

Removing the inconsistency between heritage policy and legacy heritage legislation

About the Heritage Alliance

[The Heritage Alliance](#) is the umbrella body for the independent heritage sector in England, a charity bringing together over 200 organisations representing the breadth of heritage. The Heritage Alliance sits on the Government's Heritage Council and the heritage sector's Historic Environment Forum. Our Planning and Devolution Bills task & finish group has fed into this briefing note.

Background

National heritage planning policy is based throughout on 'conservation', defined in the National Planning Policy Framework (NPPF) as "the process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance". This is comprehensively set out in the NPPF, its Planning Practice Guidance, Historic England's *Conservation Principles* and its policy of 'constructive conservation', and Historic England guidance.

This is longstanding conservation best practice (first codified in the Burra Charter in 1979 in Australia), adopted in England (and other UK countries) in the 2000s, after extensive public consultation, and incorporated into national planning policy in 2012 in the NPPF. This NPPF policy approach has been summed up by Historic England as follows:

"Historic England has worked hard to remove the common misconception that listed buildings must be 'preserved' effectively just as they are. This is not the case. The goal is positive 'conservation' and managing change rather than 'preservation'. This approach will allow a listed building to change and adapt to new uses and circumstances in a way that keeps its heritage value intact."¹

The problem

In contrast, the 35-year-old legislation² at the heart of the planning system, which out-ranks policy, retains a legal presumption in favour of 'preservation'. Every listed building consent (LBC) decision, every planning decision near any listed building, and every planning decision in England's 10,000 conservation areas, must explicitly give 'special regard' to 'preservation', not to 'conservation'.

¹ [Heritage Works, Historic England, 2017](#), section 1.1.

² Primarily the [Planning \(Listed Buildings & Conservation Areas\) Act 1990](#), sections 16, 66, and 72 (1).

(For historical context, the concept of 'preservation' is rooted in the late 19th century. Before 1882 there was no legal protection for historic and archaeological sites. Widespread concern at the degradation of prehistoric archaeological sites by private individuals and outrage that there was no mechanism to prevent sites like Tattershall Castle being stripped of its medieval fireplaces for sale abroad led to the 1882 'Ancient Monuments Protection Act'. The legal requirement for 'preservation' stems from this context of total loss).

Contribution to the growth agenda

Heritage is not a peripheral issue: at least a third of planning applications involve heritage, and this legal discouragement of change to heritage, or near heritage, encourages the view that heritage is a 'blocker', deterring change and growth. It also discourages the sympathetic changes needed to allow heritage to (as above) "change and adapt to new uses and circumstances in a way that keeps its heritage value intact".

The adaptive reuse of listed and unlisted historic buildings are proven lynch pins to successful urban regeneration.³ Heritage led regeneration reinforces place-based identities, supporting resilience in communities and places. A community's future is enriched by its past, fostering shared identities and values. Research demonstrates that between 560,000 - 670,000 new homes could be created in England alone by repairing and repurposing existing historic buildings.⁴ Repurposing redundant factories, mills and shops, that contribute to local identity, cultivates resilience in local communities, restoring a sense of local pride.

A 'conservation' rather than 'preservation' mindset towards the built environment enables built heritage to contribute to sustainable, place shaping development which delivers for local people. In the context of designated heritage assets, different grades can be understood as a guide to a site's sensitivity to change. Grade I sites are highly sensitive whilst undesignated sites often have considerable potential for contemporary adaptation.

The Planning and Infrastructure Bill is an opportunity to update 35-year-old legislation to require the established best practice for development that impacts the historic environment. 'Conservation' rather than 'preservation' enables heritage to drive growth, strengthen communities and inform good design that reinforces the distinctive identity of places.

³ [Regeneration Approach and Vision](#). Historic England.

⁴ [New Homes from Vacant Historic Buildings](#), Historic England.

The solution

This problem has long been recognised, but solving it requires primary legislation.⁵ We propose an amendment to the Planning and Infrastructure Bill to insert a new clause.

Suggested new clause to the Bill (as amended after passage in the House of Commons)

We propose an amendment to insert a new clause after clause 55 (2) as follows:

55A conservation of the historic environment

(1) In sections 16 (2), 66 (1) and (2), and 72 (1) of the Planning (Listed Buildings & Conservation Areas) Act 1990, substitute the words 'conserving or enhancing' for 'preserving'* in each case.

Explanatory statement: This amendment removes the fundamental inconsistency between heritage policy and heritage legislation, by using the same terminology in both, and safeguarding heritage by encouraging desirable change.

* NB. some further and consequential amendments would also be needed

⁵ The problem was addressed to a limited extent in the form of a clause (202) in the Levelling Up and Regeneration Act 2023, not implemented, which would change 'preserving' to 'preserving or enhancing'. That might mitigate the problem to an extent, but the primary inconsistency between the legislation and the policy would remain. It would clearly be much better to use the term used throughout policy, ie 'conserving', not 'preserving', removing the doubt from the core of heritage policy. Otherwise that doubt would continue for as long as the term 'preserve' remains in the legislation.