

1. The CLA is broadly supportive of the Bill, as far as it goes, but it and the accompanying policy and guidance have some serious gaps:
 - (i) While we support the intentions behind the new and extended discretionary powers in the Bill, some amendment of detail may be needed to make it effective and fair. Above all, it is essential to add good new guidance, on whether, when, and how these powers should be used, both to avoid unintended consequences, and to achieve potential improvements in heritage protection which the Bill could not achieve by itself (see section C below). Without good guidance, and potentially amendment, we could not support these provisions.
 - (ii) Effective management of the historic environment requires effective policy and guidance. These are more important than the changes in the Bill. The new draft Planning Policy Wales (PPW) Chapter 6 and TAN24 improve on current policy, but to protect heritage effectively, and to comply with the Well-being of Future Generations Act's Resilient Wales Goal, they need further work (see section G).
 - (iii) Most fundamentally, the Bill does not substantively address the current and growing problems in heritage protection, or make the changes needed to create a system that protects heritage effectively (see section D).

B. The CLA and the historic environment

2. The CLA's 3,500 members in Wales manage at least a quarter of Welsh heritage, including well over half of rural heritage. As by far the biggest stakeholder group of managers and owners of heritage (charitable, commercial, and private), we are one of the half-dozen key stakeholders in the heritage field. The CLA believes strongly in effective and proportionate heritage protection (see 22 below).
3. The CLA has been a member of the Welsh Government's External Review Group from the start, and has contributed extensively to detailed discussions on the Bill and the accompanying policy and guidance.
4. We are surprised that the Committee – perhaps unintentionally – does not seem to have invited oral evidence from owners of heritage. Heritage cannot survive without owners, and we hope that this does not reflect a traditional (though usually

unstated) view that the role of owners is simply to pay whatever heritage costs and that they would not have any other worthwhile contribution to make.

C. The Bill: giving more effective protection to listed buildings and scheduled monuments

5. The new and amended enforcement powers in the Bill itself could give a somewhat greater degree of protection to scheduled monuments, and perhaps to listed buildings, but the changes by themselves miss an important opportunity, and could well cause harm.
6. Three issues are crucial here. The first is the danger of mis-targeting of planning enforcement. The 'paradox of enforcement' is that local authorities tend not to target enforcement on the small number of malign owners who deliberately damage heritage, or encourage it to decay in the hope of gaining valuable planning permissions, because they are difficult and have sharp lawyers. Instead, enforcement tends to be targeted on essentially-benign owners who have made technical breaches which have not permanently harmed significance or the public interest, but are easier to deal with and give a good 'clear-up rate'. Failing to pursue malign owners causes real harm (see 8 below). But pursuing essentially-benign owners also causes real harm, because stories of apparently-well-meaning owners being 'bullied' by local authorities, using tools which can appear to disregard natural justice and can lead to bankruptcy, obviously harm heritage by discouraging people from owning it at all.
7. The second issue is the danger of mis-diagnosis of the heritage at risk problem as one of 'neglect' by owners, soluble simply by forcing them to pay for works. It is now well-established (i) that most buildings at risk have substantial 'conservation deficits', so owners repairing them would make large (often six-figure) financial losses, and (ii) that just carrying out repairs is, by itself, unlikely to save a building at risk. The root of the solution is viable long-term use, not just repair: a building which is viable and relevant and used is likely to be put, and kept, in repair.
8. The third issue is lack of enforcement. It is important to heritage protection that malign owners who deliberately or carelessly cause serious harm to heritage, or refuse to accept clearly-viable and reasonable solutions for buildings at risk, are identified and enforced against or prosecuted. Not doing that can lead to systemic harm, not least because malign purchasers of heritage feel they can safely outbid benign purchasers.
9. Resolving these issues may require some amendment of the discretionary powers in the Bill in the interests of natural justice (we will discuss this further with Cadw). But above all it is essential to add good guidance. That needs to go beyond mere restatement of the law: it needs to give practical guidance on whether and when these new (and existing) discretionary powers should be used, and how. The new TAN does not yet provide this. This guidance should be drafted by Cadw, but with

input from the beginning from external stakeholders with experience of enforcement and heritage at risk, including voluntary sector bodies, and owners – the External Review Group would be a logical place to begin this.

10. This guidance – in practice largely an expansion of PPW 3.8 – is not a chore, but an opportunity. Without it, the Bill itself would not much help heritage protection or heritage at risk, and might well cause harm. With good new guidance, in contrast, the Bill could make a substantive or even substantial positive difference.

D. The Bill: enhancing existing mechanisms for the sustainable management of the historic environment

11. The Bill fails to do this, because it does not substantively address the fundamental and steadily-worsening mismatch between the current heritage protection system and its resourcing. Welsh Government has long been aware of the problem, which was the primary concern raised in the 2013 public consultation. A previous Minister concluded¹ that “resources are under pressure...the traditional delivery systems...may prove to be ill equipped to face the future... our plan of action needs to be realistic...we cannot assume that long-established ways of working will be viable or relevant...”. These concerns are of course not unique to heritage; mismatch of systems and resources and the need for solutions were at the core of the Williams Report recommendations (“it is better to invest in reform now, before it is too late, and to create a public sector and services of which we can all be proud, rather than face prolonged and ultimately unsustainable cuts...”)².
12. Why, therefore, does the Bill not address the problem? The current legislation requires expert scrutiny of any proposed change to heritage by skilled experts in local authorities or Cadw, or both. That labour-intensive system might be fine if it were resourced, but central and local government have many pressing concerns and have not and will not see detailed scrutiny of every heritage proposal, good or bad, as a key resourcing priority. There is widespread concern that cuts will continue or accelerate, and that the system will progressively collapse. One symptom is that few listed building consent decisions are taken within the prescribed deadline³, but the real problems are much greater, above all that the widespread perception of a failing consent system discourages the sympathetic changes needed if heritage is to remain relevant and valued and viable and to be maintained in future.
13. Many respondents to the 2013 public consultation asked Welsh Government to provide the extra money needed to run the existing system. If – as seems inevitable – it does not, it instead needs, with stakeholders, to reform the system so that it can work with the resource which will actually be available. Several solutions are available. An obvious step, given that most proposed changes to

¹ Ministerial Priorities for the Historic Environment of Wales, Welsh Government and Cadw, 2012.

² Williams Review, foreword, 2014.

³ Hyder report Refining the listed building consent process, 2013.

heritage are neutral or beneficial, is to streamline legislation and procedures so that those proposals are handled in a lighter-touch way, freeing up scarce local authority and Cadw staff to focus on the cases which might be harmful, and also on more, but better-targeted, enforcement. In addition, Welsh Government and stakeholders need to define what must (for reasons of democracy and transparency) be done by the public sector, and devise monitoring systems and sanctions to ensure that that is actually done in practice.

14. Welsh Government will need to address this problem sooner or later. It would obviously be better to do it sooner, working with heritage stakeholders to devise new more-financially-sustainable systems which work and which therefore actually increase, not reduce, the protection of heritage on the ground. Some of that will require at least minor changes to the primary legislation, so Welsh Government will have to return to heritage legislation again.

E. The Bill: introducing greater transparency and accountability

15. We welcome the inclusion of new rights of consultation and review in the listing and scheduling processes. Though Cadw has consulted in most (not all) cases, the absence of these statutory rights was hard to reconcile with natural justice.
16. A statutory Register of Parks and Gardens should have similar statutory rights. If it does not, it is important that guidance makes it clear firstly that owners should be consulted automatically, and have an informal right of review, and including (importantly) a right of review, against clear criteria, for all sites in the existing Register. Secondly, there must be clear designation criteria. Thirdly, it must be clear that inclusion on the Register does not prevent all subsequent change.
17. The new Advisory Panel is welcome in principle but raises important issues. Firstly, though it is not designed to represent stakeholders, it is important that it is broadly representative, and takes experience not only from central and local government and the voluntary sector but also from owners of all kinds, commercial developers, and heritage professionals. Secondly, it is very important that Cadw and Welsh Government have direct formal links to heritage stakeholders. That implies a continuation of the External Review Group, or a re-formed Historic Environment Group which again includes not only central and local government and the voluntary sector but also owners of all types, commercial developers, and heritage professionals. This stakeholder group and the Advisory Panel need defined roles, roles which do not put the stakeholder group in a subordinate position.

F. The Bill: unintended consequences and other matters

18. As in 5-10 above, we think some of the new powers in the Bill could have serious unintended consequences, but that amendment and new guidance can resolve the problem. We have no comments on the other matters raised.
19. It is important that historic environment law and policy align seamlessly with planning law and policy, and with sustainable development principles, so that these are all considered consistently, predictably, and at the same time.

G. Planning Policy Wales (PPW), the TAN, and other guidance

20. It is impossible to have effective heritage protection without effective policy and guidance. Although the Committee's terms of reference do not focus on the new PPW chapter 6, the new TAN, the guides to managing change, etc, we see these as very important, much more so than the Bill itself.
21. In general terms, the drafts improve on current policy, but important parts still do not fully reflect the current best practice approach to heritage protection, which has changed radically. The traditional mid-C20th approach did not have a clear policy approach to change based on consideration of significance, use, adaptation, costs, viability, or proportionality. Instead it was based on general presumptions against change, and on the 'preservation' of 'fabric', illustrated by the statement in the still-current Circular 61/96, Annex D, that "historic buildings should be considered in the same light as antiques, paintings or manuscripts...".
22. Modern C21st conservation best practice, captured (at least partly) in Cadw's 2009 *Conservation Principles*, instead encourages owners of heritage to conserve its significance, working out what matters about it and then ensuring that this is looked after and/or enhanced by enabling it to be relevant, appreciated, and used, and to produce (directly or indirectly) a stream of income to cover its maintenance costs. This best practice makes sympathetic change as easy as possible, and harmful change as difficult as possible. It stresses proportionality. It also values certainty, setting out a clear policy approach to change, so an owner who has analysed significance properly and drawn up sympathetic proposals taking that significance into account can be confident that consent can be obtained. It also accords with the Well-being of Future Generations Act's Resilient Wales Goal (to "support... resilience and the capacity to adapt to change").
23. We commend the approach in some of the new guidance, for example in *Managing change to listed buildings*, which says that "conservation is about the careful management of change", that "change may be desirable or necessary, but needs to be well managed", that "a deep understanding of the significance of your listed building goes a long way towards ensuring that any changes you propose respect what's special about it", and that "owners who take advice, gather evidence, make a realistic heritage impact assessment ...are often surprised at

what changes can be approved". Similarly, we welcome Heritage Impact Assessments (HIAs) which encourage that process, as a replacement for the ineffective Design & Access Statements, though it will be important that the HIA guidance stresses proportionality.

24. Other areas however need further work if they are to safeguard Wales's heritage effectively. In particular, the core documents, PPW chapter 6 and the new TAN 24, need to fully encompass the principle of the need for viability, resilience, and sympathetic change, and the importance of proportionality. The CLA will continue to contribute to this process via the External Review Group and public consultations.

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