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TOWN AND COUNTRY PLANNING AND THE ARCHAEOLOGIST - HOW THE LEGISLATION WORKS

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INTRODUCTION

Most people are aware that the use and development of land is controlled under the Town and Country Planning Act. Archaeologists and others concerned with the protection of sites and amenities know that the Act provides the means for the preservation of objects and places of historical or scientific interest or natural beauty.

The legislation is, however, involved and in some places difficult to interpret. When this fact is freely admitted by practitioners in the field, it is not surprizing that the layman who tries to use it frequently retreats in baffled dismay. The following article will try to explain the important aspects of the legislation. It will not deal in detail with all the provisions, but will concentrate on those which can be used by archaeologists in trying to secure protection for important sites.

The town and country planning legislation has not enjoyed a particularly high reputation among archaeologists in recent years. There have been several disappointing experiences of local authorities failing, for various reasons, to prevent the destruction of important sites. It is not fair, however, to regard the legislation as necessarily faulty because of these incidents. Local authorities are often subject to strong pressures over land use, and, in the absence of strong public opinion in favour of the preservation of sites, it is unrealistic to expect them to require preservation of sites when large commercial interests are at stake.

Apart from these rather exceptional cases, some progress has been made in encouraging local authorities to safeguard sites, and much more could be done if archaeologists were to make local authorities more aware of important sites and the need to protect them.

The purpose of this article is to explain how this can best be done.

THE AIMS OF THE LEGISLATION

The Town and Country Planning Act 1953 deals with the regulation of the use of land and its zoning. The primary powers are exercised by territorial local authorities (city, borough and county councils), subject to compliance with Regional Planning Schemes where these are operational (Part I of Act). Section 18 of the Act requires local authorities to prepare district schemes for planning purposes. The section reads:

> "Every district scheme shall have for its general purpose the development of the area to which it relates (including where necessary, the replanning and reconstruction of any area therein that has already been subdivided and built on) in such a way as will most effectively tend to promote and safeguard the health, safety and convenience, and the economic and general welfare of its inhabitants, and the amenities of every part of the area."

THE LEGISLATION

(1) The Town and Country Planning Act

Part I deals with regional planning schemes. As already stated, district schemes must conform to these, but as yet very few of them are operative. Part II deals with the district schemes of local authorities, and Part III contains miscellaneous provisions including the important ones dealing with compensation and the taking of land. The Second Schedule lists the matters to be dealt with in district schemes.

Generally, the Act provides the legal framework for the preparation and enforcement of planning schemes.

(2) The Town and Country Planning Regulations 1960

These regulations prescribe the detailed procedures to be followed in preparing schemes, the form and context of schemes, and the forms to be used.

Regulation 15 requires that every scheme include:

"(a) A scheme statement, being a statement setting forth the description of the particular purposes of the district scheme and other particulars necessary for its proper explanation:

"(b) A code of ordinances for the administration and implementation of the scheme:

"(c) A map or maps ... illustrating the proposals for the development of the area:

"(d) Any other particulars or material..."

The third and fourth schedules to the regulations contain the form which scheme statements and codes of ordinances respectively are expected to follow generally. They are intended as a guide and precedent for the local authority.

(3) The Scheme Statement and Code of Ordinances

As shown, the Regulations require these to be prepared by the local authority. The detailed contents are for the authority to decide on, and it enforces them within its district. A district scheme and code of ordinances would therefore need to be examined by the interested archaeologist in order to find out exactly what provision the council has made for protection of sites.

The draft provisions set out in the Regulations for the guidance of local authorities contain the following provisions which are of particular interest to archaeologists:

Scheme Statement - Part X - Amenities - Clause 2 - Objects and Places of Special Interest

"The objects and places of historical or scientific interest or natural beauty listed in Appendix VIII hereto are to be registered, preserved and maintained so far as the powers of the Council or local authority from time to time permit."

(This is really a declaration of intent. The executive power is set out in the Code of Ordinances below.)

Code of Ordinances - Ordinance VII - Amenities - Clause 1 - Objects and Places of Historical or Scientific Interest or Natural Beauty

(1) This provides for the registration by the Council of places or objects, for notification of the registration to the owner and occupier of the land, and for the register to be open for inspection.

The Ordinance goes on:

"(2) No person shall, without the written consent of the Council, wilfully destroy, remove, or damage any object or place registered by the Council as aforesaid.

"(3) The Council may at any time cancel such registration..."

Apart from these specific provisions for protection, a Council could provide in the scheme for the acquisition of an important site as a reserve. The Public Works Act was amended last year to make it clear that the definition of "public work" includes a reserve, enabling proposed reserves to be acquired by the Council under the Town and Country Planning Act. Obviously this power would only be exercised in the case of a site of considerable importance. The power is used sparingly because of the expenditure involved in acquiring the land and, in fact, I do not know of it being used to acquire a prehistoric site.

The powers necessary to protect sites therefore exist in the legislation. It is up to local authorities to exercise them if they wish, or can be persuaded to do so. Before they can do so, however, they must be supplied with information on the sites.

Supplying information on sites

The first concern of the archaeologist is to know how and when to make his case for the protection of sites to the local authority responsible. This can be done at several points during the preparation or review of a scheme.

These are:

Invitation of proposals for a district scheme - This is publicly notified in the press, etc. - see Regulation 9.

Public notification of the adopted scheme - Objections may be made by any person etc. who considers that the scheme does not provide for any matter - see Section 24 of Act.

Review of a scheme - This is also publicly notified and suggestions are called for - see Section 30A of Act.

Appeal to the Town and Country Planning Appeal Board - Any objector may appeal to the Board if his objection is disallowed by the Council.

The best opportunities are obviously when proposals are invited for the preparation or review of a scheme. Objection to the Council could follow if suitable provision is not made in the scheme. Appeal to the Appeal Board is a rather drastic step, but the remedy is available if circumstances warrant it.

Section 21 of the Act requires schemes to be submitted to the Ministry of Works before public notification takes place. The reason for this is that any public work for which the government has responsibility must be provided for in the scheme. The words underlined are important because they describe the limits of the part played by the Ministry of Works in the planning process. Its main function is to co-ordinate government works with local schemes, and to ensure that this is done all government departments and agencies, including the Historic Places Trust, are circularised by the Ministry asking them to make known the works for which they are responsible which have to be included in the scheme. The only direct part which a government department or the Trust would play in site protection would be the proposed acquisition of an important site as a reserve, which, as explained above, would be classed as a public work. Such cases will, however, be rare, and will be well known to the authority which proposes to acquire the site. Government departments may, however, have an important indirect part in site protection. As agencies responsible for government works, they should be made aware of important sites which should be taken into account in planning these works. This can be done by advising District Office of the Ministry of Works alone, which will take the submissions of the archaeologist into account in co-ordinating government works. It therefore pays to notify the Ministry as well as the local authority of sites which require protection. Experience so far has shown that the Ministry of Works is usually co-operative, and that the extra work involved in keeping it informed is well worth while. It is not always possible, of course, to avoid threats to sites from public works, but liaison with the Ministry can also provide early warning of future threats to sites so that salvage work can be planned.

Action at the Local Level: What Archaeologists and Local Societies Should Do

It will probably be obvious by now that the action suggested above can only be taken at the local level, either by individuals or local societies or institutions. The part of the Association in the process must necessarily be very limited. It is only people on the local scene who can keep in touch with planning agencies and assess the relative importance of sites. Many important sites are not yet recorded for the Site Recording Scheme and others are inadequately recorded. In these cases local knowledge of the sites is essential.

It is up to local archaeologists, with the help of any expert advice available and in consultation with bodies such as regional committees of the Historic Places Trust, to judge the importance of sites for protection. The local authority cannot as a rule do this itself. It is therefore no use swamping the local authority or the Ministry of Works with long lists of every site in the district, important and unimportant. This would probably have the reverse effect from that intended. A well-prepared and sensibly-argued case has at least a fair chance of a good hearing.

To summarize, archaeologists should:

(1) Make contact with local authorities and district offices of Ministry of Works and inform them of sites which should be protected, and

(2) Watch the newspapers and make submissions on district schemes at the appropriate times.

CONCLUSION

This article describes the main provisions of the Town and Country Planning legislation as they may be used to protect archaeological sites. The legislation is not perfect but it is there to be used, and has in fact been used effectively in some cases already. We should not lament its inadequacies unless we have made all possible use of what already exists, and this we have certainly not done. Future improvements in measures to protect sites will be achieved not by attacking the present legislation, but rather by the creation, by public education, of the right climate of opinion.