



Annex E – English Heritage

Introduction

This Annex is supplemental to Part 1 of Planning Inspectorate Advice Note 11. Part 1 covers many of the points of interaction relevant to the Planning Inspectorate and English Heritage. However, there are some specific points that have not been addressed or which require clarification that are considered in this Annex.

This Annex will be kept under review so as to ensure that it remains relevant and up to date, for example because of future organisational or legislative changes affecting English Heritage and/or the Planning Inspectorate.

One of the purposes of this Annex is to provide advice to applicants in order to improve engagement between applicants and English Heritage. The Planning Inspectorate and English Heritage encourage direct engagement between applicants and English Heritage at a sufficiently early point at the pre-application stage.

English Heritage's Statutory Role

English Heritage is the Historic Buildings and Monuments Commission for England, established by the National Heritage Act 1983. It seeks to broaden public access to England's cultural heritage, increase people's understanding and appreciation of the past, and conserve and enhance the historic environment. This includes 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 landscaped and planted or managed flora.

It has specific duties under the 1983 Act¹ to:

- (a) secure the preservation of ancient monuments and historic buildings situated in England.
- (b) promote the preservation and enhancement of the character and appearance of conservation areas situated in England, and
- (c) promote the public's enjoyment of, and advance their knowledge of, ancient monuments and historic buildings situated in England and their preservation,

"Ancient monument " in this context includes not only scheduled ancient monuments but also the remains of vehicles, vessels, aircraft or other movable structures which English Heritage consider of historic, architectural, traditional, artistic or archaeological interest.

English Heritage handles applications for Scheduled Monument consent on behalf of the Secretary of State. It also administers the Secretary of State's licensing functions in relation to access to designated wrecks².

English Heritage is an Executive Non-Departmental Public Body sponsored by the Department for Culture, Media and Sport, with its funding agreement signed by the Department for Communities and Local Government and the Department for Environment, Food and Rural Affairs. It works in partnership with central government departments, local authorities, voluntary bodies and the private sector.

¹ Section 33 NHA 1983 as amended

² Under s.1 of the Protection of Wrecks Act 1973



Geographical Extent of English Heritage's Responsibilities

On land

English Heritage's responsibilities for the protection of the historic environment (including the protection of the setting of the heritage assets) cover the whole of England.

At sea

Responsibilities include underwater archaeology within the English area of the UK Territorial Sea, under the National Heritage Act 1983 (as amended)³.

English Heritage can also provide advice, services or information relating to 'foreign' monuments outside the seaward limits of the UK Territorial Sea, under the National Heritage Act 1983 (as amended), that are adjacent to England and not subject to the responsibilities of any Devolved Administrations.

English Heritage will be a consultee in relation to the Marine Plans being prepared by the Marine Management Organisation (MMO) under the Marine and Coastal Areas Act 2009, which will set out how the UK Marine Policy Statement will be implemented in English inshore and offshore waters. We offer advice for plans and programmes subject to Strategic Environmental Assessment (2001/42/EC) and those projects that are subject to Environmental Impact Assessment (85/337/EEC, as amended) as both of these directives include assessment of 'cultural heritage'. We also provide advice to the MMO as part of the Marine Licensing process (provided for under the Marine and Coastal Access Act 2009). For plans/programmes and projects within that part of the UK Marine Area beyond the seaward limits of the territorial sea adjacent to England, and not subject to the responsibilities of any Devolved Administration, any advice that English Heritage offer is given on a 'without prejudice' basis

The Planning Act 2008 regime

The Planning Act 2008 (2008 Act) established the procedure for applying for, examining and determining applications for development consent for Nationally Significant Infrastructure Projects (NSIPs)⁴.

The grant of development consent will obviate the need for certain separate consents, including those under the Ancient Monuments and Archaeological Areas Act 1979 and Planning (Listed Buildings and Conservation Areas) Act 1990. However, any consents that are necessary under the Protection of Wrecks Act 1973 must be referred to the Department for Culture Media and Sport and those under the Protection of Military Remains Act 1986 must be referred to the Ministry of Defence.

English Heritage's roles under the 2008 Act regime

Given their scale, most onshore projects within the scope of the NSIP regime will have some impact on the historic environment.

English Heritage is the UK Government's statutory adviser and a statutory consultee on all aspects of the historic environment. Its responsibilities include being a consultee on all proposed applications for NSIPs which are likely to affect land in England.

The roles of English Heritage during the various stages under the 2008 Act regime are set out in more detail below.

³ Amended by the National Heritage Act 2002, s.1

⁴ Part 3, 2008 Act.



The 2008 Act regime – English Heritage’s role as statutory consultee

The pre-application stage under the 2008 Act regime allows an applicant to identify relevant issues, consult on, publicise and refine their scheme and hopefully resolve any outstanding issues before an application is submitted to the Planning Inspectorate.

English Heritage must be consulted on any proposed applications for development consent likely to affect land in England⁵.

For proposed developments sited in England or Wales that are likely to have cross-border implications, early consultation with Cadw and the Countryside Council for Wales in conjunction with English Heritage will be important. For proposed developments sited in England that are likely to have cross-border implications in Scotland, early consultation with Historic Scotland and Scottish Natural Heritage in conjunction with English Heritage will be important.

English Heritage would wish to receive the following information at the pre-application stage as part of applicants’ consultation: -

- a plan/plans of sufficient size and scale so that the proposed location(s) for development can be identified;
- a detailed description of the project;
- an outline of any project options, including any alternatives to those options already considered;
- sufficient marine survey data (geophysical and geotechnical) corroborated by review of desk-based historic environment information resources to enable the impacts of the proposals on its areas of interest to be assessed;
- any draft environmental statement or Preliminary Environmental Information (so that EH can consider issues of heritage, archaeology, landscape, visual impact) (see also “EIA” below);
- the draft Development Consent Order (including any Deemed Marine Licence)
- the deadline by which responses must be received;
- information on when an application is intended to be submitted to the Planning Inspectorate

Applicants are statutorily required to formally consult bodies such as English Heritage at the pre-application stage. Applicants must give not less than 28 days in which to respond to such consultation⁶; applicants are then required to have regard to any ‘relevant response’ that consultees may make⁷ before the deadline. Applicants are not bound to take account of any responses received after the deadline has passed.

Once an application has been accepted by the Secretary of State, English Heritage is automatically a ‘statutory party’⁸. As such it will be invited by the Examining Authority to the preliminary meeting, and if English Heritage wishes it is able to become an interested party, and thus participate in the examination process.

⁵ Section 42, 2008 Act; The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, Regulations 3 and 8(1) and Schedule

⁶ Section 45, 2008 Act

⁷ Section 49, 2008 Act.

⁸ s.88(3A) 2008 Act and Regulation 3 of The Infrastructure Planning (Interested Parties) Regulations 2010 as amended.



English Heritage is able to become an interested party either by making a relevant representation shortly after an application has been accepted when notified by the applicant of acceptance and the deadline by which they have to make any relevant representation⁹ to the Planning Inspectorate or by notifying the Examining Authority in writing that it wishes to be an interested party following the preliminary meeting.

Sufficiently early consultation of English Heritage by applicants during the pre-application stage should minimise the risk of additional information being required once an application has been made to the Planning Inspectorate, which could otherwise result in delays in the examination of the application. All relevant issues should if possible have been resolved at the pre-application stage.

The nature of Nationally Significant Infrastructure Projects will demand a multi disciplinary response from English Heritage. In preparing responses to consultations it may be necessary to involve a variety of expert colleagues. Because of that need to co-ordinate the preparation of any response, and because colleagues will also be handling a workload of other NSIPs, as well as planning applications that fall below the thresholds of 'nationally significant', applicants should request reasonable deadlines for a response, where statutory deadlines are not imposed.

English Heritage will always seek to provide comments as promptly as is possible, but it would not be reasonable to expect a response to any query within one week of sending it. More complex proposals requiring detailed responses will usually require longer deadlines.

The following preparatory work will help to minimise delays in English Heritage responding to consultations:

- Applicants should provide a proposed timetable for an application at an early stage of pre-application work. This should outline when they will be approaching English Heritage for comment. It is understood that such a timetable will need to be flexible, but such an indication will allow English Heritage to manage its resources more effectively and ensure appropriate prioritisation.
- Applicants should provide a principal contact for each project as relevant for any terrestrial and/or marine components. This will aid communication between applicants and English Heritage. It will be helpful for that contact to meet with the relevant English Heritage project lead, for either terrestrial or marine, as early as possible to discuss the details of the project and its process.

It will also be helpful, for all concerned, to have pre-application discussions formally recorded and minutes agreed by all parties. This will ensure that problems do not arise resulting from previous misunderstandings.

EIA

The EIA Directive (Article 3) states that an EIA should include the direct and indirect effects of a project on matters inclusive of "landscape, material assets and the cultural heritage". English Heritage should be consulted on these impacts at an early stage of the pre-application process.

English Heritage is willing to look at the whole of an applicant's draft ES or other document prepared as their Preliminary Environmental Information.

⁹ Section 56, 2008 Act



The Planning Inspectorate

Where a proposed NSIP is EIA development, and a scoping opinion has been requested from the Secretary of State, English Heritage is a statutory consultee that must be consulted before a scoping opinion is adopted in relation to all applications likely to affect land in England. English Heritage has also been identified as a body that will be consulted before the Secretary of State adopts a scoping opinion for all proposed NSIP applications in England where there is any offshore element. See Planning Inspectorate Advice Note 3 for further details.

Although applicants are only required to consult English Heritage as part of their s.42 consultation in relation to applications likely to affect land in England the Planning Inspectorate encourages developers to consult as widely as they deem appropriate during the pre-application stage, for example whilst preparing their ES and draft Development Consent Order.

Relevant reports advice and guidance

English Heritage provides an extensive range of guidance on its operations and how it makes decisions. The principles which underpin its advice are laid out in [Conservation Principles](#).

Our Planning Charter <http://www.english-heritage.org.uk/professional/advice/our-planning-role/charter/>

The Historic Environment and the National Planning Policy Framework
<http://www.english-heritage.org.uk/professional/advice/government-planning-policy/national-planning-policy-framework/>

English Heritage also produces guidance on a variety of issues relating to the protection and management of the historic environment and they are made available via both the [English Heritage](#) and [HELM](#) websites. In particular, relevant guidance includes:

Setting and Views: see <http://www.helm.org.uk/server/show/nav.21747> for The Setting of Historic Assets.

Strategic environmental assessment, sustainability appraisal and the historic environment: see <http://www.helm.org.uk/upload/pdf/Strat-env-ass.pdf?1334925442> (being revised)

Environmental Impact Assessment and the historic environment (being drafted due for issue summer 2012)

Other sources of guidance include:

Joint Nautical Archaeological Policy Committee (2006) Code of Practice for Seabed Development, published by The Crown Estate

Wessex Archaeology (2007) Historic Environment Guidance for the Offshore Renewable Energy Sector, published by COWRIE

Oxford Archaeology (2008) Guidance for the Assessment of Cumulative Impacts on the Historic Environment from Offshore Renewable Energy, published by COWRIE

The Crown Estate (2010) Model Clauses for Archaeological Written Schemes of Investigation: offshore renewables projects



The Crown Estate (2010) Protocol for Archaeological Discoveries: offshore renewables projects

EMU (2011) Offshore Geotechnical Investigations and Historic Environment Analysis: Guidance for the Renewable Energy Sector, published by COWRIE

English Heritage Contact Details

Co-ordination of English Heritage's engagement with the Planning Inspectorate for Nationally Significant Infrastructure Projects is supported centrally. Involvement with individual projects will be handled through the appropriate local office of English Heritage or the English Heritage Marine Planning Unit for offshore projects. The identification of the lead officer for a project will be taken on a case by case basis, depending on the nature and location of the proposal, including, with the agreement of the relevant Planning Director, identification of a lead local office or the Marine Planning Unit when proposals cross geographical office boundaries. If applicants are unsure who they should be contacting they should use the contact details below until they have established a lead official for the proposal in question.

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