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27 January 2014

Dear Mr Gould,

Enterprise and Regulatory Reform Act – Secondary Legislation to accompany the Heritage Provisions: A Consultation

Thank you for the opportunity to respond to this consultation.

The Institute for Archaeologists

The Institute for Archaeologists (IfA) is a professional body for the study and care of the historic environment. It promotes best practice in archaeology and provides a self-regulatory quality assurance framework for the sector and those it serves.

IfA has over 3,000 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.

Enterprise and Regulatory Reform Act – Secondary Legislation to accompany the Heritage Provisions

General

IfA endorses Government's approach to the implementation of primary legislation in the Enterprise and Regulatory Reform Act 2013, namely, to simplify systems where possible, whilst maintaining present levels of protection.

Specific Questions

1. Do you agree that the duration of a Listed Building Heritage Partnership Agreement should be left to the discretion of individual local planning authorities?

1.1 Yes. There needs to be flexibility to address the individual circumstances pertaining to any particular agreement (perhaps assisted by guidance in this regard). The required termination provisions in any agreement should provide some safeguard in the event that the continuation of the agreement is no longer in the public interest.

2. Do you agree that local planning authorities should only consult English Heritage on

the proposed grant of listed building consent included in draft Listed Building Heritage Partnership Agreements where they cover Grade I and II* listed buildings?

2.1 The consultation requirements should be consistent with those that would apply to an application for listed building consent for the same or similar works, although wider consultation with other stakeholders in the historic environment sector in practice would be welcomed.

3. Do you agree that local planning authorities should only be required to specifically notify known owners of the listed building who are not party to the draft Agreement of the proposed listed building consent, with any further notification being left at the local authority's discretion?

3.1 The notification requirements should be consistent with those that would apply to an application for listed building consent for the same or similar works.

4. Do you have any other comments on the draft regulations for Listed Building Heritage Partnership Agreements?

4.1 The primary legislation would not appear to allow local authorities to enter into Listed Building Heritage Partnership Agreements in respect of properties in their ownership (since it would be purporting to contract with itself). It would be helpful if the regulations could expressly provide for some alternative mechanism by which such properties could receive the benefits of such an agreement (for instance, by an agreement with the Secretary of State), but this might require further, primary legislation.

5. Do you agree that local planning authorities should only consult English Heritage on draft Local Listed Building Consent Orders where they cover Grade I and II* listed buildings?

5.1 The consultation requirements should be consistent with those that would apply to an application for listed building consent for the same or similar works, although wider consultation with other stakeholders in the historic environment sector in practice would be welcomed.

6. Should local planning authorities only be required to notify known owners of listed buildings of the draft Local Listed Building Consent Order? The need for any further notification would be at the local authority's discretion.

6.1 The notification requirements should be consistent with those that would apply to an application for listed building consent for the same or similar works.

7. Do you agree that the duration of a Local Listed Building Consent Order should be left to the discretion of individual local planning authorities?

7.1 Yes, although it would be wise to ensure that local authorities review such Orders periodically since circumstances can change over time undermining the assumptions upon which an order was originally made.

8. Do you have any other comments on the draft regulations for Local Listed Building Consent Orders?

8.1 No comment.

9. It is proposed that Certificates of Lawfulness of Proposed Works should be determined by the local planning authority within six weeks. Do you agree?

9.1 Yes. The parallel with certificates of lawful development is not wholly accurate since the latter can involve other issues (such as whether existing development is exempt from enforcement action due to the length of time that has elapsed since it was carried out) which involve more detailed consideration of evidence. Nor is the parallel with listed building consent wholly accurate

since the two applications consider different (although related) issues.

9.2 It is hoped that 6 weeks would be sufficient in order to assess whether listed building consent is required (as opposed to whether it would be granted, if required).

10. The procedures that are being proposed for Certificates of Lawfulness of Proposed Works are intended to be 'light touch' to avoid creating any unnecessary burdens while still ensuring an appropriate level of protection for listed buildings. Do you agree that the draft regulations are sufficiently 'light touch'?

10.1 Yes. However, where a Certificate is refused on the grounds that consent is needed, it would be counter-productive in this regard if an applicant then had to apply for listed building consent afresh. It would be helpful if the original application could be treated as an application for listed building consent if (but only if) the application is refused.

11. Do you have any other comments on the draft regulations for Certificates of Lawfulness of Proposed Works?

11.1 Local authorities should be able to charge for this service. Not only would this deter frivolous or vexatious applications, but it could also help to fund conservation services.

12. Do you consider that this new system of Certificates of Lawfulness of Proposed Works will encourage applications from people who would otherwise have, correctly, not applied for listed building consent and gone ahead with the proposed works?

12.1 Don't Know.

13. Are there any other steps that could be taken to provide greater certainty about when listed building consent is or is not required. For example, improved guidance?

13.1 Although general guidance can be of assistance, decisions on individual cases depend on their own facts and money will usually be better spent funding local conservation services whose officers can provide 'on the spot' advice.

14. Do you have any comments on the proposed approach for making National Listed Building Consent Orders?

14.1 The power in section 60 of the Enterprise and Regulatory Reform Act 2013 appears to be unambiguous and hence, on its face, unconstrained by Government's intention that its use should be confined to estates or infrastructure that crossed local authority boundaries. Consequently, it is important for Government to provide clear policy on the circumstances in which the Secretary of State will exercise this power and encourage early engagement to ensure that resources are not wasted promoting inappropriate draft orders.

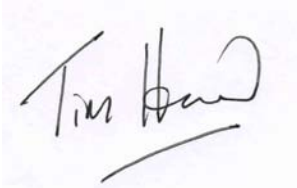
14.2 'Blanket approvals' for multiple owners on a national basis, would potentially present significant risks for the historic environment. If such orders were to be considered it would be necessary for there to be consultation with a wide range of stakeholders, including national amenity societies and professional bodies such as IfA.

15. Do you agree that the compensation procedures which there are powers to prescribe through regulations for National Listed Building Consent Orders should mirror those put in place for Local Listed Building Consent Orders?

15.1 Yes.

If there is anything further that I can do to assist please do not hesitate to contact me. IfA does not object to the disclosure of this response to third parties.

Yours sincerely,

A handwritten signature in black ink that reads "Tim Howard". The signature is written in a cursive style with a long horizontal stroke underneath the name.

Tim Howard LLB, Dip Prof Arch
Policy Advisor