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PPS5 AND ITS APPLICATION FOR PLANNING DECISIONS

PPS5: Planning for the Historic Environment was issued on 23 March 2010. The Government's current practice is to separate policy from guidance. So whereas PPG15 and PPG16 (both cancelled) contained policy and guidance, PPS5 is focused on policy and contains a mere seven paragraphs of key guidance. The remainder of the guidance is set out in a separate Practice Guide published jointly by CLG, English Heritage and DCMS.

The context for PPS5 is to set out planning policies on the conservation of the historic environment. Its policies relate to features of the historic environment that are significant because of their historic, archaeological, architectural or artistic interest and which are therefore termed "heritage assets". When considering applications for planning permission or listed building consent LPAs are to take into account the specific development management policies (HE6 to HE12). These policies, by virtue of paragraph 3, "can be applied directly by the decision maker when determining whether development should proceed".

PPS5 (like PPS4 and other emerging PPSs) gives greater significance than previously to the development management policies, especially when undertaking the statutory tests of s38(6) Planning and Compulsory Purchase Act 2004 and s70(2) Town and Country Planning Act 1990. The PPS5 guidance that development management policies can be applied directly goes further than that contained in PPS1: General Principles, paragraph 13 of which states:

"The Courts have held Government statements of planning policy are material considerations which must be taken into account, where relevant, in decisions on planning applications".

PPS5 goes further than its predecessors in other ways. For example in relation to the setting of listed buildings, previously covered in paragraphs 2.16 and 2.17 of PPG15, policy HE10 of PPS5 now requires LPAs to treat favourably applications that preserve the positive elements of the setting of the heritage asset. It also includes a specific requirement of weighing any harm against the wider benefits of the application.

The policies in PPS5 apply both to designated heritage assets and non-designated assets which have "a degree of significance meriting consideration in planning decisions". The decision-maker will need to apply the relevant policies according to whether or not the asset is designated.

The Guide sets out the steps to be adopted by LPAs in determining the significance and achieving optimum use of heritage assets. LPAs will need to carry out detailed work on preparing an evidence base to identify the significance of heritage assets and enable ongoing monitoring. LPAs' decision-making will need to be informed by this evidence base. Previously designation was the decisive factor in considering the importance of heritage assets. Now, however, if a heritage asset is not designated that fact will not preclude the decision-maker from allocating it significance. The Guide explains that non-designated assets may have at least

equivalent importance to many places that are designated. It emphasises that in making decisions LPAs must take a holistic long-term view and intelligently manage change: “change, including development, can sustain, enhance or better reveal the significance of an asset”. This places an onus on LPAs to take a proactive approach to conservation in plan and decision-making to achieve the optimum viable long-term use of heritage assets. They are charged with assessing the significance of the heritage assets and ensuring best use of them, with the Guide also acknowledging that the historic environment can play a key role in driving and sustaining regeneration. As the Guide explains, finding the optimum viable use for a heritage asset may require LPAs to apply other development plan policies flexibly and imaginatively to achieve long-term conservation. In order to carry out their functions properly and comply with PPS policies LPAs will need to use expert advice to inform their decision-making where the need to understand the particular significance of the heritage asset and the impact of the proposed development demands it.

LPAs are responsible for ensuring that sufficient detail is provided to be able to evaluate the effects of proposed development on heritage assets. The Guide seeks to ensure a consistent approach for all types of heritage asset (archaeological, historical, architectural, artistic). Evidence suggests that previously while LPAs required archaeological impact assessments to be carried out as part of the decision-making process, they did not normally require such detailed assessments in respect of other type of heritage asset (despite the guidance in Annex B of PPG15). The Guide explains the level of information LPAs should expect to receive in order to be able to determine applications. The emphasis is on pre-application discussions to identify the significance of any heritage assets affected and to understand the potential impact involved. By adopting a significance-based approach, which applies to all heritage assets, and advising LPAs to apply development management policies directly, PPS5 seeks to ensure that LPAs take a more active role in managing heritage assets.

**This note is intended to provide a brief overview of the legal principles under discussion.
It is not intended to be a comprehensive guide or to constitute legal advice.**

