

## **CLLS Planning & Environmental Law Committee response to English Heritage consultation on Historic Environment Good Practice Advice in Planning**

---

The City of London Law Society (“CLLS”) represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response in respect of English Heritage’s consultation on Historic Environment Good Practice Advice in Planning has been prepared by the CLLS Planning & Environmental Law Committee.

We welcome the opportunity to comment on the three Good Practice Notes published on 11 July 2014. It has been duly noted that these documents are intended to replace both the PPS 5 Planning and the Historic Environment: Historic Environment Planning Practice Guide (2010) and various other pieces of English Heritage guidance. It is accordingly our view that the amalgamation of advice into one source is a positive step which we endorse.

As much of the advice has been previously published we have no particular concerns in respect of the contents and respond only on the questions raised:

**1. Do you think the topics selected for publication as Good Practice and Technical Advice in Planning are the right ones? If not, please list any topics which you consider should be included.**

We agree.

**2. Does GPA 1 give sufficient information on sources of evidence to address the historic environment in drawing up a Local Plan? If not, please list any sources of evidence you consider are missing.**

It does indeed provide sufficient information from our view.

**3. Does GPA 1 give sufficient and proportionate information and advice on how to develop a positive strategy for the conservation and enjoyment of the historic environment for the Local Plan area? If not, please indicate how you consider it can be improved.**

Agreed.

**4. Are the steps given in paragraph 9 of GPA 2 on the sources of information that might be consulted, or the exercises that might be carried out in assessing significance, useful? If not, please list any others which you consider might usefully be added?**

These are useful.

**5. Do you consider that the advice in GPA 2 which applies specifically to listed buildings, including paragraphs 12 on curtilage and paragraphs (25-29) on the recent changes to the listed building control system (under the ERR Act 2013) is helpful in managing change to these heritage assets? If not, please list any other factors which you consider could usefully be addressed.**

Curtilage is a difficult subject and the advice provided is fairly basic but probably sufficient for the GPA purposes. In respect of para 28, dealing with Certificates of Lawfulness for Proposed Works, we think it would be helpful to clarify that any works for which a Certificate is issued should be carried out within 10 years of the date of issue of the relevant Certificate.

**6. Do you consider that the paragraphs in GPA 2 which apply specifically to assets with archaeological interest, including those on Archaeological and Historic Interest (13-14), and Decision-taking for Assets with Archaeological Interest (30-31) and the archaeological conditions included at paragraph 37 provide proportionate advice on the protection of non-designated heritage assets with archaeological interest? ? If not, please list any other factors which you consider could usefully be addressed.**

No particular comments.

**7 Would the planning conditions included at paragraph 37 of GPA 2 be sufficient to ensure an appropriate level of archaeological work while being flexible enough to allow development to proceed in a reasonable and timely way?**

Encouraging staged conditions is welcomed in place of a single pre-commencement condition. However, although it is recognised that the proposed conditions are only intended to provide a helpful model it is our view that para 37 should go further and state that the proposed drafting is not intended to be prescriptive and developers and local authorities may wish to negotiate different conditions.

**8 Do you consider that the section on what makes development successful in its context (paragraph 58) covers the main matters in this regard? If not, please list any additional considerations you think should be included.**

There is no mention of sustainability which should be relevant to the success of any new development.

**9 Does the way that GPA 3 – The Setting of Heritage Assets – is set out give clear steps to aid the assessment of setting, bearing in mind that the main concepts relating to setting are now housed in the Government’s Planning Practice Guide (paragraph 18a-013)?**

We have a concern here generally about the compatibility of the GPAs and the Government's PPG. Whilst there appears to be no incompatibility at the moment there remains a potential risk that having two documents producing overlapping advice may at some point lead to discrepancies. Clearer advice is needed as to which would take precedence.

**10 Have you any further comments to make on Good Practice Advice notes 1-3?**

No other comments.

5 September 2014

© CITY OF LONDON LAW SOCIETY 2014

All rights reserved. This paper has been prepared as part of a consultation process. Its contents should not be taken as legal advice in relation to a particular situation or transaction.

**THE CITY OF LONDON LAW SOCIETY  
PLANNING & ENVIRONMENTAL LAW COMMITTEE**

Individuals and firms represented on this Committee are as follows:

Rupert Jones (Weil Gotshal & Manges) (Chairman)

Mrs V.M. Fogleman (Stevens & Bolton LLP) (Vice Chairman)

J. Bowman (Field Fisher Waterhouse LLP)

S. Charles (K & L Gates LLP)

M.D. Cunliffe (Forsters LLP)

A.G. Curnow (Ashurst LLP)

P. Davies (Macfarlanes LLP)

M. Elsenaar (Addleshaw Goddard LLP)

D. Field (Wragge Lawrence Graham & Co LLP)

Ms C. Fielding (Wragge Lawrence Graham & Co LLP)

Ms C. Fallows (Speechly Bircham LLP)

M. Gallimore (Hogan Lovells International LLP)

I. Ginbey (Clyde & Co LLP)

Ms S. Hanrahan (Blake Laphorn)

R. Holmes (Farrer & Co LLP)

N. Howorth (Clifford Chance LLP)

Ms H. Hutton (Charles Russell LLP)

R.L. Keczkcs

Dr. R. Parish (Travers Smith LLP)

T.J. Pugh (Berwin Leighton Paisner LLP)

J. Risso-Gill (Nabarro LLP)

Ms. P.E. Thomas (Pat Thomas Planning Law)

D. Watkins (Linklaters LLP)

S. Webb (King Wood & Mallesons SJ Berwin LLP)

M. White (Herbert Smith Freehills LLP)

C. Williams (CMS Cameron McKenna LLP)

B.J. Greenwood (Osborne Clarke) (Secretary)