



Section 8

| | | |
|-----------|--|------------|
| 8. | Supporting Legislation and Guidance | 405 |
| 8.1 | Introduction | 405 |
| 8.2 | Legislation | 405 |
| 8.3 | International Agreements | 405 |
| 8.4 | National Policy and Guidance | 407 |
| 8.5 | Regional Policy and Guidance | 412 |
| 8.6 | Local Policy | 413 |
| 8.7 | Development Control | 413 |

8 Supporting Legislation and Guidance

8.1 Introduction

8.1.1 The importance of landscape character has been recognised at a number of levels ranging from the local through to regional, national and international. The following is a brief summary of some of the key statutory tools, legislation, guidance and policy documents relating to landscape character, the implementation of which will be enhanced or facilitated by the use or consultation of Historic Landscape Characterisation.

8.2 Legislation

8.2.1 Listed below are key statutes which both directly and indirectly recognise and offer protection to the landscape in England.

1949 National Parks and Access to the Countryside Act

1967 Forestry Act (as amended 1999)

1968 Countryside Act

1983 National Heritage Act (as amended 2002)

1986 Agricultural Act

1990 Planning (Listed Buildings and Conservation Areas) Act

1990 Town and Country Planning Act

1995 Environment Act

1995 British Waterways Act

2000 Countryside and Rights of Way Act

2004 Planning and Compulsory Purchase Act

2006 Natural Environment and Rural Communities Act

2006 Commons Act

8.3 International Agreements

8.3.1 The European Landscape Convention

In October 2000 the Council of Europe published The European Landscape Convention (ELC) also known as the Florence Convention; this came into force in England on March 2007. The Convention applies to the entire

territory of the signatories and is concerned not just with remarkable landscapes but also ordinary everyday landscapes and blighted areas. For the purposes of the Convention landscape ‘means an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors’.

Article 5 of the Convention requires that each party undertakes:

- a) to recognise landscapes in law as an essential component of people’s surroundings, an expression of the diversity of their shared cultural and natural heritage, and a foundation of their identity;
- b) to establish and implement landscape policies aimed at landscape protection, management and planning through the adoption of the specific measures set out in Article 6;
- c) to establish procedures for the participation of the general public, local and regional authorities, and other parties with an interest in the definition and implementation of the landscape policies mentioned in paragraph b above;
- d) to integrate landscape into its regional and town planning policies and in its cultural, environmental, agricultural, social and economic policies, as well as in any other policies with possible direct or indirect impact on landscape.

Article 6 further states that each party also undertakes to :

- a)
 - i) to identify its own landscapes throughout its territory;
 - ii) to analyse their characteristics and the forces and pressures transforming them;
 - iii) to take note of changes;
- b) to assess the landscapes thus identified, taking into account the particular values assigned to them by the interested parties and the population concerned.

8.3.2 Guidelines for the implementation of the Convention note that knowledge plays a fundamental role in the development of a sustainable landscape policy and that achieving an adequate knowledge base “...involves an analysis of morphological, archaeological, historical, cultural and natural characteristics and their interrelations, as well as an analysis of changes. The perception of landscape by the public should also be analysed from the viewpoint of both its historical development and its recent significance”. These guidelines also state that in order to achieve greater public awareness specialised knowledge should be made available and presented in a way that

makes it understandable even by non-specialists. It also states within the guidelines that each administrative level (national, regional and local) should draw up specific and/or sectoral landscape strategies.

8.3.3 The Convention offers a strategy and vision for landscape that addresses all levels of government, both national and local, and civil society as a whole.

8.4 National Policy and Guidance

8.4.1 The Department for Communities and Local Government determines national policies on different aspects of planning and the rules that govern the operation of the system. National policies are set out in Planning Policy Statements (PPS), which are gradually replacing Planning Policy Guidance Notes (PPG). National policies are also laid out in Minerals Planning Statements (MPS) and Mineral Policy Guidance Notes (MPG). The use of HLC is endorsed and encouraged throughout much of the guidance for which some key aspects are set out below.

8.4.2 Planning Policy Statement 1: Delivering Sustainable Development

PPS1 sets out the Government's overarching planning policies on the delivery of sustainable development through the planning system. The policy states

The Government is committed to protecting and enhancing the quality of the natural and historic environment, in both rural and urban areas. Planning policies should seek to protect and enhance the quality, character and amenity value of the countryside and urban areas as a whole. A high level of protection should be given to the most valued townscapes and landscapes, wildlife habitats and natural resources. Those with national and international designations should receive the highest level of protection.

and

Plan policies and planning decisions should be based on: up-to-date information on the environmental characteristics of the area.

HLC is clearly a tool that can provide information relating to the character of an area particularly in relation to the historic environment.

8.4.3 Planning Policy Statement 5: Planning for the Historic Environment

PPS5 sets out the Government's planning policies on the conservation of the historic environment. This statement replaces *Planning Policy Guidance 15: Planning and Historic Environment* (PPG15) and *Planning Policy Guidance 16: Archaeology and Planning* (PPG16). The PPS comprises policies that allow the Government's vision for the historic environment to be implemented through the planning system. PPS5 updates planning policy affecting archaeological sites, monuments, buildings and landscapes. The policy retains as a fundamental principle the importance of conserving what is a precious, fragile and finite legacy and stresses the need to develop an holistic

progressive framework for constructive conservation. The policies set out in PPS5 are a material consideration and must be taken into account in development decisions where relevant.

The policies set out in PPS5 are supported by the accompanying Historic Environment Planning Practice Guide which provides advice for the implementation and delivery of the policies in the PPS.

Policy HE2 requires that

Regional and local planning authorities should ensure that they have evidence about the historic environment and heritage assets in their area and that this is publicly documented. The level of detail of the evidence should be proportionate and sufficient to inform adequately the plan-making process.

and

Local planning authorities should use the evidence to assess the type, numbers, distribution, significance and condition of heritage assets and the contribution that they may make to their environment now and in the future. It should also be used to help predict the likelihood that currently unidentified heritage assets, particularly sites of historic and archaeological interest, will be discovered in the future.

The Historic Environment Planning Practice Guide advises that there is a need to consider how various methods of environmental appraisal, including historic landscape characterisation, can contribute to a better understanding of heritage assets and how they are placed within a wider context. The point is also made that historic characterisation can be used in sensitivity studies or the development of green infrastructure strategies.

Policy HE3 addresses regional and local planning approaches

Regional spatial strategies (RSS) and local development frameworks (LDF) should set out a positive, proactive strategy for the conservation and enjoyment of the historic environment in their area, taking into account the variations in type and distribution of heritage asset, as well as the contribution made by the historic environment by virtue of:

- (i) its influence on the character of the environment and an area's sense of place

and further that

At a regional level, the character and significance of the historic environment should inform the RSS with particular attention paid to the landscapes and groupings or types of heritage assets that give distinctive identity to the region or areas within it.

When considering Policy HE3 the Practice Guide discusses the European Landscape Convention (ELC) and how it establishes the need to develop landscape policies dedicated to the protection, management and planning of urban and rural landscapes. To facilitate the development of such policies regional planning bodies will be assisted by high level historic characterisation

studies and landscape character studies that define sub-regional landscape character areas.

From the local planning perspective the guidance states that a key consideration for drawing up the Core Strategy and other development plan documents will require a comprehensive evidence base adequate for devising a positive and proactive strategy. Here historic landscape characterisation, urban characterisation and sensitivity studies are recommended as useful evidence resources which may inform development options for particular sites.

HLC is also clearly relevant in regard to design policies as laid out in the practice guide which notes that

Local development framework policies on design can set out the local planning authority's views on the importance of new development having a good relationship with the surrounding historic environment. These will need to reflect the policies on design and setting within both PPS5 (HE7.4, HE7.5, HE9.5, and HE10) and PPS1. By encouraging applicants to consider both how existing valued heritage assets can inform high quality design that is inspired by its local context and how the best contemporary design can fit comfortably into its surroundings, the local planning authority can help deliver sustainable communities and places that residents value highly. It is important to recognise that new development that relates well to its surroundings is likely to last longer before its replacement is considered and therefore make a greater contribution to sustainability. Local planning authorities are encouraged to seek well-conceived and inspirational design that is founded on a full understanding of local context.

PPS5 ensures that there is a focus on understanding what is significant about a building, site or landscape and from that it becomes easier to determine the impact of the proposed change. The policy statement emphasises the importance of the principles of sustainable development applying the management of change in the historic environment. These are principles which have, since its inception, guided the development of HLC.

8.4.4 *Planning Policy Statement 7: Sustainable Development in Rural Areas*

PPS7 sets out the Government's planning policies for rural areas, including country towns and villages and the wider, largely undeveloped countryside up to the fringes of larger urban areas. Paragraph 12 states

Many country towns and villages are of considerable historic and architectural value, or make an important contribution to local countryside character. Planning authorities should ensure that development respects and, where possible, enhances these particular qualities.

and 13 that

Local planning authorities should prepare policies and guidance that encourage good quality design throughout their rural areas, in accordance with Annex C to PPS1, and utilising tools such as Landscape Character Assessments and Village or Town Design Statements, and the design elements of Village or Parish Plans prepared by local communities.

In addition Paragraph 24 states

The Government recognises and accepts that there are areas of landscape outside nationally designated areas that are particularly highly valued locally. The Government believes that carefully drafted, criteria-based policies in Local Development Documents, utilising tools such as landscape character assessment, should provide sufficient protection for these areas, without the need for rigid local designations that may unduly restrict acceptable, sustainable development and the economic activity that underpins the vitality of rural areas.

8.4.5 *The Historic Environment: A Force for Our Future* (DCMS 2001)

The Department for Culture, Media and Sport (DCMS) is responsible for the identification and conservation of the historic environment in England. DCMS is also responsible for government policy in relation to the historic environment. This policy is outlined in *The Historic Environment: A Force for Our Future*. This policy document recognises from the outset that the past is all around us and that the historic environment is more than just a matter of material remains. “It is central to how we see ourselves and to our identity as individuals, communities and as a nation”. The policy emphasises the point that the historic environment is central to our collective memory with both urban and rural landscapes reflecting many layers of experience through their own distinct characteristics. Paragraph 1.3 of the policy acknowledges the importance of the role played by local authorities in their stewardship of the historic environment and requires that ‘local authorities to adopt a positive approach to the management of the historic environment within their area and the monitoring of its condition’. The policy also stresses the point that the historic environment should be something that all sections of the community can identify with and paragraphs 3.17 and 3.18 recognise the potential role for HLC in contributing to community-led conservation and management plans. To this end at paragraph 3.19 ‘the Government commends character assessment to local authorities both as a useful tool in itself and as a way of encouraging greater involvement by local communities in conservation issues’.

8.4.6 *Minerals Policy Statement 1: Planning and Minerals*

MPS1 sets out the Government’s key overarching policies and principles which apply to minerals. Section 14 of the policy relates to protection of heritage and countryside. Planning authorities are required to

Take account of the value of the wider countryside and landscape, including opportunities for recreation, including quiet recreation, and as far as practicable maintain access to land. Minimise the impact of mineral operations on its quality and character and consider the cumulative effects of local developments.

8.4.7 *Minerals Policy Statement 2: Controlling and Mitigating the Environmental Effects of Mineral Extraction in England*

MPS2 sets out the policies and considerations in relation to the environmental effects of minerals extraction that the Government expects Mineral Planning

Authorities (MPAs) in England to follow when preparing development plans and in considering applications for minerals development. Paragraph 11 requires that development plan policies and proposals for minerals extraction and associated industries should take into account

The impacts on landscape, agricultural land, soil resources, ecology and wildlife including severance of landscape and habitat loss, and the impacts on sites of nature conservation, archaeological and cultural heritage value.

Paragraph 15 requires developers, during pre-application discussions, to consult the relevant authorities and parties 'with a material interest, over proposals to develop land in agricultural use or forestry or land of environmental, nature conservation, historic or archaeological importance'.

8.4.8 The Department for Environment Food and Rural Affairs (Defra) is the government department with responsibility for environmental protection, food production and standards, agriculture, fisheries and rural communities. Defra sponsors Natural England, the Government's statutory advisor on the natural environment and the landscape. Included in Natural England's remit is the responsibility to ensure sustainable stewardship of the land. Natural England's policy on landscape takes the position that all landscapes matter and that landscapes in towns and cities are as important as those in the countryside and on the coast. The policy position statement states that

Landscape character and cultural heritage are key contributors to regional and local identity, influencing sense of place, shaping the settings of people's lives and providing a critical stimulus to their engagement with the natural environment.

8.4.9 English Heritage is the Government's statutory advisor on the historic environment and is an Executive Non-departmental Public Body sponsored by the Department for Culture, Media and Sport (DCMS). It is within this capacity that English Heritage has produced a body of guidance documents and best practice information acknowledging the value and recommending the use of HLC. These include

Conservation Principles Policies and Guidance

Farming and the Historic Environment: An Introduction to Farm Advisers

Guidance on Conservation Area Appraisals

Guidance on the Management of Conservation Areas

Living Buildings in a Living Landscape: Finding a Future for Traditional Farm Buildings

Suburbs and the Historic Environment

The European Landscape Convention: The English Heritage Action Plan

Using Historic Landscape Characterisation

Wind Energy and the Historic Environment

8.4.10 Historic Landscape Characterisation is a key plank in English Heritage's strategy for managing the Historic Environment and English Heritage has been actively promoting its use over recent years. For many historic environment specialists English Heritage's initiatives in relation to

HLC, along with other forms of characterisation studies and more established data sets such as the Historic Environment Record, have contributed to the formation of a powerful suite of tools essential for effective management of our historic and cultural landscape and their component assets.

8.5 Regional Policy and Guidance

8.5.1 The Government Office for the East Midlands (GOEM) is the hub of central government in the East Midlands and has become the primary means by which a wide range of Government policies are coordinated in the region. In 2009 GOEM published the current Regional Spatial Strategy for the East Midlands. The strategy known as the East Midlands Regional Plan (RSS8) provides a broad development strategy up to 2026 and also forms the spatial component of the East Midlands Integrated Regional Strategy (IRS). Policy 27 of the East Midlands Regional Plan sets out regional priorities for the historic environment and requires that local authorities ‘use characterisation to understand their contribution to the landscape or townscape in areas of change’.

8.5.2 Policy 28 addresses regional priorities for environmental and green infrastructure. Here local authorities and those responsible for growth and environmental management across the East Midlands should

within Local Development Frameworks develop “green infrastructure plans” based on character assessments of existing natural, cultural and landscape assets and the identification of new assets required to meet the needs of existing and expanding communities.

8.5.3 Policy 31 outlines priorities for the management and enhancement of the landscape and states that the natural and heritage landscapes within the region should be protected and enhanced by

the identification in Local Development Frameworks of landscape and biodiversity protection and enhancement objectives through the integration of Landscape Character Assessments with historic and ecological assessments.

8.5.4 The Leicester, Leicester and Rutland Structure Plan 1996 - 2016, was adopted on 7th March 2005. Under the Planning and Compulsory Purchase Act 2004 policies in the Plan were “saved” for a three year period ending on the 7th March 2008. The Structure Plan was replaced where necessary by elements of the Regional Spatial Strategy and district LDF documents.

8.6 Local Policy

8.6.1 Following the introduction of the Planning and Compulsory Purchase Act 2004 a new two tiered plan system was introduced comprising Regional Spatial Strategies, as mentioned above, and Local Development Frameworks (LDFs). The local planning authorities within the project area are currently preparing their LDFs. These are essentially folders of local development documents that outline the spatial planning strategy for the local area. The LDF will include within it Development Plan Documents (DPDs) which will contain the Core Strategy. The Core Strategy is the principal document contained within the LDF and sets out the general spatial vision and objectives for its delivery. Guidance for the production of the Core Strategy is laid out within PPS12: Local Spatial Planning which requires that this vision 'should be informed by an analysis of the characteristics of an area and its constituent parts and the key issues facing them'. The vision should also conform to the RSS and closely relate to any Sustainable Community Strategy for the area. In noting that core strategies may involve major impacts upon environmental or cultural assets, PPS12 also requires that they should be based upon through evidence. HLC is clearly a data source that should be used to inform core strategies.

8.7 Development Control

8.7.1 It has long been recognised that Historic Landscape Characterisation has an increasingly important role to play as a tool for aiding historic environment specialists in the day to day work of development control. This development control function is probably best understood viewed against the context of current legislation and guidance as outlined above. The requirement for characterisation studies is outlined in Paragraph 2.26 of Planning Policy Guidance Note 15 which states that '...authorities should take account of the historical dimension of the landscape as a whole rather than concentrate on selected areas. Adequate understanding is an essential preliminary and authorities should assess the wider historic landscape at an early stage in development plan preparation.' Further to this paragraph 6.40 also emphasises the point that appraisals which are based upon the assessment of the historic character of the countryside as a whole are intrinsically flexible and can easily be integrated into the planning process.

8.7.2 The Leicestershire, Leicester and Rutland Historic Landscape Characterisation Study has been carried out using the HLC module available within the exeGesIS HBSMR software package. This is a sophisticated database which holds the Historic Environment Record for Leicestershire and Rutland. The use of this integrated software package means that the Historic Environment Team now has available to it an additional consultation layer providing 100% coverage across the study area.

8.7.3 One of the LLR HLC's particular strengths is highlighted when it is being used to help in the determination of large scale projects including, for instance, housing estates, road schemes and minerals extraction. Earlier HLCs placed a strong emphasis on providing an informed assessment of the

landscape in a rural context and whilst this continues to be the case a continually refined methodology and improved data capture technology has enabled us to produce an HLC which also examines in depth the landscape of the built environment.

8.7.4 HLC is a highly flexible tool which when set alongside other relevant data sets will aid the Historic Environment Team in gauging the likely impacts upon the landscape that any proposed development might have and in determining a suitable response. HLC aids the historic environment professional in placing sites into a wider landscape context and is at its most useful when used in conjunction with other data sets, most notably the Historic Environment Record. In Leicestershire the HER includes not only a record of known archaeological sites and investigations but also listed buildings, conservation areas, registered parks and gardens and battlefields, all of which can be viewed alongside HLC material. When used in conjunction with other relevant information HLC can offer the relevant professionals the opportunity of assessing whether or not development proposals are in keeping with the historic character of an area and how they might impact upon significant cultural attributes. Where such information is available it can be used to inform the response of the planning authority or their advisors in determining whether refusal of an application should be recommended, or in suggesting amendments so as to take more fully into account the needs of the historic environment and, most particularly, the historic landscape.

8.7.5 In a number of counties, notably Cornwall, HLC is increasingly being used as a predictive device. The development of HLC as a predictive modelling tool is likely to be particularly useful in areas that have no previously known Historic Environment Records and it may be possible to use HLC to suggest what might be expected and to recommend assessment and mitigation accordingly.