

MHCLG briefing – 22 January 2021

Plan consent & archaeology proposals

Summary

This briefing responds to a request from MHCLG for updated proposals relating to the emerging concept of ‘plan consent’ as it pertains to archaeological safeguards within the planning system. This request was made at a meeting with the Chartered Institute for Archaeologists (CIfA), Council for British Archaeology (CBA), and Association of Local Government Archaeological Officers (ALGAO) in November 2020.

This briefing summarises options that would accord with the principles that plan consent should deliver (1) certainty to developers on the principle of development, while (2) retaining flexibility to respond to specific sustainability needs arising through the design and execution of development schemes.

Our proposals highlight how safeguards for the historic environment could be protected under a plan consent process and explore ways to potentially enhance the value that archaeology brings to the planning system.

A. Reprise

Our principal concerns at the last meeting was to ensure that archaeology contributes to

1. plan-making and place-shaping, reflected in adequately informed decisions about allocations to growth, renewal and protected areas
2. making development sustainable through public benefits arising from the enhancement of significance of heritage assets by archaeological research and dissemination (even where the physical asset is lost)

For the proposed new planning systems to work we need to carry forward some essential principles from the current approach

- plan-making, including allocations, must be based on sufficient local archaeological information and expertise
- early conversations between developers and planning authority (pre-app, outline, or local plan allocation)
- field evaluation to inform responses (maximising benefit, minimising harm) – funded by the developer as under the current system (unless MHCLG envisages another funding source)
- legally enforceable agreements to modify designs to minimise harm and secure public benefit via excavations to agree scope of Written Schemes of Investigation

To make the new system work well we need to ensure that

- local authority historic environment functions are adequately resourced (data, expertise and influence) to carry out the enhanced role required by the new systems which, among other things, increased the amount of work that needs to be done at the plan making or allocation stage

B. Proposals for ensuring sustainable development at the plan-making/consent stage in the absence of an application.

Option 1: simple process

1. Develop an initial rapid assessment methodology for all proposed areas for growth and renewal to triage/sift
 - known heritage assets (designated and undesignated)
 - likelihood of encountering unknown heritage assets (where practicable with a confidence rating for nature and significance)
 - potential for development in these areas to benefit from archaeological input to place-making, to enhance significance or to cause unacceptable harm.
2. Supplementary process for areas allocated to growth and renewal to establish 'ground rules' for handling archaeological treatment of known, unknown, unforeseen and unforeseeable heritage assets – these rules could/should be graded according to the predicted (at step 1) extent and significance of known/unknown heritage assets, thus retaining key virtues of
 - having given certainty that development will happen, identify areas or sites within areas where there is more or less certainty about how opportunities/constraints will shape the precise nature of development, and archaeological cost implications
 - permitting a rules-based system
 - retaining a flexible approach for dealing with the many unknowns
 - proportionality
3. Setting the 'ground rules' through appropriate forms of words (in the local plan) to give clarity that
 - there are circumstances where it may not automatically be possible to implement the full extent of the consent
 - judging whether those circumstances apply may require an archaeological desk-based assessment or field evaluation, agreed with the planning authority ad hoc, or better still to a set of formulae, graded to the predicted (at step 1) extent and significance of known/unknown heritage assets on sites in the allocated area
 - the full extent of the consent may be permissible subject to modifications to the detail of the scheme, or a programme of archaeological works, to a scope agreed with the planning authority ad hoc, or better still to a set of formulae graded to the predicted (at step 1) extent and significance of known/unknown heritage assets on sites in the allocated area
4. Finding a mechanism for applying the 'ground rules', such as

- policy requirements to consider the historic environment impacts of any scheme (especially early consultation with specialist archaeological advisors)
- through the ‘key accompanying information’ for a development area in the local plan
- through ‘discretionary’ rules within the local plan
- design codes

Option 2: a true front-loaded approach

1. Same as above but including a more thorough targeted investigation (including field evaluation) and possibly taking advantage of predictive modelling (of known knowns and known unknowns). There is a menu of techniques of varying reliability, effectiveness and cost: selections could be made according to the questions to be answered, pre-existing information, geology, sensitivity, access etc.¹
2. This process would provide greater levels of certainty at plan consent stage, meaning that ‘reserved matters’ will be fewer, easier to scope and more likely to be proportionate to the public benefit sought.
3. It would allow for an area-wide approach to archaeology, rather than site-by-site interventions. Archaeological research could therefore be
 - more structured and thoughtful, less formulaic, and deliver better research outcomes and hence greater public benefit
 - more efficient and potentially less costly
 - more predictable, reducing developer uncertainty at the point of acquisition
4. Where there is a lack of existing information, more up-front investment would be required than under the current system, without an as-yet-clear (see below) mechanism to secure this investment from developers, not the planning authority.
5. Investment in sensitivity mapping and predictive modelling would reduce but not remove the need for finer grain evaluation, for which there would need to be strong policy inclusion at a later design/reserved matters stage.

C. Allocation stage charging: A quid pro quo for certainty.

1. Additional evaluative work will be required at allocation and plan consent stages. In return for a planning authority’s investment in providing certainty to landowners/developers that development will take place in allocated areas, charges could/should be levied on beneficiaries.
2. This would not be an additional burden, but a re-timed one. The costs of providing information that permits decision-making are currently incurred largely at post-application, pre-determination stage: they would shift to a charge for allocation, or taking up an allocation.
3. Alternatively, developers could be required to commission the necessary evaluation before being allowed to take up an allocation.
4. A second alternative relates to increased application fees, but we need to understand MHCLG thinking on what ‘application’ would mean in this context.

D. Resilient advice to planning authorities.

¹ Historic England are currently undertaking research to establish the potential of strategic archaeological and landscape sensitivity assessment methodologies in the context of the Planning White Paper.

1. Investing in parallel HER improvements could improve the value of rapid assessment methodologies and contribute to progressive improvements to speed and effectiveness of up-front archaeological assessment. Better up-front information and better access to it reduce uncertainty and the costs of overcoming it.
2. Statutory HERs – under either the formerly proposed English, or current Welsh, provision – that meet the minimum benchmark would help ensure the provision of adequate information and expertise. But we need to assure the plan-making, advisory and enforcement functions that draw on but are not part of the record, so statutory HERs are only part of the need.
3. There is a particular need to invest in some under-developed HERs and under-resourced (occasionally non-existent) services. There is thinking about how the new planning system could refine the function of HER services and the baseline data and support they need. The relationship with natural environment data and services could usefully be explored. While models for delivery structures are the subject of some sectoral research and debate, we have nothing to offer MHCLG at this stage, and recognise that any changes arising from local government reorganisation will be the principal determinant of how services are provided.

E. Other thoughts

- We have discussed pilot projects for predictive modelling with Historic England, and Historic England is funding ClfA and the Federation of Archaeological Managers and Employers (FAME) to research how to make field evaluation more cost-effective.
- At what point is EIA likely to be a requirement under the plan consent process? At present it is required before development consent and requires a masterplan.
- Planning conditions: What are Govt's expectations for the use of planning conditions under the new system?
- What would 'application' mean, and when would 'permission' be granted (nb viability, compensation)?
- How will the superstructure of the plan consent process be developed? How long will there be for allocation discussions and assessment, etc.
- Timescales for developing new approaches: At what point do we need to set information requirements (eg details of possible archaeological assessment processes needed) For a draft Bill, or later?
- There is a need for further research into area-based surveys pilot project (cf Natural England area based plans), and review of Heritage Information Access Strategy.

Contact us

For more information or to discuss further please contact rob.lennox@archaeologists.net or neilredfern@archaeologyuk.org.