

AJ Refurbishing existing Buildings conference 28 June 2007

Planning issues

Brian Waters

One of the new driving issues in planning is the swathe of emerging policies seeking to deal with energy efficiency, carbon emissions and sustainability. Many – especially those emanating from London’s Mayor – are predicated on untried and unproven technologies and methodologies, so will have unpredictable outcomes.

Even more unfortunate is the increasing overlap and duplication of planning with building and environmental regulation. Other speakers today are expert on the last two, so I will confine myself to planning and will focus on the area of planning where the legislation and policy is particular to finding new life in old buildings and regeneration – listed buildings.

The new planning white paper is of general relevance and the recent Heritage white paper is of more particular relevance. Both are out for consultation.

The key documents to which I am going to refer are these:

- White paper: *Heritage Protection For The 21st Century* (www.english-heritage.org.uk)
- EH’s consultation paper *Conservation Principles, Policies and Guidance*
- an article by Robert Adam in April 2006 *Planning in London*
- EH and the BPF’s 2005 *Heritage Matters*
- PPG15 *Planning and the Historic Environment*
- Planning white paper: *Planning for a sustainable future* May 2007

You will find links to these on my website with this paper: www.bwcp.co.uk > Guidance. They are noted at the end of this paper.

The contribution which the historic environment can make to regeneration is increasingly being recognised and its value to sustainability is emerging. Taken together with the recent white paper *Heritage Protection For The 21st Century* and new thinking by English Heritage (EH) suggests that a more constructive approach to development where it involves listed buildings and conservation areas is emerging.

EH’s consultation paper *Conservation Principles, Policies and Guidance* introduces a values-based approach intended to help decision-makers to take account of the diverse ways in which people value the historic environment as part of their cultural and natural heritage. Justifiable decisions about change in the historic environment depend upon understanding who values a place and why they do so, leading to a clear statement of its significance and with it the ability to understand the impact of change on that significance. “Every reasonable effort should be made to eliminate or minimise adverse impacts on significant places”, says EH. “Ultimately, however, it

may be necessary to balance the public benefit of the proposed change against the harm to the place. If so, the weight given to heritage values should be proportionate to the significance of the place and the impact of the change upon it”.

The new approach is summed up: “Proposed changes which would materially harm the heritage values of a significant place should be unacceptable unless all the following criteria are met:

- the changes are demonstrably necessary either to make the place economically sustainable, or to meet another public policy objective;
- it is either not reasonably practicable to avoid the harm by achieving the conflicting objective in a different way, or the harm has been reduced to the minimum consistent with achieving that objective;
- it has been demonstrated to the competent authority that the public benefit decisively outweighs the unavoidable harm to the values of the place, considering its comparative significance, the impact on that significance, and the benefits to the place itself and/or the wider community or society as a whole”.

Architect Robert Adam has called for a re-examination of the core principles of the culture of conservation in planning which he says is long overdue. “Conservation has come to have a deadening effect on the historical environment with often bizarre consequences for the continuing life of buildings”, he argues in *Planning in London*, April 2006.

The proportion of listed buildings to all buildings has increased in 30 years from 1 in 140 to 1 in 40, a total of half a million, and conservation areas from four to over 8,000. This says Adam has created a new breed of administrators and the dominant culture has changed from architect conservation officers to specialists from an archaeological and historical culture which has led to an overriding concern with historic authenticity. “This” he says “is like the study of wildlife through taxidermy”.

Adam notes that *Conservation Principles* recognises that our attitudes to our historic environment are in a constant state of change: “the historic environment reflects the evolving knowledge, beliefs and traditions of multiple communities” and “changes in the historic environment as a whole are inevitable”, adding “judgements about values are necessarily specific to the time they are made”. This explicit recognition, he suggests, could have far reaching consequences in a system that relies on a default position of preservation.

There may be heated debate about the criteria for the justification for ‘irreversible intervention’ – which means permanent change or destruction – but the fact that the principle is formally recognised is important, say Adam.

Conservation Principles seeks to relate conservation to sustainability. It states that the use of the historic environment should “not compromise the ability of future generations to do the same”. How you decide that without a return to simple preservation is an interesting and unanswerable question says Adam. “The simple fact is that the effective reuse and avoidance of destruction of good building stock is fundamentally sustainable”.

The refreshing new direction is also seen in the EH and British Property Federation document *Heritage Works* of 2005. Its headline messages include:

- Critical to the success of regeneration is finding a viable economic use that can support initial refurbishment, provide the owner or developer with a reasonable return on their investment and which generates sufficient income to ensure the long-term maintenance of the building fabric and any associated public open spaces
- In short, the listed buildings consents regime does not prohibit any change, rather it establishes criteria against which ‘acceptable change’ can be assessed
- The re-use and adaptation of heritage assets is at the heart of sustainable development. Re-using historic buildings contributes to the achievement of sustainable development targets for reducing greenhouse gas emissions
- The impact of successful schemes is felt beyond the boundaries of the heritage asset itself and can boost the economy of the whole town or city
- Design development: Work to listed buildings requires sensitivity and care, and the works proposals must be drawn up in careful consultation with statutory authorities and advisory bodies. Undertake thorough surveys of the building and make realistic assessments of its capacity to be adapted for the proposed use.

The Heritage white paper aims to review and simplify the regulatory regime, merging planning and conservation area applications, integrating the classification of monuments and listed buildings and improving listing procedures now in the hands of EH rather than DCMS.

Conservation Areas

A word about Conservation Areas. The key measure here has long been that new development has to ‘preserve or enhance’ [not both, note]. Increasingly however local planning authorities [LPAs] resist demolition in a CA. PPG15 *Planning and the Historic Environment* suggests that the tests which apply to the demolition of a listed building should apply in a CA. Some LPAs take this literally – which would make the listing of any building in a CA rather meaningless.

LPAs are meant to prepare character assessments when they designate a CA, but often they have not. They are also meant to review their designations regularly – which they rarely do. However, a fine example was set earlier this year when the City of London shrunk and undesignated several CAs. In my view CAs have proliferated to the point of devaluation. Where they haven’t been justified by a credible and up to date character assessment within the last five years they should automatically lose their status. But not everyone would agree with me!

Listed building consent

20. Listed building consent (LBC) is required for any works for the demolition of a listed building, and for most works relating to its alteration or extension. The House of Lords ‘Shimizu’ case* has established that the ‘demolition’ of a building means ‘the clearing of its site prior to rebuilding’. As for ‘works for alteration and extension’, these only require consent if they are ‘in any manner which would affect its character as a building of special architectural or historic interest’.

The ruling therefore makes it clear that there are some works of alteration that do require consent, and some that do not. However, it is also clear that, for works to

require consent, they have to have an ‘affect (on) the special character’ – which may be either beneficial or adverse. Note that the Planning white paper aims to reverse the impact of this decision.

The determination of precisely what does or does not need consent in any case will be a matter of fact and degree; but it may be noted that the determining factor is their impact on ‘the special character of the building’. The ‘reversibility of the works’ is considered to be relevant to an assessment of their effect on the character of the building, and thus for the need for consent. The inference is that if the works are easily reversible without damage to the historic fabric then consent may not be required, although it may be considered that the position of something, even though it might be reversible, affects the character by, for example, blocking visibility. There is however a balance, as PPG15 (1.3) notes: “The Government has committed itself to the concept of sustainable development.... (and) the historic environment is all-pervasive, and it cannot in practice be preserved unchanged.”

The carrying out of repairs, internal or external, may need LBC, but “only where they affect the character of the building as a building of special architectural or historic interest”. PPG15 states that repairs carried out on a like for like basis do not normally require consent. As for redecoration, this too needs consent only where it affects the character of the building.

It should also be noted that, if works do not affect the character of the listed building, consent is not required. Such judgements may be made by the architect and should be based on expert knowledge or advice. If they are proved wrong the consequences are serious and criminal offences may be the result.

PPG 15 (3.5) states that “Generally the best way of securing the upkeep of historic buildings and areas is to keep them in active use. For the great majority this must mean economically viable uses if they are to survive...it requires balancing the economic viability...against the effect of any changes they entail in the special architectural and historic interest of the building” (3.9) “Policies for development and Listed Building controls should recognise the need for flexibility ...to secure a building’s survival..”

PPG15 (3.10) continues: “Achieving a proper balance between the special interest of a Listed building and proposals for alterations or extensions is demanding and should always be based on specialist expertise; but it is rarely impossible, if reasonable flexibility and imagination are shown by all parties involved. Thus, a better solution may be possible if a local authority is prepared to apply normal development control policies flexibly; or if an applicant is willing to exploit unorthodox spaces rather than set standardised requirements.” (3.15).

Advice given in PPG15 and by SPAB (Society for the Protection of Ancient Buildings) and upheld by ICOMOS is that designs “should not try to confuse the history of a building”: what is old should be preserved, but what is new should be seen to be new – although it should not seek to detract from the original fabric. Extensive alterations undertaken during the building's history generally do not try to mimic the “period, style and detailing of the original building” but were in a style that was felt to be

more appropriate at the time.

A key to determining appropriateness of new interventions is their 'reversibility' and any perceived 'serious detriment' that they might have on those parts of the historic fabric that might be considered of 'special interest'. Therefore, a modern 'kit of parts' type of construction that both allows specifically for minimal adaptation and visual intrusion on historic fabric and may be reversible would seem most appropriate.

Being an architect as well as a planner I am going to run through an example where I have applied the new approach. The listed building and planning applications only went to Westminster a few days ago, so I have yet to see how well it is accepted!

A new future for No.1 Marylebone Road, Sir John Soane's Holy Trinity church of 1828.

[I will let the slides talk here. The full story is on the consultation website at www.bwcp.co.uk >Current Stuff.]

Extract from *Heritage Works*:

6 Consents regime for heritage assets

6.1 Listed buildings

6.1.1 What does 'listing' mean?

A 'listed building' is a building or structure included on the list of buildings of special architectural or historic interest, compiled by the Government on the advice of English Heritage. Buildings may be listed for a number of reasons, including their architectural or historic merit, historical association with nationally important events or people, or their group value. Local authorities sometimes compile lists of buildings of local interest. These are commonly referred to as 'local lists.' These have no statutory significance and do not give rise to any additional consent requirements for buildings that are not on the statutory list.

6.1.2 Listed building grades

In 2002 there were 376,094 listed building entries covering an estimated 500,000 individual properties or items in England. Each building is placed in one of three categories (Grades I, II* or II) to give an indication of its relative importance – with a Grade I listed building being of the greatest significance.

6.1.3 List descriptions

When a building is listed, a listing description will be prepared by English Heritage. This refers to the principal features of the building which have led to its listing. The listing description is not intended to be exhaustive. Where there is doubt over the importance of particular features, the advice of the local planning authority should be sought.

6.1.4 Extent of listing

The listed building will include the building itself, plus any object or structure which forms part of the land and has been within the curtilage since 1948.

6.1.5 Applications for listed building consent – when are they required?

Listed building consent is required for a listed building's demolition, in whole or in part, and for any internal or external works of alteration or extension which would affect its character as a building of special architectural or historic interest. A checklist which considers whether listed building consent is likely to be required for proposed works is provided in Figure 3.

6.1.6 Applications for listed building consent – how are they determined?

The primary decision-maker on applications for listed building consent is the local planning authority. Outside London, local planning authorities are required to notify English Heritage of listed building applications that affect Grade I and Grade II* listed buildings, as well as those Grade II applications that involve substantial or complete demolition. In London, all applications need to be notified to English Heritage and this body can direct the local planning authority to grant consent or to determine the application as it sees fit. *[This is incorrect! EH can only direct a refusal – BW]*

Government advice in PPG15 'Planning and the Historic Environment' makes it clear that the listing of a building should not prevent all future change. The statutory requirement on local planning authorities is 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. Applicants for listed building consent will need to show why proposals which would affect the character of a listed building are necessary or desirable.

This means that it is essential to provide a clear reasoned justification for the proposed works, explaining why they are needed and why they should be supported in the context of the wider advice in PPG15 and in particular, the listed building application criteria set out in the section below. The application should provide full information to the local planning authority to enable it to assess the likely impact of the proposals on the building or its setting.

PPG15 contains detailed guidance on the approach that should be taken formulating and assessing development proposals for listed buildings. It also provides a useful guide for practitioners embarking on a regeneration scheme involving a listed building.

House of Lords - **Shimizu (U.K.) Ltd. v. Westminster City Council Judgments - **Shimizu (U.K.) Ltd. v. Westminster City Council**. HOUSE OF LORDS. Lord Browne-Wilkinson Lord Griffiths ... **SHIMIZU (U.K.) LIMITED (APPELLANTS)** ... www.publications.parliament.uk/pa/ld199697/ldjudgmt/jd970206/shimiz01.htm*

Key documents and links:

- White paper: *Heritage Protection For The 21st Century*
www.culture.gov.uk/Reference_library/Consultations/2007_current_consultations/hpr_whitepaper07.htm
- EH's consultation paper *Conservation Principles, Policies and Guidance*
www.english-heritage.org.uk/server/show/ConWebDoc.10217
- an article by Robert Adam in April 2006 *Planning in London*
www.planninginlondon.com/HTML/Epil/ePiL%20april%202006.htm
- EH and the BPF's 2005 *Heritage Matters*
www.english-heritage.org.uk/upload/pdf/Heritage_Works.pdf
- PPG15 *Planning and the Historic Environment*
www.planningportal.gov.uk/england/professionals/en/1021020427913.html
- Planning white paper: *Planning for a sustainable future* May 2007
www.communities.gov.uk/index.asp?id=1510503