

HE 24

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol

Communities, Equality and Local Government Committee

Bil yr Amgylchedd Hanesyddol (Cymru)/Historic Environment (Wales) Bill

Ymateb gan: Cyngor Sir Ddinbych

Response from: Denbighshire County Council

Thank you very much for inviting Denbighshire County Council to comment on the general principles of the Historic Environment (Wales) Bill. The Council is supportive in principle of the following measures as laid out in the Historic Environment (Wales) Bill and associated draft guidance:

*Section 3 – ‘Amendments relating to the Schedule’*: The proposed consultation and review process for Ancient Monuments and Archaeological Areas.

*Sections 13 – ‘Temporary stop notice’*: The introduction of stop notices for Ancient Monuments.

*Section 16 – ‘Damaging certain ancient monuments’*: The tightening of the terms, under which the perpetrators of damage to Ancient Monuments and Archaeological Areas can plead ignorance.

*Section 33 – ‘Historic environments records’*: This provides this statutory basis for HER’s that are important repositories of information and the backbone of archaeological decision making within the planning process. They are also an increasingly useful source of information relating to historic buildings and historic landscapes, although the origin of the HERs in archaeological, site-based information is still apparent.

However, there is concern regarding details or lack of information on the following sections of the Heritage Environment (Wales) Bill and associated draft guidance documents:

*Section 16 – ‘Damaging certain ancient monuments’*: It is felt that the measures provided regarding the defence of ignorance in the draft Bill are too weak. Whilst it is appreciated that there are arguments relating to inadvertent damage, it would have been preferable to see the defence of ignorance removed because the wording of the draft Bill would allow perpetrators of damage to Ancient Monuments too much latitude to escape prosecution or penalty; ultimately it will be one person’s word against another. For example, the defence of ignorance is not lawful within the framework of the Habitats Directive.

*Section 33 – ‘Historic environments records’*: For Local Planning Authorities (LPAs) who do not already understand the value and role of the HERs, the vague wording of the definition of a HER, specifically with respect to undesignated assets (the core of the HER) is potentially problematic. There is a danger that some LPAs might decide to discharge the new statutory responsibility by maintaining their own HER (i.e. prepare a HER including the bare minimum outlined in 33[2][a]-[j] with minimal further additions – as the wording of the draft Bill appears to imply is their prerogative to do so) to the detriment of the cohesion of the current pan-Wales approach. The supporting guidance document (see draft ‘Managing Historic Environment Records in Wales: Statutory Guidance’) lays out the detailed requirements of an HER and the proposed arrangements for evaluating and benchmarking whether these requirements are met. However we feel that these guidelines need strengthening and clarification and that more of the detail of the requirements should be included in the wording of the Bill itself.

The wording of the draft Bill places a duty on the LPAs to consider which assets should be included on their HER. Does this imply that every entry in the existing HER, and future inclusions, within the LPA area has to be validated by the authority for inclusion on their HER or scrutinised in some way? As the

existing HER has been compiled over 40 years and has tens of thousands of entries this would have a major resource implication. Linked to this, would LPAs be liable for any inaccuracies in the HERs? Is there a process for challenging inclusions and would LPAs find themselves in the position of having to justify entries? The wording could be read as implying that only LPAs can add entries onto their HER. Presumably this isn't the intention; it would not be practicable for Welsh Archaeological Trusts (WATs) to have to get LPA authorisation for proposed additions. Could the wording be clarified in this respect and/or any approval arrangements outlined?

We support in principle the continuation and formalisation of arrangements with the WATs concerning access to the regional HERs which they have developed and which they manage. The authority has access to the Clwyd-Powys Archaeological Trust HER and excellent Wales HER online GIS and database system through an informal arrangement which will need to be formalised in due course to meet the requirements of the Bill. It is not anticipated that the proposed measures would have any additional cost implications. The HER is well managed and its staff are competent and helpful.

However, given that this is a statutory responsibility that we will, effectively, be outsourcing to an external organisation, additional details should be provided in the Bill and guidance concerning the WATs in relation to: governance (e.g. appointment and term of office of trustees; consideration of representation of LPAs amongst trustees), scrutiny, separation and independence of commercial/contract and curatorial functions (the WATs are both educational charities and commercial businesses – the details given on this matter – a link to a page on the Glamorgan Gwent Archaeological Trust website - in the HER guidance paper supporting the Bill are inadequate). What would be the implications of failure of a WAT as a business for the discharge of a LPA's statutory responsibility towards HERs? We understand that an HER charitable trust has been established to hold the data of the HERs separate from the WATs themselves but would like further information on this and details of the mechanism for transfer and maintenance of the data. We understand that Cadw are committed to funding the continuation of the HERs in the event of failure of a WAT. How would this work and would it cover all staff costs etc. such that LPAs will not be exposed to potential costs in having to meet the statutory requirement in the event of the failure of a WAT?

*Section 25 – 'Amendments relating to the temporary listing of buildings'*: The new proposal includes interim protection "as if the building were a listed building". There is no appeal mechanism against listing at the moment so the Bill provides owners the opportunity to ask for a review. However, a risk for Welsh Ministers is that there will be an opportunity for an owner to make a claim for loss or damage as a result of a building being granted interim protection but not ultimately listed.

*Section 28 – 'Heritage partnership agreements'*: This is a significant alteration to the legislation, which allows Welsh Ministers or local planning authority to enter into a heritage partnership agreement (HPA) with owners or others who have an interest in a listed building. These agreements need careful thought and Cadw have indicated that additional guidance and possibly a template may be useful in drafting the agreements.

*Section 29 – 'Temporary stop notices'*: Local planning authorities will receive significant new power to serve a temporary stop notice where unauthorized works are being carried out on a listed building. Though, it also carries a risk to LPAs in that compensation may be payable in certain circumstances to an owner or others who have an interest in the building.

*Section 30 – 'Urgent works'*: extension of scope and recovery of costs: At the moment the cost of carrying out urgent works in default can be recovered from the owner if necessary through the courts but this can prove to be difficult such as when the owner is an off shore company or where recovery would cause hardship to the owner. This section gives local planning authorities the power to place a charge on the property. This is important because it refers to the Law of Property Act 1925 and the power to enforce the sale of the property. If the property has value this might allow the recovery of some or all the urgent works costs but at the moment it is unclear whether the LPA charge will be a priority charge

above other charges such as that from a mortgage company. Regardless of whether the recovery of costs is possible, this is useful power to bring about a change of ownership where the owner of a listed building is seen as principal cause a buildings poor condition. It is disappointing however that the Bill does not go further to reduce the risk to local authorities in using their enforcement powers and some measures that would help reduce the number of buildings at risk.

Draft guidance document *'Managing Lists of Historic Assets of Special Local Interest in Wales'*

The guidance on local lists is confusing and there is concern about the prospect of having to consult on the inclusion of any item (heritage asset) on the list. How would this work in practice? The resource implications would appear to be prohibitive not least in terms of staff time. The guidance doesn't appear to discriminate clearly enough between buildings and other types of historic asset despite the fact that the local lists have their origins in historic buildings (and the former grade III Listed Buildings).

Further, local lists will need to be included within the HER. There is further concern that this will lead to a double standard in the mechanisms for inclusion of new sites in the HERs. Could this lead to requirements to consult on the inclusion of all heritage assets in the HER in the long term? This would be highly problematic. Also, might the creation of a hierarchy of 'local' assets, consulted compared with non-consulted, risk undermining the value of the HER as a material consideration within the planning process?

*Associated draft policy and guidance documents* (for consideration but not formally part of the Bill consultation)

Cadw state that before formal issue, all of the documents will be subject to full public consultation and that this will probably occur early in 2016. However, how meaningful will this consultation be as there may be limited scope at that point to make significant changes to the documents (because the wording of the Bill will have been formalised already). Although it is a hefty quantity of information to wade through, it probably is worth looking at the documents now, not least because, alongside the Explanatory Memorandum, it helps to make sense of some of the less immediately clear elements of the draft Bill. This is particularly the case for the draft statutory HER guidance.