

HE 21

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 Ynys Môn (Planning and Public Protection)
Response from: Isle of Anglesey County Council (Planning and Public
Protection)

Thank you for the invitation and opportunity to submit our views to you on this very first legislation drafted specifically for the Welsh Historic Environment.

We warmly welcome the very broad aims and objectives of the Bill but we have a number of points and concerns that we feel are worthy of further consideration.

Our comments and observations on the Bill are as follows:

ADDED PROTECTION

Headline Points:

- **New powers and duty could place added pressures on LPA's at a time of budget cuts.**
- **Since 2006 local authority conservation posts have seen a loss of 35% as well as a reduction in legal service posts.**

The Bill creates new measures that: enable authorities to act quickly if a listed building is under threat from unauthorised works and gives them greater flexibility in dealing with historic buildings that require urgent works to protect them from further decay.

We welcome the measures that extend the scope of the protection to listed buildings as well as the ability to be able to recover costs. We are concerned

however that these measures could place added pressures on LPA's to use their statutory powers at a time of relentless cuts to LA budgets and resources.

We are also concerned that the measure which places a duty for an LA to act quickly will be constrained by not only the budget cuts but also the increased distance staff would have to travel as a result of the new map of LA's in Wales.

URGENT WORKS

Headline Points:

- The draft Bill brings existing historic environment legislation in line with Housing and Building Acts to recover costs
- Creates new impetus for Local planning authorities to act with more confidence in the use of urgent works powers to address buildings at risk, whether occupied or not
- However, needs to be supported by Welsh Government with sufficient funding to allow powers to be effectively utilised

The draft Bill proposes to allow LPA's to extend the scope of the urgent works notice to any part of building where it does not interfere unnecessarily with that use (Part 30 (4a) and an ability to under (6) recover costs under the Act through a legal charge and where necessary an enforced sale.

The extension of the Bill in scope tackles the less scrupulous owners who claimed the building was occupied and therefore the power became moot, despite the occupation being at best interim or an ad-hoc basis to a limited element of the building. This proposed power allows for urgent works to be undertaken where it would interfere with a residential use and no doubt undertaking the works could benefit the occupier.

The new power will give local planning authorities more confidence in the use of the power as the risk of taking action and not recovering their

investment is reduced significantly and brings the law in relation to historic buildings in line with similar powers held under the Housing and Building Acts, which is welcome.

However, the powers will only be useful if there is financial and strategic direction provided by Welsh Government in supporting their use and ensuring a national strategy for buildings at risk. Cadw has undertaken much sterling work in recent years in providing a comprehensive national snapshot of the condition of Wales' designated Listed Buildings and has offered some financial support towards talking particular buildings. However, without a national strategy to support tackling buildings at risk, the powers real ability to contribute to saving the nation's designated heritage assets will be diminished.

CERTIFICATE OF IMMUNITY

Headline Points:

- **By relaxing the conditions for applications will Cadw be able to cope with the reactive increased workload?**
- **We are uncertain what implications this will have on LPA's who are familiar with our buildings.**

We welcome the measure that makes it easier for owners or developers to create sustainable new uses for unlisted buildings by relaxing the conditions for applications for certificates of immunity from listing.

We do have a concern that Cadw may not be able to cope with the potentially reactive workload that the measure seeks and we are also concerned that in turn it may place an additional burden on ourselves.

Local building knowledge could place reliance by Cadw onto LA's to respond to a greater volume of enquiries than currently exists at a time of reducing conservation posts.

WALES HISTORIC PARKS AND GARDENS

Headline Points:

- **Disappointment that the measure does not provide protection**
- **Uncertain what implications the measure will have for decisions on developments directly and indirectly affecting them**

We welcome the measure that creates a Statutory Register of Wales Historic Parks and Gardens to bring it in line with its English Sister over the border. We are slightly disappointed that the Bill does not provide for any statutory protection in the form of legislation and we will have to give very careful consideration how we will respond to planning application that directly affect our Historic Parks and Gardens and their settings.

Planning Appeals and Court Case Judgements will have to be monitored in order for LPA's to understand what level of protection to give when determining planning applications.

PARTNERSHIP AGREEMENTS

Headline Points:

- **Clearly a need due to the current number of LB's in Wales and the declining resource allocated to deal with them**
- **The measure comes at an unwelcome time of budget cuts**

We acknowledge the growing need for Heritage Management Partnerships in certain circumstance but we have concerns that there may not be the capability or the expertise to respond to the reactive nature of this in the first instance let alone provide a stable monitoring and reporting process.

An added concern is the need to have dedicated specialists not only in conservation disciplines but also in specialist legal services at a time of growing uncertainty with the shape and form of LA's in Wales.

HERS

Headline Points:

- New duty imposes additional future costs on Local Planning Authorities at a time of budget cuts
- Proposal overplays the relevance of HERS to day to day planning decision making, with less than 12% of planning application having a HER input, suggesting the proposal for LPA's to take responsibility is flawed
- Through new requirements on staff to maintain the record, gives greater emphasis to record keeping than managing heritage assets or change to them through planning
- Alternative arrangements need to be considered, including the duty being transferred to Ministers (and delivered through the Royal Commission and Trusts).

The draft Bill makes reference to a new statutory duty : 'Each local planning authority in Wales must create and keep up to date a historic environment record.' Part 4, 33 (1), which lead to a number of potentially serious impacts on the Local Planning Authority (LPA). A number of questions remain unanswered by the Bill's explanatory document and draft accompanying guidance, namely:

Relevance to LPA's – it is unclear what the relevance of the HERS is to day to day decision making, beyond the statutory records the LPA already holds to inform decision making (Listed Building descriptions, Conservation Area appraisals etc) and the proportion of HERS inputs into other non-designated heritage assets. For example, in the last year to 17th June 2015 Isle of Anglesey received 1,210 planning applications of all types, to which we received 139 responses on the HERS from the Trust on planning applications, or only 11.5% of the all the applications it processes. This indicates the lack of relevance for HERS within the LPA.

Ownership – This remains unresolved, where the Welsh Archaeological Trusts see themselves as the legal owners, yet the Council are duty bound to maintain, in effect through the draft Bill someone else's asset where the

LPA's appear ultimately responsible for all the costs for but proportionally see little benefit.

Understanding of Costs & Impacts – The costs and options in the Explanatory memorandum are not crystal clear on the impacts to LPA's, especially in the circumstances where the current Royal Commission funding support to the Trusts to maintain the HERS in the future diminishes or is withdrawn and the impact on already stretched LPA budgets and the likely future pressures to deliver a mainstream Planning service created by the Planning Bill.

Equality of competencies – The Bill introduces detailed requirements placed on LPA's to ensure skilled archaeologically focussed officers are employed to maintain and manage the HERS. No such requirements are placed on LPA's in relation to LB/CA as designated heritage assets for Conservation Officers, surely this is suggesting government is placing greater weight on records than the actual asset and was not their intention. It could also rather perversely mean that the only statutory post within a LPA is that of a HERS officer, not a planner.

Standards – Should the HERS be transferred to LPA's, how will they respond to planning service needs and in maintaining collection standards for archives and record keeping, how will these be dealt with, especially in relation to IT system integration and updating costs, which differ from existing Planning IT systems. The Royal Commission could also impose new standards, with the burden falling on LPA's to fund any shortfall at a time of budgetary constraint.

Accountability – The split of the statutory responsibility and costs to the LPA and standards to the Royal Commission, while the record is held by a third party (a Trust) appears to indicate a confusing split for proper management and oversight. Sufficient safeguards should be established to ensure LPA's are not left exposed to the costs being incurred and changes in collection standards.

Legacy Issues – Categorical reassurance have to be given to LPA's over unresolved historic and potential future pension and tax liabilities of the Welsh Archaeological Trusts, given previous problems suffered by at least one of the four bodies. LPA's should not be held liable for additional costs due to poor financial management of an external body.

Conclusion

While it could be argued as to the value or not of a statutory of HER, the real issue is placing it with an LPA just seems wholly the wrong fit, especially as most relevant records are already held by LPA's. The current proposal misunderstands and overplays the limited role of HERS in day to day planning decision making and the impact on Development Control work. The better location would be with Local Archives or remaining with the Trusts but overseen and the duty resting with the Welsh Ministers through the Royal Commission.

The issues of the potential impact of costs was briefly touched upon in a previous report by the National Assembly's on Historic Environment policy from March 2013 and the matter of HERS was only briefly discussed but became a recommendation – number 2 (pg 24 / para 48). As the IFA mentions "we cannot be confident of maintaining that provision in the future in the light of the funding challenges facing all public bodies".

In effect the funding challenge has been recognised with the current arrangements and somehow the Bill suggests placing the costs with LPA's is the preferred solution, potentially placing other elements of planning at risk, as budgets inevitably diminish over the coming years potentially placing more mainstream planning activities at risk from this most recent proposal set out in the draft HE Bill.

FORMAL CONSULTATIONS

Headline Points:

- **The proposed measure could result in the significant alteration or the loss of historic assets contrary to what the current measure provides**

We understand the need to introduce the measure that make existing structures for the designation of nationally important historic assets more open and transparent by introducing formal consultation with owners as well as establishing a mechanism to review those decisions.

The measure will remove the uncertainty we have at present during the formal planning process however; unsympathetic and aggrieved owners may alter or even demolish historic buildings after being formally consulted on proposed scheduling or listings which the present measure does not allow this to happen.

ADVISORY PANEL FOR THE WELSH HISTORIC ENVIRONMENT

Headline points:

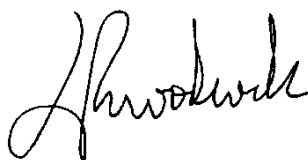
- Welcome creation of the Panel to advise Ministers but needs to avoid duplication with the existing Historic Environment Group (HEG)
- Needs to be transparent in appointment, working and reporting to ensure credibility.

The creation of an Advisory Panel is welcome, in providing expert advice to the Minister. This proposal deals with the abolition of the former Ancient Monument Board and Historic Buildings Council for Wales in 2006. The proposed range of exclusions ensures wider set of contributors, given the dominance of certain interest and lack of transparent appointment on the existing Historic Environment Group (HEG). The Panel is vital to ensure voices beyond Welsh Government have a route to the Minister but needs to avoid duplication with HEG's role.

However, the Panel needs to be vehicle whereby expert opinion could genuinely challenge Welsh Ministers and Cadw on their policies and strategies, and drive a positive agenda. It could be questioned how independent the panel would be, given that its members would be appointed by the Welsh Government and that its work programme must be approved by

the Welsh Ministers. Since the Advisory Panel is intended to introduce greater transparency and accountability it is generally felt that the Bill and Explanatory Memorandum should explain how transparency and accountability are to be achieved – the Historic Environment Group (HEG) for example has done useful work but this goes unreported and unpublished. For instance, in comparison to HEG the Advisory Panel’s work must be wholly transparent with its work programme published, while at present there is apparently no requirement to publish its output and this should be considered a statutory obligation.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Shrookwell', written in a cursive style.

Head of Planning and Public Protection
Isle of Anglesey County Council