



PLANNING COMMITTEE - 11 JANUARY 2017

**SUBJECT: WELSH GOVERNMENT CONSULTATION DOCUMENT
'CONSULTATION ON A PROPOSAL FOR REGULATIONS
REQUIRED BY THE HISTORIC ENVIRONMENT (WALES) ACT 2016
AND FOUR GUIDANCE DOCUMENTS'**

REPORT BY: CORPORATE DIRECTOR - COMMUNITIES

1. PURPOSE OF REPORT

- 1.1 The purpose of the report is to advise Members that Welsh Government (WG) has launched its second in a series of consultation documents in relation to the Historic Environment entitled 'Consultation on a proposal for regulations required by the Historic Environment (Wales) Act 2016 and four guidance documents.' It is seeking comments by 13 January 2017.
- 1.2 A summary of the main components of this consultation is provided below and the report also provides the proposed officer response to the questions raised by WG for Member consideration.
- 1.3 Copies of the Background Papers to this report are available for view on the Members portal.

2. SUMMARY

- 2.1 The report summarises the key considerations proposed in the consultation document and four guidance documents and those most pertinent to Caerphilly County Borough Council.
- 2.2 This consultation seeks views on a proposal for regulations to establish procedures for the review of decisions to designate historic assets and draft statutory guidance on the compilation and use of historic environment records (Annex 1). Both are required by provisions of the Historic Environment (Wales) Act 2016.
- 2.3 It also presents three pieces of draft best-practice guidance for consideration. These have been developed as components of a wider programme to improve the protection and management of the Welsh historic environment that is linked to the implementation of the Historic Environment (Wales) Act 2016. These three draft annexes are as follows:-

Annex 2 – Managing Listed Buildings at Risk in Wales
Annex 3 – Managing Change to Registered Historic Parks and Gardens in Wales
Annex 4 – Managing Historic Character in Wales
- 2.4 Following the closing date of 13 January 2017, all responses are to be analysed and considered by WG.

3. LINKS TO STRATEGY

- 3.1 In its strategic plan for 2011-16, the *Programme for Government*, the WG sets out its vision for the nation:

Healthy people living productive lives in a more prosperous and innovative economy; safer and more cohesive communities with lower levels of poverty and greater equality; a resilient environment with more sustainable use of our natural resources and a society with a vital sense of its own culture and heritage.

- 3.2 The importance of the historic environment in realising that vision for Wales is acknowledged in the *Programme*, with one of its specific aims being to ‘enrich the lives of individuals and communities through culture and heritage.’
- 3.3 The WG’s approach to the promotion of the sustainable management of the historic environment in line with the objectives of the *Programme for Government* is detailed in the *Historic Environment Strategy for Wales* and its associated ‘Headline Action Plan.’
- 3.4 The goal of the *Strategy* is a well-protected and accessible historic environment that will contribute to the quality of life and quality of place and enhance people’s life chances.
- 3.5 The WG’s vision is that:

The Welsh historic environment should be sustainably managed so it can continue to deliver meaningful social, economic and environmental benefits to the people of Wales.
- 3.6 The historic environment is also recognised as an important factor in regeneration. This role is highlighted in *Vibrant and Viable Places*, the Welsh Government’s regeneration framework, published in 2013.
- 3.7 The WG considers the historic environment to be central to Wales’ culture and its character and contributes to our sense of place and cultural identity. It is vital that the historic environment is appreciated, protected, actively managed and made accessible for the general well-being of present and future generations.
- 3.8 The Welsh Ministers have wide-ranging powers to protect and support the historic environment in Wales, and have a duty to make appropriate arrangements to promote sustainable development.
- 3.9 The Well-being of Future Generations (Wales) Act 2015 places duties on public bodies requiring them to act in accordance with the ‘sustainable development principle’ (i.e. requiring the body to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs). That Act also establishes well-being goals which include achieving ‘a Wales of vibrant culture and Welsh language’, described as ‘a society that promotes and protects culture, heritage and the Welsh language’. A properly protected, conserved and enhanced historic environment can improve the quality of life and well-being for everyone.
- 3.10 In policy terms, the historic environment is defined as:

“All aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and deliberately planted or managed.”
- 3.11 An historic asset is:

“An identifiable component of the historic environment. It may consist or be a combination of an archaeological site, a historic building or area, historic park and garden or a parcel of historic landscape. Nationally important historic assets will normally be designated.”

Taken together and set within their cultural context, historic assets contribute to the character and sense of place of different parts of Wales.

- 3.12 The Historic Environment (Wales) Act 2016, which received Royal Assent on 21 March 2016, makes important improvements to the existing systems for the protection and management of the Welsh historic environment. It also forms the foundation for an integrated package of secondary legislation, new and updated planning policy and advice, and guidance on a wide range of topics. Taken together, these support and promote the careful management of change in the historic environment in accordance with current conservation philosophy and practice.
- 3.13 Planning policy and advice provide the cornerstone for the management of change in the historic environment through the planning system. A twelve-week consultation on a revised historic environment chapter (chapter 6) for *Planning Policy Wales* (PPW) came to an end on 13 June 2016. The chapter, amended in light of the consultation responses, was re-named as '*The Historic Environment*' and published as Chapter 6 of Edition 9 on 18 November 2016. The draft of the new *Technical Advice Note 24: the Historic Environment* (TAN 24) was the subject of a further consultation over the summer. It closed on 3 October and an analysis and the final version of *Technical Advice Note 24* will be issued in Spring 2017.
- 3.14 In parallel with the consultation on *Technical Advice Note 24*, Welsh Government sought views on several proposals for regulations and best-practice guidance documents. They are now considering the responses and aim to introduce the regulations and publish final versions of the guidance in Spring 2017.
- 3.15 Further consultations will take place in 2017 on additional proposals for secondary legislation to implement provisions of the Historic Environment (Wales) Act 2016 and further guidance documents.
- 3.16 The Key Objectives relevant in the Caerphilly County Borough Local Development Plan up to 2021 (Adopted November 2010) are to:-
- 22 Maintain the vitality, viability and character of the County Borough's town and village centres and re-establish them as a focus for economic activity and community pride.
 - 23 Maintain, enhance and develop a hierarchy of town and village centres which are easily accessible, and which meet the needs of all sections of the population.
 - 24 Protect and enhance the overall quality of the historic natural and built environment of the County Borough.
- 3.17 The Council adopted its Conservation Strategy for the Historic Environment 2014 – 2019 entitled 'The Value of Historic Places' in November 2014. This Strategy seeks to highlight the opportunities provided by the county borough's historic environment to help regeneration, tourism and education opportunities across the entire county borough. Importantly, it seeks to highlight opportunities to positively and beneficially conserve, enhance and where appropriate preserve the historic environment for its intrinsic value and as an important historic asset for the people and the communities that live alongside these features.

4. THE REPORT

- 4.1 The Welsh Government (WG) issued its 'Consultation on a proposal for regulations required by the Historic Environment (Wales) Act 2016 and four guidance documents' for public consultation purposes.
- 4.2 This consultation covers five subjects:
- A Proposal for regulations under the Historic Environment (Wales) Act 2016 to set out procedures for a review of a decision to designate a scheduled ancient monument or listed building (paras 9-54)

- B Draft statutory guidance for certain public bodies – *Historic Environment Records in Wales: Compilation and Use* – as required by the Historic Environment (Wales) Act 2016 (paras 55-60)
- C Draft best-practice guidance: *Managing Listed Buildings at Risk in Wales* (paras 61-65)
- D Draft best-practice guidance: *Managing Change to Registered Historic Parks and Gardens in Wales* (paras 66-69)
- E Draft best-practice guidance: *Managing Historic Character in Wales* (paras 70-73).

A. Proposal for regulations under the Historic Environment (Wales) Act 2016 to set out procedures for a review of a decision to designate a scheduled ancient monument or listed building

- 4.3 The Ancient Monuments and Archaeological Areas Act 1979 requires the Welsh Ministers to compile and maintain a schedule of monuments of national importance. Similarly, the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the Welsh Ministers to compile lists of buildings of special architectural or historic interest. The Historic Environment (Wales) Act 2016 amends these 1979 and 1990 Acts to place new obligations on the Welsh Ministers to consult with the owner and occupier and other appropriate persons when considering the designation of an historic asset as a scheduled monument or a listed building or making changes to an existing designation. The 2016 Act also introduces interim protection to apply the majority of the provisions of the 1979 Act or the 1990 Act to a monument or historic building that the Welsh Ministers propose to designate. Furthermore, if the Welsh Ministers schedule a monument, make a material amendment to an entry on the Schedule, or list a building, the 2016 Act gives an owner or occupier the right, in certain circumstances, to request that the Welsh Ministers review the designation decision.
- 4.4 The 2016 Act specifies three review procedures:
- written representations
 - hearing, and
 - public local inquiry.
- 4.5 The Welsh Ministers will appoint the Planning Inspectorate to undertake all reviews on their behalf, who will decide upon the most appropriate procedure, or combination of procedures for a review and its determination will be final. The Welsh Ministers will have to make any changes to the Schedule or a list required by a review decision of the Planning Inspectorate.
- 4.6 It is expected that the provisions of the consultation, interim protection and review will be brought into force in 2017, after the Welsh ministers have made the regulations needed to establish a structure for reviews.
- 4.7 The 2016 Act requires the Welsh ministers to set out in regulations:
- the grounds on which an application for a review may be made;
 - the information that must be provided to, or may be required by, the Welsh Ministers in connection with an application for review;
 - the form and manner in which an application must be made; and
 - the period within which such an application must be made.
- 4.8 The Welsh Ministers can also make any other provision in regulations that they think appropriate in connection with reviews.

- 4.9 The consultation document sets out the proposed arrangements for the conduct of these reviews, which are modelled on the existing systems for planning and listed building consent appeals, i.e.;
- the grounds for review when arriving at a decision to schedule a monument or list a building;
 - when and how a review application should be made;
 - review procedures, whether by written representations, a hearing, or by public local inquiry; as well as the award of costs.

B Draft statutory guidance for certain public bodies – *Historic Environment Records in Wales: Compilation and Use* – as required by the Historic Environment (Wales) Act 2016 (Annex 1)

- 4.10 The 2016 Act requires the Welsh ministers to compile and keep up to date a publicly accessible historic environment record for each local authority area in Wales. The historic environment record provides detailed information about the historic environment for public benefit and use.
- 4.11 The Welsh Ministers have asked the four Welsh archaeological trusts to discharge this duty on their behalf, and preparatory work is underway to bring the provisions into force in 2017. This duty would be undertaken by Glamorgan Gwent Archaeological Trust for the Caerphilly county borough council area.
- 4.12 Each archaeological trust maintains a regional historic environment record and together they provide comprehensive coverage of the whole of Wales. These records are the product of research and investigation and are maintained and updated in accordance with the national and international standards.
- 4.13 The 2016 Act also requires the Welsh Ministers to issue statutory guidance for certain public bodies in Wales – Local and National Park authorities and Natural Resources Wales – on how they may contribute to the compilation of the historic environment records and how they should use the records in the exercise of their functions.
- 4.14 This guidance, *Historic Environment Records in Wales: Compilation and Use (Annex 1)*, explains:
- what historic environment records area;
 - the roles and responsibilities of key organisations;
 - the role of the public bodies in the compilation of the records; and
 - how the public bodies should use the records in the exercise of their functions.
- 4.15 Separate statutory guidance will be made available in due course regarding information on the benchmarks and standards that the Welsh Ministers expect the trusts to adhere to in discharging their duties under the 2016 Act.

C Draft best-practice guidance: *Managing Listed Buildings at Risk in Wales (Annex 2)*

- 4.16 This represents best-practice guidance, which supports Planning Policy Wales – Chapter 6: The Historic Environment (Edition 9 Nov 2016) and *Technical Advice Note 24: The Historic Environment*.
- 4.17 It outlines the critical relationship between a building's condition, use and ownership, and how the careful balance between these elements can be managed to ensure a sustainable future.
- 4.18 The guidance describes the roles and responsibilities of owners, the Welsh Government and local authorities. It shows how policies and programmes to manage listed buildings at risk can be successful, but also explains the statutory powers available to protect listed buildings at risk should they be needed.

- 4.19 Although the guidance focuses on listed buildings at risk, the principles can be applied to managing any historic buildings at risk, such as those identified as locally important. Some of the statutory powers apply only to listed buildings, however.
- 4.20 This guidance is aimed primarily at local authority conservation, planning, housing, regeneration and development departments, as well as Welsh Government departments. It may be of interest to owners, occupiers and agents, as well as local communities and third sector organisations that have a vital role in caring for listed buildings at risk.

D Draft best-practice guidance: *Managing Change to Registered Historic Parks and Gardens in Wales (Annex 3).*

- 4.21 The 2016 Act requires the Welsh Ministers to compile and maintain a register of historic parks and gardens in Wales. This will replace an existing non-statutory register and create a comprehensive record of sites that meet the criteria of historic interest. A review of the entries on the non-statutory register is now being undertaken with the aim of bringing the provisions of the 2016 Act into force in 2017.
- 4.22 This best-practice guidance sets out general principles to follow when considering changes that may have an impact on registered historic parks and gardens. It explains the status of the statutory register of historic parks and gardens in Wales and its place in the planning system, including the roles and responsibilities of owners, local planning authorities, amenity societies and Cadw.
- 4.23 This guidance is aimed principally at owners of registered historic parks and gardens, and agents acting on their behalf. It will help them to understand the implications of owning a registered historic park or garden and manage changes that affect it. This guidance can also be used by owners and managers as a best-practice guide to caring for registered sites. The principles and practices are applicable to all historic parks and gardens in Wales, whether registered or not. This guidance supports PPW – Chapter 6: The Historic Environment and emerging *TAN 24: The Historic Environment*.

E Draft best-practice guidance: *Managing Historic Character in Wales (Annex 4).*

- 4.24 This best-practice guidance, which supports PPW – Chapter 6: the Historic Environment and emerging *TAN 24: The Historic Environment*. It also highlights how an understanding of historic character can be used in many ways beyond the planning system.
- 4.25 This guidance explains why it is important to recognise historic character and use it as an evidence base for conservation, regeneration and planning work. It shows how policies and programmes to manage change can take inspiration from the past to help create and sustain distinctive places for the future.
- 4.26 This guidance does not impose another layer of designation or consent, but encourages the best use of our historic environment to improve the social, economic, environmental and cultural well-being of Wales. This means managing change sustainably, not preventing it.
- 4.27 This guidance is aimed primarily at local authority conservation, planning, housing, regeneration and development departments, as well as WG departments. It will be of interest to local communities and third sector organisations that have a vital role in identifying, promoting and caring for local historic character.

Q 1: Do you agree with the grounds of review for designations of scheduled monuments?

Recommended answer: Yes, the grounds of review in respect of scheduled monuments appear to be appropriate. It is important to note here that it is understood that this relates to both new designations of scheduled monuments or when making changes to an existing designation on the 'schedule.'

Q 2: Do you agree with the grounds of review for designations of listed buildings?

Recommended answer: Yes, the grounds of review in respect of listed buildings appear to be appropriate. It is important to note here that it is understood that this relates to listed buildings to be included on the 'statutory list' as well as those that are to be excluded from the 'statutory list' but not in respect of those where a material amendment is to be made to an entry on the 'list'.

Q 3: Do you agree that a request for a review should be made within 3 months of receipt of a notice of designation? If not, what timescale would be appropriate?

Recommended answer: This timescale appears to be too short. It is suggested that this timescale might be increased to 'within 6 months of receipt of a notice of designation.'

Q 4: Should any other information be required in the review application? If yes, please specify.

Recommended answer: No, the level of information required to be submitted in the review application appears to be appropriate.

Q 5: Do you believe that the procedures outlined are reasonable and fair for all involved in designation reviews? If not, how could they be improved?

Recommended answer: Yes, although some further clarification would be helpful.

Q 6: Do you agree with the measures proposed for the award of costs to deter unreasonable behaviour in designation reviews? If not, how could they be improved?

Recommended answer: Yes, however, there is a need for clarification in the definition of 'unreasonable behaviour.'

Q 7: Does the draft statutory guidance, *Historic Environment Records in Wales: Compilation and Use*, clearly set out the roles and responsibilities of the relevant public bodies? How could this section be improved?

Recommended answer: Yes, however, this document could be more user-friendly in the way it is set out.

Q8: Does the draft statutory guidance, *Historic Environment Records in Wales: Compilation and Use*, give the relevant public bodies adequate guidance on how they may contribute to the compilation of historic environment records? How could this section be improved?

Recommended answer: As answered to Q7 above.

Q9: Does the draft statutory guidance, *Historic Environment Records in Wales: Compilation and Use*, clearly set out how the relevant public bodies should use the historic environment records in the exercise of their functions? How could this section be improved?

Recommended answer: No, this guidance could be improved by being more user-friendly and addressing more specifically how local planning authorities could best use the HER.

Q10: Will the draft guidance, *Managing Listed Buildings at Risk in Wales*, support the more effective management of historic buildings at risk? How could it be improved?

Recommended answer: This guidance could be very much improved by reinforcing the guidance set out in Historic England's 'Stopping the Rot' Guide and making it more appropriate to Wales.

Q11: Does the advice on condition, use and ownership, contained in the draft guidance, *Managing Listed Buildings at Risk in Wales*, cover the key issues? If not, what is missing?

Recommended answer: Yes, it covers that main issues, however, it is questionable as to how practical or useful this document is. The addition of a range of relevant case studies would make this guidance more useful.

Q12: Does the draft guidance, *Managing Change to Registered Historic Parks and Gardens in Wales*, clearly explain the implications of owning an historic park or garden included in the statutory register? How could it be improved?

Recommended answer: Given that there is such a wide range of types and characteristics to those Historic Parks and Gardens on the Register, it is difficult to 'capture' and provide prescriptive and appropriate guidance on them all.

Q13: Will *Managing Change to Registered Historic Parks and Gardens in Wales*, help owners and their agents to manage historic parks and gardens to achieve high-quality, sensitive change? How could it be improved?

Recommended answer: Yes, it provides a useful context and links for Further Information and Contacts.

Q14: Does the draft guidance, *Managing Historic Character in Wales*, clearly explain what historic character is? How could it be improved?

Q15: Does the draft guidance, *Managing Historic Character in Wales*, give sufficient information to support the effective management of historic character? If not, what is missing?

Recommended answer: This guidance is a useful tool and structured approach in firstly understanding what 'historic character' of an area is and as a preliminary framework when identifying areas of special architectural or historic interest, which may go on to meet the criteria for designation as a conservation area. Such a structured approach to understanding historic character is an essential part of conservation area appraisal and review. However, as it stands, it is questionable about how effective this guidance is, as it currently has no legislative 'teeth' or consent processes within the planning system and therefore such 'historic character' that does not meet the statutory criteria for designation, can remain unprotected.

5. WELL-BEING OF FUTURE GENERATIONS

5.1 This report contributes to the Well-being Goals as set out in paragraphs 3.9 - 3.11 in 'Links to Strategy' above.

5.2 The Well-being of Future Generations (Wales) Act 2015 places duties on public bodies requiring them to act in accordance with the 'sustainable development principle' (i.e. requiring the body to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs). That Act also establishes well-being goals which include achieving 'a Wales of vibrant culture and Welsh language', described as 'a society that promotes and protects culture, heritage and the Welsh language'. A properly protected, conserved and enhanced historic environment can improve the quality of life and well-being for everyone.

5.3 In policy terms, the historic environment is defined as:
"All aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and deliberately planted or managed."

5.4 An historic asset is:
"An identifiable component of the historic environment. It may consist or be a combination of an archaeological site, a historic building or area, historic park and garden or a parcel of historic landscape. Nationally important historic assets will normally be designated."
Taken together and set within their cultural context, historic assets contribute to the character and sense of place of different parts of Wales.

6. EQUALITIES IMPLICATIONS

6.1 There are no specific equalities implications arising as a result of this report.

7. FINANCIAL IMPLICATIONS

7.1 There are no financial implications arising as a result of this report.

8. PERSONNEL IMPLICATIONS

8.1 There are none.

9. CONSULTATIONS

9.1 The report reflects the views of the consultees.

10. RECOMMENDATIONS

10.1 That Members note the status and purpose of this second in a series of consultation documents and four annexed guidance documents in relation to the Historic Environment; and

10.2 That Members recommend Welsh Government be advised of the answers set out in this report.

11. REASONS FOR THE RECOMMENDATIONS

11.1 To make Members aware of the Welsh Government's Consultation document, 'Consultation on a proposal for regulations required by the Historic Environment (Wales) Act 2016 and four guidance documents' and

11.2 That a formal response as outlined be made to WG on behalf of Caerphilly County Borough Council by the 13 January 2017 deadline.

12. STATUTORY POWER

- 12.1 The Historic Environment (Wales) Act 2016
- 12.2 The Planning (Listed Buildings and Conservation Areas) Act 1990
- 12.3 The Ancient Monuments and Archaeological Areas Act 1979
- 12.4 The Well-being of Future Generations (Wales) Act 2015
- 12.5 Local Government Act 1972 (as amended).

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Cllr Ken James – Cabinet Member for Regeneration, Planning & Sustainable Development
Cllr David G. Carter (Chair)
Cllr Wynne David (Vice Chair)

Background Papers:

Welsh Government Consultation Document 'Consultation on a proposal for regulations required by the Historic Environment (Wales) Act 2016 and four guidance documents.' Date of issue 19 October 2016. Responses by 13 January 2017.