



Streamlining listed building consent

Lessons from the use of management agreements

A research report

Front

The Alexandra Road Estate, LB Camden

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Opposite page, clockwise from top left

The Willis Building, Ipswich

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The Alexandra Road Estate, LB Camden

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The Civic Centre, Newcastle Upon Tyne

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A research report



The Paul Drury Partnership

Historic environment policy and practice

with

The Environmental Project Consulting Group

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Summary

This report is the outcome of a study of the use and effectiveness of listed building management guidelines, as defined in the English Heritage guidance note, *Developing guidelines for the management of listed buildings*, published in June 1995; and of their potential to contribute to streamlining the listed building consent regime by making it more efficient, in order to help reduce barriers to competitiveness. It fulfils a commitment made in the government's statement on policy for the historic environment, *The Historic Environment: A Force for our Future*, published in December 2001, to research the current impact of management agreements and their future potential. In the wider context, it can be seen as a timely contribution to the review of the heritage protection legislation announced by the Secretary of State for Culture, Media and Sport in November 2002 and other current initiatives that are looking at the existing legislative framework and guidance for protecting the historic environment.

Overview

The study was commissioned by English Heritage and the then Department for the Environment, Transport and the Regions (now the Office of the Deputy Prime Minister). Its scope specifically included considering the need for a formal procedure for determining whether or not listed building consent is required for specified works.

The extent of the use and the nature of management guidelines since 1995 are described in Section 2. Some 18 sets of guidelines are known to have progressed, with 15 live at the end of the study period, of which four were examined as case studies. The experience of using **management guidelines** is summarised in Section 3.

Management regimes that are in some ways comparable to the listed building consent system are reviewed in Section 4. Unlike almost all other comparable regimes, there is no legal provision for local planning authorities, or the Secretary of State, bindingly to determine what works do or do not require listed building consent. The contrast between the increasingly **active management of natural heritage and the passive management of the cultural heritage through listed building legislation** is explored further in Section 5, concluding with an examination of the principal barriers to the wider use of management agreements. These are the limitations and interpretation of the legislation, the need for overt government policy to encourage positive management of listed buildings, and the issue of local planning authorities' lack of resources.

General conclusions from the study are set out in Section 6. Key points are that:

- **Management guidelines or agreements, though not yet widely adopted, have already proved their value in promoting constructive, ongoing dialogue and mutual trust and understanding between building owners and the statutory authorities.** It is the process, rather than the written agreement, that is important, so guidelines define an ideal approach to the positive management of listed buildings.
- **Management agreements have considerable potential to contribute to streamlining the listed building consent process by making it more transparent, consistent and therefore predictable, thus helping to reduce barriers to competitiveness.** And they can bring about a net saving of resources for all involved. The study examined alternative approaches, such as building-specific 'schedules of consent', or 'class consents' (an option that had been suggested earlier), but found there were inherent problems with these and no enthusiasm amongst respondents for their use. Management guidelines provide an existing method for achieving the same objectives.
- **The major barrier to the widespread use of management agreements is the current lack of a statutory power to determine the need for listed building consent for proposed works.** Without it, guidelines cannot offer the degree of certainty and clarity that potentially makes them attractive to building owners and managers, or acceptable to lawyers.
- **The preparation and use of management agreements has no specific training requirements for local authorities,** provided that they have experienced, qualified conservation staff. But the current lack of such staff, or the effective deployment of their skills (as confirmed by other research), is obviously a major problem in the field of historic environment conservation.
- **Updated guidance, including a model or template, on preparing management agreements, would be helpful.** Such guidance should distil current good practice and experience and provide advice, both for local authorities and building owners, on developing guidelines.

The **recommendations** stemming from the study, set out in Section 7, include –

- Government policy towards listed buildings needs overtly to encourage their positive management, which should be founded on constructive relations between all concerned and ready access to information;
- Local authorities need to be adequately resourced to deal with listed buildings in terms of both the quantity and range of specialist skills required;
- Streamlining the listed building consent process can best be achieved by –
 - Local authorities having a formal power to determine whether or not listed building consent is required for specific works: this can be achieved by an order under the Regulatory Reform Act 2001;
 - Providing more specific guidance, perhaps in the new Planning Policy Statement (PPS) Guidance document, on the principles that determine what works will require listed building consent;
 - Providing guidance, also perhaps in the PPS Guidance document, on the use of conditions attached to listed building consents, and the amount and quality of detail reasonably required to ensure the application is valid and can be determined by the local planning authority.
- Since management agreements clearly have the potential to help streamline the listed building control regime, particularly in the context of large, complex listed buildings in dynamic use, they should be made more effective through local authorities having a formal power to determine when listed building consent is needed;
- English Heritage should then produce a detailed practice note on the use of management agreements.

The **four case studies** (the Willis Building, Ipswich; the Alexandra Road Estate, Camden; the University of Sussex at Brighton; and the Civic Centre, Newcastle upon Tyne) are reported in Section 8.

1

Introduction

1.1 In August 2000, English Heritage and the then Department for the Environment, Transport and the Regions (now the Office of the Deputy Prime Minister) commissioned a study of the use and effectiveness of listed building management guidelines, as defined in the English Heritage guidance note, *Developing guidelines for the management of listed buildings*, published in June 1995. This report is the result. It was written by Paul Drury, and subsequently revised following consultation by Anna McPherson, of the Paul Drury Partnership; comparison with the management of the natural environment was provided by Ron Allen of the Environmental Project Consulting Group.

1.2 The government's particular concern lay in exploring options for streamlining the listed building consent process, in order to reduce barriers to competitiveness. Continuing pressure from property interests for greater clarity and certainty in the controls that stem from listing was, and continues to be, central to that concern. It was therefore a specific requirement of the study brief to examine experience in other protection regimes and other jurisdictions; and to consider the potential of management guidelines, or other building-specific provisions, to contribute to streamlining the current consent regime. The scope of the study also included giving consideration to the need for a good practice guide on management guidelines and making recommendations on any necessary legislative changes, particularly the merit of providing a procedure for formal determination of whether or not listed building consent was required for specified works. The issue of what

might require listed building consent was necessarily considered in some detail as part of the research and the outcome is set out in Appendix B.

1.3 The concept of management guidelines originated in 1992, in the model developed for the Willis [Faber] Building in Ipswich, between the owners, English Heritage and Bob Kindred of Ipswich Borough Council. Publication of the 1995 guidance was prompted by a need to demonstrate that the statutory controls consequent on listing could be applied to, particularly, large post-war buildings (some of which, like Alexandra Road in Camden, are larger than many conservation areas) without generating undue burdens for owners, tenants, or local planning authorities, against the background of the post-war listing review.

1.4 One option that had been suggested was the introduction of a system of 'schedules of consent', which would enable local planning authorities to issue schedules of consent, or standing consents, for individual listed buildings; and giving owners the right to apply for such schedules, should they wish to do so. It was considered, however, that management guidelines provided an existing method for achieving the same aim and that their use should be further investigated and developed before more radical alternatives were considered. This led to the commissioning of the current study.

1.5 *Developing guidelines* was based on the proposition that the management of change to a listed building should follow policies developed from a thorough understanding of that

building and an assessment of its significance, both as a whole and in its parts. Whilst this had much in common with conservation management plans and statements, it was in fact based on developing models of conservation area management, set out by English Heritage in *Conservation Area Practice* (1995) and, later, in the Historic Towns Forum publication, *Conservation Area Management – A Practical Guide* (1998).

1.6 Management guidelines (and indeed conservation plans) provide a tool for achieving positive, active management of cultural heritage assets. Their so far limited adoption and use in the management of listed buildings nonetheless reflects a growing realisation of the value of, and the need to encourage, positive, pro-active, co-operative management of both cultural and natural heritage assets if their significance is to be sustained, enhanced, or recovered. The development of such guidelines also provides a potential means for offering owners of listed buildings (in particular large buildings in commercial or public use and residential buildings consisting of repetitive units) greater certainty about what works to their buildings are unlikely to require listed building consent and what works requiring it are likely to receive consent, thus helping to make the consent regime more efficient.

1.7 The general shift of emphasis towards co-operative, active management, and away from passive/reactive and often-confrontational approaches to protection, has advanced further in other areas of both cultural and natural heritage protection in England, particularly in the recent changes in managing Sites of Special Scientific Interest (SSSIs). The preliminary conclusion of this study was that a move towards positive management of heritage assets could address both property and conservation concerns; and that, if the legal barrier to effective management agreements can be lifted, management guidelines could provide a valuable means of achieving it for listed buildings in dynamic use.

1.8 This conclusion ties in with recommendations in *Power of Place: The future of the historic environment* (English Heritage, December 2000). Indeed, this study can be seen as a contribution towards exploring in more depth the implications of certain key proposals in that review. Particularly relevant is *Recommendation 12*, to give statutory force to management agreements based on the logical process involved in conservation planning¹ for individual listed buildings.

1.9 The first result of this study was a discussion paper that was circulated for comment at the end of April 2001 to key organisations with an interest in the management of listed buildings (a list of the organisations consulted can be found in appendix C). The outcome of the consultation exercise underlined the need for a wider framework for achieving the active, positive management of cultural heritage assets – a framework that went beyond the use of specific management agreements and guidelines, and conservation plans and statements – and especially for a streamlined, more responsive listed building consent process.

1.10 The government's recent policy statement *The Historic Environment: A Force for Our Future* (DCMS/DTLR, December 2001) included a commitment, in paragraph 4.9, *Management tools for historic places*, that "the government would work closely with English Heritage in researching the current impact of management agreements and their future potential". This study has taken that objective forward. It is intended that wider issues raised during the course of the study, especially the inability of local planning authorities bindingly to determine what does, or does not, require listed building consent, will feed into the current review of heritage protection legislation, which will also consider the related issue of local authority resources, both funding and the quantity and quality of staff, provided for the conservation of the historic environment. This was recently assessed for English Heritage (*Heritage under Pressure* by Gill Chitty and David Baker, published in May 2002) and

then the subject of a detailed research study by Oxford Brookes University, (*Local Authority Conservation Provision in England*, published in February 2003).

1.11 References to the Secretary of State are to the First Secretary of State, unless otherwise stated.

The opinions expressed in this report are those of the authors alone, and are not necessarily shared by the steering group for the study, or the sponsoring bodies.

¹ Paragraph 85 mentions 'conservation plans', which is more specific than the summary text of the Recommendation

2

The extent of use of management guidelines

2.1 Overview

2.1.1 Management guidelines or agreements are essentially informal memoranda of understanding between the owners and managers of listed buildings, the local planning authority, and (usually) English Heritage. They tend to be brief documents that provide a structured framework for decision-making by informed professionals, not (unlike a conservation management plan) an assessment of the significance and vulnerability of all elements of the building fabric at the outset. However, most examples contain an over-view (or reference to an existing statement) of design philosophy and intent; and maintenance, or curation of, and access to, the building archive is often a key issue.

2.1.2 The 1995 English Heritage guidance suggested that management guidelines would be suitable for buildings where there was a combination of frequent change and large size (or the common ownership, or management of, a large number of similar small units). The target group proposed included large office buildings (whether newly built in the 20th century, or converted from large, earlier buildings); working buildings (such as factories, warehouses and mills), whose special interest may be concentrated in the envelope or structure; shopping arcades and precincts, where the interest lies primarily in the public spaces; department stores; universities, hospitals and other institutional buildings; large-scale housing developments; and buildings listed specifically *for* their group value.

2.1.3 An initial assessment of the extent of current use was made by consulting English Heritage's regional teams, especially their Inspectors of Historic Buildings. The results, which provide a snapshot of the position in March 2001, are summarised in appendix A.

2.1.4 Eighteen sets of guidelines are known to have been developed, three of which were abandoned prior to completion. This left 15 documents known to be live during the study period, of which four were followed up as case studies: a commercial office building (The Willis Building, Ipswich), a university campus (Sussex at Brighton), a social housing complex (Alexandra Road, Camden) and a civic centre (Newcastle). Despite the disparity of location and building type, both the response from the case studies and other discussions with participants in management agreements revealed many points of similarity.

2.1.5 Although the total number of agreements in existence was small, there was no suggestion that the idea of developing them had fallen out of favour. Whilst some were clearly triggered by listing in the early 1990s, beginning with Willis Faber in 1991-2, many had only recently been brought to fruition, or were being finalised during the study period. If anything, interest appeared to be growing, and a number of respondents were aware of the need for guidelines and the savings they could bring. Chris Hargreaves of Birmingham City Council pointed to the example of the University Minerals and Metallurgy Building, where the authorities 'apply for listed building consent to remove a fume cupboard'². A slow start seemed to be gathering

some momentum, a conclusion borne out by information received about guidelines initiated subsequent to the study period.

2.2 The nature of the buildings

2.2.1 Eight agreements (*c*45%) related to grade I or II* buildings or groups, which comprise 8% of the listed building stock generally. Most of the buildings were 20th century: some interwar, but the majority post-war. The only guidelines to be progressed to completion for a pre-1920 building related to the Peabody Estate in Islington, a social housing scheme of 1864-6.

2.2.2 All but one (Newcastle Civic Centre) were in the southern half of England (in or south of Oxfordshire), and five were in London. Whilst the distribution of post-war listed buildings also has a southern tendency, especially towards the London area, the enthusiasm, initiative and resources of English Heritage regional teams was probably also a significant factor.

2.2.3 Most agreements related to groups of buildings, or linked buildings forming an ensemble. All were large, sometimes vast, like Alexandra Road, Camden, containing 520 dwellings. They therefore tended to cover the spaces between the buildings as well as within them, perhaps emphasising the origins of the concept of management guidelines in the management of conservation areas. Some were within, or form the dominant part of, conservation areas, for example Alexandra Road, Camden, or the proposed conservation area at DCTA, now the Defence Logistics Organisation (DLO), Bicester (which has since been designated by Cherwell DC). For others, like the University of Sussex, conservation area designation had not been pursued because the agreement provided an effective management regime for the ensemble of buildings.

² Telephone conversation, 17 October 2000

2.2.4 Apart from large social housing schemes, there were no known agreements for residential buildings. Rather, the list was limited to office, industrial, civic and educational buildings, all in intensive and dynamic use. They tended to be characterised by frequent reorganisation to suit fluid patterns of activity, adaptation to new processes or ways of working, and a high and growing level of servicing.

2.2.5 In summary, when the study was undertaken, management guidelines had been developed principally for large, 20th century, highly-graded, intensively and dynamically used buildings, mostly commercial, civic and educational, but including major social housing projects. They fell wholly within the target groups envisaged in the 1995 English Heritage guidance (para 2.1.2 above).

2.3 The stated objectives

2.3.1 The stated primary objective of the management agreements considered might be simply to establish what did and did not need listed building consent, despite the legal problems surrounding the issue, eg:

‘to provide clarification as to what proposals for the building may not require listed building consent and/or planning permission’ (Willis Building, Ipswich);

‘to clarify which works to the estate need listed building and/or planning permission, and which do not’ (Alexandra Road, Camden);

‘to provide clarification as to what works to the building do not require listed building consent’ (John Lewis Warehouse).

2.3.2 However, most were more general:

‘to agree principles with the University of Sussex in order to ensure that the need for the care of historic buildings does not unduly inhibit the need for works of alteration in the interests of efficient functioning of the University, whilst at the same time ensuring that due regard is given to the architectural and historic interest of the buildings’;

‘to describe and define [the] special architectural and historic interest so that management decisions that have to be taken in connection with the maintenance, repair and alteration of its fabric, fixtures and fittings can be as well informed as possible’ (Newcastle Civic Centre, Document B);

‘to ensure that, however minor or major the works proposed, the significant historic or architectural qualities of the estate are not lost’ (Peabody Estate, Islington);

‘to establish a mutual understanding of the special architectural and historic interest of the building which can inform the management and maintenance strategy for the building, and offer a degree of certainty about the scope for change in respect of the building’ (Centre Point);

‘to provide guidance for the occupiers of the [then] DCTA site, their professional advisers and works staff about the way in which the site and its buildings should best be managed to preserve or enhance its character ... to provide clear guidance about appropriate methods of repair and to eliminate as far as possible areas of uncertainty regarding the restrictions consequent upon listing of individual buildings and designation of the whole site as a conservation area.’ (DLO, Bicester);

‘to define guidelines within which the owner may manage the building fabric with the minimum of delay and uncertainty ... indicating the sort of works, such as repairs and maintenance, that would not require listed building consent’ (Rushbrooke);

‘to overcome any ambiguities which may exist regarding the effect of the Civic Centre having been listed as a building of special architectural interest’ (Southampton Civic Centre).

2.3.3 It was also clear, particularly from the case studies, that there were further, usually unwritten, objectives, for example:

- to provide a positive framework in which conflicts could be systematically

resolved, and ideally to develop mutual understanding and trust;

- to achieve a saving of resources by an initial investment of time in setting up a structure for making informed decisions (ie making the consent procedure more efficient).

These objectives tended to be common to both owners and statutory authorities.

2.4 The scope of agreements

2.4.1 Almost all agreements had generated a **process for regular participation** by the parties in decisions about the fabric of the building, though this was frequently a consequence of the agreement, rather than being prescribed or governed by it. Often regular meetings took place, 4-9 per year, as at the University of Sussex or Newcastle Civic Centre; otherwise, they are held, or enlarged, in response to specific issues.

2.4.2 The most common basis of agreements was to **define the nature of works that would, or would not/might, or might not, require listed building consent**, particularly in areas where change was envisaged. They tended to refer to, or have appended, studies or publications that provided the basis for those conclusions.

2.4.3 Others, however (eg Peabody, DLO Bicester, Alexandra Road), included in their text the essential elements of a conservation statement (understanding, assessment of significance, issues/vulnerability and policies for conservation). They provided a comprehensive analysis of significance, and from that, **guidelines not only for sensitive alteration, but also appropriate care and maintenance**, providing a sound basis for day to day, as well as project, management, a tool that could be used by building managers. But typically, as the Centre Point draft said, they ‘cannot be inclusive of all the works that may at some time be contemplated, rather they seek to identify in broad terms those proposals which are likely to affect the special architectural and historic interest of the building and those which are not’.

2.4.4 Most, following the advice in *Developing Guidelines*, also **defined the curtilage** of the building, and thus what other structures were covered by listing. Some also discussed setting and context.

2.5 Approaches to preparation

2.5.1 The decision to pursue management guidelines seemed as often to have come from owners as from local authorities or English Heritage, although, once the decision was made, the authorities, and frequently English Heritage, tended more often to have taken the lead in producing an initial draft. However, since the concept of agreements demands shared objectives and enthusiasm if it is to succeed, the question of who makes the first move is less significant than whether the response is positive.

2.6 Format

2.6.1 There was a huge variation in length and format. Not surprisingly, agreements that were simply seeking to define the scope of works requiring listed building consent tended to run to no more than a few pages of typescript. Those which also sought to set detailed parameters for maintenance, as well as criteria for change, could run to 20 or more pages, plus illustrations and appendices. Typically, the latter are spiral bound or even printed (Peabody has been printed and Bicester should follow, pending a decision on the listings), reflecting the much larger number of users, and also their exemplary value for other buildings and managers on the same large estates (the Peabody Trust and Ministry of Defence respectively). At the other extreme, two consisted of single sheets, recording agreement reached, or a position stated at a key meeting, although both were envisaged as preliminary to a more formal version.

2.7 Time and resources involved

2.7.1 The time taken from inception to adoption could be considerable. A year was normal, two years common, and some had taken even longer. But this

seemed to stem from the time taken to respond to, and eventually agree, drafts, rather than the input of time required of the parties. For the case studies, this appeared to amount to 1-2 person weeks for the key parties. The guidelines for DLO, Bicester probably fell at the upper end of this range, with 2-3 days for producing the first draft, which was then refined in the essential, but potentially time-consuming, process of consultation and meetings³. Interestingly, the parties consulted had not seen allocating this amount of time over the period concerned as problematic. In all these cases, however, the essential significance of the building had been established through the systematic research that had led to the listing recommendation.

2.8 Provision for review

2.8.1 Most agreements included provision for review, typically after five years, but, in some cases, after two or even one. The Rushbrooke draft proposed two years in the first instance, and five years thereafter, and the John Lewis Warehouse also envisaged initial biennial review.

2.9 Failure rate

2.9.1 Not all intentions to pursue an agreement resulted in a draft being agreed between the parties, but these were not necessarily failures. In some cases, for example, the large social housing scheme at Park Hill, Sheffield, initial steps towards an agreement achieved mutual understanding of the nature and extent of the special interest of the building, and thus its implications for ongoing management. An agreement was not pursued to completion because of a decision to seek the transfer of Park Hill out of local authority ownership.

2.9.2 Sale of the property terminated negotiations on Centre Point, when the agreement had reached final draft stage. Whilst establishing the special interest of the Cummins Engine Factory at Darlington, and appropriate measures for its conservation, formed the basis for English Heritage negotiations with the local authority and potential buyers, there could be no question of a management agreement

until a new owner and uses had been found. It remained to be seen whether such an agreement would be made with the new owners, once a dispute about one element (rooftop plant) of an otherwise successful conversion had been settled⁴. These and other examples underlined the fact that agreements are essentially concerned with the long-term ownership and management of listed buildings.

2.10 The special case of the Milton Keynes Shopping Building

2.10.1 In response to concern about proposed changes, English Heritage advised the Secretary of State for Culture, Media and Sport that the Milton Keynes Shopping Building should be listed. This advice was not taken, but, in August 1998, management guidelines⁵ were agreed between the owners (BriTel Fund Trustees Ltd), Milton Keynes Council and English Heritage, 'to assist in the future management of those elements of the Shopping Building which are considered to be of 'special interest' (2.1), which to a significant extent are outside the scope of planning control. The owners will discuss any proposals affecting these elements with the Council and English Heritage 'at the earliest opportunity' (2.4). What is of special interest, and why, was explained in some detail. 'Whilst it is acknowledged that these guidelines are not legally binding, all parties confirm their commitment to their implementation' (6.2).

2.10.2 The agreement provided only for prior consultation about changes, not a requirement for consent. However, given that it was accepted in effect by the Secretary of State for Culture, Media and Sport as an alternative to the listing of a building generally acknowledged to be of special

³ Note from Will Holborow, English Heritage, 7 November 2000

⁴ Briefing from English Heritage, North East Region

⁵ Copy supplied by Julia Smith, Conservation Officer, Milton Keynes Council

architectural or historic interest, there was an implication that, in the event of significant unresolved disagreement, listing remained a possibility. But precisely because the building was not listed, the guidelines could provide certainty about the extent of special interest and the works likely to affect that special interest; they are no more or less than what was agreed between the parties. The other key difference between this voluntary arrangement and listing was the absence of public consultation and influence on the outcome.

2.10.3 English Heritage have been consulted regularly since the management guidelines were agreed and throughout the development of the current proposals for the major expansion of the Shopping Building. Although the guidelines are not a substitute for statutory listing in controlling detailed change, they have, in this case, proved successful in helping to achieve a proposed new building of high quality⁶.

⁶Information provided by Diane Green, English Heritage, January 2003

3

The experience of using management guidelines

3.1 Management guidelines provide a valuable method of securing the pro-active, positive management of historic buildings. At their best, they facilitate and promote constructive, ongoing dialogue, and mutual trust and understanding, between building owners and the statutory authorities. It is that process and its outcome, rather than the formal document, which is important. In a sense, therefore, agreements can define an ideal approach to the active management of listed buildings whose use is essentially dynamic.

3.2 Such constructive dialogue creates a climate in which minor changes and maintenance are planned with due respect for the character of the listed building concerned, which in turn encourages local authorities to interpret these matters as not affecting character, and thus not requiring consent. This approach can achieve savings of time and cost for all parties. The listed building consent process is then appropriately limited to major changes, where wider scrutiny is justified.

3.3 The use of management agreements or guidelines for listed buildings in dynamic use thus can be seen as a potentially important model for developing a wider strategy for the positive management of listed buildings within a local authority's area. The principles embodied in management guidelines undoubtedly can be applied on a wider scale, with consequent savings of time and costs for all involved – subject, of course, to the resolution of the principal barrier to adopting such an approach, the current

inability of local planning authorities to make a binding determination of what does, or does not, require listed building consent (see section 5.4).

3.4 The process of agreeing management guidelines does, of course, raise the issue of whether and how relevant amenity societies and other third parties can or should be involved. Potentially, they might lose the opportunity to comment on some minor works which, were it not for the agreement, would be the subject of listed building consent applications as a result of the parties erring on the side of caution. Some more recent agreements, like Alexandra Road, Camden, addressed this issue by involving the obvious organisations as consultees. At the University of Sussex, the Twentieth Century Society attended meetings of the listed building group, and was content with the cut-off level for listed building consent applications.

3.5 The number of actual or potential guidelines concerning local authorities' own listed buildings of itself has suggested that management guidelines may be particularly helpful in defining the roles and responsibilities of authorities' estates and conservation/planning departments. Guidelines can also help to establish an operational framework (responsibilities and a means of resolving conflict) within an authority, as well as between it, the relevant regional Government Office and English Heritage.

3.6 On the limited sample considered, however, a difference seemed to be emerging between private sector and local authority buildings. With the Willis building, it was clear that all parties shared the common objective of maintaining the significance and quality of the building. But initial explorations of the dynamics of agreements relating to local authority buildings suggested that they had not brought about the same degree of convergence of objectives. Building managers (and impliedly political representatives) remained to varying degrees sceptical of the significance of the buildings, insensitive to the objectives of listing, and resentful of the constraints and costs it imposed.

3.7 One of the obvious reasons for this was the financial constraints under which the public sector now works. Listing of Newcastle's civic centre implied maintenance, change, periodic renewal of finishes and services, for example, to the same standard as the original specification, rather than the adoption of the most expedient modern solution at the least possible cost. The restricted nature of the areas deemed to contribute to the building's special interest might in part have been a reflection of this issue. The concept of 'Best Value' could have positive implications for such local authority-owned buildings, by taking into account quality standards and whole life value. The preparation by local authorities of statutory Asset Management Plans and the annual review process may also have an impact in relation to priorities for funding corporate property management and maintenance. The guidelines agreed for Alexandra Road would only come into effect if and when the extra cost of maintenance to conservation standards is accepted. Financial constraints were also a concern at the University of Sussex, but the value of the buildings was certainly appreciated by all concerned. The most damaging consequence of these financial constraints was probably the lack of quality and quantity of design skill applied to problem solving.

3.8 Against the background of an established routine of meetings, it is possible to lose sight of the original objectives of a management agreement, or even the original documents, without regular and active review. The questioning of assumptions by one party to the Newcastle Civic Centre building agreement seemed to underline the importance of regular review, involving all the players. In many cases, however, as with the Willis building, this may well result in little change being necessary to either the documents or the arrangements.

4

Comparable management arrangements

This section considers some relevant active management regimes for cultural and natural assets. Consideration of countryside schemes has generally been limited to those that are intended to promote the conservation of areas formally designated for their significance and sensitivity, although the Countryside Stewardship Scheme is briefly considered. Local authority powers to enter into management agreements under Section 39 of the Wildlife and Countryside Act 1981 have been omitted. They are essentially similar to authorities' discretionary powers in relation to ancient monuments, and seemingly equally little used⁷.

Managing the natural heritage in England

4.1 The management of SSSIs by English Nature

4.1.1 Sites of Special Scientific Interest (SSSIs) are designated areas of particular importance for the conservation of the natural heritage, both biological and geological. There are currently some 4,100 SSSIs in England, covering about 6% of England's land area. Over half of them, by area, are internationally important for their wildlife and designated as Special Areas of Conservation (SACs), Special Protection Areas (SPAs), or Ramsar sites. Many SSSIs are also National Nature Reserves (NNRS), or Local Nature Reserves (LNRS). Every SSSI in England has been registered as a local land charge⁸. Whilst most are owned and managed privately, English Nature are responsible for ensuring that the special interest of the sites is

properly protected and correctly managed. To this end, they are working with landowners to draw up Site Management Statements. By 1997, these were in place for 51% of SSSIs, and full coverage is envisaged by the end of 2005. Detailed guidance on preparation is given in *Site Management Plans for Nature Conservation* (1987⁹). It states that:

"All sites managed for nature conservation should have a management plan, the main purpose of which is to ensure that there is continuity and stability of management. Without an effective plan, sites are vulnerable to inconsistent management which can result in a waste of resources and worse, in the loss of the special interest of the site."

4.1.2 Drawing up a Site Management Statement for an SSSI involves three stages:

- summary description of the site
- an evaluation of this information and the setting of management objectives
- a description of the proposed management of the site.

4.1.3 If it becomes clear through this process that subsidy for capital or ongoing management work is needed, English Nature may, under s15 of the Countryside Act 1968, enter into management agreements with the owners, occupiers or managers of sites to achieve this¹⁰. By 31 March 2000, there were 2,773 agreements in place, covering 137,977 hectares of land¹¹, ie about 13.1% by area. Agreements are

with individual owners. The size of many SSSIs means that they are often in divided ownership.

4.1.4 Until the early 1990s, most management agreements were compensatory, with payment being made in return for defined activities damaging to the interest of the site not being undertaken. Such agreements are not very cost effective, so English Nature has tended in recent years towards 'positive agreements', under which payments are made to the landowner to carry out works and manage the site in a way that will produce tangible conservation benefits. Compensatory agreements now represent only 11% of all agreements.

4.1.5 English Nature are funders of last resort. If subsidy is needed, they initially direct the landowner towards the 'Environmentally Sensitive Areas' or 'Countryside Stewardship' schemes run by the Department for the Environment, Food and Rural Affairs (DEFRA). The objectives of these schemes can often achieve 80% or more of the aims of the Site Management Statement. Only when they are not appropriate, or do not provide for all of the aims, do English Nature offer additional funding

⁷Implementing the Leicestershire nature conservation strategy', *Nature's Place*, 11 (1996), 10-11

⁸English Nature *Sites of Scientific Interest (SSSIs)* leaflet, 2002

⁹When English Nature's role was undertaken by the Nature Conservancy Council

¹⁰(2) Where, for the purposes of conserving those flora, fauna, or geological or physiographic features, it appears to the Council expedient in the national interest to do so, the Council may enter into an agreement with the owners, lessees and occupiers of any such land, which imposes restrictions on the exercise of rights over land by the persons who can be bound by the agreement.

(3) Any such agreement –

(a) may provide for the carrying out on the land of such work and the doing thereon of such things as may be expedient for the purposes of the agreement,

(b) may provide for any of the matters mentioned in paragraph (a) above being carried out, or for the cost thereof being defrayed, either by the owners or other persons, or by the Council, or partly in one way and partly in another, and

(c) may contain such other provisions as to the making of payments by the council as may be specified in the agreement

¹¹English Nature, Annual Report, 2000

through a management agreement, usually a 'Wildlife Enhancement Scheme' (WES) agreement. English Nature has a standard scheme of payments based on the cost of capital and ongoing works, income foregone and up to 20% extra as an incentive¹². The total English Nature budget for management agreements in 1999-2000 was £7.8million.

4.1.6 English Nature conducted surveys in 1992, 1995 and 1997 into their relationships with the owners and occupiers of SSSIs, which were in part concerned with the use of management agreements. In 1997, 41% of sites had some form of management agreement with English Nature, of which 4% were under the (relatively recently introduced) WES scheme. Over half the respondents (58%) found the agreement helpful, a rise of 17% compared to 1995. A large proportion also found the process of negotiating and finalising management agreements simple and straightforward. However, many respondents declined to answer, probably because they had been through the process several years earlier and felt unable to comment. Similarly, the Management Agreements themselves were considered simple and straightforward by a large proportion of respondents (55%). Wildlife Enhancement Schemes were also regarded fairly highly; 39% declared them to be either a good or very good idea, but again a substantial proportion had no opinion.

4.1.7 As a result of the 1997 survey, English Nature revised their 'Action Plan' governing their relations with SSSI owners and occupiers. They made commitments to make WES agreements nationally available and complete Site Management Statements with the majority of SSSI owners and occupiers in the next few years (at the time of the survey, only a quarter of respondents had one).

4.1.8 The Countryside and Rights of Way Act 2000 made significant changes in the legislative framework governing the management of SSSIs. A revised *Code of Guidance* for the management of SSSIs, and new *Guidelines on Management Agreement Payments*, were the subject of prior consultation.

The changes were intended to:

- achieve the positive management of SSSIs to sustain their special interest, giving English Nature more extensive powers to do so
- deliver transparent value for taxpayers' money
- achieve equality of treatment of all owners and occupiers of designated sites
- provide information which is easier to understand
- establish a flexible framework, allowing quicker establishment of agreements and lower costs
- ensure compliance with human rights legislation.

In particular, where appropriate management cannot be achieved by negotiation, English Nature are able to serve a 'management notice' in parallel with an offer to pay the costs of the action required. If the owner does not do the work, English Nature may enter and do so. There is a right of appeal to the Secretary of State for Environment, Food and Rural Affairs against a management notice¹³.

4.2 The management of Environmentally Sensitive Areas

4.2.1 The Environmentally Sensitive Areas (ESA) Scheme, introduced in 1987, is run by DEFRA. Its aim is to encourage farmers to safeguard areas of the countryside where the landscape, wildlife or historic interest is of national importance. Under s18 of the Agriculture Act 1986, within the 22 defined ESAs, anyone who has responsibility for, and control over, agricultural land may enter into a management agreement with DEFRA¹⁴. Although confined to specific areas, this is essentially an elective grant scheme, with no strategy for extending coverage to the whole area, or developing its integrated management beyond a range of defined qualifying works.

4.2.2 Agreements last for ten years, although they are reviewable after five. The landowner receives an annual

payment per hectare of land included and there are several tiers of commitment and corresponding remuneration. The aspects of management that qualify for payment differ in each ESA, and are aimed at retaining and enhancing the particular interest of the area. There is also an option to enter into a 'conservation plan', under which the landowner carries out positive works to enhance the land's interest, rather than merely retaining the existing interest. Payments are also made for increasing public access to the land.

4.2.3 Once an ESA agreement has been made with DEFRA, the landowner may also apply for a 'conservation plan' on any part of their land. This provides grant aid for carrying out particular capital works, such as planting new hedges or restoring ponds. A schedule of works is put forward by the applicant; payment of over £500, but below a specified ceiling, is made by the Department. As an example, the whole of the South Downs is an ESA, in which the main aim is to protect and enhance the landscape character of the downs: the open chalk grassland, hedgerows, walls, traditional buildings, ponds and archaeological remains.

4.3 The Countryside Stewardship Scheme

4.3.1 The Countryside Stewardship Scheme is the main scheme for the wider countryside which aims, through the payment of grants, to improve the natural beauty and diversity of the countryside, enhance, restore and recreate targeted landscapes, their wildlife habitats and historical features, and to improve opportunities for public access. It operates under the EC Rural Development Regulation (1257/1999)¹⁵.

¹²The rules are currently contained in DoE/MAFF Circular 4/83, about to be superseded

¹³Consultation papers issued by DETR, May 2000

¹⁴The scheme is part funded by the EC within 'England under the Rural Development Regulation', a package of measures to encourage farmers to conserve and enhance the rural environment. The terms and conditions of agreements in each area are set by specific statutory instruments

¹⁵See *The Countryside Stewardship Scheme: Information and how to apply* (MAFF, 2000)

The scheme aims to sustain landscape beauty and diversity, to protect and extend wildlife habitats, to conserve archaeological sites and historic features, restore neglected land or features, create new habitats and landscapes and improve opportunities for people to enjoy the countryside. It operates outside Environmentally Sensitive Areas.

4.3.2 Farmers and land managers enter 10-year agreements with DEFRA to manage land in an environmentally beneficial way in return for annual payments on the basis of performance measured against a set of agreed tasks. Grants are also available towards capital works such as hedge laying and planting, repairing dry stone walls, etc.

Aspects of managing the historic environment in England

4.4 The management of scheduled monuments by DCMS and EH

4.4.1 Almost any work to monuments that are protected by inclusion in the schedule of monuments compiled by the Secretary of State for Culture, Media and Sport (advised by English Heritage) under the Ancient Monuments and Archaeological Areas Act 1979 requires scheduled monument consent. The regime is thus much more rigorous than that governing listed buildings, under which only works affecting their character as buildings of special architectural or historic interest is controlled. Since some exceptions to this blanket requirement are necessary to make the system workable, there is provision for scheduled monument ‘class consents’ for commonly occurring recurrent activity, analogous to development under the General Permitted Development Order in the planning system.

4.4.2 PPG 16, *Archaeology and Planning*, emphasises that appropriate management is essential to ensure that archaeological remains survive in good condition (para 6), and goes on to state that:

‘Statutory protection may not of itself secure the future preservation of a monument. In most cases, it is essential to develop a management plan and to carry out regular maintenance to prevent progressive decay of the building or site.’ (Annexe 3, para 14)

‘English Heritage provide advice on the management of ancient monuments, principally through their Inspectors of Ancient Monuments, but also through their network of Field Monument Wardens assigned to individual areas. The Wardens in particular inspect scheduled monuments on a regular basis, reporting on their conditions and are available to discuss with both owners and local authorities measures for the improved management of sites.’ (PPG16, Annexe 3, para 17).

4.4.3 However, a system under which specific consent is required for repair work not covered by a specific class consent is in itself a disincentive to repair, compounded by the fact that few scheduled monuments are capable of economically beneficial use. Moreover, Class 1 of permitted works includes continuing existing agricultural regimes, which, in some cases, will cause the steady erosion of the structure and significance of the monument.

4.4.4 Thus there is provision not only, under s24 of the 1979 Act, for grant aid for the preservation, maintenance and management of monuments, but also, under s17, for English Heritage (or a local planning authority) to enter into a management agreement with the occupier (and also the owner) of any monument, or nearby land. This provides a mechanism for pro-active management through both capital works (eg repair, fencing) and maintenance. Like management agreements for SSSIs, there may be provision for compensation for income foregone, usually as a result of ceasing to plough a field monument. English Heritage normally require provision for public access¹⁶. Scheduled monument consent for works which are included in a s17 agreement is automatically granted by Class 8 of the Class Consents Order 1994. As of 9 November 2000, there were 18,671 scheduled monuments, but information on the number of management

agreements ‘is not held centrally or in any practically retrievable form’¹⁷.

4.4.5 Management agreements, facilitating an active role by the owner, are now preferred to guardianship¹⁸ in which DCMS, English Heritage, or a local authority take over full control and management (but not ownership) of a monument. Nonetheless, a significant proportion of the 400 or so sites managed by English Heritage are in the guardianship of the Secretary of State for Culture, Media and Sport. Public access to a monument held in guardianship is obligatory.

4.4.6 Another management tool, normally used for scheduled buildings that require active maintenance regimes, is the ‘standing consent’. This will typically specify that defined works (eg repointing of brickwork) may be carried out in a defined way (eg using a specified mortar mix) and to a defined extent (eg in small areas not exceeding 2 sq metres) during a specified period, normally five years. It is, in effect, a class consent tailored to the needs of a particular monument.

4.5 Conservation management plans and statements

4.5.1 A conservation plan is a document that sets out the significance of a heritage asset and how that significance will be retained in any future use, alteration, management or development. The basic stages of a conservation plan are:

- understanding
- assessing significance
- defining issues/ vulnerability
- writing conservation policies.

Current practice, including a model brief, is set out and examined in depth in *Conservation Plans in Action* (English

¹⁶ See C Mynors, *Listed buildings, conservation areas and monuments* (3rd edn, 1999), 87-8; PPG 16, *Archaeology and Planning*, Annex 3, para 16.

¹⁷ Information from Oliver Frankham, Data Team Monuments, English Heritage

¹⁸ under s12 of the Act

Heritage 1999). A ‘conservation statement’ is a briefer document, essentially based on existing knowledge rather than in-depth research.

4.5.2 The methodology originated in Australia. The use of conservation plans has grown in the United Kingdom primarily because the preparation of such a plan is normally a precondition of a major grant from the Heritage Lottery Fund. The value of a conservation plan usually lies in providing a long-term basis for managing heritage assets at whatever level of detail is necessary to inform and underpin decisions. The Heritage Lottery Fund (HLF) has recently circulated, as a consultation draft, revised guidance on the objectives and content of conservation management plans. Based on the HLF’s experience over several years of the preparation of such plans for grant purposes, *Conservation Management Plans – A Guide*¹⁹ will suggest an approach that focuses more on the positive management of the heritage asset(s) concerned. In particular, the new guidance will link practical management issues with the consideration of the conservation principles to be adopted. Offering generally very sound advice, the new guidance is likely to have relevance far beyond applications for HLF funding.

4.5.3 Conservation management plans can be a useful, or indeed crucial, means of delivering the long-term, integrated management of heritage assets, although the resources required to produce plans to currently recommended standards can be considerable. This may be inescapable for the complex, multi-period and highly sensitive heritage assets for which they tend to be used. Such assets are not within the target group for listed building management agreements identified in 1995. The current move in the UK towards focusing conservation plans more on practical arrangements and positive management issues is, however, welcome.

4.6 Capital taxation relief

4.6.1 A transfer of a heritage asset may be conditionally exempted from capital taxation (on transfer, or inheritance) if formally designated, in return for undertakings, normally by the new owner, to preserve the asset and allow reasonable public access to it. The exemption ends if the property is sold, but can be continued if it is given away to someone who renews the undertakings. Maintenance (trust) funds may also be set up to sustain exempted historic assets, with similar exemption from capital taxation. For buildings, exemption is only available to those of outstanding architectural or historic interest, which effectively equates to buildings listed in grade I or II*, with their historically-associated land (including subsidiary buildings) and contents²⁰.

4.6.2 One of the key conditions of exemption is an undertaking that agreed steps will be taken ‘for the maintenance, repair and preservation of the property’²¹. A schedule of detailed management conditions is required. In England, English Heritage advise the Inland Revenue, both on eligibility for conditional exemption and the terms of undertakings. This arrangement has the potential to be more positive, with management conditions based on conservation plans, in line with the approach taken by the Countryside Agency with their management plans. English Heritage will monitor undertakings on a five-yearly cycle.

Examples of management regimes outside the UK

4.7 Australia: New South Wales

4.7.1 Works to the 1200 or so items and places included on the ‘State Heritage Register’ (because of their state heritage significance) require the consent of the Heritage Council, unless they fall within ‘Standard Exemptions’. These include minor and routine maintenance, like-for-like repairs, painting, and restoration, as strictly defined in the Burra Charter, by re-assembling existing components, or removing accretions²².

4.7.2 Of particular interest in the present context is Standard Exemption 6:

‘Conservation works in accordance with a conservation policy or strategy contained in a *conservation management plan* endorsed by the Heritage Council of NSW or, for minor works, a *conservation policy* endorsed by the Director of the Heritage Office’

4.7.3 NSW *Conservation management plans and conservation policies* are documents which:

- explain the significance of heritage items;
- analyse that significance with reference to external constraints; and
- develop policies which provide guidelines for maintaining and enhancing the heritage significance of the item.

A *conservation management plan* also includes strategies for implementing development policies or maintenance works that will ensure the conservation of the item.

4.7.4 This exemption applies to works specified in a *conservation management plan* or *conservation policy* prepared in accordance with approved guidelines and evaluation criteria, which has been endorsed by the Heritage Council or, in the case of *conservation policies* for minor works, the Director of the Heritage Office. The process is flexible as to the detail of what is approved. Thus it might be specified that, for example, the door leaf to an identified room can be replaced with a specified type of door, in which case no further approval is required; but if replacement alone is specified, further approval will be required for what is to replace it.

¹⁹ Document in preparation: these comments are based on a draft circulated in July 2002

²⁰ This is a very brief summary of the operation of the exemptions in relation to listed buildings. For more information, see *Capital Taxation and the National Heritage* (Inland Revenue, 1986) and *Capital Taxes – relief for heritage assets: Notes on the changes made by the Finance Act 1998* (Capital Taxes Office, 1999)

²¹ Inheritance Tax Act 1984, S31(4)

²² Heritage Act 1977, as amended 1998

4.7.5 There are obvious parallels with the management of scheduled monuments in the UK, particularly between standard exemptions and class consent, and exemption/consent being automatic for works agreed under a conservation management plan/s17 management agreement. However, the NSW provisions apply to a wider range of items and places than UK listing and scheduling combined.

4.7.6 It is also interesting that the vehicle used to facilitate management agreements is a general power to exempt works to a listed item or items from the requirement for approval of works²³, not a specific provision in the primary legislation. A regulation is currently being developed to give this process greater clarity and force²⁴.

4.7.7 This general power also allows site-specific exemptions for works other than those covered by the standard exemptions. Applications must be supported by a *conservation management plan*, or similar study, carried out by an experienced heritage consultant. If recommended by the Heritage Council, exemptions must be approved by the Minister and published in the NSW Government Gazette before they come into force.

4.8 Australia: Northern Territories

4.8.1 Sections 30-33 of the Heritage Conservation Act (as amended) allows the Heritage Council to prepare a conservation management plan in respect of a heritage place or object, taking into account the opinion of the owner/occupier/possessor, and public opinion. It must contain a description of permitted work and any conditions as to how this may be carried out. Draft plans must be advertised, giving not less than 28 days for representations to be made. After giving them 'due consideration', and making any alterations it thinks fit, the Council must forward the plan and representations to the state Administrator, who may make amendments to the plan. The Minister must then lay it before the Legislative Assembly within three sitting days after acceptance by the Administrator. The Assembly has seven sitting days to pass

a motion disallowing the plan; if it does not, then the plan comes into force. If it does, the Council must prepare a new plan and repeat the whole process. Approval of amendments to a plan involves the same procedure, except for public consultation.

4.8.2 This is clearly a cumbersome process, resulting in a tendency to use 'draft' conservation management plans²⁵.

Overview of policy implications

4.8.3 Conservation of natural heritage assets is strongly focused on management rather than preservation, not least because such assets are self-evidently dynamic ecosystems, often created and kept in balance by particular management regimes. But in reality, to draw a distinction between a living landscape and an inert building is entirely false; without active management, ie. ongoing maintenance, the building will soon succumb to natural forces, although the pace of change might sometimes be slower. The primary reason for the different approaches is the different outlook and traditions of those responsible, including the essentially negative idea of preservation that dominates traditional thinking and legislation about the historic environment.

4.8.4 The regimes established to manage the natural heritage all recognise that sustaining, as well as enhancing, special interest has cost implications, that subsidies are necessary if owners are to meet those costs, and that they are justified as a means of securing the public interest in essentially private property. That idea has become accepted in the conservation of scheduled monuments and of assets granted conditional exemption from capital taxes, in both cases probably because of the link between management requirements and the availability of subsidy.

4.8.5 All conservation regimes based on active management of the historic asset involve a management plan based on a thorough understanding of significance, ie what features and qualities the management regime seeks to preserve

or enhance. When that is in place, the need for specific consents for particular works is greatly reduced, and decision-making becomes more certain and reliable, because it is based on adequate, accessible information.

²³ *Ibid*, s57

²⁴ Information from Bruce Baskerville, Heritage Office of New South Wales

²⁵ Information from Richard Morrison

5

The policy and legislative context

5.1 Passive versus active management

5.1.1 There are essentially two approaches to managing designated natural and cultural heritage assets:

- **passive**, in which designation imposes little more than a requirement to seek consent to undertake specified or any works ('thou shalt not kill/ but needst not strive/ officiously to keep alive', as Arthur Hugh Clough²⁶ put it); and
- **active or positive**, in which designation initiates, or is conditional upon, a strategy being agreed between the regulatory authorities and owners to maintain, and often to recover and enhance, the significance that warranted designation.

5.1.2 In the natural heritage field, great progress has been made in initiating active management through management agreements for SSSIs. The Countryside and Rights of Way (CROW) Act 2000²⁷ places a general duty on all organisations to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the features for which an SSSI has been notified. The draft code of guidance for the management of SSSIs, produced by English Nature in anticipation of the CROW Act 2000, states firmly that:

"The Government's aim, in radically revising this part of the 1981 Act, has been to emphasise the importance of the positive management of SSSIs: in particular

- to improve the procedures for notifying sites of national nature conservation importance as SSSIs, and emphasise the importance we attach to them;
- to develop further the constructive relationship between land owners and managers and the officers of the conservation agencies;
- to provide better protection for SSSIs from operations which damage, or are likely to damage, the special interest, and to secure management, by both public and private landowners, which contributes to the conservation of the special features on individual SSSIs.

Throughout, this Code emphasises the significance of SSSIs and the importance of securing their protection and conservation, and (where practicable and appropriate) their restoration and enhancement: the value of constructive dialogue, listening carefully to views, and the provision of support both through advice and, where appropriate, through financial assistance: the need for public bodies to be fully accountable in the actions they take on, and in respect of, SSSIs: and the expectation that information about SSSIs will be freely available."²⁸

5.1.3 By the end of 2005, all owners will have a short but clear statement of management requirements. For sites with complex management or ownership problems, discussions about a management scheme, providing owners with a detailed statement of the measures required for the positive management of their land, will follow. Costs may be assisted through management agreements, covering

income foregone, additional costs and the need for an incentive.

5.1.4 By contrast, the protection of heritage assets in England, particularly listed buildings, remains substantially passive. Conservation areas, introduced by the Civic Amenities Act 1967, first encapsulated the idea of active management of heritage assets as a statutory responsibility stemming from designation. Under the provisions of the 1967 Act (now included in the 1990 Act) local planning authorities have a duty to 'formulate and publish proposals for the preservation and enhancement' of conservation areas²⁹. Although the diligence applied to performing this duty varies considerably in practice, the principle is important. It was the experience of conservation area management that lay behind the 1995 English Heritage *Developing guidelines for the management of listed buildings*. The aim was to encourage a more active approach to the management of some types of listed buildings, particularly those of a scale that raised issues similar to those raised by conservation area designation, of discrimination between positive, neutral and even negative elements.

5.1.5 There has also been considerable progress in the active management of scheduled monuments. Their potential for sustainable management is indeed one of the criteria for selection for scheduling. The idea of 'acknowledgement payments', introduced in 1972³⁰, led to the more comprehensive idea of management agreements, introduced by s17 of the Ancient Monuments and Archaeological Areas Act 1979. These provisions facilitated the wider application of active management, until then largely confined to the relatively small number of monuments taken into guardianship, or otherwise managed by the public sector. However, although not legally required, s17 agreements tend in practice to involve payments to the owner or

²⁶ *The Latest Decalogue*, 1862

²⁷ DETR, August 2000

²⁸ Publication of the Code by DEFRA is expected by mid 2003, subject to Parliamentary approval

²⁹ Planning (LB&CA) Act 1990, s71

³⁰ Field Monuments Act 1972

occupier of the monument, to defray the cost of implementation. In that sense, they are similar to the SSSI management regime, and field monuments are often significant on both counts.

5.1.6 Over the past decade, the idea of active management of the historic, as well as the natural, environment has steadily been gaining ground. This reflects a growing realisation that the mere act of designation, and the consequent imposition of controls over deliberate change, does not of itself ensure that cultural or natural significance is preserved, let alone enhanced. Since 1995, applications for the inscription of World Heritage Sites must be accompanied by a detailed management plan, and such plans must now be produced for sites inscribed prior to that date³¹. The recent policy statement *The Historic Environment: A Force for Our Future* confirmed (in paragraph 4.10) that the Government was working towards completion of management plans for England's eleven World Heritage Sites by the end of 2002.

5.2 The listed building control regime

5.2.1 Listed buildings constitute by far the most numerous category of protected heritage asset. Perhaps because of the sheer problem of scale, the practice, indeed the idea, of active management of listed buildings remains less well developed than in any other area of natural or cultural heritage. It can, however, reasonably be seen as giving effect to the concept of 'stewardship' embodied in PPG 15, *Planning and the historic environment*³². As well as management agreements, the use of conservation plans, and management plans deriving from them, has grown, although largely in the context of major grants as a result of Heritage Lottery Fund policy. Tackling buildings at risk is also an aspect of positive management, and in *Buildings at Risk: A New Strategy* (1998), English Heritage urged local authorities to take a systematic approach to monitoring and managing their historic building stock³³, elaborating the advice of PPG15, para 7.2³⁴. Obligations stemming from exemption from

Inheritance Tax, often covering entities comprising buildings, contents and historically associated land, also provide a potential vehicle for positive management of some of the most important elements of our heritage³⁵.

5.2.2 Nonetheless, the listed building regime remains, by statute and government policy, an overwhelmingly passive one, requiring only the granting of prior consent for certain works. The current regime does not embrace the concept of an active, building-specific management strategy designed to preserve, enhance or recover significance, 'built on a constructive relationship between land owners and managers and the officers of the conservation agencies', as is now proposed for SSSIs³⁶. Through management agreements or other means, such strategies are in place for only a tiny proportion of listed buildings, compared to a substantial proportion of other designated natural and heritage assets. There are other key differences:

- Significance is not substantially defined at the point of protection, but only if and when works are proposed, an inherent problem in the statutory listing process. The 'special interest' of the building is not fully defined at the point of listing, since to do so would be both exclusive and limiting. But, since the decision to list a building is normally based on an expert evaluation of its architectural or historic significance, which is not fully documented in the list description, owners and managers of listed buildings often have no clear idea of the nature or content of the 'special interest' that they should seek to preserve. Official guidance is limited to emphasising that the list description should not be interpreted as a statement of the special interest;
- Whether listed building consent is required is therefore a matter of judgement and interpretation, fact and degree (whether 'character' will be affected), rather than being clearly defined (eg all works, or any of a list of specified works); and the regulatory authorities have no statutory power to determine whether or not consent is required (only the courts can do so

definitively), despite the fact that they are able to grant consent in the context of determining a formal application;

- Consents are granted by local authorities, rather than by a specialised organisation;
- The role of the relevant statutory body, English Heritage, is advisory, and touches only a very small percentage of cases;
- Local authorities are under no obligation to have access to the quality, range, or level of specialist skills required for sound decision-making and recent surveys have shown that there is a serious (and growing) skills shortage;
- The emphasis is on the reactive process of determining applications for consent and pro-active management initiatives are considered a low priority. It is generally accepted that few authorities systematically monitor compliance during implementation and fewer still maintain cumulative archives, documenting change to each building;
- Subsidies or tax concessions to provide incentives for sound management are insignificant.

³¹ Mynors 1999 (op cit, note 16), p92; *Operational guidelines for the implementation of the World Heritage Convention* (ICOMOS 1997)

³² Paras 1.6-7

³³ at p11

³⁴ 'The timely use of urgent works and repairs notice powers ...should always be considered, but authorities' resources for conservation will be used to best effect if some are devoted to identifying buildings at risk – from neglect or inappropriate changes – as early as possible and providing advice, encouragement and (where appropriate) grants to owners. Monitoring listed buildings, and unlisted buildings which make a positive contribution to conservation areas, by means of simple, regularly updated condition surveys is a valuable element of this approach'.

³⁵ See 4.6 above. The faculty jurisdiction system of the Church of England, coupled with the requirement for quinquennial inspections, can be considered a form of active management, through rather outside the scope of this paper.

³⁶ See para 5.1.2

5.2.3 The listed building consent system in fact bears much more resemblance to the administration of town and country planning (the regulation of the use of land in the public interest), within which it originated, than it does to other natural and cultural asset conservation regimes. The separation of the legislation indeed only occurred in 1990, as an administrative by-product of consolidation. In that light, local decision-making takes on a potentially more positive aspect – communities know what they value – but:

- The planning system is statutorily ‘plan-led’, with a strategy for each local planning authority, subject to cyclical revision through public consultation. Few authorities have heritage management equivalents even at this ‘broad brush’ level, and policies concerned wholly with listed building consent policy are legally excluded from local plans;
- There is considerable clarity as to whether planning permission is required, and a procedure exists for binding determinations in cases of doubt, compared to the uncertainty about the need for listed building consent;
- All planning authorities have professionally qualified planning staff, but more than 20% have no qualified conservation staff³⁷.

5.2.4 Looked at in this rather harsh light, ongoing criticism of the listed building control regime, from both conservation and property interests, is understandable. A full discussion of all the issues, particularly financial incentives, is outside the scope of this paper, but **a more detailed analysis of the current listed building consent process can be found in appendix B**. As one of the conclusions from this study, it seems clear that there should be potential for legitimate forms of management agreement that, at one and the same time, could:

- improve the conservation of listed buildings, through a change from passive to active or positive management; and

- minimise uncertainty, the risk of inconsistency in decision-making, and avoidable bureaucracy and delay, for building owners and managers and thereby remove barriers to competitiveness by making the consent process more efficient and more predictable.

5.2.5 Active management of listed buildings is clearly more demanding of both human and financial resources. Even if the resources were available, such an approach would not always be justified at a level below that of systematic monitoring of the building stock of an area as a whole, particularly for buildings in stable management and use. Thus, in jurisdictions elsewhere, for example New South Wales (4.7 above), active management agreements have developed as an alternative to passive designation and control, which owners and managers can consider if it would be advantageous, given the nature of the building and its use.

5.3 The principal barriers to management agreements

5.3.1 During the study, several factors emerged as contributing to the rarity of management agreements, despite their apparent advantages, at least in terms of particular types of building and user. These were, in order of significance:

- **The limitations and interpretation of the legislation:** It is not legally possible for local planning authorities or the Secretary of State to make a binding determination as to whether listed building consent is needed. Interpretation of what work requires consent, and when it is appropriate to grant consent subject to later submission of details, varies considerably between planning authorities. Elements of uncertainty are thus inherent in the system, although, given the nature of the subject matter, professional judgement and discretion will always be required.
- **Policy:** There is no equivalent in PPG15 in relation to listed buildings to the draft code of guidance for SSSIs, based on a commitment to ‘positive management’. The Government’s policy statement on the historic environment *A Force for Our*

Future does, however, emphasise the fundamentally important part played by local authorities in the stewardship of the historic environment (paragraph 1.3) and importantly states that ‘the Government looks to them to adopt a more positive approach to the management of the historic environment within their area and the monitoring of its condition’. The report also underlines that ‘management agreements can help speed up the determination of listed building consent applications’ and contains a commitment (at paragraph 4.9) by the Government to ‘work closely with English Heritage in researching the current impact of management agreements and their future potential’;

- **Resources:** Listing has historically been seen as a designation with very few resource implications for the responsible authorities, triggering action only when change to character is proposed. The large number of designations – 370,000 items, representing at least 400,000 buildings (which may still be an under-estimate) – is perhaps not unconnected with this view. A recent report for English Heritage, *Heritage Under Pressure*, has confirmed that local authorities’ resources for historic environment conservation are falling, while up to 30% of an increasing number of planning applications have built environment implications³⁸ and another 11% may have archaeological implications. The resource issue means that any move towards positive management on a building-by-building basis must necessarily be very selective, normally only where, in terms of the use of resources, there is a clear balance of advantage in doing so.

³⁷ *Power of Place* (English Heritage, 2000) para 92, suggests that 22% of local authorities employ no appropriately qualified conservation staff

³⁸ Net expenditure on historic environment conservation by local authorities has declined by 8% in real terms over the last five years. Local authority staff costs fell by 10% in real terms between 1996 and 2000. *Heritage Under Pressure*, prepared for English Heritage by Gill Chitty and David Baker, May 2002

5.4 The lack of a statutory mechanism for determining whether listed building consent is needed

5.4.1 Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires prior authorisation by the local planning authority or the Secretary of State of any works to a listed building that would ‘affect its character as a building of special architectural or historic interest’. However, the 1990 Act does not give a local planning authority – or indeed the Secretary of State – a specific power or procedure by which to determine whether or not any particular works to a building would, or would not, affect its character and so do, or do not, require listed building consent. Thus ‘any opinion offered by a local authority officer must, therefore, be just that – it will not and cannot legally bind the authority’³⁹. Nor can the authority bind itself to taking a consistent view over a period of time, since to do so would be to ‘fetter its discretion’. What requires listed building consent is a matter of fact and degree, but ultimately only the Courts can give a definitive view, through (if the matter has not become the subject of litigation) seeking a declaration in the Chancery Division of the High Court⁴⁰.

5.4.2 Thus there exists a major impediment to true management agreements, the inability of a local planning authority, or the Secretary of State, legally and definitively to determine what does or does not require listed building consent, even for a fixed period. Their inability to do so is perhaps all the more surprising given that undertaking works that require consent, but for which consent has not been obtained, is a criminal offence in respect of which anyone is entitled to bring a prosecution. So it is theoretically open to, for example, an amenity society to bring a criminal prosecution against the owner of a listed building for undertaking works that the local authority concerned had stated that, in its opinion, did not require consent. This would seem to encourage a precautionary approach to seeking listed building consent and prompt significant numbers of potentially unnecessary applications.

5.4.3 This situation stands in clear contrast to comparable regulatory regimes. Normally, the administering authority has a formal power to determine whether or not consent is required, that determination being binding on all parties, unless varied through an established appeal procedure, normally to the relevant Secretary of State. Some examples, drawn primarily from regimes covering the management of land and buildings, are outlined below.

5.4.4 **Building control:** Section 16 (10) of the Building Act 1984 states that:

‘In any case where a question arises under this section between a local authority and a person who proposes to carry out any work [as to]

(a) whether plans of the proposed work are in conformity with building regulations, or

(b) whether the local authority are prohibited from rejecting plans of the proposed work by virtue of subsection (9) above,

that person may refer the question to the Secretary of State for his determination; and an application for a reference under this subsection shall be accompanied by such fee as may be prescribed.’ Under Section 34, the decision of the Secretary of State is final.

5.4.5 **Certificates of lawfulness of existing use:** Under S191 of the Town and Country Planning Act 1990, if any person wishes to ascertain whether

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful

he may make an application for the purpose to the planning authority. If a certificate is refused, the applicant may, under S195, appeal to the Secretary of State, who, under s196, shall, if either

the appellant or the local planning authority so wish, give each of them an opportunity of appearing before, and being heard by, an inspector. The decision of the Secretary of State on such an appeal is final (s196(3)).

5.4.6 **Planning permission:** Section 192 of the Town and Country Planning Act 1990 as amended provides that if any person wishes to ascertain whether

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land would be lawful

he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question. If, on an application under this section, the planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application they shall issue a certificate to that effect. As with a refusal of planning permission, if a certificate is refused, the applicant may, under S195, appeal to the Secretary of State, who, under s196, shall, if either the appellant or the local planning authority so wish, give each of them an opportunity of appearing before, and being heard by, an inspector. The decision of the Secretary of State on such an appeal is final (s196(3)).

5.4.7 **Consent for operations affecting Sites of Special Scientific Interest (SSSIs):** Under the Wildlife and Countryside Act 1981, as amended by the CROW Act 2000, applications to carry out operations affecting SSSIs are determined by English Nature. There is a right of appeal to the Secretary of State for Environment, Food and Rural Affairs, whose decision is final.

5.4.8 **Certificates of immunity from listing** are a particularly interesting case. Under Section 6 of the Planning (Listed Buildings and Conservation

³⁹ Mynors 1999 (op cit in note 16), 227

⁴⁰ *ibid*, 228

Areas) Act 1990, the Secretary of State may issue a certificate to the effect that a building will not be listed during a period of five years from the date of the certificate. Thus it is possible for the Secretary of State to determine that a whole building is not of special architectural or historic interest, and bind himself to that view for five years; but not to determine that any particular part of a listed building does not contribute to its special interest, and similarly be bound by that decision.

5.4.9 The situation with regard to determination of the need for listed building consent in England and Wales (and indeed Scotland, whose legislation, consolidated in the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, reflects that in England) emerges as anomalous. As Mynors put it in 1999:⁴¹

‘It is unfortunate that the Government’s view is that the introduction of a formal certificate procedure ... is ‘unnecessarily complex’ and ‘confusing’⁴² – the more so since just such a procedure exists in Northern Ireland.’

5.4.10 The relevant provision in Northern Ireland (where all applications are made to, and decisions made by, the NI Department of the Environment) is the Planning (Northern Ireland) Order 1991. Quoting Mynors again,

‘There is a simple procedure, whereby anyone proposing to carry out any works to a listed building may determine whether they affect its character, so as to require listed building consent (article 48). Any application to the Department for listed building consent may be deemed to be an application under article 48, and where it decides that consent is not required, it may certify accordingly. A determination under article 48 is subject to a right of appeal to the [Planning Appeals] Commission (article 48(2)).’

In practice, this formal procedure is very rarely used. Its value lies in underpinning by statutory authority the advice given by officials as to whether or not consent is required.

5.4.11 The lack of a legal power in England to determine whether or not listed building consent is needed emerged as a serious impediment to encouraging and regularising the use of management guidelines or agreements for listed buildings. It was evident that most of the agreements in existence simply ignored the issue.

5.4.12 To overcome the legal barrier, a provision could be inserted into the 1990 Act broadly equivalent to s192 of the Town and Country Planning Act 1990 (relating to certificates of lawfulness of proposed development). Such a provision would offer a means for an owner to agree with the local planning authority that works specified in an agreement do not require listed building consent. Any certificate issued, or agreement expressed to be made under the new provision would be taken as conclusive proof of the lawfulness of the works and provide a complete defence to any prosecution under the 1990 Act.

5.5 The operation of listed building consent

5.5.1 In other regulatory regimes, for example scheduled monument consent in England, or Heritage Council approval in New South Wales, works which are included in a formal management agreement automatically have statutory approval. The question has therefore been raised whether it would be desirable to introduce provisions to give works included in a management agreement the benefit of listed building consent. A variant on this idea is the approval of schedules of defined work for particular buildings, in effect a building-specific ‘class consent’.

5.5.2 This is a complicated issue. In the NSW and English scheduled monument consent regimes, or indeed for development under the Town and Country Planning Act, all work requires consent, although for some works, consent is given by a general grant variously called Standard Exemptions, Class Consent, or Permitted Development Rights. The concept behind listed building consent in England is less clear cut, or more sophisticated, depending upon one’s point of view. Consent is required for

any works that would affect the character of the building as one of special architectural or historic interest. Anything that would not by definition does not require consent. This issue is discussed in greater detail in **appendix B**.

5.5.3 What affects character is a matter, legally speaking, of fact and degree; an informed judgement based on an assessment of significance (‘special interest’) of the building as a whole and in its parts, and how that significance is expressed in the built fabric. When dealing with value judgements, some variation in interpretation by decision makers is inevitable and it is clear that, particularly with modern buildings, different people can judge the distinction between repair and alteration differently. This matters little when a cautious approach is taken to decisions about what needs consent; proposals are exposed to wider scrutiny through the formal process for the determination of listed building consent. But such caution is resource-hungry and time-consuming for all concerned, particularly where local authorities are owners, as Alexandra Road, Camden (see page 30) has demonstrated. Nonetheless, it is understandable when there is no specific power to determine whether listed building consent is needed for particular works, ie whether they would affect character.

5.5.4 One solution, if the determination of whether listed building consent is required can be put on a statutory footing, may be management agreements that determine, on the basis of an adequate assessment of significance and vulnerability, that certain maintenance works will not affect character and thus will not require consent. Such works would need to be carried out to a defined specification, or within very clearly drawn limits, even if some technical enhancement is involved. At Alexandra Road, for example, almost all of the works that have been, or will be, the subject of applications for listed building consent are works of major

⁴¹ p227

⁴² *Hansard* (HL), Debate, 29 January 1991, col 668

maintenance, which would only have an impact on character if done inappropriately. Because the building is in the ownership of the local authority, the listed building consent procedures are more complex than for private owners, with an extended timetable. If the Government Office were able, on the advice of English Heritage, to certify that specific works of this kind did not require consent, the ongoing delay and bureaucracy that frustrates tenants and managers could be reduced and the process made more efficient.

5.5.5 Elsewhere, for example in Ipswich, such matters are generally dealt with on the basis that, if done appropriately and in a way agreed between the parties, consent is not required. This is on the basis that the effect on character will be neutral, although physical intervention is involved. Internal alterations within agreed limits could be dealt with similarly, as they already are at the University of Sussex or Newcastle Civic Centre, for example. Where such arrangements are in place, despite the uncertain legal status, they appear to have produced an outcome with which all involved seemed to be content, both in terms of process and product. Established working relationships and knowledge undoubtedly assisted in this, but were not necessarily disrupted by the inevitable changes of personnel. The existence of the working team, and the documentation, minimised the discontinuity that a change of individual could cause.

5.5.6 In order to be adopted on a wider basis, such an approach would clearly need safeguards. If management agreements could become a binding means of determining whether listed building consent is needed and, particularly, defining works for which it is not needed, then publicity or consultation becomes necessary. There would also be a need for a right to challenge, in effect, where the line about what is a material or significant impact on character is being drawn (which, of course, exists now). Review after a fixed interval, say five years, would be essential, as would monitoring and the submission of full details of maintenance specifications, if not

available at the outset. All of these provisions are features of current good practice.

5.5.7 The concept of deciding that, for example, alterations to office partitioning within agreed rules does not affect character, but that anything outside those parameters will require an application, is both logical and normally provides building managers with the certainty they need. That certainty can be further extended through defining character and significance, and setting out criteria that should inform proposals for change, extension, and indeed new building within the curtilage. The agreements for the Peabody Estate in Islington and DLO Bicester, for example, have already done this, as, implicitly, have those agreements for modern buildings that define the original design philosophy. Proposals brought forward within those criteria, although requiring consent, should be acceptable, especially if developed through constructive dialogue between the applicant and the statutory authorities.

5.5.8 There was no enthusiasm among interviewees during the study for extending the concept of ‘class’ or ‘standing’ consent beyond the provisions that currently exist for granting listed building consent subject to the approval of details, provided the proposals are sufficiently defined for their impact on character to be assessed. There is simply no rational or justifiable basis for granting consent for works whose impact on character is uncertain. Schedules of consent for defined types of works in specific types of buildings would necessarily have to pre-empt that those works had no impact on special interest, whatever the context in which they were undertaken. It is not hard to see that particular works carried out without detriment in one part of a building might have a considerable impact on character or appearance in a more sensitive location elsewhere in that building, or in another building of a similar type.

5.5.9 However – and this is an issue that clearly requires further investigation – it is clear that there is very considerable variation in practice between planning authorities on the degree of detail

required at the time of submission of an application for listed building consent. Since this study was undertaken, *Heritage under Pressure* has confirmed that the time taken by local authorities to determine applications affecting the historic environment is often extended by the effects of registering applications without ensuring that they include sufficient information, leading to delay and frustration for all involved. The evidence appears to indicate both shortages of specialist expertise and lack of appropriate training for generalists in the local planning authority. This appears to be an area where more detailed policy guidance would be helpful and could assist in promoting greater consistency between authorities, whilst recognising that, ultimately, these are matters on which only the courts can make definitive rulings.

5.6 The need for government policy to encourage positive management of listed buildings

5.6.1 If policy and legislation for listed buildings were brought into line with that now proposed for SSSIs, and the positive approach to management of the historic environment recommended in *A Force for Our Future* were adopted, a revision of PPG 15 might open thus: “The Government’s aim has been to emphasise the importance of the positive management of listed buildings: in particular

- to improve the procedures for listing buildings of special architectural or historic interest, and emphasise the importance we attach to them;
- to develop further the constructive relationship between owners and managers of listed buildings and the officers of the conservation agencies;
- to provide better protection for listed buildings from operations which damage, or are likely to damage, their special interest, and to secure management, by both public and private landowners, which contributes to the conservation of the special features of individual listed buildings.

Throughout, this Guidance emphasises the significance of listed buildings and the importance of securing their protection and conservation, and (where practicable and appropriate) their restoration and enhancement: the value of constructive dialogue, listening carefully to views, and the provision of support both through advice and, where appropriate, through financial assistance: the need for public bodies to be fully accountable in the actions they take on, and in respect of, listed buildings and the expectation that information about listed buildings will be freely available.”

5.6.2 This is, of course, the quote at para 5.1.2⁴³, with ‘listed building’ substituted for ‘SSSI’, and a few consequential amendments. But this, or something like it, will be necessary if a positive or active approach to managing listed buildings is to gain momentum, even if the legal barrier is removed and there is obvious resource advantage in doing so. The SSSI statement crucially emphasises ‘the constructive relationship between land owners and managers and the officers of the conservation agencies’. This is at the heart of successful management agreements, and must lie at the heart of achieving the twin objectives of improving conservation standards and increasing competitiveness. The lack of clear government support for the current English Heritage guidance on management guidelines has contributed to the negative perceptions of positive management. This has, to some extent, been remedied by the commitment in a *Force for Our Future* to research the current impact of and future potential of management agreements and guidelines as important management tools; and the clear statement that the Government looks to local authorities ‘to adopt a more positive approach to the management of the historic environment within their area’. But until the legislative problems surrounding determination of the need for listed building consent are resolved, however, it is hard to see how matters can be otherwise. It is hoped that these issues can be addressed in the context of the current review of heritage protection legislation.

5.7 The issue of resources

5.7.1 The input of professional resources required to produce a management agreement as currently defined is modest. All participants interviewed during the study felt that, for the listed buildings concerned, an agreement offered good or very good value for money, with a considerable net saving in resources compared with the likely scenario without one.

5.7.2 Thus, contrary to expectations, resource implications for the statutory authorities did not emerge as a significant barrier to developing management guidelines. This is clearly only likely to hold true for the original ‘target group’ of buildings that are characterised above all by large size and dynamic use involving frequent change, although, as yet, agreements are in place for only a small number of these. It is clear, however, that management agreements must continue to be, at entry level, simple in scope and content, yet firmly based in assessment of significance, if they are to remain cost-effective.

5.7.3 To extend the concept of active or positive management of listed buildings beyond those where, at worst, the investment of professional time by the statutory authorities would not be increased by a pro-active stance would clearly require a significant increase in public sector resources. In the present climate, therefore, the idea that owners might have a right to seek a management agreement is impracticable. Nor would management agreements have the same attraction for owners as their SSSI equivalents, namely subsidy for repair or enhancement. The only current exception (on both counts) is Inheritance Tax Exemption, where favourable taxation treatment, although in a very limited context, is dependent upon undertakings about maintenance and management, often of an entity consisting of both land and buildings.

5.7.4 The duty of ‘Best Value’ now imposed on local authorities is intended to improve the quality of local services and the efficiency and economy with which they are delivered. It involves challenging the purpose of a service;

comparing performance with other councils through benchmarking; consulting the community; and competition for delivery, where this is appropriate. Best value in conservation services is as yet in its pilot stages, but it seems likely to encourage management agreements where resource savings/ efficiency gains are likely to result.

5.7.5 So long as qualitative indicators are incorporated (recognised as important in the Ipswich conservation best value pilot), and there is community support, best value may indeed encourage, in some authorities, a more positive, pro-active approach to managing the historic environment, particularly listed buildings. It is important, however, that there are common, local authority-wide aims and objectives behind best value and that the process is not undertaken in watertight compartments. There must, for example, be a clear link between indicators for historic environment conservation, and indicators for the management of the authority’s own listed buildings and its housing stock, as the case studies for Alexandra Road and Newcastle Civic Centre have suggested.

⁴³ DETR draft code of guidance for the management of SSSIs, produced in anticipation of the Countryside and Rights of Way Act 2000

6

General conclusions

6.1 Management guidelines, though not widely adopted, have already clearly proved their worth in promoting constructive, ongoing dialogue and mutual trust and understanding, between building owners and the statutory authorities. It is that process, rather than the formal agreement, which is important. In a sense, therefore, guidelines define an ideal approach to the positive management of listed buildings.

6.2 Such constructive dialogue, founded on a mutual understanding of the character and significance of a listed building and its vulnerability to harm, creates a climate in which minor changes and maintenance are planned with due respect for the character of the building. This, in turn, encourages local authorities to interpret such matters as not affecting character and thus not requiring listed building consent. Defined areas of buildings can reasonably be taken out of listed building control, thus in effect restoring rights to make changes to them that are, for planning purposes, permitted development, without the need for listed building consent. Whilst demanding an initial investment of resources, this can bring savings of time and cost for all parties. The listed building consent process of formal control is then limited to major changes, where wider scrutiny is justified.

6.3 Management guidelines or agreements thus have the potential to make a substantial contribution to ODPM's objective of streamlining the regulatory regime of listed building control by increasing the efficiency of the consent process and making it more

predictable. The major barrier to their widespread use is the current lack of a statutory power to determine whether or not works to a listed building need listed building consent. Without it, management agreements cannot offer the degree of certainty and clarity that potentially makes them attractive to owners or, indeed, acceptable to lawyers. This barrier could be removed by an order under the Regulatory Reform Act 2001.

6.4 The lack of a statutory power to determine the need for listed building consent for proposed works would also seem to encourage a precautionary approach by building owners and managers to seeking listed building consent, and particularly in local authorities in deciding whether an application is required. Many such applications, which increase the numbers going through the consent process and add to the local planning authorities' caseload, could prove unnecessary if the need for listed building consent for the works proposed could be determined at the outset. Combined with the use of management agreements where appropriate (ie for the target group of buildings outlined in the 1995 guidance note *Developing guidelines*), the potential reduction in the numbers of applications requiring determination by local planning authorities could clearly help to streamline the system and make it more efficient. The achievement of this desirable objective would, of course, also depend upon the local authorities having the necessary expertise to make informed decisions.

6.5 Conscious of the implications of the Human Rights Act, it is also necessary to emphasise that the process of establishing a management agreement, particularly if, in the future, it becomes binding, must be transparent. The process will need to take all material interests into account, normally through consultation, and the result must be in the public domain.

6.6 There is no logical basis for granting listed building consent for works that are likely to affect character, but which are not sufficiently defined for their impact on character to be assessed; nor was there any encouragement from respondents during the study for developing such an idea through the use of 'class consents', or building specific schedules of consent. However, management agreements can usefully set out parameters for change that is likely to be acceptable subject to listed building consent, thus further reducing uncertainty for owners. In addition, there may be an issue in terms of differing practice amongst local authorities in their willingness to grant listed building consent subject to later approval of details.

6.7 There has been sufficient experience of drafting and using management guidelines now to facilitate the preparation of new guidance (and possibly an outline model document). Respondents to the recent study would welcome such guidance. Key aspects of good practice that are emerging in the preparation of guidelines or agreements include consultation with interested third parties at draft stage, and review after no more than five years. The practicality of producing new national guidance before the legal impediment has been removed, however, must be questionable.

6.8 It is important that the format and content of management agreements or guidelines are kept short and simple, whilst recognising the need for the decisions they contain to be grounded in a thorough understanding of the significance of the listed building concerned, as a whole and in its elements, and its vulnerability to

detrimental change. Such simplicity is easier to achieve with later 19th and 20th century listed buildings than multi-period ones.

6.9 On this basis, management agreements potentially can bring about a net saving of resources for all parties for the target group of large later 19th or 20th century buildings, whose form and architectural history are relatively straightforward and whose use is essentially dynamic, resulting in constant pressure for adaptation and change.

6.10 With modern buildings, it is crucial to distil the design philosophy and the basis of decisions about materials and detailing, etc whilst the original design team is still available to consult⁴⁴. One significant difference between traditional buildings and distinguished modern ones is that, whilst the former tend to use a well-known and understood language of use of materials and detailing, listed modern buildings tend towards a language either unique to the building, or to the design practice concerned. It is important to learn that unique language and to understand what was sought, as well as what was achieved, for the significance of the building encompasses both.

6.11 Provided that local authorities have experienced, qualified conservation staff, there appear to be no specific training requirements for planning authorities associated with the preparation and use of management agreements. But the lack of such staff, or the effective deployment of their skills, in a significant number of planning authorities is one of the major problems in the field of heritage conservation, emphasised in *Power of Place*⁴⁵ and more recently by *Heritage under Pressure*, a report for English Heritage on local authority historic environment resources. A model agreement and updated guidance, distilling current best practice and experience in developing management guidelines, would, however, be both desirable and appreciated – although drafting such a document whilst the legislative impediment remains is as problematic as it was in 1995.

6.12 It is clear, however, that many responsible for the maintenance of listed buildings, especially the type of large and complex building likely to be the subject of a management agreement, are in need of guidance, which can often best be provided through the process of developing and instituting an agreement. The need has become, if anything, greater with the growing role of facilities managers, and the rapid rate of change of building services installations. In general terms, the certainty that many owners seek and which would contribute greatly to ODPM's objectives for streamlining the listed building consent process, can arguably best be achieved by more positive, constructive approaches to the management of listed buildings, as well as by encouraging greater consistency and clarity in decision-making by local authorities.

⁴⁴ As the example of the floor ducts at the Willis Building (8.1.8) emphasises

⁴⁵ Recommendation 13 and quotes from respondents, p34

7

Recommendations

7.1 The wider context

7.1.1 Following the welcome first step in *A Force for our Future*, which confirmed (in para 1.3) that ‘the Government looks to [local authorities] to adopt a more positive approach to the management of the historic environment within their area and the monitoring of its condition’, Government policy towards listed buildings needs overtly to encourage their positive management. This should be founded on constructive relations between all concerned and ready access to information, in line with policy for the natural environment and, increasingly, other elements of the historic environment. A common intellectual framework, with procedures and criteria as far as possible aligned, would contribute to the quality, transparency and efficiency of managing the historic environment as a whole. The wider heritage protection legislation review now provides an opportunity to achieve these objectives.

7.1.2 If they are to be achieved, all local planning authorities need to be adequately resourced to deal with listed buildings, in terms of both the quantity and range of specialist skills required. This issue is being addressed by current studies, from which specific recommendations will doubtless emerge.

7.2 Listed building consent

7.2.1 Streamlining the listed building consent process generally can best be achieved by introducing greater clarity, certainty and transparency into the decision-making process. This requires:

- Local authorities (and the Secretary of State in default) having a formal power to determine whether listed building consent is required for specific works, as is the case with virtually all other comparable regulatory regimes. This could be achieved by an order under the Regulatory Reform Act 2001, inserting a relevant provision in the 1990 Act, and should be pursued at the earliest opportunity.
- More specific guidance on the principles that determine the nature of work for which listed building consent is needed, along the lines of **appendix B** of this report. This could be included in the new PPS Guidance document.
- Guidance on the use of conditions attached to listed building consents, setting out what level of detail should be required as part of the application (ie sufficient for the impact of the proposed works on the special interest of the building to be fully assessed) and what can reasonably be conditional upon the grant of consent (details of the methods to be used)⁴⁶. This, too, could be included in the new PPS Guidance document.

7.3 Listed building management agreements

7.3.1 Management agreements have the potential to streamline the listed building control regime, increasing efficiency and predictability, and thus helping to remove barriers to competitiveness, particularly in the context of the positive management of certain large buildings in dynamic use (the original target group proposed in

the 1995 English Heritage guidance). However, the effective use of such agreements is dependent on local planning authorities having a formal power to determine whether listed building consent is needed. As and when such a power is in place, their use should be encouraged by the new PPS guidance.

7.3.2 English Heritage should then produce a practice note on the use of management agreements, based on the conclusions of this study, including a model agreement.

⁴⁶ The High Court's judgment in the case of *R v Secretary of State, ex parte Bath and North East Somerset DC* confirmed that the question of whether an application has been validly made (in this case, whether it contained a sufficient amount and degree of detail) is not a matter solely for the local planning authority. The applicant had appealed to the Secretary of State against the council's failure to determine the application on the basis that the level of detail required to register the application as valid was unreasonable.

8

Case studies

8.1 The Willis Building, Ipswich

Visited 14 August 2000, with Bob Kindred of Ipswich Borough Council and Peter D Smith and Alan F Say, then respectively Managing and Resident Directors, Establishment Services, of the Willis Group.

8.1.1 The building: An office building designed by Foster Associates in 1970-71 for the then Willis Faber in Friars Street, Ipswich, and constructed in 1973-5. Three storeys high, concrete framed, with a bronze tinted glass wall following the curved perimeter of the site; turf-covered flat roof, with a glazed rectangular pavilion and perimeter hedge. Open-plan offices around a central atrium, with flights of escalators serving all floors. The architects conceived the design of the interior as a whole, with a distinctive green and yellow colour scheme. There was originally a swimming pool in part of the ground floor, now floored over. Listed grade I on 25 April 1991.

8.1.2 The agreement: A brief document (9 pages plus appendices) dated 22 February 1992, whose primary objective was 'to provide clarification as to what proposals for the building may not require listed building consent and/or planning permission' (para 2.1). Regular review was envisaged, and was about to take place for the first time. It set out general principles, acknowledging that the interior of the building had changed since 1975, would continue to change, but that every effort should be made to ensure that future works 'do not undermine the character of the building' (3.1). Proposals requiring

listed building consent 'will need to be carefully considered within the context of the original design philosophy' (3.3), but there was no overt attempt to define it, other than that alterations 'should be conceived with the elegance and cleanliness of line of the original and should respect the original colour scheme' (15.1). Rather, the document set out agreed positions on aspects of the fabric, including partitions, floor coverings, lighting and ceilings, the boiler room, perimeter glazing and the roof (5-13). The basement was agreed to be of 'little intrinsic special architectural character' (7). The curtilage was defined (14).

8.1.3 Circumstances of drafting:

The building was listed as a result of a proposal to convert the swimming pool area to office space. The owners were naturally concerned about the limitations on use that might stem from the listing, given that, as insurance underwriters, they needed, for example, the flexibility to change internal arrangements rapidly to bring together disaster response teams. A meeting on 15 May 1991 between the owners, Ipswich Borough Council (Bob Kindred) and English Heritage (Andrew Derrick and Diane Chablo) to clarify the situation led to the idea of a memorandum of understanding, which was produced over the following 9 months. This was the origin of the idea of 'management guidelines'. Ipswich and English Heritage took the lead in drafting it.

8.1.4 Resources involved in the drafting: Local authority: 1.5 days, of which 1 day Chief Conservation Officer (the latter accurate). English Heritage and Willis probably of the same order. Willis involved Linklaters and Paines (solicitors) and Weatherall Green and Smith (surveyors).

8.1.5 The agreement in practice:

The Willis building is (for the UK) unusual in being commissioned by a company for its own use, and remaining in owner-occupation. The agreement acknowledged that the building had been well maintained (15.2). It continued to be a credit to its owners; investment decisions were made on the basis of long-term value, not short-term expediency, or meeting minimum landlord requirements. Staff, too, were protective of the building, and the quality of working environment that it provided. The managers felt that the objectives of the management agreement would be much more difficult to achieve if ownership was split from occupation, and if the building were multi-occupied.

8.1.6 The agreement had provided a framework within which constructive, ongoing dialogue, and mutual trust and understanding had developed between the building owners and the statutory authorities. It was that dynamic, ongoing process – people working well together – that was important, rather than the limited scope of the written agreement. As well as showing expertise and professionalism in conservation, the Council 'comes out and talks to business'. For the building managers, the guidelines were also helpful internally, in preventing local initiative thwarting consistent building management. The Council's ongoing interest in the building was seen as positive, in contrast to the City Corporation re 10 Trinity Square (Willis London Headquarters).

8.1.7 This constructive dialogue created a climate in which minor changes and maintenance were planned with due respect for the character of the listed building, and discussed and agreed between people with an established working relationship and a strong degree of common purpose. This had in turn encouraged the Council to



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interpret these matters as not affecting character and thus not requiring listed building consent. All parties agreed that this had led to savings of time and cost for all involved. Many of the matters, like finishes in toilets, or health and safety access requirements, could not have been foreseen when the agreement was drafted, so it was impractical to try to be comprehensive; benefit was seen in keeping it simple.

8.1.8 On this basis, the LBC process was then limited to major changes, where wider public scrutiny of proposals was justified. LBC applications since listing, all subject to prior discussion and all approved, have covered:

1992 Replacement and additional rooftop plant.

1994 Alterations to reception layout to revert to original concept, conversion of pool to office space.

1997 Conference suite on third floor.

1999 Full access floors and replacement of carpeting

There is no doubt that the involvement of the original architects from 1994 onwards had been particularly helpful in producing sensitive proposals for change, particularly to the pool and floors. The list description refers, for example, to the parallel floor ducts, reflecting the pattern of lighting in the ceilings. In replacing the floors, it had been accepted that this would not be replicated, primarily because the architects were able to say that, had the technology been available at the time, the floors would have been undifferentiated.

8.1.9 Experience to be reflected at the first review: The agreement was reviewed and revised in September 2000. Changes were largely of detail, updating references and reflecting decisions made. The principal addition in Appendix 5, detailing changes prior to listing, and subsequent changes to the building outside the guidelines,

included the design philosophy behind them. The task of updating took Bob Kindred 2 hours. There was no statement of the original design philosophy of the building as a whole, since this was fully defined in the *Architectural Review* (September 1995), and G Bramante, *Architecture in Detail: The Willis Building* (Phaidon, 1993). A bibliography may be added at the next review.

8.1.10 Training/guidance needed: None in relation to this agreement.



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8.2 The Alexandra Road Estate, LB Camden

Visited 12 September 2000; followed by a meeting with:

- Kevin Murphy, inspector, and Donald Wahlberg, architect, North and North-East London Team, English Heritage
- Sadhbh Leonard, Senior Conservation and Urban Design Officer, LB Camden
- Alastair Kinghorn, District Technical Manager, Housing, LB Camden.

8.2.1 The building: The Alexandra Road Estate, housing 520 families, was designed by Neave Brown of Camden Architects' Department in 1968 and built in 1972-78. Long parallel blocks follow the sinuous curve of the east coast main line, the dominant materials being white board-marked concrete and render. The northern blocks have stepped elevations falling towards a pedestrian street, Rowley Way, with garaging on levels below. To the south is

a landscaped park and play areas, bounded by three linked terraces of three-storey houses. A community centre above the boiler house for the district heating system stands at the east end of the site. The estate was listed grade II* on 18 August 1993.

8.2.2 The agreement: The final draft was a substantial document of 94 pages, dated 20 March 2000, between Camden, English Heritage and South Hampstead Housing Co-operative. Its primary objective was 'to clarify which works to the estate need listed building and/or planning permission, and which do not.' (3.1). Regular review was envisaged 'in any case within two years of the date of this document'. It set out general principles, particularly the roles of the parties (4), the uses of the buildings and their conservation status (5), and practical responsibilities for maintenance (6). The control of internal alterations was considered in Section 7, and exteriors in Section 8, with an 'occupants' guide' (9), but

there was no coherent attempt to discern and summarise the design philosophy and language. Isometrics of dwellings were provided, but without commentary. The concept of 'heritage flats', whose interiors are to be conserved in their original form, is introduced in Section 10. The majority of the document was taken up by appendices, including schedules of estate drawings, LBC consents and applications, and approved repair methods; and a particularly important 'Summary of technical experience from estate action'.

8.2.3 Circumstances of drafting: Drafting had been complicated by changes in the management of the estate. Day to day management and minor repair was then the responsibility of the Co-operative; Camden remained as freeholders responsible for major works (structure, roofs, district heating). Such works had been handled by Camden's Building and Development Services group, but that

had been run down prior to winding up in September 2000.

8.2.4 Consultation with residents and some 70 'right to buy' leaseholders was handled by the Co-operative, through its newsletters, management meetings, and 'core committee' of tenants. The Government Office for London had contributed to the guidelines, and the 20th Century Society, DOCOMOMO and Camden Civic Society were consulted on a draft (11.2).

8.2.5 Resources involved in the drafting: Changes of staff responsibilities made it particularly hard to make meaningful estimates. English Heritage contributed about 6-7 person days; Camden rather more.

8.2.6 The agreement in practice: As a final draft, not yet formally adopted, it was too early to say how it would work in practice, although to a large extent it formalised existing working relationships and set down what had been learned by trial and error in the repair and management of the estate. The Co-operative would not formally adopt the guidelines unless and until the extra costs of maintaining listed buildings to conservation standards are reflected in management allowances and/or a sinking fund to cover major periodic items. These extra costs were being assessed by quantity surveyors and M&E engineers. A related issue was the need to clarify lines of demarcation of responsibility between Camden and the Co-operative.

8.2.7 English Heritage, particularly, was encouraged that the process of preparing the guidelines had led to the parties talking constructively. Whilst much had already been learnt from experience, there was a greater need for advance planning, and for research to which EH could contribute, or integrate into its national research programmes. Repair of the concrete and control of graffiti remained problematic. Tenants were frustrated by the lengthy LBC application process that must proceed works, a consequence of the building being local authority owned, grade II* and in London. Two applications had been approved before the preparation of the document, eight applications were concurrent with it (11.6.4) and

at least two more were anticipated in the future (11.6.5). But the guidelines did provide standard answers to 'Frequently Asked Questions' about what could and could not be done.

8.2.8 Unlike many modern buildings, particularly public housing, the special interest of Alexandra Road clearly embraces the interiors of the dwellings. By the time of listing, most had suffered some degree of alteration and policing change was difficult, both practically and politically. The pragmatic approach taken in the guidelines was to define the structure as inviolate, but to accept that defined minor changes, to kitchen units and decorations, did not require listed building consent. However, the concept of retaining or restoring a number of 'heritage flats' was introduced, where volunteers would agree to maintain the interiors in precisely their original form, with financial help and on condition that limited public access would be available three days per year (10).

8.2.9 The possibility of developing a range of acceptable alterations to the main dwelling types had been raised. As with repairs involving sufficient modification to require listed building consent, it would be possible to obtain consent to alter all relevant elements of the estate, even if it is intended that the works be phased, or in the case of internal alterations, or the provision of trellis to certain private balconies (to be the subject of a forthcoming application), to be optional. Unless special conditions are imposed, once such consents had been partially implemented, there would be no time limit for completing the remainder.

8.2.10 Best Value has yet to impact on the arrangements, but there is concern that it will involve more quantitative rather than qualitative standards.

8.2.11 The Alexandra Road Estate in context: The estate forms the major part of a conservation area, designated in 1996, that encompasses the whole area redeveloped by the Council in the 1970s. The other buildings are or were of distinctive architectural quality. However, the integrity of the ensemble and the setting of some of the listed

buildings has been seriously compromised by crude alterations and extensions to convert Evans and Shalev's centre for physically handicapped young people into a nursing home. These were approved in 1998 and were nearing completion during the visit. A draft Conservation Area Statement was put out to public consultation in 2000.

8.2.12 Experience to be reflected at the first review: As the guidelines had only recently been completed and had yet to be formally adopted, it was too early to say. However, greater explanation of the design concept and linkage between text and illustrations would probably be desirable in a future review.

8.2.13 Training/guidance needed: An updated guide to drafting guidelines would be useful, amongst other things defining the roles of the players.

8.3 The University of Sussex at Brighton

Visited 29 September 2000, and joined the 37th meeting of the Listed Buildings Group, on that occasion consisting of:

- Richard Morrice, Inspector of Historic Buildings, English Heritage
- Rob Fraser, Head of Conservation and Design, Brighton and Hove Borough Council
- Pete Johnson, Development Control, Brighton and Hove Borough Council
- Rob French, Special Projects Manager, Buildings and Support Services Division, University of Sussex (Secretary and chair of the meeting)
- Morag Stalker, Space and Planning Manager, Building and Support Services Division, University of Sussex.
- The Chair, Mr P Cowling, of the University, was absent.

8.3.1 The buildings: The core of the University of Sussex was built in a parkland setting to the designs of Sir Basil Spence between 1959 and 1969. The buildings have a consistent design language, and are characterised by the use of red brick in combination with board-marked concrete; segmental concrete arches are used internally and externally. Finishes are generally of high quality, including purpose-made oak joinery and furniture. On 31 March 1993, ten buildings were listed, as follows:

Falmer House	I
The Meeting House	II*
The Gardner Centre	II*
The Library	II*
Arts Block A	II*
Arts Block B	II*
EAPS Block 1 (now Engineering 1)	II*
MOLS Block 1 (now Chichester 1)	II*
MAPS Block 1 (now Pevensey 1)	II*
MAPS Block 2 (East and west wings only; now Pevensey 2)	II*

8.3.2 The agreement: A very brief document (4.5 pages plus annexes), [circa] January 1995, but undated, whose aim was ‘to agree principles with the University of Sussex in order to ensure that the need for the care of historic buildings does not unduly inhibit the need for works of alteration in the interests of efficient functioning of the University, whilst at the same time ensuring that due regard is given to the architectural and historic interest of the buildings’ (para 1.1). An introduction set out the background and statutory considerations, emphasising that the notes were ‘for guidance only’ (1.3). The predominant character of the buildings was summed up in Section 2. Sections 3 and 4 set out works for which LBC would usually be required or not required respectively, based on a full joint inspection. In summary, works to exteriors, or to Falmer House and the Meeting House, would normally require consent: alterations to partitions in the other buildings within defined limits, and any alterations in specified basements, would not. Specific guidance from the LPA would be sought for works to lecture theatres, circulation areas, etc (5). It was agreed that no other buildings were protected by inclusion within the curtilage of the listed ones (6), but the document drew attention to the importance of their setting (7) and the treatment of the spaces between them. The guidelines were to be reviewed at five-yearly intervals ‘as the perceptions of all parties may change’ (8.1), and there was provision for an annual monitoring visit, if compliance was not monitored through the Listed Buildings Group (8.2). The establishment of a comprehensive archive ‘would be helpful’ (8.4), to which records of change would be added.

8.3.3 Circumstances of drafting: Brighton Borough Council began to discuss designation of the campus as a conservation area after the 1991 Association of Conservation Officers annual conference was held at the University. Designation was not pursued because of concern by the University about the consequences of

the controls on lopping and felling of trees. However, the University already had, and has retained, a ‘site team’ (an executive group of its Estates Committee), responsible for the management of the built environment of the campus, including design issues. The guidelines followed about a year after the buildings were listed. From the Council’s point of view, they provided a framework for, and justification of, its specific decisions. The Listed Buildings Group was set up at the same time, with a membership drawn from the University’s Estates Division, Brighton Borough Council and English Heritage. Brighton and Hove Council took over the role of Brighton BC when the current unitary authority was formed. There was no wider consultation on the content of the guidelines, but they were later adopted as special planning guidance.

8.3.4 Resources involved in the drafting: The agreement was drafted by Richard Morrice of English Heritage. There was much discussion about legal status. In all, perhaps about five person days was spent by each of the parties in finalising the agreement itself.

8.3.5 The agreement in practice: It is in the nature of academic buildings to be subject to constant change in the way that they are used. Financial pressures meant that the use of space had to be maximised, and the budget for maintenance and alteration was limited.

8.3.6 The agreement codified and confirmed a process of constructive dialogue between the University, English Heritage and the planning authority already established through the Listed Buildings Group. It provided a framework for making decisions based on comprehensive knowledge and an over-view of the building group as a whole. The minutes of the meetings recorded precedents, which contributed to consistency, even through personnel might change over time. For the statutory authorities, the arrangements, based around some five meetings of the listed building group each year, made a large caseload

manageable and also smoothed the handling of planning applications for works to the campus as a whole.

8.3.7 All considered that the trust established through a long term relationship was essential to the successful working of the guidelines, and brought considerable savings of staff time and resources: ‘the time spent is justified by the outcome’. Prior discussion and a common understanding of the special interest of the buildings helped to ensure that applications were acceptable without the need for amendment. Whilst another listed building in the Borough presented similar problems of frequent change, guidelines would not have been useful, because of the confrontational, unco-operative character of the owners. The building managers also found it useful in setting out the need for statutory consent for their ‘customers’ within the University. Indeed, the only significant problems that had arisen had been due to individual departments attempting to, or being encouraged to, by-pass the established arrangements.

8.3.8 Observation of the meeting generally confirmed the participants’ views, but some issues clearly took a long time to resolve. The longest

running single issue seemed to be handrails intended primarily to prevent students sitting on the parapets at the Library entrance. It has been discussed for 4-5 years, and temporary scaffolding had been in place for two years. The extent to which this was due to problems in agreeing a solution acceptable in both listed building and health and safety terms, rather than, say, lack of resources to proceed, was unclear; but lack of input of the appropriate quality and quantity of design skills seemed likely. The reconciliation of the special architectural and historic interest protected through listing with changes required by recent legislation (eg the Disability Discrimination Act, Health and Safety regulations) to intensively used public buildings clearly presented the University with considerable difficulties, not least because its financial resources were constrained. There was an observable, and inevitable, tension; but its existence underlined the importance of these established procedures for avoiding conflict.

8.3.9 The Twentieth Century Society had attended occasional meetings of the Listed Building Group, and been reassured by them. It seems content

with the threshold for requiring an LBC application, thus triggering wider consultation.

8.3.10 The buildings in context: As at Alexandra Road in Camden, the management agreement in effect covered the spaces between the buildings as well as the buildings themselves, but here listing led to the idea of designation of a conservation area being dropped. External alterations to unlisted buildings that affect the setting of listed buildings were, however, designed and determined taking into account their effect on that setting.

8.3.11 Experience to be reflected at the first review: At the time of the visit, the first review was some nine months overdue. Little change was anticipated, for the document’s simplicity was seen as crucial to its success. A key issue was the future management of the building archive, including the need to index the minutes of the Listed Building Group meetings, and applications that have been approved.

8.3.12 Training/ guidance needed: None noted by the participants.



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8.4 The Civic Centre, Newcastle Upon Tyne



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Visited 25 October 2000 with Peter Derham, Historic Buildings Officer, Newcastle City Council; separate meetings with Ian Martin, Government Office for the North East, and Rudi Imhoof (Civic Centre Manager), Shaun Trott, on 23 November 2000.

8.4.1 The building: The Civic Centre was designed from 1950, fulfilling a concept that originated in the late 1930s, but was deferred because of the war. The building was designed by the City Architect, George Kenyon, and built 1956-68. The civic suite forms the west side of a courtyard, with the elliptical council chamber attached to the west front. The north block is taller, 12 stories, with a tower and carillon at the west end. The building shows significant Scandinavian influence, and is notable for the high quality of its materials and craftsmanship, and the integration of artworks, both externally and in the circulation, public and civic areas within. It was listed grade II* in November 1995, as a result of reaction to replacement of the main

lift doors, but on the strength of assessment emerging from the post-war listing review.

8.4.2 The agreement: Three documents existed:

1. *Listed building management guidelines*, a three page document that set a framework for defining the special interest of the Civic Centre, to 'streamline the Listed Building Consent Process', 'remove uncertainty about what works will or will not need listed building consent', and integrate the LBC process into the management of the Civic Centre. It identified the setting, the exterior, and key interiors (about 20% of the total) as 'sensitive areas', where works that would affect character required LBC⁴⁷, and other works that did not, including 'changes in the spirit of the original building and consistent in character with the existing offices and [associated] toilets'. The DoE [now ODPM], advised by English Heritage, was seen as the final arbiter of whether consent was needed. Provision

was made for annual review. The document ended 'It will be necessary for the final guidelines to form an important point of reference in the consideration of the corporate management of the Civic Centre'.

2. A *'description and definition of the building's special interest'*, anticipated by document 1 and prepared by Peter Jubb (Peter Derham's predecessor) in February 1997 (14 pages). Its aim was to 'describe and define [the] special architectural and historic interest so that management decisions that have to be taken in connection with the maintenance, repair and alteration of its fabric, fixtures and fittings can be as well informed as possible'. This 'archive' acknowledged the contribution of members of the original design team (1), outlined the design philosophy and context (2), going on to explore plan form (3), structure and external materials (4), internal finishes (5), services (6), and fixed and decorative works of art; and ended with a note on main alterations 1968-96 (8). Since much of the original documentation had been dispersed, appendices A-W brought together key documents – drawings, bills of quantities, contemporary publications, etc – a base archive for the building (originals were about to be transferred from City Design).

3. A set of floor plans defining two levels of sensitivity of internal spaces, and *inter alia* defining the office spaces as not sensitive.

8.4.3 Circumstances of drafting:

The archive was 'produced in response to the listing' of the building, during 1996 (the sensitivity drawings were dated July) and was dated February 1997. The documents were discussed and agreed in the conservation team and with the Civic Centre Manager, and externally with English Heritage alone. GO-NE, although supportive of the idea of an agreement, were not consulted and only received a copy in the course of this study.

⁴⁷ It is, of course, legally incorrect that works affecting the setting would require LBC

8.4.4 Resources involved in the

drafting: Unknown, since those originally involved had retired or moved on.

8.4.5 The agreement in practice:

The agreement effectively defined internal areas where listed building consent was or was not needed for change; and within those areas where consent was needed, defined the character, the special interest, that must be respected. It therefore set a consistent framework for conservation involvement in, and influence over, change, and necessarily limited that influence to areas deemed to be 'sensitive'. It certainly helped to defend sensitive areas against pressure for *ad hoc* change, whether formal (through the Civic Centre Manager) or informal, through local initiative. To this extent, it was a success, and fulfilled expectations. It had provided a consistent basis for decisions despite changes of post holder, and provided an instant briefing for new players. For GO-NE, it was welcomed as eliminating the trivial applications that followed listing (some for works which almost certainly did not need lbc, such as a temporary post and rail fence in January 1997); and for ensuring that applications were submitted in a form for which consent could be given, because of the basis of understanding of its special interest that existed, and the prior involvement of English Heritage. This both saved resources and speeded up handling.

8.4.6 In practical terms, the Civic Centre Manager, or his nominee and the Historic Buildings Officer met to discuss proposed works every six weeks (as set out in Document 1). In contrast to the University of Sussex, the meetings did not involve English Heritage, who only became involved if an LBC application (to the Secretary of State, via GO-NE) was proposed for works affecting the exterior, or a 'sensitive area'. Greater English Heritage involvement was thought to be desirable, but was limited by their resources.

8.4.7 There were different perceptions of the nature of this process. In the view of the conservation team, these meetings had not led to shared understanding and objectives, a deeper

appreciation of the qualities of the building. Rather, they provided a structured framework for conflict resolution; the management team had 'not shifted position'. Pressure for change that would be detrimental to the special interest of the building continued, for example to the paving of the 'processional way' (eg to replace clay paviors with a flexible, asphalt-based material impressed in a brick pattern, the better to withstand coach traffic) and to the furnishings of the civic suite. Over the latter there was, of course, no statutory control, yet from the outset they had rightly been seen as very important to the ensemble. The management team, however, saw the process as effective rather than negative, and expressed pride in the listed status of the building. Their task was complex. The buildings had to be sensitively reconciled with the needs of today, and public expectations of, for example, disabled access; the fabric, intensively used, needed to be maintained and services upgraded; and all this had to be done to clear timetables and within the tight budgetary constraints prevailing in local government. They were helped by a more unified management structure, which encouraged a consistent corporate identity. They would have liked to be able to add to the quality of the building, particularly through artworks of regional inspiration forming an integral part of major interventions, as they did of the original fabric, but lacked the funding to do so.

8.4.8 In reality, there were many pressures acting on the fabric of the building, and each of the players had a different role and priorities, and different perceptions of what constituted its special character. Thus both conservation and management staff could quite reasonably assert that they believed their view was correct, for at the margins (as with all listed buildings), the issues were matters of value judgement, not absolutes. In general, it was clear that, however interpreted, there was a strong sense of pride in the Civic Centre as part of the City's image, both at political level and amongst the staff. But this had to be tempered both by the need for the building to adapt to modern performance requirements and local

authority resource constraints. The agreement seemed to provide an appropriate context for reconciling these potentially conflicting interests, with external moderation by English Heritage on major issues. However, whilst the original agreement stated that 'changes in the spirit of the original building and consistent in character with the existing offices and [associated] toilets' would not require consent, in practice neither the conservation team nor the statutory authorities had any involvement in works to those areas.

8.4.9 Obtaining replacement fittings had become a significant problem as they fell out of normal manufacture – a set of glass light shades had recently been made in Sunderland. But, in general, as with the University of Sussex, there was a problem in funding maintenance and the necessary renewal of finishes to the standard of the original building.

8.4.10 There had been three listed building consent applications since the documents were completed in 1997:

1999 Rates Hall conversion to general public enquiry point: completed

2000 Disabled access ramp internally to the Banqueting Hall

2000 Disabled access ramps externally – current in November 2000

8.4.11 The sensitivity plans were treated, in practice, as a definitive guide to those areas within which change required listed building consent; it had, in effect, been assumed that it was within the power of the players to make that decision. However, no useful role was seen by the participants for standing, or outline consents; each application should be discrete.

8.4.12 Records of works not requiring listed building consent were not added to the building archive, so there was no definitive record of the process of incremental change.

8.4.13 **The building in context:** The Civic Centre stands on the east side of a green, with the grade II* listed St Thomas' Church to the south, which provides an appropriate public setting.

It is not a conservation area, but has been included in a list of 25 low priority possibilities for designation. Whilst the immediate 'hard' elements of the Civic Centre landscaping were an integral and important part of the architectural composition, their protection by physical attachment to the listed fabric remained a matter of dispute.

8.4.14 Experience to be reflected at the first review: The guidelines were intended to be reviewed annually, but this did not appear to have happened. However, the need for review was underlined by Mr Derham's concern that the 'non-sensitive' office and toilet areas did contribute in a modest way to the special interest of the building and that, at some level, there should be a 'conservation' influence on changes to them. The present rigid division was seen as eroding the basic unity and quality of the original concept. Identification of the best implicitly denigrated the rest. This view might have reflected changing perceptions of conservation, the politically charged circumstances that produced the original agreement, or merely have been an individual view, but it does seem to accord with the intention of the original agreement. The situation underlined the need for a review process involving all the players, not least the building managers, as the agreement envisaged, although at the time the latter saw no need for review.

8.4.15 The opportunity should also be taken to involve GO-NE in any future review, and to seek their endorsement of the result.

8.4.16 The most frequently used document was the set of plans defining degrees of sensitivity. Presentation of other key information in a more graphic way, related to the plans, would have improved usability.

8.4.17 Training/guidance needed: A model template, distilled from current best practice via case studies, was considered useful.

Appendix

A

Management guidelines: March 2001

Building or area	Use	List grade	Build Date	Planning authority and contact	Commissioning organisation and contact	Start	Complete	Prepared by	Live?
Bedgebury Park Kent	School	II*	late C17-1850	Tunbridge Wells BC Chris Harvey	TWBC and EH	Sept 1998	No	English Heritage	No
Bicester RAF Bicester	Military airfield then DCTA (now DLO) HQ	Listing (II) & CA proposed (since desig'd)	Inter-war	Cherwell District Council Sally Stradling	Defence Clothing & Textiles Agency Roger Miller	When listed	Final draft May 2000	English Heritage	Yes
Brighton, University of Sussex	University buildings (9)	I, II*	1959-69	Brighton & Hove BC Rob Fraser	University of Sussex R.W French	Mar 1993	Jan 1995	English Heritage	Yes
Exeter, County Hall	Civic	II*	1959-65	Exeter City Council	Devon CC Peter Child	Apr 1998	Final draft Oct 2000	Peter Child (based on report by Jeremy Gould)	Yes
Ipswich, Willis Building	Office	I	1975	Ipswich BC Bob Kindred	Willis Peter D Smith	1991	Feb 1992	Willis/IBC/EH	Yes
London, Camden Alexandra Road	Social housing	II*/CA	1972-79	LB Camden Sadhbh Leonard	LB Camden Housing Dept	Oct 1998	Mar 2000 (Formal adoption to follow)	LB Camden Housing Dept Alastair Kinghorn	Yes
London, Camden Centre Point	Office	II	1961-66	LB Camden Sadhbh Leonard	MEPC J O'Sullivan Snr Property Manager	May 1996	Apr 1999	EH/MEPC/LB Camden	No – property sold
London, Camden Senate House, University of London	Educational	II*	1932-38	LB Camden Joanna Parker	University of London; Estates Department; Martin Burchett	Mar 2000	No	Martin Johnson, AHP Architects	Yes
London Heathrow, Technical Block A	Industrial – civil airport maintenance	II	1950-55	LB Hillingdon John Finney	LB Hillingdon	early ¹ 2000	No	John Finney, LBH	Yes
London, Islington Peabody Estate	Social housing	II	1864-66	LB Islington Development & Planning Jane Corfield	Peabody Trust Dickon Robinson	Nov 1997	Final draft Oct 2000	English Heritage	Yes
Newcastle, Civic Centre	Civic	II*	1959-1967	City of Newcastle	City of Newcastle Ian Ayris	1996	Feb 1997	Peter Jubb Tyne & Wear Conservation Team	Yes
Rushbrooke Estate Village	Village housing and clubhouse	II	1952-63	St Edmundsbury DC	SEDC and EH	Jan 1999	No	English Heritage/ Bidwells	Yes ²
Southampton, Civic Centre	Civic	II*	1928	City of Southampton Kevin White	City of Southampton Dee Taylor	1995	No	Michael Carden, (Radley House Partnership) <i>et al</i>	Yes
Southampton Wyndham Court	Social housing	II	1965	City of Southampton Kevin White	City of Southampton	1999	No	Cultural Services, SCC	Yes
Stevenage John Lewis Warehouse	Warehouse	II	1963-7	Stevenage BC Ken Sanderson	Stevenage BC John Lewis	Jan 1996	Feb 1997	Hillier Parker; Russ Craig, Hertfordshire CC	Yes ³
Tunbridge Wells Town Hall	Civic	II	1938-9	Tunbridge Wells Borough Council	TWBC and EH	?	No	English Heritage	No
Truro, New County Hall	Civic	II	1963-66	Carrick DC Eric Berry	David Matthews, Cornwall CC	May 1998	Jun 1998 ⁴	English Heritage/ Cornwall County Council	Yes
Walton on Thames Walton Court	Office	II	1960-61	Elmbridge BC Tony Hall	EH	1995	Mar 1996	English Heritage	Yes

¹ Arising from an ultimatum that a succession of proposals by BA could only be dealt with in the context of an agreed management framework.

² But the owners of the Estate are not currently progressing completion of the agreement.

³ Not followed up since, despite 2 year review cycle – LA has no conservation staff. Most of interior said not to be of interest. Russ Craig, HCC, involved.

⁴ Conversation with Frank Chapman, Head of Property, 23 October: CH built to be regularly changed (80K ft sq); areas of sensitivity/management protocol agreed in walkabout with PB after listing – Understanding set out but not formalised – should be, to achieve gravitas.

Towards a definition of the need for listed building consent, and the implications for process

1 Introduction

1.1 The listed building consent procedure is part of the framework for the management of the historic environment that has grown up incrementally in response to changing perceptions of the nature and significance of the historic and cultural dimension of the landscapes in which we live. Whilst the primary legal definitions of what may be protected have remained the same for more than fifty years, the statutory interpretation of what is ‘special’ has expanded in line with (or perhaps just behind) public and academic perceptions of what is special.

1.2 Nonetheless, since decisions about inclusion on the statutory list are made by the Secretary of State for (currently) Culture, Media and Sport, on the advice of English Heritage, there is arguably a national consistency in the exercise of this value judgement. By contrast, decisions about whether proposed works are consistent with a statutory duty to ‘have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses’ are made by some 330 different local authorities, with English Heritage input into less than 10% of cases. Experience, rather than quantitative data, suggests a considerable disparity of interpretation at the local level. Consideration is given below to the precise meaning of the words in the legislation, and their implications for the process of protecting a key aspect of public interest in private property.

2 The statutory requirements

2.1 Listed building consent (LBC) is required for ‘any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest’ (Planning (Listed Buildings and Conservation Areas) Act 1990, s7).

2.2 More generally, the purpose of the 1990 Act can be construed (primarily from s16(2)) as providing the means to secure the preservation of (ie. keeping safe from harm) the special architectural or historic interest of listed buildings. The word ‘preserving’ is also used specifically in, for example, s47 (1) and s66 (1).

3 Need for consent: the meaning of the words

3.1 ‘*Demolition*’ was defined in *Shimizu (UK) Limited v Westminster City Council* (1997) as meaning the demolition of all, or substantially all, of a building (in effect, amounting to the clearing of a site for redevelopment). Thus the destruction of only part of a listed building, including curtilage buildings, now falls into the category of alteration.

3.2 ‘*Alteration*’ commonly means a change in position, size, shape, or form, and ‘*extension*’ an increase in volume in any direction. Taken together, ‘works for... alteration or extension’ appear to encompass virtually any intervention in the physical fabric of a listed building, whether by addition or subtraction, that falls short of demolition.

3.3 However, the works of alteration or extension for which listed building consent is required are limited to those ‘which would *affect* its *character* as a *building of special architectural or historic interest*’.

3.4 ‘*Affect*’ means ‘to produce an effect on’ (Oxford), ‘to act upon or influence, especially in an adverse way’ (Collins). ‘*Character*’ is ‘distinguishing quality or qualities’ (Oxford), ‘the combination of traits and qualities distinguishing the individual nature of a person or thing’ (Collins).

3.5 A ‘*building of special architectural or historic interest*’ is one included in a list compiled or approved by the Secretary of State (P (LB&CA) Act 1990, s1). To achieve a degree of consistency, the Secretary of State has established criteria (set out in PPG 15, paras 6.10–16) for inclusion of buildings in the list, setting a threshold that defines the meaning of ‘special’ by reference primarily to periods (for most types of buildings), or exemplars (particularly for post-war buildings). The general position is set out in paragraph 6.16: ‘The emphasis in these criteria is on national significance, though this cannot be defined precisely’. In other words, to be of *special* architectural or historic interest, and thus included on the statutory list, a building must be significant in the *national*, as well as the local, context.

4 Need for consent: the implications of the words

4.1 What constitutes effect on the character of a listed building is at the heart of the issue of what needs consent. It is, by the definitions quoted

above, a qualitative term. It clearly does not include all physical work to fabric contributing to special interest; but will include work to fabric (or the addition of fabric) that, whilst not of itself of special interest, would affect perceptions of the character of the building as a whole. For example, cyclical, like-for-like, redecoration of fabric of special interest would be most unlikely to affect character; whilst the construction or external alteration of a proportionately substantial extension could hardly fail to do so.

4.2 Consent is required for works that would affect the character of the building as one of special architectural or historic interest. Thus, what is being protected is that which makes the building of special interest, which justifies its inclusion in the list, not any and every aspect of its interest or significance to anyone. It is what is significant at the national level, not what is significant only at the local level. Thus, it is not sufficient that works would affect the character of the building as one merely of architectural or historic interest; to require consent, they must affect its *special* interest.

4.3 Special interest/national significance is only very rarely fully defined through the listing process and then mainly in the context of thematic surveys. Inclusion in the list indicates only that the building was judged to have sufficient special interest/ national significance to be above the threshold for inclusion. Thus, it normally falls to be fully defined in the context of, and at the time of, proposals for works, against the Secretary of State's criteria as they stand at the time. The principles are therefore similar to those underlying the conservation plan: define significance based on understanding, consider how that significance is vulnerable and, on that basis, define strategies and make decisions about future management.

4.4 Certain kinds of work are clearly likely to affect the character of a listed building as one of special architectural or historic interest, the individual traits and qualities that make it special, and so need consent; that is, work to a listed building that would:

- diminish its integrity and value as an historic document, involving the loss of concealed as well as visible evidence for the nature and evolution of its character as a building of special interest
- change the form, appearance or integrity of any element or aspect, including spatial character, that contributes to its character as a building of special interest
- affect the structural integrity of the building, or in any way likely to reduce its lifespan, or that of any element that contributes to its character as a building of special interest
- change the form or appearance of any element that does not, of itself, contribute to its character as a building of special interest, in a way that affects the context, setting or perceptions of that whose character is of special interest
- extend the building in a way that affects the context, setting or perceptions of that whose character is of special interest
- destroy a relationship between a building and its site that contributes to its character as a building of special interest, for example by moving the building.

4.5 One uncertainty is the extent to which 'affect' implies negative impact, and thus the extent to which positive change needs consent. Despite the purpose of the legislation, it seems implausible to argue that major works involving material enhancement are excluded from the need for consent – not least because there is rarely consensus as to whether they would or would not enhance character. The reality seems to be that minor positive impact on character can reasonably be regarded as not needing consent, whilst minor (but not *de minimis*) negative impact can reasonably be regarded as needing consent; not least because the cumulative effect of minor negative change undoubtedly has a significant negative impact on character. As PPG 15, para 3.13, puts it, 'minor works of indifferent quality, which may seem

individually of little importance, can cumulatively be very destructive of a building's special interest'.

4.6 The following works, by contrast, do **not** require consent:

- those whose impact on those aspects of its character which contribute to its special architectural or historic interest is neutral, essentially leaving it unchanged
- those which affect only fabric not of special architectural or historic interest, and do not affect perceptions of the character of the building as one of special architectural or historic interest as a whole
- those which are *de minimis* in their effect, for although the word 'affect' is not qualified by 'materially', as it is with regard to the need for planning permission, the law is not concerned with trifles. But whether the effect is *de minimis* is not a factor of the scale of the works, but their impact.

4.7 In many cases, it will be clear that the method rather than the objective is crucial to the decision as to whether listed building consent is needed. For example, repairs, cyclical redecoration, or the installation or replacement of services will generally only affect character if done in inappropriate ways, using inappropriate materials. If carried out in a workmanlike manner, such works will rarely affect character. A small hole carefully drilled through the fabric of a plain brick wall of any date is unlikely to affect character; the same hole drilled through the carved spandrel of a medieval door head would be a matter for prosecution. The difference is between a neutral impact and a materially damaging one. Fixing a satellite dish to the front of a Georgian house would certainly affect character; but fixing it to a chimney stack concealed from view in a butterfly roof probably would not, provided it could not be seen from any normal vantage point, and the effect of the fixings on the historic fabric were *de minimis*. Such an interpretation would follow the line taken in *Burroughs Day v Bristol CC* concerning the issue of materiality in the context of the need for planning permission (that

materiality is to be judged in relation to the whole building, not simply the part directly affected).

5 Listed building consent: the basis of the decision

5.1 'In considering whether to grant listed building consent for any works, the local planning authority or the Secretary of State shall have *special regard to the desirability of preserving* the building or its setting or any features of special architectural or historic interest which it possesses' (s16 (2), Planning (LB&CA) Act 1990). Somewhat curiously, the word 'character' is not repeated in this section.

5.2 In contrast to the need for consent, there is a significant body of case law and appeal decisions about whether it should be given'. '*Special regard*' has been interpreted as meaning that 'the legislation required that the preservation of a listed building had to operate as a paramount consideration' (*Bristol Meeting Room Trust v Secretary of State and Bristol CC* [1991] JPL152), and the corresponding duty under section 72 should be 'the first consideration for the decision-maker' (*Bath Society v Secretary of State* [1991] 2 P.L.R. 51). But as Mynors² has pointed out, the wording actually requires that special regard be given to 'the desirability of preserving the building...', ie to the question of whether or not it should be preserved, rather than to the preservation of the building *per se*. The general presumption in favour of preservation is a matter of current policy (in PPG 15, para 3.3), not law, which has evolved in response to public perceptions of the significance of listed buildings. However, there is clearly no duty to consider the preservation of anything that does not contribute to the special interest of the listed building concerned.

6 Listed building consent: the nature and importance of process

6.1 The implication of the analysis in section 4 is that a decision on whether or not listed building consent is needed must be based on an understanding of

the evolution of the building, which in turn makes possible an assessment of its significance (and the vulnerability of that significance to damage or loss), not only as a whole, but in its parts and phases, and in its setting. These steps provide a rational basis for conclusions about which phases and what elements constitute the special interest of the building as defined in the Secretary of State's criteria. These are implicit, though, rather than explicit in the Secretary of State's guidance as set out in PPG15, para 3.5.

6.2 The approach is well established, however, in the assessment of archaeological sites within the planning process. PPG16, *Archaeology and Planning*, sets out the steps: early consultation with the planning authority, desk-based assessment of existing information, and field evaluation leading to an assessment of significance (paras 19-22). PPG15, at para 3.4, states that applicants 'should provide full information, to enable them to assess the likely impact of their proposals on the special architectural or historic interest of the building and on its setting'. Yet such systematic analysis remains rare even when proposals involve major change to complex, multi-period buildings whose special interest may lie as much in what is concealed as what is visible, and which are indeed the upstanding fraction of the archaeology of the site from which they rise.

6.3 This is not to imply that an extensive and specific analysis will always be required. There are many listed buildings, indeed classes of listed buildings, whose special interest is clearly evident. Often this is because they are predominantly of one period and remain substantially as built, although not every surviving element is necessarily of special interest. Equally, the requirements for understanding must be related to the nature and potential impact of the proposal.

6.4 However, a shared understanding of the special interest of a listed building between the applicant/architect and the local planning authority (and English Heritage, in the case of 'outstanding' buildings) should be the basis for developing proposals that are either

submitted for listed building consent, or agreed not to need it. One of the main conclusions from this report is that management guidelines 'facilitate and promote constructive, ongoing dialogue, and mutual trust and understanding, between building owners and the statutory authorities. It is that process, and its outcomes... that is important (para 6.1, p27).'¹ The process will generally involve assessment of the impact of proposals on significance and, where it would result in harm, the adoption of mitigation strategies to remove or diminish such harm.

6.5 For this to happen, the planning authority must positively welcome early discussion about proposals for listed buildings; and have staff capable of understanding the evolution of buildings, assessing their special interest, and considering how it is vulnerable to harm. That is not to say that they should necessarily undertake those tasks themselves, other than perhaps in simple cases; but they must be capable of providing a brief for the applicant to procure the work, and of assessing the results (as happens under PPG 16). Decision-makers need adequate information, but must be prepared to explain and justify their requirements. Proposals developed around a misunderstanding (or no appreciation of) significance result in a waste of resources by applicant and planning authority alike.

6.6 Whilst the analysis of the original form and subsequent development of a building, using the evidence both of fabric and of documents, is essentially an objective, analytical task, the assessment of significance based upon it is a value judgement. It is not made in isolation, but in the context of the Secretary of State's criteria for listing which set the benchmark. It would be made much easier and more consistent if these criteria were expanded or explained by the kind of guidance developed during the last large-scale resurvey exercise, and subsequently for thematic survey projects.

¹ Charles Mynors, *Listed Buildings, Conservation Areas and Monuments* (3rd Ed, 1999), section 9.7, p256 et seq

² *Ibid*, p257

6.7 At present, such analysis and assessment normally only occurs in the context of a one-off application for major work. But for buildings likely to be the subject of frequent change, it is preferable to undertake a comprehensive assessment of significance that can guide future change, which can be achieved through management guidelines. Where there are many listed buildings of a similar type in a local authority's area, for example early 19th century terraced houses, some authorities have produced (as PPG15, para 2.5, recommends) general guidance on what constitutes their special interest, and therefore what kinds of work are likely (or not) to need, and to receive, listed building consent. This approach would clearly be more practical – and likely to be adopted more widely – if local authorities actually had the power to determine what needs listed building consent.

6.8 Once the special interest of the building has been understood, there exists a logical basis for the applicant to develop proposals, and the planning authority to assess them. It is self-evident that physical damage or loss sufficient to affect the integrity of any elements of fabric that have been identified as contributing to special interest is not consistent with preserving that special interest. Provided the proposals are clearly defined, there should not be any doubt about whether such loss is inherent in a proposal. The process of understanding, assessing significance, and developing proposals is addressed in detail in *Informed Conservation* (English Heritage, 2001).

6.9 However, since listed building consent is needed for works affecting character, its scope is wider than the mere loss of significant fabric. It is concerned not only with physical fabric, but also with the context, the setting, of that physical fabric. Whilst the nature of the listed building sets a quality standard against which new elements can be judged, impacts of this nature are value judgements. To be defensible and consistent, they must be based on appropriate professional skill and experience, not least in the assessment of design quality in context,

as well as a understanding of the special interest/significance of the building.

6.10 In reality, the development of proposals for a listed building is an iterative rather than a linear process, as negative impacts are mitigated by design amendments. The initial overview of evolution and significance of the building and its context may need to be developed in local detail as the need for intervention in a particular area becomes apparent. Ideally, this process should end with a proposal that achieves the applicant's objectives without harming special interest, and may indeed reveal, or better express, special interest previously obscured.

6.11 Such a proposal must define the impact on the special interest of the building to the extent that it is clear that such impact is acceptable, provided it is appropriately detailed or specified. If so, it is likely to be appropriate to use the provisions of s17(2) of the 1990 Act to impose conditions requiring the approval of details before work begins, rather than requiring them before consent is given (*R v Secretary of State, ex parte Bath and North East Somerset District Council, 1999*).

6.12 There will also be occasions where achieving particular objectives involves some harm. Whether consent should be granted is then a matter of weighing the balance between the disbenefits and the benefits. This, too, is a value judgement, but one which must often be made in a wider context. As the Secretary of State's guidance puts it, it may be necessary to consider 'the extent to which the proposed works would bring substantial benefits to the community' (PPG15, para 3.5); but, even so, the desirability of preservation is a paramount or primary consideration.

6.13 As with the unavoidable destruction of (below ground) archaeological remains, that which cannot be preserved *in situ* should be preserved by record (mitigation of last resort). But recording is no substitute for prior understanding of the significance of what will be lost, which is fundamental to the decision about whether its loss is acceptable.

6.14 The process involved in determining listed building consent applications, or deciding whether such application is needed, might be summarised as follows:

Step	Nature of task
1 Understanding the origins and evolution of the building	Objective analysis
2 Defining the nature and extent of its special architectural or historic interest	Value judgement
3 Developing proposals grounded in that understanding and assessment of special interest	Application of professional skills
4 Iterative process to eliminate/minimise detriment to special interest (mitigation)	Application of professional skills
5 Weighing disbenefit from any unavoidable harm against benefits of proposals	Value judgement

6.15 A further implication arises from this analysis. Where conservation issues are at the heart of a decision, as they should be with applications for listed building consent, the lead officer needs to understand the technical conservation issues sufficiently to know when input from those with specialist skills is required, whether it be to understand the building, assess its special interest, or engage with the applicants in developing a positive solution, including the design of new elements.

6.16 Nor is the granting of consent the end of the process, for the procedure will have been fruitless unless what is carried out on site corresponds with that for which consent was given. Monitoring and enforcement are as important as the decision-making process in fulfilling the objective of s16(2).

7 Conclusions

7.1 Deciding whether particular works require listed building consent is a matter of fact and degree. Whilst there will inevitably be a grey area between what clearly does, and what clearly does not, require consent, the words and their context appear to offer very considerable guidance on the matter.

Moreover, they seem to suggest that the scope of work that needs consent is not as wide as some current interpretations. The scope and purpose of listed building consent is to protect what is of *special* interest. It is not to require consent for all change, nor even for change that affects any interest that is less than special; nor to discourage change that leaves special interest unaffected.

7.2 Attempting to clarify the meaning of the definition of what works require listed building consent inevitably raises the question of whether it is the right definition to achieve current objectives. The most obvious problem with the 4th and 5th points of the definition suggested in paragraph 4.4 is the absence of the word ‘materially’ to qualify ‘affects’, although in practical decision-making, it is often implied. Could it be so as a matter of policy? What would be the implications, given case law on the interpretation of materiality in the context of the need for planning permission (4.7 above)? With this caveat, the definition does appear to meet current objectives.

7.3 Discussion of the process that follows from definition of the objective of listed building control emphasises the importance of specialist skills in reaching sound, consistent, transparent decisions that demonstrably fulfil the purpose of the legislation. It also suggests that the logical process for assessing proposals for listed building consent ought to be made more explicit in policy terms, as it is with archaeology within the planning process. Indeed, the process is essentially similar for all aspects of cultural and natural heritage significance. A common intellectual framework for assessment, with procedures and criteria aligned, and integrated with the planning process where development is involved, would contribute greatly to the quality, transparency and efficiency of managing the quality of our historic environment.

7.4 Listed building consent procedures must also be seen in the wider context, as one aspect of monitoring and managing the listed building stock, which in turn is but one component of the wider historic environment, increasingly recognised as a significant indicator of quality of life.

C

Organisations consulted on management guidelines discussion paper – April 2001

Ancient Monuments Society
Association of Building Preservation Trusts
British Property Federation
Cheltenham Borough Council
Civic Trust
Civil Service College, Facilities Management Department
Commission for Architecture and the Built Environment
Council for British Archaeology
Defence Estates, Ministry of Defence
DOCOMOMO UK
DoE Northern Ireland, Environment and Heritage Service
English Historic Towns Forum
English Nature
Garden History Society
Georgian Group
Historic Houses Association
Historic Scotland
ICOMOS UK
Institute of Facilities Management
Institute of Historic Building Conservation
Local Government Association
Maintain our Heritage
Planning Service (Northern Ireland)
Royal Institute of British Architects
Royal Institution of Chartered Surveyors
Royal Town Planning Institute
SAVE Britain's Heritage
Society for the Protection of Ancient Buildings
The Countryside Agency
Twentieth Century Society
Victorian Society
Government Office for the Eastern Region (re Willis Building, Ipswich)
Government Office for London (re Alexandra Road)
Government Office for the South East (re University of Sussex)
Government Office for the North East (re Newcastle Civic Centre).

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