

Townscape in Focus: Challenges and Opportunities a review of 'Townscape in Trouble' (1992)

The Conservation Area

1. The English planning system is undergoing a period of dramatic and controversial change. It seems that nearly every aspect of the system is currently the subject of a review, new guidance or legislation. In addition, Council planning departments are still coming to terms with the modernisation agenda, the target culture, the skills shortage, the new local development frameworks and climate change. Therefore, now is a good time to judge where conservation and the care of our historic environment fit in the priorities of both the Government and local Councils.

2. Also, as we proceed towards a new Heritage Protection Act and eventually, to a replacement of the ageing PPG15, it is appropriate that we should focus on the treasured townscape of historic towns and ask whether the special character of our most attractive towns is being adequately protected. Specifically, the time is right to look again at whether the planning system provides the means to safeguard the Conservation Areas which have been designated to enhance the special character of many towns and re-examine the question – is the appearance and condition of these special areas improving or declining?

3. Alongside National Parks and Green Belts, the Conservation Area is a well-known component of the planning system where the public expect that the familiar and cherished scene will be protected by their local Council. In recent years, it appears that these areas have become “much sought after” as places to live and work and arguably, there is a growing appreciation by the media, estate agents and shopkeepers that looking after a Victorian terrace or shopfront, a pretty Edwardian house or the cottage round the village green, can generate investment and protect, or even increase, property values. There seems to be a growing consensus that Conservation Areas are not restrictive tools of preservation, in a negative sense, but can create and drive positive physical and economic regeneration.

4. However, compared with the attention given to listed buildings and ancient monuments, the Conservation Area (CA) is definitely the Cinderella to the great castles and colonnades - why - because many buildings in a CA are unlisted, (i.e. not deemed to be of national importance) and they are designated by Councils in accordance with regulations that are vague and ill defined. However, these areas can cover the setting to our great cathedrals (e.g. Beverley) and the very heart of important towns (e.g. Brighton or Whitby)

5. The Conservation Area was created by a stroke of luck, when Sir Duncan Sandys won the ballot for private Members' Bills, which then led to the 1967 Civic Amenities Act. However, the Act only just got through, because MPs were worried about over regulation. Therefore, the CA began life as a weak and permissive tool, with subsequent changes to the law being reluctant and haphazard (e.g. control over demolition did not come in until 1974).

Townscape in Trouble

6. In 1992, the English Historic Towns Forum published “Townscape in Trouble” which created a major debate that continues today. Controversially, the document said that the appearance and character of CAs were deteriorating rapidly and that parts of historic towns were being destroyed by “permitted destruction”, i.e. lax

permitted development rights that allowed the wholesale alteration of houses. Features such as visible doors, windows, slates, railings, chimneys or porches could all be removed or replaced without planning permission. Also, two identical buildings in a CA were subject to completely different planning regulations if one was a house and the other converted to flats. The Times said that "towns were being ruined". The Mail called it a "DIY disaster area" and The Telegraph said "plastic windows were one of the great horrors of our time". Some professionals called for the de-designation of damaged areas, or a ban on further designations. However, many called for reform and agreed that our conservation record compared unfavourably with that of France and Italy.

7. The Government response to this was underwhelming. Government wanted to defend the freedom of the individual to "modernise" and avoid the high costs of proper restoration. There was a worry that designation occurred without consultation and that, if planning controls were extended, there would be a rise in the number of planning applications. In 1993, a Government Paper rejected the case for change and said CAs "should be left to the normal dynamics of economic change". In future, the emphasis should be on educating the public about restoration, renovation and repair rather than relying on coercion.

8. 16 years on, has anything changed and is the townscape still in trouble?

9. "Townscape in Trouble" certainly raised public awareness and cemented the reputation of EHTF as a professional and campaigning body and in 1994, a miracle happened. The Planning Minister (David Curry) announced that Councils would have new powers to remove permitted development rights. (The Article 4(2) Direction.) The media called it an "embarrassing U turn". The Minister cited the strength of public opinion and the force of the argument. He said, "We are giving back power to Councils and saying, OK, you decide. You say which parts of your area you want to control".

10. Despite this apparent victory, the new Direction did not give the solution that was sought, i.e. to remove permitted development rights for houses so that they were the same as flats and other buildings across the whole of a CA. The Forum predicted that unless a Direction covered every building in every CA, the public would be confused with similar buildings in the same street having different controls and policies.

11. EHTF reviewed the situation at the Scarborough conference in 1998 and concluded that there was a crisis, because, by then, very few Councils had made one of the new Directions, due in part to the reluctance of Councillors to risk claims for financial compensation – a provision included by the Government to limit the number of Directions? Creating the new Directions also had resource implications. In addition, a series of appeal and court decisions (e.g. Shimizu, Burrows Day, South Lakeland) had weakened the legislation by diluting the legal requirement to enhance CAs and by removing control over the demolition of parts of buildings. It was unclear to Councils precisely what powers they had. In effect, things were getting worse.

12. The Journal of Planning Law said that "the trouble is deeper than anyone expected at the time of Townscape in Trouble" and English Heritage called for "the debate to be reopened so that there could be a sensible planning regime for Conservation Areas". Meanwhile, PPG15 had been published and planners were urged to prepare Conservation Area Appraisals, to "justify and define" designations and even to consider de-designation. In essence, this was negative guidance from Government, which could limit the number of designations and the level of protection

given to these special areas. Ever since, Councils have struggled to protect these areas.

Conservation Area Management

13. To address the problem, Councils have turned to the concept of "Conservation Area Management" which encourages a more corporate approach, puts greater emphasis on dialogue with residents and on targeted and proactive enforcement. The EHTF guidance document "Conservation Area Management" (1998) urged greater use of Section 215 amenity notices and Article 4 Directions and suggested that the "tough" tools and skills of regeneration should be applied to Conservation Areas, to reverse the effect of permitted development.

14. Today, the challenge of townscape is all about sharing good practice. Appraisals have to be done, but for many Councils they will take years to complete and it seems unlikely that staffing levels exist to complete appraisals for over 9000 areas. Will appraisals achieve any physical improvement to CAs or do they divert scarce staff time away from practical action? Public realm enhancement schemes and grant aid are becoming more important, but will the funding for this be available in future? It is important that conservation policies are included in Local Development Frameworks, but how long will this take? The creation of locally listed buildings can make a difference, but will legislation include control over demolition and remove permitted development rights for these buildings?

15. It will be interesting to find out, from research being carried out by RPS with EHTF, if the use of Article 4(2) Directions is increasing and whether they are having a positive effect. Is compensation a real issue or not? Both Councils and the public find A4s confusing, but some Councils have found that, when permitted development rights are removed, residents want to avoid the need to submit a planning application for plastic windows or doors (which would be refused anyway) and therefore residents see the sense in carrying out like for like and sustainable repairs.

The Heritage Bill

16. The forthcoming Heritage Protection Act is a milestone in the story of historic townscape. It has been a long time coming, but there is hope that it will provide the answers to the problems of the last 16 years. Certainly, the merger of various consents and permissions is very welcome, as is the statement in the Bill that it is "putting the historic environment at the heart of the planning system".

17. In relation to Conservation Areas, the good news is that the Bill aims to reverse the Shimizu and South Lakeland decisions that, according to a recent statement by English Heritage, have "seriously limited the practical protection of Conservation Areas for many years". The Bill also requires Councils to prepare firm "management plans and proposals" for Conservation Areas. Unfortunately, the Bill does not yet give Councils the power to designate locally important buildings that would be protected from demolition and benefit from no permitted development rights. Repair Notices appear to have been strengthened and Clause 9 seems to make the demolition, or part - demolition of an unlisted house in a Conservation Area a criminal offence, but what is the definition of a "structural alteration" and is the removal of architectural features "development", "part demolition" or an "alteration"?

18. However, the emphasis of the Bill is still on the "elite" end of heritage, i.e. the "heritage assets" of listed buildings and monuments. This reflects the unfortunate

history of, and years of indifference to, the “ordinary” Conservation Area which is perhaps understandable given that the solution to “Townscape in Trouble” lies, not in primary legislation, but in the muddy world and political football of development control and the Advertisement Regulations. The Committee of MPs looking at the Bill in July were “deeply disappointed” with it and critical that DCLG, the Department responsible for development control and enforcement, did not seem to have an involvement in the Bill and that consideration of Conservation Areas was being “rushed”. Draft clauses and notes on Conservation Areas were issued after the main Bill in June.

Opportunities

19. In their joint response to the Bill, the RTPI, RIBA, RICS, IHBC and the Planning Officers Society have said, as their key message to the Government, that whilst much of the Bill is welcomed, the big issue is that a Conservation Area (“which is the heritage asset communities care most about”) should have all permitted development rights withdrawn as “a matter of course”. They say that “Conservation Areas do not mean anything” and that they suffer from “incremental degradation”, thus repeating the EHTF campaign message of 1992. Whilst the Bill cannot deliver this on its own, it should pave the way. A good starting point would be to remove the compensation provisions attached to Article 4(2) Directions and clarify the law on whether replacement windows etc are “material alterations” which need permission.

20. So, the next challenge for the historic townscape is to focus on the opportunities presented by the current profusion of ongoing reviews of the planning system. The Government proposal to relax permitted development rights for householder development is worrying, if it is to apply to Conservation Areas. The review being conducted by Killian & Pretty invites ideas to simplify, speed up and strengthen development control. The major heritage bodies should be involved in these reviews. Conservation needs you -- renew the spirit of `92!

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