Levelling Up and Regeneration Bill - Committee Stage Briefing

The Heritage Alliance

June 2022

The Heritage Alliance Toplines

- Heritage is at the heart of the Levelling Up and Place agenda and we are pleased Heritage is on the face of the Bill and has its own chapter, Chapter 3;

- We strongly support Clause 185, which would make Historic Environment Records statutory, and which has been a long-term ask from the sector;

- We also strongly support Clause 92 (extending the protection of heritage assets), and suggest there are a limited number of key additions to the heritage assets list that would ensure protection is clearer and more comprehensive;

- We would like a better understanding of what 'enhancing' would mean legally in Clause 92;

- We have some questions about the replacement of Environmental Impact Assessments, which will be replaced with Environmental Outcome Reports (Part 5, Clause 116). It is good that cultural heritage is included in these proposals, as the historic and natural environment are dependent on each other, but we need some more information on how EORs will work and it is important to ensure that the definition of cultural heritage in the Environment Bill is not used in this legislation, as it excludes built heritage;

- We also have questions about how heritage will be considered with regard to National Development Management Policies, (chapter 2);

- Given the presidency of COP26 last year, and the recognition of the climate emergency, we hope to see more action from Government, in parallel to the Bill, to encourage reuse of current building stock over a presumption to newbuild. We hope that the Government will review and remove the permitted development for demolition as part of, or in tandem with, this Bill.

The Heritage Alliance – who we are

Established in 2002, The Heritage Alliance is a membership body, which represents the independent heritage movement in England. As such, it has a unique role, promoting the sector in all its diversity. We have 180 members from micro- to international organisations, covering:

- built heritage
- community heritage and public engagement
- culture and memories
- industrial
- maritime and transport heritage
- landscape, parks and nature
- archaeology
- conservation
- academia, learning & traditional skills
- places of worship
- sector support

Our combined membership represents the interests of over 7 million volunteers, trustees, members and staff.

Clause 185 – Historic Environment Records

We give strong support for this clause; this is something the heritage sector has long called for, and was included in our 2019 Heritage Manifesto.

This clause makes Historic Environment Records (HERs) a statutory requirement for relevant authorities, in so far as the relevant authority has the information and considers it suitable for inclusion in the record. The relevant authority must take reasonable steps to obtain the information, and keep it up to date. The clause also gives the Secretary of State various powers, including making regulations to enable a relevant authority to charge for access to the record, and for copies of the record.
Relevant authorities include county councils, district councils where there are not district councils, London boroughs, National Park Authorities, and the Broads Authority.

Why HERs matter:

HER & archaeological advisory services are a key provision of LPA culture and heritage services and create public benefit by:

- **ensuring better information**, and therefore better and faster decisions;
- **advancing understanding** by providing information to the public and engaging them with their local heritage, through research, furtherance and dissemination of knowledge, and the creation and maintenance of accessible HERs and archaeological archives;
- **contributing to achievement of sustainable development** through managing change to heritage assets and historic landscapes in a way that as far as possible sustains or enhances their significance and that of their setting;

- **contributing to the realisation of social, economic, and environmental benefits** including include promoting local distinctiveness, pride and a sense of place, stimulating inward investment and regeneration, and promoting wellbeing through encouraging physical activity, participation and volunteering, and providing leisure and learning opportunities.

Comprehensive and reliable HERs and advisory services, staffed by suitably qualified and experienced staff, contribute to the smooth and timely operation of the planning system. They do this by providing ready access to reliable information about the historic environment, and by enabling sound judgements to be made about significance. This ensures that advice is provided promptly to developers and others, and that any planning requirements imposed are well-founded and proportionate. In this way, national planning policy for the historic environment is properly implemented.

The proposed statutory duty is a positive step to recognise this value and ensure that all HERs across England can be levelled-up to meet high data standards, enhance the usability of digital data, and thereby contribute to Government's aims to improve digital planning and deliver on its levelling-up mission in respect of beauty and restore local sense of community, local pride and belonging. Some HERs have already demonstrated that the resource, properly and expertly characterised and interpreted, can identify opportunities for place-making benefits and development opportunities, and were the entire English network to receive proper investment and resourcing, the opportunities from using the historic environment for engagement, growth and levelling up communities are immense.

We seek clarification on a few points of detail:

- The Bill states that it 'extends to England and Wales', but it is worth noting that Wales already has its only statutory duty on HERs in the Historic Environment (Wales) Act, 2016;
- Whilst we recognise that the Government's intention is to ensure that the current functional operation of HER services across England are covered by the new duty, there's a number of local authority arrangements which could fall outside of the current definition (including 'shared' HERs which cover more than one relevant authority, and those which are externally hosted by other organisations (e.g. Greater London). We also wish to ensure that lower tier authorities which are not relevant authorities are not able to withdraw funding or opt out of service provision;
- We note that fees for accessing HERs are currently locally set and it would be helpful to confirm that regulations will continue to allow this in order to enable LPAs to set a threshold appropriate to local needs;
- There are also questions from the sector about the proposal for payments to access HERs, especially for statutory consultees. It would be useful to understand what level these fees might be, and whether they will be applicable to everyone.

We are delighted that HERs are an element which will contribute even more strongly to local heritage and beauty as a result of Government's commitment to invest in digital planning.

There are some factors which will ensure HERs are as useful as possible:

- It is important a high minimum standard is set for statutory HERs so all the necessary information is captured and that HERs can be levelled-up to meet this standard across the country;
- It would be useful for Parliamentarians to raise the importance of resourcing for the Relevant Authorities who will have to create, enhance, and manage these new upgraded records.

Chapter 3 – Heritage

We are pleased to see heritage is recognised on the face of the Bill, and with its own chapter.

Clause 92 – regard to certain heritage assets in exercise of planning function

This clause would amend the Town and Country Planning Act 1990, so when considering whether to grant planning permission or permission in principle, which affects a relevant asset or its setting, planning authorities or the Secretary of State must have special regard for preserving or enhancing the asset or its setting. This includes "preserving or enhancing any feature, quality or characteristic of the asset or setting which contributes to the significance of the asset." The relevant assets are set out in the Bill, alongside their significance, as below:

TABLE

"relevant asset"	"significance"
a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979 (see section 1(11) of that Act)	the national importance referred to in section 1(3) of that Act
a garden or other area of land included in a register maintained by the Historic Buildings and Monuments Commission for England under section 8C of the Historic Buildings and Ancient Monuments Act 1953	the special historic interest referred to in subsection (1) of that section
a site designated as a restricted area under section 1 of the Protection of Wrecks Act 1973	the historical, archaeological or artistic importance referred to in subsection (1)(b) of that section
a World Heritage Site (that is to say, a property appearing on the World Heritage List kept under paragraph (2) of article 11 of the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage adopted at Paris on 16 November 1972)	the outstanding universal value referred to in that paragraph

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This same regard is to be included in the consideration of draft neighbourhood development orders. There are also two amendments to the Listed Buildings Act, so that 'preserving' is read as 'preserving or enhancing'.

The Heritage Alliance is very pleased to see this list of heritage assets. While this table does cover many of the key asset groups we would expect to see (though the inclusion of Registered battlefields could be clearer), it would be good to address a couple of gaps at this stage – particularly to add protection for the setting of conservation areas and to insert a clause to allow the protection of a small number of nationally-important archaeological sites which cannot now be designated because they lack structures. This latter measure was included in the draft Heritage Protection Bill, and raised again by The Heritage Alliance in discussion around the then Environment Bill, in 2019.

It would be good for parliamentarians to probe how these designations will interact with other natural environment designations, for example Ancient Trees, Ancient Woodland, Veteran Trees and Ancient Hedgerows. As there is a symbiotic relationship between the natural and historic environment, often a few different designations will be in the same area, and it is important there is clarity about how each is to be regarded in the planning system.

Similarly, consideration should also be given to the interaction with maritime archaeology designation, including the Protection of Military Remains Act 1986, where naval heritage assets are designated by the Ministry of Defence.

It is important for Parliamentarians to clarify the intention behind amending the Planning (Listed Buildings and Conservation Areas) Act 1990. If the wording has been chosen to align this Act with the wording in the NPPF, it should be noted the NPPF talks about 'preserving and enhancing significance' which is subtly but importantly different to 'preserving and enhancing assets'. This amendment should replicate the intent of the NPPF. Doing this would ensure that the process of undertaking archaeology (i.e. a process which may be destructive but carries the potential to enhance significance through new information) is covered by the duty.

The concern from some in the sector is that unless enhancement of significance is properly defined, archaeologists may not be able to carry out important work, which in some cases might be destructive but carries the potential to enhance significance through new information. There could also be. There could also be confusion about what works 'enhance' a heritage asset.

Clauses 93 and 94

Clauses 93 and 94 are welcomed by the sector.

Clause 93 would amend the Listed Building Act so that a local planning authority can issue a stop notice to works which affect the special or architectural interest of the building.

These notices must be in writing, prohibit specific works from taking place and give the planning authority's reasoning for prohibiting them. The stop notice can then be served to the person causing the works, the occupier, or the person with interest in the building. Works should then be stopped immediately. Stop notices will have to be displayed at/on the building, with the date when the stop notice was served, and would come into effect as soon as they are displayed as such. The stop notice would then last for 56 days, unless a shorter period is specified in the stop notice itself, and planning authorities will not be able to issue subsequent stop notices for the same works, unless they have taken enforcement action in relation to those works.

There is also a clause allowing the Secretary of State to permit works in line with regulations or circumstances which the Secretary of State prescribes. The clause then goes on to make it an offence punishable by fine to contravene, or cause a person to contravene, a stop notice, subject to some limited defences which include health and safety works and works for the preservation of the building. It is also significant that in deciding the fine, the court must have regard for the realised or potential financial benefit to the person in consequence of the works. The clause also allows for loss or damage compensation, including payment for breach of contract, to the person who has interest in the building, in circumstances where the stop notice is a repeat of a previous stop notice, where no injunction has been taken, or where the local planning authority withdraws the notice the day after it ends without listing the property. However, compensation will not be paid if the claimant was required to provide information to the local planning authority, and then loss or damage could have been avoided if the claimant had provided that information or otherwise cooperated with the local planning authority. This clause also gives the Secretary of State the power to issue a stop notice on any land in England, as well as extending the provision to Wales and Greater London.

Clause 93 makes stop notices, long available within the wider planning system, applicable to heritage consent regimes.

Clause 94 amends section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as it applies to England and Wales in a number of ways to:

- Remove the provision that in occupied buildings, urgent works can only take place in the unoccupied sections, subject to the owner and occupier having 7 days notice, and:
- Allow an urgent works notice to recover the costs of works to be served to a new owner.

There is also strong support from some in the sector for Clause 94, the proposal that Urgent Works can be required in cases where listed buildings are occupied, and the proposal makes it simpler to reclaim costs where ownership changes.

<u>Clause 95</u>

This clause removes the right to claim compensation for any loss or damages due to the serving of a Building Preservation Notice in England. This would come into force

after the passing of the Levelling Up and Regeneration Bill, so any notices served in England before then would still give interested persons the right to apply for compensation.

While there is general agreement in the sector that there needs to be a better system for the protection of buildings which are being considered for listing, and the whole sector recognises that interim protection of heritage during the listing process is important, there are different views in the heritage sector on the proposals in this Bill to address this.

Many in the sector welcome the removal of compensation, and would go further, asking for a duty on local planning authorities to serve a BPN where they believe criteria for listing can be met. A significant minority, however, have concerns about the removal of compensation from those wrongly served a Building Preservation Notice (BPN), which could result in delays and losses to building owners. There is also a concern that it sets a worrying precedent for other compensation clauses across planning legislation to be removed too.

These organisations propose, rather, a system of interim protection for assets being considered for designation akin to that already operational in Wales.
It is important for the whole sector that there is clarity on the approach that will be taken in any transition period until the new Act is fully effective.

Part 5 – Environmental Outcome Reports

The Heritage Alliance is pleased to see the EOR clause 116 recognises environmental protection should include protection of the cultural environment and landscape as well as the natural environment. The historic environment often forms part of the habitat for nature, and it is vital this symbiotic relationship is recognised in legislation.

Clause 116 gives the Secretary of State powers, with reference to Part 1 of the Environment Act 2021, to create regulations which may specify environmental protection outcomes for the UK and the relevant offshore area. These are a replacement for Environmental Impact Assessments.

Environmental protection in this context means:

"(a) protection of the natural environment, cultural heritage and the landscape from the effects of human activity;
(b) protection of people from the effects of human activity on the natural environment, cultural heritage and the landscape;
(c) maintenance, restoration or enhancement of the natural environment, cultural heritage or the landscape;"

As well as monitoring and reporting on any of the above.

It is also worth noting the definition of cultural heritage includes any building, structure, other feature of the natural or built environment or site, which is of historic, architectural, archaeological or artistic interest.

We need more information on what the Bill considers to be a "relevant offshore area". In general, local authority jurisdiction coincides with the authority's administrative boundary and it is generally agreed that coastal local authorities have administrative control and jurisdiction over areas down to low water mark, in the whole of England and Wales. However, in some cases, the administrative boundary, and therefore general jurisdiction, may extend seaward of low water mark, for example in estuaries, bays, inlets, creeks, channels and harbours.

It would be helpful to have clear confirmation that "cultural heritage" includes "underwater cultural heritage". This is generally important but particularly important in the case of the AMAA 1979 which also protects underwater scheduled monuments.

We have some questions about how the proposed EORs will differ from the current Environmental Impact Assessments. There are particular concerns about an inadvertent drop in the protection currently offered by EIAs and SIAs, and the sector seeks reassurance this will not be the case. These concerns arise as it is difficult to see as much of the detail will be delivered by regulations which we have not yet had sight of. We are also concerned that the delivery of EORs through regulations might mean there will not be the same opportunity to scrutinise the details to make sure the EORs work for the natural and historic environment as if they were passed through primary legislation.

We are very keen to ensure that the new arrangements for EOR cover the same scope as the current EIA/SEA – which includes protection of cultural heritage and landscape, with these given the same weight for consideration as natural environment, as set out by Article 3 of the original EU Directive, which specifically including landscape and cultural heritage as factors for existing EIA assessment. The definition of environmental protection in the Environment Bill is problematic because it relies on the Environment Act's definition of "Natural Environment", which (as some may recall we challenged at the time), specifically excludes built and man-made structures from its meaning (the same wording as currently in clause 116 (3)).

Amendments to Clause 120 are also needed to ensure that non-regression provisions apply to cultural heritage and landscape – as it stands, the reference to Environmental law as defined by the Environment Act means that these factors are excluded from the coverage of that clause.

The development of these new regulations offer an important opportunity to look at the crucial relationship between embodied energy, the whole-life carbon emissions involved in construction, and the carbon-cost of demolition work. The repair of historic buildings is an integral sustainable activity that will contribute to addressing the climate emergency. We hope to see more action from Government, in parallel to the Bill, to encourage reuse of current building stock over a presumption to newbuild. We hope

that the Government will review and remove the permitted development for demolition as part of, or in tandem with, this Bill.

We would recommend the inclusion of a presumption in favour of the adaptive reuse of buildings that contribute to a 'sense of place' as opposed to demolition and rebuild alternatives. This approach to regeneration contributes to both levelling up agendas and net zero commitments. This role of culture and heritage for the regeneration of places is recognised in the Levelling up Fund Round 2 Prospectus but has not yet been incorporated into this draft legislation.

Chapter 2 – Development plans and Design Codes

The Heritage Alliance has some questions about how National Planning Policies will interact with Local Plans, and what place locally listed heritage will have in the new proposed relationship between national and local planning, for example:

- Would the Government suggest a NDMP on general heritage protections?
- Would local plans be allowed to retain spatial heritage policies?
- How do we stop a standardised approach from 'levelling-down'? e.g. in some parts of the country, any site above a certain size will have to have a mandatory archaeological assessment. This is a good policy, but hard to apply in areas where land values are low. Do you help/force poorer areas to level up? Or force richer areas to level down?
- Would a NDMP be an opportunity to standardise the approach to local listing and to introduce guidance on National Importance?
- Could a NDMP on locally listed sites be tied with a presumption in favour of adaptive reuse over demolition?

The Heritage Alliance also welcomes the possible introduction of design codes, which would allow for development which would recognise the local vernacular. Many areas identified as focal points for 'levelling up' have few listed buildings but many non-designated heritage assets. Better protection for locally listed structures is not currently included in the Bill, but some provision could be made. At present there is often uncertainty about the status of locally listed buildings and inconsistency between the levels of protection they receive in different local authority areas.

Sensitive adaptation and alteration of non-designated heritage assets offers huge potential for regeneration in terms of historical identity as well as climate sustainability. Adapting non-designated heritage assets also offers opportunity for innovative contemporary design whilst embodying a phoenix-like resurrection of communities that builds on past strength rather than erasing an (often) expired industrial and post-industrial past.