.1. Inextricably linked to planning reform is the issue of finance. It is the cause of, and rationale for, most if not all of the proposals and any proposed solutions which ignore the realities of public and private finance in the post-recession era are doomed to failure.

## 8. ClfA's position on the relaxation of planning control

8.1. ClfA's current policy objectives for England include the following which is given the highest priority (priority level 1):

***'Ensuring that risks to the archaeological resource are not increased – preferably reduced – by incremental changes to planning and other safeguards'***

As part of this commitment, ClfA will;

- support improvements to the planning system which facilitate the prompt delivery of sustainable development
- oppose changes to the planning system which are likely to reduce the level of protection currently afforded to the historic environment
- seek to ensure that the implications for the historic environment are fully addressed in the consideration of any proposals for change
- support such changes only where there are adequate safeguards for the historic environment.

***Do you have specialist knowledge of this policy area? Volunteer to be a consultant on ClfA policy in this area and help us shape our advocacy. Email [rob.lennox@archaeologists.net](mailto:rob.lennox@archaeologists.net) for details.***

For further information about ClfA's advocacy and campaigns and for details on other priority areas, visit [www.archaeologists.net/advocacy](http://www.archaeologists.net/advocacy) or email [info@archaeologists.net](mailto:info@archaeologists.net).