

White Paper briefing – 15 October 2020

## ‘Planning for the Future’ & archaeology

This briefing<sup>1</sup> briefly sets out our key issues relating to the to the *Planning for the Future* White Paper and our suggestions for developing policy proposals relating to archaeology and the historic environment.

We welcome the Government’s commitment to ensuring economic recovery through an ambitious programme of infrastructure spending and housebuilding. We are also keen to ensure that the planning system is both streamlined *and* effective. There is certainly room for improvement, and we want to work with government to ensure that development-led archaeology contributes to these goals by effective investigation, leading to greater understanding and conservation of heritage assets before and during development.

We are pleased that MHCLG has confirmed<sup>2</sup> that the Government is committed to the protection of the historic environment and that “heritage considerations, including the need for archaeological surveys, will continue to be taken into account in bringing forward any planning reforms”. The Secretary of State, Robert Jenrick, has also personally stated to us that his intention is to not only maintain but strengthen provisions for the historic environment.

However, we are concerned that the proposals in the White Paper do not provide any information that confirms this intention. We recognise that there is a considerable amount of detail missing from the proposals and would like to work with MHCLG and DCMS to address these gaps and develop constructive policy proposals that will help the Government deliver on its commitment to the historic environment while delivering its radical vision for planning reform.

The Secretary of State recently proposed that CIfA, CBA, and ALGAO meet with MHCLG representatives to discuss the implications of the proposed reforms on the processes of safeguarding archaeological heritage through the planning system. A date for this meeting has not yet been set.

### Summary:

- I. Within the proposed system for ‘Growth’, ‘Renewal’ and ‘Protected’ areas, safeguards for archaeology need to exist at both the strategic area allocation stage, and at the level of individual development proposals.

<sup>1</sup> A version of this briefing was sent to MHCLG and DCMS on 9 September 2020.

<sup>2</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-07-15/74420/>

- We would like to confirm MHCLG’s intent to fill in gaps in detail in the White Paper proposals. We can advise on structured approaches to delivering safeguards and public benefits for heritage assets with archaeological interest.
- II. The system must recognise that heritage assets with archaeological interest are just as likely to occur in areas earmarked for growth as they are in protected areas and that many assets are unrecorded, undesigned, or remain undiscovered. Within growth and renewal areas the proposals must have provisions in place for appropriate desk-based assessment of heritage assets and, where necessary, a field evaluation which can inform development management.
- We suggest work is undertaken with the archaeological sector to investigate an approach to ‘archaeological sensitivity mapping’ that will help local authorities to understand archaeological constraints, allocate suitable land for growth and renewal, and enable the avoidance and offsetting of harm to heritage assets in these areas. We consider that this approach has the potential to enhance strategic approaches to research, streamline mitigation, and improve innovation and public engagement, and we are keen to develop these opportunities.
- III. Any front-loading of archaeological assessments at a strategic allocation stage will require additional funding to improve baseline data and conduct a high-level assessment of allocated areas. This front-loaded assessment, however, will not be able to replace site-specific evaluation of heritage assets.
- We wish to assist in scoping new processes for data gathering and archaeological evaluation in development areas, and contribute to the development of reserved matters and technical details consent approaches to ensure that these process will be viable for undertaking site-specific evaluation of heritage assets.
- IV. We want archaeology to contribute fully to placemaking. In order to create better places that are meaningful to people Government must ensure that the past, local character, landscape and how people relate to places are understood. This requires a broader approach to placemaking which is focused on more than just design.
- We would welcome the opportunity to develop policies in the White Paper by incorporating the potential for heritage to contribute to beauty and design aims and also suggest further ‘fast track’ options for projects which deliver or enhance cultural capital, potentially to parallel biodiversity net gain.

The archaeological sector has adopted a cautiously positive approach to the proposals, recognising that at this stage the lack of information provides an opportunity to ensure that policies are developed in a way which is positive for the historic environment. We welcome the assurances that we have received to date. However, there remains a potential for archaeology to fall through the cracks if these positive policies are not forthcoming. The remainder of this briefing explores the rationale and evidence for these key issues and explains our initial proposals in detail. It will be necessary to develop these proposals with input from the wider archaeological sector following discussions with DCMS and MHCLG.

# 1. The current system of development-led archaeology

- 1.1. At present there is a well-tested, staged system in the planning process designed to protect our historic environment, put it to work for public benefit, minimise costs and delays, and to maximise its contribution to good place-making, local distinctiveness, and community identity.
- 1.2. Through their role in advising planning authorities and providing services to developers, archaeologists enable well-balanced and informed planning decisions by assessing how heritage assets can be protected from needless harm, and how their investigation can add value to the development, to local people and the wider community. Where harm to the assets is necessary to deliver other public benefits, developers commission archaeological investigation and dissemination of findings, normally secured through planning conditions.
- 1.3. These processes help fulfil the UK's obligations under the 1992 *Valletta Convention on the Protection of the Archaeological Heritage*<sup>3</sup>, the principles of which the UK was instrumental in developing and which have since set the standard across Europe. The UK is still a world leader in archaeological research and development and our heritage management system remains a model for others.
- 1.4. The planning system is central to the beneficial management and protection of the historic environment and provides the only effective protection for many heritage assets with archaeological interest. Most of the archaeological resource – at least 90% - is not protected by specific designations (eg it is not Listed or Scheduled). It is only through the application of planning policies in the NPPF that the impact from development on this 'undesigned' resource is managed. Through this same process many completely new archaeological sites are found each year.
- 1.5. The precise nature and extent of this undesignated archaeological resource (and even its existence) can be unknown prior to the consideration of development proposals. These heritage assets are found in all places, including in existing settlements, on brownfield sites, and on sites likely to be allocated for 'growth' areas. When encountered and unlocked as part of the development process they can add considerably to placemaking, local distinctiveness and identity and enhance our knowledge and engagement with our history.
- 1.6. The key provisions of planning policy in respect of heritage assets with archaeological interest include mechanisms to require assessment of the impact of proposed development and to manage that impact through avoiding, mitigating, or offsetting harm. This is achieved through the agreement of modifications to proposals or, failing that, by capturing information from assets which will be destroyed by development through archaeological recording. While a certain amount of assessment is carried out at the plan making stage, the vast majority of the assessment/evaluation is undertaken at the development management stage and is funded by developers.
- 1.7. The system works for the benefit of all. Over 30 years it has revolutionised our understanding of the past. It is not cited as a reason for major delay by developers<sup>4</sup>, nor is it identified as a factor preventing build-out rates<sup>5,6</sup>. It removes from the public purse most of the cost (£258m in 2019<sup>7</sup>) of safeguarding and unlocking a vital source for the history of our country.
- 1.8. The government has obligations under the *EU Withdrawal Act* (2018) to respect the polluter pays and precautionary principles, and under the Valletta Convention to ensure that any reformed

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<sup>3</sup> <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007bd25>

<sup>4</sup> Cornerstone Projects Ltd, *Delays in Construction Projects* (2017)

<sup>5</sup> Letwin, O. *Independent Review of Build Out: Final Report* (2018)

<sup>6</sup> Association of Local Government Archaeological Officers (ALGAO), *Archaeology in Development Management* (2019), p.16

<sup>7</sup> *State of the Archaeological Market Survey Report, 2019* (2020)

planning system delivers an acceptable level of safeguarding for archaeological heritage. We would expect the new system to, at least, meet the high standards of the policies for conservation and enhancement of the historic environment afforded under the NPPF.

1.9. In 2019 ClfA undertook research for Historic England which gathered evidence from 118 case studies which illustrate the successful implementation of key elements of current national planning policies relating to the historic environment<sup>8</sup>. We can supply a range of examples on request.

## 2. Key issues in the White Paper: Where does archaeology fit within the proposed system?

2.1. Our primary concern with the White Paper is that there is no explicit confirmation that provision has been made for managing the archaeological heritage within the proposed system for simplified local plans and the three types of development 'area'. It is vital that we agree at the earliest opportunity how protections for heritage assets with archaeological interest will be safeguarded and what will be the mechanisms to secure not just archaeological interest and knowledge in the event of development but the contribution this work can make to placemaking local distinctiveness, community cohesion and identity.

2.2. The vast majority of heritage assets with archaeological interest are either undesignated, unrecorded, or as yet undiscovered. A precautionary approach to evaluating heritage assets on sites which are to be developed allows for investigation of what assets are present on a site. Approaches to avoid and mitigate harm to those assets can then be designed, and for any harm which is unavoidable a programme of mitigation (to create public benefits such as increased knowledge and understanding of the past, enhanced contribution to local character and distinctiveness or public engagement) can be agreed.

2.3. Archaeological heritage assets are present in almost all landscapes across England. They will occur in areas which will be designated for growth and renewal as well as in 'protected' areas. They cannot be predicted solely with reference to the location of designated heritage assets. Brownfield sites, for example, are often areas where significant archaeological remains exist. Variances will also have to be made for certain issues, such as where designated sites such as scheduled monuments may fall within larger growth zones.

2.4. In the vast majority of cases, archaeological assets need not prevent development from proceeding, provided that adequate procedures for the avoidance, mitigation, and offsetting of harm to heritage assets exist. Managed well these assets are vital components of local distinctiveness and identity and can contribute to a meaningful placemaking. Under the current system almost no applications for planning permission are refused on solely archaeological grounds, but around 4% of all applications require some archaeological conditions<sup>9</sup>.

2.5. However, government will need to consider how best to engage specialist advice in the planning of new development 'areas' and design new processes for evaluation and mitigation. The absence of such evaluation is the very situation that led to prominent issues in the late 1980s and precipitated the creation of the current system.

2.6. Current NPPF policies on archaeological assessment and evaluation, and on the mitigation of the impact of development through archaeological investigation, originated as a response to the

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<sup>8</sup> Chartered Institute for Archaeologists (ClfA) [Archaeology and Planning Case Studies Project](#) (2019)

<sup>9</sup> Association of Local Government Archaeological Officers (ALGAO), [Archaeology in Development Management](#) (2019), p.16

problems encountered with the unexpected discovery of nationally important archaeological sites during development – and the problems this caused, both in the loss of our heritage but also in delay costs for developers. The introduction of new planning policies by the then Conservative government in 1990 dealt successfully with these problems and were the precursors of the current NPPF historic environment policies.

- 2.7. For areas designated for growth or renewal, where outline planning permission is granted automatically, or where there is a presumption in favour of development, there will need to be new procedures for evaluating the archaeological potential of sites, mitigating avoidable harm, and ensuring the offsetting of unavoidable harm through the attaching of conditions. This will need to be carried out as part of the analysis undertaken to allocate areas for Growth/Renewal and can build on some approaches that have already been adopted in the development of Local Plans (See example X, below)
- 2.8. The white paper outlines how a ‘key accompanying text’ will set out information on development uses and also briefly mentioned exclusions for ‘flood risk and other important constraints’. We would expect that archaeology will be included in the key accompanying text and should be considered as an important constraint requiring active consideration at reserved matters consent stage. Effective opportunity for mitigation should mean that most areas will not need to be excluded because of archaeological sensitivity, with this only potentially applying to the most significant landscapes and designated areas. Inclusion and early consultation with specialists will allow for archaeological assessment to be factored into any specific guidance and limitations on development within a given area earmarked for growth or renewal and for it to then contribute to any placemaking and wider public benefits being delivered.
- 2.9. It will be vital that automatic outline permissions in growth areas will still include requirements for site-based archaeological evaluation. Under the current system, this is undertaken pre-determination, which provides the best way to understand and manage risk. Mitigation of harm to heritage assets is enabled by archaeological conditions secured when permission is granted – some of which will need to be completed pre-commencement.
- 2.10. The White Paper provides very little information relating to how ‘technical details consent’ or ‘reserved matters’ may be able to replicate the critical features of this existing approach or even whether archaeological evaluation and mitigation will be included in guidance. Critically, evaluation must be done early enough to influence layout and design and guidance should make this clear. We recommend that specialist advisors in local planning authorities retain oversight over this consent process.
- 2.11. However, there is a potential problem with any ‘permission in principle’ approach in the event that a highly significant archaeological site is discovered on a site which has already been granted permission in principle. Depending on the nature of the site and the development, mitigation costs necessary to offset harm could potentially make development unviable. Under the current system, there would be the option to refuse permission. Considerate approaches to pre-development evaluation could help to reduce this risk in the vast majority of cases, but some risk of high profile issues will remain.
- 2.12. The White Paper includes a positive focus on ‘beauty’ and ‘design’. However, a narrow focus on design may limit broader benefits of placemaking. While we recognise that this language builds policies on the back of the *Building Better Building Beautiful Commission’s* work, we also note that the existing historic environment makes a vital contribution to local identity, character, and distinctiveness, as well as beauty. The historic environment also influences what kind of

development constitutes good design in a particular environment. With complementary design able to enhance or better reveal local historic character, heritage, and landscape. Archaeology and the archaeological process also offers opportunities to engage the wider public in understanding and contributing to wider placemaking opportunities. Proper consideration at an early stage allows archaeology to contribute to the overall success of development. We therefore suggest widening the definition of beauty to explicitly include wider aspects of placemaking, in particular considering how people relate to existing places.

- 2.13. Additional responses to specific aspects of proposals are being formulated in a table which can be supplied in due course, on request.

### 3. Opportunities & constructive suggestions for developing proposals

As stated above, we need to work with MHCLG and DCMS to develop proposals to ensure that the new planning system functions in a way which retains the effective NPPF policies covering the management of the historic environment and development. This section provides specific suggestions for how archaeology could work in this system, including picking up on opportunities to improve such things as efficiency, research quality, and public engagement and benefit.

#### 'Up-front' assessment and 'archaeological sensitivity-mapping'

- 3.1. We propose that '*archaeological sensitivity-mapping*' may provide a model for how the front-loading of archaeological evaluation could be made to work within the proposed system.
- 3.2. There are both statutory and non-statutory examples of where a sensitivity-mapping approach to archaeology is already used. For example, provisions for *Areas of Archaeological Importance* within the 1979 Ancient Monuments and Archaeological Areas Act, and *Archaeological Priority Areas* in Greater London (case study available). In addition many local authorities have undertaken Historic Landscape Characterisation which could be adapted to assist in the designation of areas for growth/renewal/protection. Many local authority Historic Environment Records (HERs) also have access to remote sensing technology including LIDAR and digital aerial photography mapping that can help to develop sensitivity-mapping.
- 3.3. However, in order to provide effective sensitivity-mapping we will need to improve baseline data, ensure that it is kept up to date, and secure additional resources in order to undertake specific area assessment of growth and renewal zones. *This will be a significant new burden which it will be impossible for local authorities to undertake without additional resource.*
- 3.4. *Historic Environment Records* (HERs) will be even more critical under this system and it will be vital that all local authorities either maintain or have access to an up to date HER. It would be beneficial if this opportunity was taken to *put these invaluable resources on a statutory footing.*
- 3.5. Historic England has already undertaken work in advance of publishing guidance on National Importance in relation to the identification of archaeological sites which are of national importance but which are not scheduled monuments (see NPPF Footnote 63). We believe that this work could be expanded to include advice on areas of high archaeological potential. We are keen to see this work published with urgency in order to inform planning reform proposals and develop approaches to area-based sensitivity-mapping.
- 3.6. Additionally, the proposed system would provide opportunities to accelerate the development of emerging innovative approaches to obtaining and modelling data that can be used for up-front

assessment. This would serve to better inform area allocation, improve the accessibility of archaeological data, and could make archaeological advice within the planning system significantly more streamlined and beneficial.

- 3.7. We believe that an ambitious approach to developing up-front sensitivity-mapping could reduce the overall archaeological costs of pre-allocation assessment and evaluation and provide an additional/new resource for the strategic assessment of land at the regional scale.
- 3.8. Costs associated with improving baseline data, developing sensitivity-mapping, and statutory HERs should be eligible for the time limited funding for additional burdens identified in the White Paper.

### **Archaeological evaluation of proposed growth areas**

- 3.9. The proposed archaeological sensitivity-mapping exercise would enable an informed and targeted approach to the limited archaeological ground interventions that would need to take place in advance of Growth Area land allocation. Such works (archaeological trial trenching or geotechnical investigations) are invariably necessary to ground-truth and evaluate remote sensing and other survey data and desk-based evidence. They enable the identification of archaeological potential & highlight archaeological requirements, including identifying known assets within the zone as well as providing specialist advice on the potential for undiscovered assets, including the presence of historic or ancient cemeteries.
- 3.10. It is possible that areas of extremely high archaeological potential could be considered as an 'important constraint' (p.28) which could lead to particular areas being excluded from being designated a growth area (eg historic burial grounds). However, in the vast majority of cases, it would be sufficient to ensure that archaeological potential has been considered and baseline data collected and assessed (see specific suggestions below). This assessment should include at least desk based assessment and geophysical survey or deposit modelling, and trial-trenching. We will discuss within the sector how approaches to assessment can be made more efficient within the proposed system.
- 3.11. Using this up-front assessment could provide opportunities to enhance strategic research priorities for areas (case study available) which would potentially allow for more streamlined, reflective and innovative approaches to archaeological assessment and decision-making. We are keen to explore these opportunities with sector partners. We can supply case studies which articulate good practice and which show how early consultation with historic environment specialists when allocating land for housing in local plans leads to beneficial outcomes.
- 3.12. We strongly support the development of public engagement at this stage of allocating areas for growth, renewal and protection. The historic environment, and archaeology in particular, can contribute to this process and enhance placemaking outcomes, local identity, and wellbeing.

### **Site-specific evaluation and mitigation, post allocation**

- 3.13. Front-loaded and high-level archaeological assessment and evaluation undertaken as part of the strategic allocation process – described above – will only give a low-resolution and general understanding of an area and not the fine detail of the precise heritage assets on any given site. It will therefore need to be complemented by site-specific evaluation where the potential for heritage assets with archaeological interest have been identified. A streamlined consent process based on reserved matters or 'technical details' could provide an adequate process for archaeological consent to help deal with surprises, which are common since archaeologists deal with specific unknowns which cannot be realistically dealt with at an area-wide level. The purpose of this stage will be to enable site specific evaluation and impact assessment ahead of each development.

- 3.14. This would include, for example, the discovery of human remains for which there are statutory obligations. Identification of human remains is important because their removal has high associated costs and could pose problems for the viability of development if identified too late (case study available). This is why pre-determination evaluation provides the best approach for risk management.
- 3.15. Guidance should emphasise the potential for archaeological evaluation to inform technical details applications. For instance, some local authorities require applicants for certain sites to undertake archaeological evaluation as a standard requirement to encourage early assessment (case study available). Conditions (including pre-commencement conditions) would then enable the avoidance and mitigation of unnecessary harm to heritage assets identified, and for archaeological investigation and public engagement to offset unavoidable harm.
- 3.16. We note that the White Paper recognises that

*‘The cost of operating the new planning system should be principally funded by the beneficiaries of planning gain – landowners and developers – rather than the national or local taxpayer’.*

We wish to emphasise the importance of developer-funded archaeological investigation and mitigation. This mechanism levered c.£250m in 2018/19 to support the development of public benefits such as knowledge gain about the past, dissemination of information, impacts on urban realm, and public engagement (eg publications, events, museum exhibits) as well as maintaining local distinctiveness and character and contributing to community cohesion, health, welfare, and wellbeing. We strongly suggest that government looks to preserve planning mechanisms which enable these contributions.

### **Beauty, design and placemaking**

- 3.17. We applaud the Government’s willingness to seek to improve the quality of development by introducing design codes and a ‘fast track for beauty’. We believe however, that the historic environment has a huge amount to contribute to this ambition, and that the current policies in Pillar 2 unnecessarily limit the potential to deliver better places to live. The consultation document recognises that there are connections between quality existing environments, but heritage is notably missing from the list of contributing factors to the ‘sense of community’ that Government correctly judges to be an outcome from good planning.
- 3.18. We therefore propose that heritage is explicitly recognised as a contributing factor to Pillar Two aims and that policies designed to achieve goals in this area all ensure that heritage’s contribution to placemaking can be facilitated.
- 3.19. One suggestion for how this might be achieved that the ‘fast track for beauty’ is expanded to include developments which enhance cultural capital. For example, developments which seek as a facet of their design to explicitly draw upon the positive effects of heritage sites and monuments to enhance people’s lives. Such an approach could parallel approaches to biodiversity net gain objectives linked to planning. We can supply a good practice case study which illustrates the type of development which might qualify.

## **4. Changes to the current planning system consultation**

- 4.1. We note that several of the policies in this consultation aim to make some progress towards the outcomes envisioned by the White Paper. This is concerning because it takes significant steps to prime planning policy for a substantially new system before there has been sufficient time for parliamentary scrutiny of that direction.
- 4.2. Specifically, the intention to make ‘far wider use of Permission in Principle’ (PiP) by extending it to cover major development is a potentially concerning change which must be carefully considered alongside a debate about the merits of a more radically permissive planning system.
- 4.3. The intention to allow applications for PiP to be made for major developments would be a seismic change to the current approach to PiP that would be tantamount to a bypassing of the current determination processes for, potentially, the majority of housing developments.
- 4.4. We have raised concerns with the process of PiP in the past about the lack of pre-determination assessment of archaeological potential, the robustness of technical details consent to deal with sensitive sites, and the potential problems and legal liabilities that may arise if archaeological mitigation of nationally significant discoveries impact upon viability or cannot be adequately mitigated. However, until now these concerns have been tempered by the small scale of developments and limited by the relatively small numbers of applications.
- 4.5. We recognise the desire to reduce developer up-front costs and provide certainty, but the system must enable assessment of ‘in principle’ suitability, either by enhanced up-front assessment or by limiting the potential harm (i.e. by restricting the scope of permissive regimes to uncontroversial or low risk development – as is the case with *most* PDR)

## 5. Conclusion

- 5.1. We are keen to open a dialogue with MCHLG to discuss how we can assist in developing the detail that will be necessary to underpin the White Paper proposals and ensure that it delivers on Government’s assurance that archaeological safeguards will be maintained within the current system.
- 5.2. It would be helpful to scope the potential for each of these suggestions so that we can have targeted discussions with a wide range of stakeholders in the archaeological sector and develop useful contributions to the consultation.
- 5.3. We are also working with colleagues through the Heritage Alliance and we are keen to take part in discussions with MCHLG alongside our wider historic environment sector partners, but we are conscious that there are also specific issues which affect archaeology in particular and on which it may be useful to have a separate meeting.

### Contact us

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