

A new regime for Heritage Assets

The draft PPS 15 (out for consultation) is a proposal for a massive power grab in the bureaucratic control of the historic environment, says Robert Adam.



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Heritage control has been subject to mission creep for some time. We have buildings that make a "positive contribution" to conservation areas, we have local listings, we even have buildings that have an impact on (not in) conservation areas just by being close by. Now, this draft proposes to formalise this whole rag bag of informal controls and roll up them up into a new thing called a "Heritage Asset".

This might be acceptable if, at last, greater definition were to be provided or proper remedies for mis-designation or over-zealous officials were to be established. On the contrary, under the new draft the owners of the property would be even more at the mercy of the whims and obsessions of individual officers or departments. While informal extensions of power can be challenged on their informality, this new PPS would elevate them all to government policy.

If you were afraid of the arbitrary powers of planning and conservation officers in charge of the historic environment, now you should be very afraid.

The key concept in the whole new approach set out in the draft is a "Heritage Asset". So what is a "Heritage Asset"? It is defined as "A building, monument, site, or landscape of historic, archaeological, architectural or artistic interest, whether designated or not. Heritage assets are components of the historic environment." So, essentially, it's anything to do with non-moveable man-made historic objects or places that are "of interest" – what we might call the interesting bits of the Historic Environment.

Helpfully, the Historic Environment is also defined as "All aspects of the environment resulting from the interaction between people and places through time." (That is

just about everything but, to make quite sure, there is a list of some things you might have missed) "Those elements of the historic environment that have significance are called heritage assets." So, in fact, we have two definitions of "heritage assets": any non-moveable man-made object that is historic and of interest; and bits of the historic environment that have significance.

Fortunately, both Historic Interest and Significance are also defined. Historic Interest is "An interest in past lives and events". Again there is a list but essentially Heritage Assets are things that can be associated with anything historical, not just specific events but how people feel about places or buildings, and this makes them of Historic Interest. Significance is "The value of a place to this and future generations because of its heritage interest. (my italics) That interest may be archaeological, architectural or historic."

Do you begin to feel that you locked into a circular process here? Historic significance is something that is of heritage interest; the interest can be physical, emotional, for people now and for people in the future (quite how you determine what people will think in the future I do not know). So, anything non-moveable and man-made of historic or heritage significance or interest will be a Heritage Asset. This is a very broad definition and to understand it we have to ask two questions: what is historic and who decides on what is significant or of interest?

Well, history is anything that happened in the past but there must be some limit to this or everything would be historic. For guidance, we should look to the terminus ante quem for the listing of buildings and, in special cases, this is ten years. So, we can assume that anything that is



Each one a heritage asset?

Top-Middle: 1930s semi Photograph © David Hawgood
Bottom-Left: St Pancras Station Photograph © Andrew Dunn, 2004

more than ten years old could be regarded as historic or heritage (or possibly the more usual figure of 30 years, but the point still pertains). Who then decides on what, out of our more-than-ten-year-old man-

made environment, is of significance or of interest? It is the planning authorities themselves. There is no objective measure, no checks or balances and no appeal process. If you own property which a planning

authority decides is a "heritage asset", you're at their mercy.

The decision-making on significance or interest is, however, not presented as baldly as this in the draft. Nonetheless, there is no state-

ment of exactly how, from all those millions and millions of more-than-ten-year-old man-made non-moveable things or groups of things, it is decided which ones are significant or of interest and which are not.

Local Authorities are told that they should "take into account the particular nature of the interest in the asset and the value that it holds for this and future generations", they are also told that they should "use

appropriate expert advice" (their colleagues in the private sector) and that they should "particularly seek the views of the local community" (quite how and what weight this should be given we are not told). But when they've done all this, how do they decide? Well, it seems that they just decide and that's it. Furthermore, with such a woolly and imprecise process (if you can call it a process at all) there is nowhere that a property owner can be sure that they will be able to examine the reasoning or challenge the decision-making that could have a significant effect on the enjoyment of their property.

So, for all practical purposes a Heritage Asset can be anything man-made, non-moveable and more than ten years old that an authority decides is significant or of interest. As anyone involved in the planning process knows, as often as not such decisions are made (as are most planning decisions in reality) by a few unelected people in a room.

Now we have a Heritage Asset, what status does it have? It is proposed that there would be a grading of significance from "Designated Assets" (places or buildings listed, scheduled, registered, a Conservation Area or a World Heritage Site) down to simple Heritage Assets. Quite reasonably, the draft states that "the more significant the heritage asset, the greater the presumption in favour of its conservation". But it also says that there are "heritage assets that are not currently designated or are not capable of designation but which have a level of interest which should be conserved and where appropriate enhanced." Furthermore, it states that "Those elements that do contribute to the significance [of a World Heritage Site or a Conservation Area] should be considered as designated assets in

themselves (whether subject to separate statutory designation or not)." Confusingly then, there is a system of "designation", which can logically be assumed to establish a need for a greater degree of protection, but then it is stated that undesignated and incapable-of-being-designated Heritage Assets can be given the same status as Designated Assets. So, in reality, there is no grading system at all. It is quite

possible that, in different authorities, you could be treated the same if you had a seventeenth-century Grade I building or had a 1950s building on the other side of the street to a Conservation Area.

It could well depend on the personal fancy of the conservation officer with whom you are forced to negotiate.

We know from the endless arguments at appeal that levels of protection for levels of listing in PPG15, which at least gave a list of protection measures, were hard to interpret. So how do we deal with this important issue where there is no clear guidance? It is a fact that in many, many cases what the owner of heritage property considers is right for a property is not what the local authority thinks. If there is any justice, it must also be recognised that the local authority may not be correct. The adjudication of this potential conflict of interest between the public good and private rights lies at the foundation of planning law. You would think that it would be equitable for a building owner to have a series of processes, standards and gradations set down so that it would be possible first to challenge the basis for property being identified as a Heritage Asset and second,

once the identification is accepted, understanding in advance the degree of protection that this entails. Indeed, as we move from listing the recognisably important (although even that has become questionable) to being able to make almost anything out there a Heritage Asset, the right of challenge becomes essential.

Instead of a proper set of comprehensible criteria, it is proposed that "the applicant and the local authority explore and understand the significance" of the Heritage Asset, in line with the recommendations of PPS1 for pre-application discussion. Unfortunately, in the last few years many local authorities have so bureaucratized pre-application discussions that they have become minor planning applications in themselves but subject to neither time limits nor binding conclusions and often carrying a prohibitive charge. It is a common conclusion amongst professional applicants that it is preferable to make an immediate application which will at least deliver a timely conclusion and a binding outcome – even if it is negative.

Whether or not such discussions have taken place, applicants are themselves "required ... to provide a description of the significance of the heritages assets" which are the subject of their own application and "set out .. the expertise that has been consulted". The unfortunate applicant (usually a private householder) is now to be faced with employing "experts" to tell the local authority the significance or interest of their own Heritage Asset. The local authority can then, if they so

wish ("as required") compare this with "advice from [other] professional experts" and "the outcome of any (my italics) consultation with the local community". It is astonishing that this complex and expensive process is presented as "likely to benefit developers by increasing certainty and reducing risk" and that this will "benefit business" by streamlining the process and creating "greater consistency". The reverse seems more likely.

Of course, a lot of this would work if those administering the process had time for each application, were all reasonable, flexible, practical, open to reasoned debate and never inclined to abuse their position of power. I am sure that many of those who drafted this PPS would fit this description and I know many conservation officers who act in this way. Unfortunately, and I regret having to say this, I know many who are none of these things. This draft PPS is bureaucratic without accountability and a formula for the abuse of power and the arbitrary sacrifice of legitimate property rights. You cannot have a bureaucratic system of this scale and significance based on the principle that all its administrators are of the highest quality and probity. There must be clearly defined and transparent processes, a comprehensible grading of the criteria and powers appropriate to each level of significance for Heritage Assets and an equitable system for a challenge to the designation of a property by its owner.

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