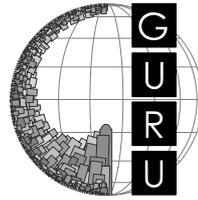


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**HISTORIC PARKS AND GARDENS AND STATUTORY  
PROTECTION**

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## ABSTRACT

Historic parks and gardens are an important part of our cultural heritage. This working paper is concerned with the move to give nationally important parks and gardens statutory protection and the form such a system might take.

The history of attempts to protect such sites, prior to the creation of the English Heritage Register of Parks and Gardens of special historic interest in the 1980s, is reviewed. The evolution of the Register as a planning tool and the use by local planning authorities of other planning mechanisms to protect historic parks and gardens are discussed, and European comparisons briefly drawn.

The only previous attempt to formulate a model of statutory protection is the work undertaken by a Garden History Society convened working party, which led to a proposed model, based on conservation area and listed building legislation, termed Registered Garden Consent. The concepts used by the working party, in describing sites, of '*structure*', '*decoration*' and '*character*' are examined through the use of a series of case studies. The key objective of Registered Garden Consent is to prevent irreparable damage to the structure of historic parks and gardens. Registered Garden Consent and a number of existing models of protection are evaluated against this objective and a number of other possible goals for a system of statutory control.

An alternative model of Registered Garden Permission is formulated, based upon the framework which exists for sites of special scientific interest. It is argued that this model has the key advantages of the capability of being tailored more closely to individual sites and more potential to encourage the active '*conservation*' of sites, a higher aspiration than just protecting them from damaging development. Associated matters of fiscal regimes and policy guidance are briefly discussed. Finally, some pointers to areas requiring further research are made.

*'Downe Hall with its 14 acres of garden and surrounding acres of pasture and woodland has staggered through the last 50 years to survive virtually intact in its design and layout since William Downe first moved here to take the sea air in 1789..... Against all the odds, this house and its setting exist in a serene, untouched bubble. But at the end of this month, barring some 'new material consideration', West Dorset District Council will vote on whether to allow a local firm, C G Fry and Son to build eight executive-style homes in the grounds of Downe Hall, while converting the house itself into five flats.... the greatest harm to the setting is caused by the four houses proposed for the foreground of Downe Hall, two on either side of the presently unbroken sweep of grass and trees.... Do the 40 trees that must be felled to accommodate eight houses count as specific features? Does it matter that a double garage has been positioned astride the presently unbroken perimeter walk? Or that the massive yew hedge and topiary to the north-west of the house will be buried under another garage block? In short, have we learnt **nothing** from the mistakes of the last 50 years?'*

Anna Pavord from *Is it really necessary to destroy this garden?* Independent Newspaper 23/3/96.

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## SECTION 1 : INTRODUCTION TO THE PROTECTION AND CONSERVATION OF HISTORIC PARKS AND GARDENS

### 1.1. Introduction.

The cultural heritage of this country is important to us as a society. Many arguments why this is so can be advanced. For example, we feel it is important to pass on the heritage as it is a historic record both of what has gone before, both in terms of physical fabric and in understanding the lives of our forebears. Alternatively there are psychological arguments about the continuity and stability of society and, in terms of the historic environment, the sense of place, identity and pride it can bring.

Britain enjoys a rich and varied heritage, but the public seem to particularly appreciate the tangible expression of this in the form of buildings and landscape. In a Gallup poll conducted for English Heritage in 1993 36% of those surveyed considered that the saving Britain's historic buildings, monuments and gardens to be '*the overwhelming heritage priority*', a percentage far in excess of heritage alternatives such as the performing arts, music or sport (English Tourist Board, 1994).

The importance of heritage has led to formal state attempts to protect and conserve it. Historically attempts at the protection of elements of the built heritage go back many centuries but begin to be formalised by the formation of the Society for the Protection of Ancient Buildings in 1877. The first state legislation dates to The Ancient Monuments Protection Act in 1882. There are few serious challenges to the necessity of state intervention, through the use of regulatory systems, to protect the country's heritage. On the right of the Conservative Party, Teresa Gorman MP has recently advocated the withdrawal state controls (Hirst, 1996), but this is in response to a Government Green Paper which states,

*'Successive Governments have given high priority to identifying and protecting the historic environment and in doing so they have enjoyed wide public support. The present Government has made it clear that it sees care of the heritage as a fundamental element of environmental stewardship. It has given...(in its planning policy guidance notes)...the firmest-ever commitment to conservation.'* (Department of National Heritage and Welsh Office, 1996)

There is an often repeated assertion that parks and gardens represent Britain's greatest contribution to European culture (see, for example, Country Life, 1994), and yet over 100 years after the passing of the first tentative steps at state intervention to protect monuments, parks and gardens enjoy no statutory protection.

## **1.2 Definitions.**

The subject under scrutiny in this paper is the protection or conservation of historic parks and gardens and, in particular, the mechanisms that the state may use to intervene in this process. The paper focuses on England specifically, given the different legislative regimes which operate in other parts of the United Kingdom. In considering these matters it is necessary to first consider what is meant by this terminology and put forward some definitions. Goodchild (1995) has attempted to define what is meant by both these terms. He argues that,

*'Protection implies preventing changes which would reduce the value or interest of the object in question. Protection is certainly one aspect of looking after an historic park or garden but on its own it is not sufficient. Positive management is also necessary, for example to enhance its historic character or to maintain its financial viability. On the whole I prefer the word 'conservation' because as a concept it includes both protection and positive management.....'*

and,

*'Conservation is a branch of management. It starts by recognising the existing values of a place and then attaches a priority to maintaining them, enhancing them or using them sympathetically and wisely.'*

This immediately raises a key issue. This paper is primarily concerned with the possibilities of introducing a system of protection for historic parks and gardens but, using Goodchild's definitions, it becomes clear that a system that encourages the active conservation of historic parks and gardens is a higher aspiration. Goodway (1995) refers to trying to conserve *'processes'* and *'systems'* rather than *'objects'*. Goodchild goes on to define *'historic parks and gardens'*,

*'My own view is that parks and gardens is a convenient shorthand phrase for a wider range of places. This wider range includes parks, gardens, designed ornamental landscapes, and places of recreation. The common element is that they are all the product of the ideas and the traditions that are associated with gardening and landscape design. The range takes in all of the different parks and gardens that have existed during the course of history whether they have been*

*associated with private domestic use, institutional use or public use and whether they are large or small, complex or simple.'*

He goes on,

*'In English....'historic' signifies a higher level of interest than 'historical'..... The reason for mentioning the distinction here is it raises the question of what degree of historical interest should a site reach before anyone takes action to conserve its historic character?'*

In practice in England the key indicator in establishing historic interest of national importance has become inclusion or otherwise on the English Heritage Register of Parks and Gardens of special historic interest in England. It is an assumption of this paper that the introduction of any system of statutory protection for historic parks and gardens in England would be linked to the English Heritage Register. This does not imply that other historic parks and gardens are not worthy of conservation; simply that a legislative change of the significance of introducing statutory protection would need to be linked to an agreed national standard.

### **1.3 A brief history of attempts at protection.**

The English Heritage Register is discussed at some length below. However, it is first necessary to consider the moves and demands for action on the conservation of historic parks and gardens which led to its eventual creation.

There has long been an appreciation of the art history and cultural significance of designed landscapes. However, organised efforts at conservation only really commence with the formation of the Garden History Society (GHS) in 1965. The Society was formed to bring together those interested in garden history in its various aspects. Its founder members saw the need for making garden history a cohesive subject like art and architectural history (Jellicoe et al, 1986). From its early days the Society has campaigned for a greater public awareness of the importance of historic gardens as part of our cultural heritage. The desire to produce lists of important gardens can be traced at least back to 1969 when the Society's newsletter announced the start of a *'Register of Gardens'*, though little progress was made at that time (Jacques, 1986). In 1974 the GHS defined a historic garden as *'..a designed area deliberately created as an ornamental environment and of historic importance as such. The term includes designed landscapes'* (cited in Roberts, 1995). In the same year the GHS produced an *'Interim List of Gardens and Parks of Historic or Design Interest in England and Wales'*, which included 311 sites. This was superseded in

1976 by '*A Preliminary List of Gardens, Parks, Grounds and Designed Landscapes of Historic Interest in England and Wales*', which itself was incorporated, two years later, into the ICOMOS-UK list of historically important British parks and gardens, which was the first list to be published (Jacques, 1986). This work was a very important foundation on which the English Heritage Register was based.

The legislative powers for local authorities to exert some form of control over historic parks and gardens through the town and country planning system has come slowly and incrementally. The various means by which this is now attempted is discussed more fully below. However, the two pieces of legislation which first extended beyond individual monuments and buildings, and acknowledged the significance of place and context, were the Civic Amenities Act 1967 and the Town and Country Amenities Act 1974: the former introducing the concept of the conservation area and the latter an acknowledgement that the setting of listed buildings should be considered in determining planning applications. This second Act also identified designed landscapes as worthy of grant aid, though no new funds were actually made available (Lambert, 1994). The importance of historic landscapes had been officially recognised by the Historic Building Council, a forerunner of English Heritage, in their report for 1972-73 which stated,

*'... in many cases the landscape itself is of outstanding interest in its own right; indeed the 'English' park or garden as exemplified by the creations of Capability Brown or Repton is of international importance or influence. But so many such landscapes have been lost that it is essential to protect and restore the remainder.'* (cited in Jacques, 1986)

In 1975 ICOMOS passed a resolution which concluded,

*'... parks and landscapes should be protected by law. Careful provision should be made for their conservation and regeneration. Planning authorities should take steps to safeguard them and give due consideration to their enhancement. They should forthwith be included in monument protection.'* (cited in Jacques, 1986)

#### **1.4 The English Heritage Register of Parks and Gardens of Special Historic Interest.**

However, the breakthrough legislation for establishing the significance of historic parks and gardens did not arrive until the National Heritage Act 1983. This legislation enabled the newly formed to English Heritage to prepare a register of parks and

gardens of special historic interest. With modest resources the first Register was compiled relatively rapidly and was completed by 1988 and contained 1,086 sites. The Register is now in the midst of a county by county review programme, started in 1991, which it is intended should be complete by 1999 (Roberts, 1995). In compiling information the Register draws on established methodologies used in scheduling ancient monuments and listing buildings and in its published form follows a similar format. Each site is graded in line with the system used for listed buildings. Criteria for selection are high with an emphasis on age, rarity, completeness of condition and examples of the work of known national and local designers.

The most systematic examination of the composition of the Register undertaken to date is by Judith Roberts (Roberts, 1995). As she points out, by selecting certain sites the Register shapes our perceptions of what is important in the past. The analysis of the Register shows, with some exceptions, a clear pattern of a concentration of sites in the south of the country and a marked decrease in the number of registered sites in the northern counties. Roberts argues that this is due at least in part that the level of information and expertise available for the first edition of the Register, rather than reflecting accurately the *'real'* distribution of registerable sites.

Site type is classified on the prime historical function of the site. Three main categories are used: sites associated with domestic use; institutions such as hospitals or colleges; and sites designed for public amenity such as public parks. These groups are not mutually exclusive and it is possible for a site to move at different periods of its history from one group to another, for example, where a private dwelling and its estate become a public park or change from domestic to institutional use. There is an overwhelming dominance of sites in the domestic category in the first edition of the Register, comprising 86.4% of sites, with a further 4.8% of sites originally created for domestic use. It seems likely that this dominance will weaken somewhat as the second edition of the Register evolves but clearly it seems set to comprise the larger part of the Register.

Analysis by date is complicated by the evolutionary nature of many sites over time. However, Robert's analysis shows a clear emphasis on the eighteenth century with a secondary emphasis on the nineteenth century. Lancelot Brown and Humphry Repton are the dominant site designers occurring in the Register, their names occurring 122 and 103 times respectively. There is then a dramatic fall to Charles Bridgeman, whose

work or influence is noted 39 times. The most frequently cited more modern designers are Edwin Lutyens and Gertrude Jekyll, singly and together.

It is clear that the Register as it stands is weighted to domestic sites, and in particular the eighteenth century landscape park, or as Roberts puts it

*'...the Register is, overwhelmingly, a record of the aristocratic estates of the south...'*

One importance of this is that debates about historic parks and gardens often implicitly assume that the subject is this type of site. However, beyond this hegemony there is a diverse range of sites, likely to broaden more with the Register review programme. If systems of statutory protection are to be evolved then these need to be flexible enough to accommodate this diversity.

The register is a statutory document, though in itself it brings no new statutory controls. However, such a process of list making and audit is a crucial first step in the process of exerting systematic influence. Inventories are generally considered a necessary preliminary for both applying the *'stick'* of controls and allocating the *'carrot'* of grant assistance. (e.g. Feilden, 1994).

### **1.5 The statutory protection debate.**

Since the establishment of the English Heritage Register there has been an undercurrent of debate over the desirability of attaching statutory controls to the Register. Demand for this was fuelled by a perception amongst concerned bodies that particularly in the development boom of the late 1980s registered sites were being irreparably damaged at an alarming rate (e.g. Lambert, 1994). A particular concern was the insensitive insertion of golf courses into parkland landscapes.

Certainly the introduction of statutory controls would reverse the intention of the government at the time the Register was first introduced. When the establishment of the Register was being considered by the House of Lords the following responses were given on behalf of the government:-

*'Of course it is true that there would be no teeth with this register... The object of the register is not to introduce a new set of controls ... Lord Avon said that it might be a precursor to statutory restrictions, and that owners of gardens would be very frightened of this.'* (Lord Digby)

*'I should emphasise that the word 'register' is used to avoid any of the overtones which are attached to the word 'listing', because the intention here is not to impose restrictions and obligations on garden owners.'* (Lord Strathcona and Mount Royal)

*'the Government recognise there has been consistent all-party concern throughout the discussion on this Bill in the House on... gardens.'* (Lord Skelmersdale) (all cited in Stacey, 1992)

This is not without precedent; Sir John Lubbock fought a ten year battle to pass the Ancient Monuments Protection Act in 1882 because of the principle of elevating public interests above private property rights. The Act eventually passed was a weak affair and it can be argued that it took nearly 100 years and the Ancient Monuments and Archaeological Areas Act 1979 to achieve effective control over scheduled ancient monuments.

One element of the questionnaire survey by Stacey (Stacey, 1992) discussed below was aimed at finding from respondents their attitude as to the desirability of the introduction of a system of statutory control. This produced quite a mixed response. The local authority respondents were overwhelmingly in favour of the introduction of such a system. Of those who responded, 94% of district development control officers were in favour and 88% of county conservation officers. The questionnaire was also targeted at perceived '*experts*' in this sphere who divided sharply into two groups; those strongly in favour of statutory protection and those strongly against. This was a range of people targeted for their knowledge and involvement in the field. Some were planning officers or conservation officers not included in the sample of local authorities contacted. The basic arguments for such a state intervention are rehearsed above. The arguments against encompassed a range of principled and pragmatic reasons. These can be summarised as follows:-

- lack of necessary skills: the system would need to be, at least in part, administered by local authorities who do not have the necessary experience and skills to properly administer such a system,
- practical problems of describing and controlling parks and gardens because of their living nature,
- interference with private property rights and, more subtly, alienation of owners due to interference and bureaucracy.

## 1.6 European comparisons.

The section below considers the practical response that local authorities and others can and are making towards the protection of historic parks and gardens in England. However, before doing so it is worth briefly considering responses elsewhere in Europe to the issues posed by the desire to protect historic parks and gardens. It is clear that though statutory systems to protect historic parks and gardens are not easy to formulate and may meet with significant opposition from vested interests, the importance of protecting this element of the heritage has led a number of European countries to legislate in this area to a greater or lesser degree.

In Italy this legislative history can be traced back to 1909 (Galetti, 1995). The protection of all works of art in Italy revolves around the concept of '*vincolo*', which is described by Galetti as '*a sort of restriction put on private property.*' To protect a work of art it is not sufficient to put it on a list but requires a decree from the Ministry of Culture. After this decree an owner must provide a detailed plan before undertaking works and get state approval. The 1909 legislation was weak in nature, sites included were only included in general terms and the law not much enforced in practice. This law was superseded in 1939. The new legislation provided for detailed descriptions, a reference to the land register and good historical research. However, protection until recently was focused on buildings and many important gardens omitted. Many gardens were lost, particularly in urban and suburban locations; where they did survive it tended to be due to a further piece of legislation protecting wider areas of landscape. Antagonism towards inclusion in a protection decree has changed radically since 1985 when inclusion brought tax relief for restoration or maintenance works, with conditions over the control of the quality of the work.

Von Krosigk (1995) has shown that specific recognition of the importance of historic parks and gardens can be traced back in Germany to 1921 at least, when there were calls for an inventory of state, municipal and private gardens that could be considered as works of art. Some legislative basis for protection was given by the 1935 Natural Beauties Protection Act, which remained as regional law after 1945, though this was a broadly based form of environmental protection. The Federal Beauties Act of 1971 (updated in 1980 and including the phrase '*the preservation of historic cultural landscapes with especially characteristic features*') gave recognition to cultural

aspects of landscape. However, the translation of this into positive action at the state or 'Lander' level was slow in coming. All the West German 'Lander' introduced the necessary legislation between 1971 and 1980 but in 1986 Berlin was the only 'Land' with a systematic programme of action, recently described by Roberts (Roberts, 1996). This has changed over the last decade with the protection of parks and gardens becoming better resourced. However, both the resources available and the legislative means still vary significantly from 'Land' to 'Land'.

France, like Italy, has legislative antecedents for the protection of historic parks and gardens going back to the early years of the century (Fustier, 1995). A 1913 Act, though focused on buildings, gave the possibility of protecting gardens. Until recently this was only used for gardens containing architectural elements such as water pools, fountains or statues - a situation which has now changed. A further piece of legislation from 1930 gave protection for sites of natural interest; something used to protect historic parks and gardens; though much less popular with owners as unlike the former piece of legislation it brought no fiscal advantages. The 1913 Act defines 'Monuments Historiques'. These can be graded 'Classe Monument Historique' (MH), the highest grade, or 'Inscrit a l'Inventaire Supplementaire des Monuments Historiques' (ISMH). If a garden is ISMH the supervision of works and maintenance depends on the 'Architecte des Batiments de France' of the 'Departement'. The law enables the owners to choose their garden advisors for any works. In the case of MH, the freedom of the owners is much more limited. Then, for any action, it is compulsory to request the assistance of an 'Architecte des Monuments Historiques', a body of independent professionals who are not civil servants but are appointed by the Administration on the basis of an open competition. The qualification implies that the successful applicant must have an excellent knowledge of architecture, though not necessarily of historic parks and gardens. Also with MH sites owners are required to undertake so called 'preliminary studies' before any attempt is made at restoration.

More briefly, in the Netherlands gardens are protected under monument legislation and the listing defines precisely what is to be protected (Goodway, 1995). Parks and gardens are relatively sparsely represented in the national list of monuments though this being addressed at the moment (Sluyterman van Loo, 1995). In Denmark both listed building legislation and nature conservation legislation have been used as models, though neither very satisfactorily. In Belgium, there is an obligation to maintain both house and garden, and there are strong powers to veto any proposed change. This power has to be used in relation to a published description. There is a

contract system for grant aid and control based on an agreed management plan (Goodway, 1995).

In summary to this section, there are many European countries which have legislated, or used existing legislation, to protect historic parks and gardens. These have various provenances though most commonly they comprise an adaptation of monument or building legislation. Some to English eyes are remarkably restrictive and interventionist, for example, the French laws applying to MH sites. They appear to have had various degrees of success; the most successful models appear to be those which are linked with fiscal incentives of grants or tax breaks to owners. Whatever the difficulties of introducing statutory control over parks and gardens in England on the basis of the wider European experience it does not appear to be inherently impossible. However, perhaps to be successful it will require adequate resourcing and this in turn may go some way to overcoming the antagonism towards control from vested land owning interests.

### **1.7 Recent policy developments.**

Though there seems no imminent likelihood of the government bringing forward controls for a statutory system of protection for parks and gardens the status of the Register within the planning system has changed and evolved since its inception. This has occurred in four principal ways.

Firstly, there has recently been some evolution of the statutory framework. After considerable sustained pressure from the Garden History Society and others the Departments of the Environment and National Heritage have introduced a requirement on local planning authorities to consult English Heritage and the GHS on planning applications affecting registered sites; Grade I and II\* in the former case, all sites with the latter (Permitted Development Order, 1995 and Town and Country Planning (Consultation with Garden History Society) Direction, 1995).

Secondly, government guidance on the proper planning response to registered sites has evolved. The principal means of government advice on conservation policy have been successively Department of the Environment Circular 23/77, DoE Circular 8/87 and Planning Practice Guidance Note (PPG) 15 jointly issued by the Departments of the Environment and National Heritage. Circular 23/77 precedes the Register which is

therefore not mentioned. The Register is first considered in Circular 8/87 which contained a fairly weak statement,

*'The Register, which has no statutory force, lists and grades gardens which still retain their special historic interest. Its purpose is to record their existence so that highway and planning authorities and developers know that they should try to safeguard them when planning new road schemes and development generally.'*

PPG15 was issued in September 1994 and considerably strengthens government advice on parks and gardens issues. One noticeable change is the title of the document, *'Planning and the Historic Environment'*, a recognition that conservation interests extend beyond the traditional focus on buildings. Paragraph 6.2 is fulsome,

*'England is particularly rich in the designed landscapes of parks and gardens, and the built and natural features they contain: the greatest of these are as important to national, and indeed international, culture as our greatest buildings.'*

Paragraph 2.24 states,

*'... local planning authorities should protect registered parks and gardens in preparing development plans and in determining planning applications. The effect of proposed development on a registered park or garden or its setting is a material consideration in the determination of a planning application. Planning and highway authorities should also safeguard registered parks or gardens when themselves planning new developments or road schemes.'*

Furthermore, paragraph 4.6, referring to conservation area designation, adds,

*'... designation is not likely to be appropriate as a means of protecting landscape features, except where they form an integral part of the historic built environment... Designation may well, however, be suitable for historic parks and gardens...'*

This is a reversal from the 1970s when Staffordshire County Council, pioneers in the designation of historic parks and gardens as conservation areas, met considerable resistance to this from the Department of the Environment.

English Heritage may supplement government guidance with its own which, though not of the same weight, may still be considered a material factor in considering planning applications. To date little has been produced on parks and gardens. A general leaflet about the Register refers to a site's inclusion being a material planning

consideration (English Heritage, 1992). Other than this the only specific guidance produced by English Heritage is concerning the insertion of golf courses into landscape parks (English Heritage, undated). However, informally encouragement has been given to conservation area designation.

Thirdly, an incremental case law has evolved, which though idiosyncratic and inconsistent, has generally moved in the direction of emphasising the importance of parks and gardens issues. Though decisions by the Planning Inspectorate show an erratic awareness of historic parks and gardens and their status there is evidence that the Register is becoming an increasingly important material consideration at appeal (Lambert and Shacklock, 1995).

Fourthly, local authorities have actively sought to increase their influence over historic parks and gardens, an issue explored in depth in the following section. In the absence of inclusion on the English Heritage Register bringing any specific additional controls existing planning mechanisms have been utilised. Some authorities such as Staffordshire County Council pioneered this approach in the 1970s but on a larger scale the kick-start for this activity was the development of the English Heritage Register.

### **1.8 Local authority attempts at protection.**

The only systematic exploration of this subject undertaken to date is by Mary Stacey (Stacey 1992). Stacey sought to examine both the mechanisms local planning authorities use to exert influence over works in historic parks and gardens and also the practice and attitudes of development control officers operating these systems. The work was based on a series of questionnaire surveys involving local authorities at both district and county level and to '*experts*', individuals or organisations thought to be able to provide a useful perspective on the issues raised. In terms of the mechanisms used to protect registered sites Stacey found of the 41 authorities who responded to her questionnaire and have registered sites within their boundaries that:-

- 17% cited no measures of protection (other than from registration);
- 12% specified only one method; and,
- 70% specified two or more means.

It is clear, therefore, that local planning authorities are seeking to become actively involved in protecting registered sites. To do so they are using a range of planning tools. The most popular means of control was found to be the use of Tree Preservation Orders (TPOs) whilst when asked which currently available measures should be used the potential role of development plans was given far greater prominence. A summary of the results is reproduced in Table 1.1 below.

The various measures vary widely in their scope and have quite different implications for owners and sites. For example, development plan policies do not bring works within planning control which would otherwise have been exempt, whereas Article 4 directions or TPOs may radically diminish the works which can be undertaken in a protected area without consent being sought from the local planning authority. As many of the models discussed later in this report as potential systems of statutory control are based around existing planning tools it is worth exploring some of the measures in a little more depth.

**Table 1.1 The Frequency With Which Measures are Used to Protect Registered Sites, from Stacey (1992).**

	41 districts with registered sites		preferred measures	
	number	rank	number	rank
Tree Preservation Order	23	1	9	3
Listed Building law	22	2	3	8
Consult County Conservation Officer	21	3	1	9
Conservation area	18	4	12	2
Local Plan	15	5	19	1
Notify English Heritage	12	6	5	6
Structure Plan	9	7	7	4
Green Belt	9	7	1	9
Consult local Gardens Trust	8	9	0	
Purchase or ownership	5	10	4	7
Garden History Society	5	10	5	6
Article 4 Direction	3	12	6	5
Scheduled Ancient Monument	3	12	1	9
Sites and Monuments Record	2	14	0	
s.106 agreements			1	9

**1.8.1** One of the common measures cited in Stacey's survey as the use of **listed building legislation**. This is not surprising given the art history provenance of the English Heritage Register and the common approach taken to designed landscape as primarily functioning as the setting for buildings. Buildings are listed by the Department of National Heritage and the Planning (Listed Buildings and Conservation Areas) Act 1990 (hereafter the 1990 Act) section 16(2) imposes a duty on local planning authorities and the Secretary of State when dealing with applications for listed building consent to,

*'have special regard to the desirability of preserving the building or its setting...'*

and, Section 66(1) states,

*'in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority, or as the case may be, the Secretary of State shall have special regard the desirability of preserving the building or its setting...'*

In practice this can impact on planning decisions affecting historic parks and gardens in two principal ways; where structures within a park or garden are listed, or where the affect of a proposal on a landscape is considered to affect the setting of a listed building. Paragraph 2.16 of PPG 15 states,

*'The setting is often an essential part of the building's character, especially if a garden or grounds have been laid out to complement its design or function.'*

In addition to the situation where buildings or structures within a garden are listed in their own right, they may be affected by listing by being considered as part of the curtilage of a listed building. The curtilage concept is complicated and has been subject to significant evolving case law. Listing encompasses objects and structures which form part of the land of a listed building. Quite whether something should be considered a curtilage object or structure depends on a whole range of tests including historical independence, physical layout, ownership, and use and function (DoE, DNH, 1994).

The first of these two situations is straightforward (apart from the complications of the curtilage issue). Listed buildings have a high degree of protection under planning law, supported by considerable government guidance. The wider setting issue is less

straightforward, and more interesting as it is potentially a way of viewing a whole site rather than a number of discreet components within a site. Development within a garden has been successfully resisted on a number of occasions using this approach. Indeed, the concept of setting can be applied broadly. Avon Gardens Trust successfully argued at an appeal over development at Brentry House that two fields not visually linked to the listed building had historic value as part of the ensemble of grounds of the House and were thus part of the setting of the listed building, a decision later upheld in the High Court (Lambert and Shacklock, 1995).

However, to a degree this approach though shown to have a pragmatic utility is based on the intrinsic importance of something other than the garden in question. It is also only applicable to situations where a park or garden can be argued to be a subsidiary foil to a building. This is not useful when, as is the case of many municipal parks for example, the site is not obviously based around a principal building.

**1.8.2** A second measure used by planning authorities is **conservation area designation**. Designated by local planning authorities and defined as,

*' areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance'* (1990 Act s.69),

this approach has the merits of being an area based approach to conservation and though registered parks and gardens are usually single sites they frequently cover a considerable land area. Conservation area status brings a number of potential means of control. There has been a range of conflicting case law over recent years - a series of legal cases over the precise meaning of the law, and in particular the need for development to *'preserve and enhance'* a conservation area culminated in South Lakeland DC v Secretary of State for the Environment, (1992) 2 WLR 204, which held that development which is neutral, that is to say development which leaves character and appearance unharmed, maybe acceptable. However, the legislation which applies to development in conservation areas remains stronger than that which applies to the Register of Parks and Gardens. Paragraph 4.19 of PPG15 states,

*'The Courts have recently confirmed that planning decisions in respect of development proposed to be carried out in a conservation area must give a high priority to the objective of preserving or enhancing the character or appearance of the area. If any proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission...'*

Conservation area status also brings a number of direct controls. The most generally applicable to parks and gardens is the need to inform the planning authority before works are undertaken to trees, which enables the authority the opportunity of making a tree preservation order (1990 Act, s.211). Also applicable is the control over demolition which comes with conservation area designation (1990 Act, s.74). However, though there is now official acceptance of conservation area designation as appropriate for historic parks and gardens, it is a tool evolved for dealing with urban areas and at best is an imperfect tool for dealing with many parks and gardens issues.

**1.8.3** A control measure often associated with conservation area designation, though not in fact directly related is the use of **Article 4 Directions**. Article 4 refers to the section within the Permitted Development Order (PDO) where this topic is considered, and the PDO being one of the primary statutory instruments, or pieces of secondary legislation, applying to the planning system. An Article 4 Direction brings minor works of development, normally considered '*permitted development*' and not requiring planning permission, within planning control. For historic parks and gardens this can have a utility, for example by controlling agricultural buildings. However, the introduction of Article 4 Directions involves a somewhat cumbersome bureaucratic process and, until recently, though usually prepared by local authorities, required the approval of the Department of the Environment. A threat to character had to be demonstrated; in effect damage to a site will already need to have occurred. Recently changes to the Permitted Development Order enable local authorities to make some Article 4 Directions within conservation areas without reference to central government, though as this only applies to domestic property it is unlikely to have significant implications for parks and gardens.

**1.8.4** Stacey found **tree preservation orders** to be the most common tool of control in her survey, though often in conjunction with other measures. Made by local planning authorities they may be applied to individual trees, areas, or woodlands, and bring controls over felling and other operations. Under some circumstances replanting can be required. A relatively straightforward and powerful tool TPOs have clear advantages. However, their obvious limitation is their narrow focus. At Orchardleigh, Mendip, Somerset, TPOs did not prevent the destruction of the landscape caused by engineering works in laying out a golf course. Stacey also cites cases where TPOs have been used narrowly, and works which would have benefited wider landscape design considerations refused.

**1.8.5** The National Heritage Act 1983 defined historic parks and gardens as monuments. They can be included in County **sites and monuments records** (SMRs) and protected as archaeological sites. Government Policy Planning Guidance Note 16, '*Archaeology and Planning*', states that evaluation and survey should take place prior to the consideration of a planning application and the major responsibility for providing this is placed on developers. The first priority for archaeological sites is generally preservation in situ.

However, Stacey found that even where sites were included in SMRs this is not necessarily actively used by development control staff, though whether this a general problem with SMRs or due to the relative disinterest in parks and gardens from archaeological staff is not clear. Again, the utilisation of an archaeological approach is essentially an adaptation of a system evolved for other means, other than for '*archaeological*' gardens (for example, surviving earthworks of a '*lost*' garden). For example, aesthetics are not an explicit consideration for archaeological sites, but will usually be a significant issue when considering historic parks and gardens.

**1.8.6** A higher level of protection to archaeological sites is given by designation as a **scheduled ancient monument**. This gives a high level of statutory protection and designation and administration is undertaken by the Department of National Heritage, advised by English Heritage. Few specific garden features are scheduled, and relatively few archaeological sites generally. Perhaps more commonly parks and gardens contain scheduled monuments representing undisturbed remains of previous activity, as parkland has often avoided the disturbance of intensive agricultural activity.

**1.8.7** Stacey reports a growing tendency for planning authorities to include policies on historic parks and gardens in their **development plans**. Her survey dealt only with shire areas where a two tier system of plans operates; structure plans (providing strategic guidance) and local plans (providing specific local policies). In the metropolitan areas this system has been superseded by combined unitary development plans performing both functions for individual district areas. The different plans perform different functions but all give a framework for local planning authorities to make development control decisions. In addition to specific policies on historic parks and gardens development plans may contain other material policies. For example, green belt policies were cited by some respondents as a means of protection, though in fact green belts may be permissive to forms of development injurious to parks and

gardens, such as golf courses. The inclusion of protective policies in development plans has had greater significance since the advent of Section 54A in the 1990 Town and Country Planning Act which requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise.

**1.8.8** Some respondents also cited **non-statutory plans** developed to afford protection to historic parks and gardens, though these do not carry the weight of statutory development plans. A variety of other mechanisms are also used by planners such as section 106 agreements, attached to planning permissions or management agreements. However, these are not protective planning designations and are not considered here.

## **1.9 Summary**

There are a range of reasons why the state may wish to intervene in controlling works to historic parks and gardens. The fundamental reason, as with other elements of the historic environment, is that the resource is so precious that public benefit should outweigh private property rights. There is also a strong practical reason; local planning authorities in order to exert more influence over sites are using a variety of other powers and designations originally conceived for other purposes. As well as being imperfect tools, these can at times bring controls not necessary for the objective of protecting parks and gardens and can involve a complicated layering of different restrictions. It would seem sensible to acknowledge that this intervention is increasingly taking place and therefore to introduce a system that is purpose designed. This would give certainty to the process: uncertainty is traditionally one of the common complaints developers and others have over the planning process. Lack of certainty over the weight the Register should carry was an element in the high profile appeal over proposals for hotel and golf course development at Warwick Castle and ultimately led the appellant's consultants to conclude that a system of statutory protection would have given clarity to the situation (Lambert, 1994).

As has been discussed in 1.5 above, the call for the identification of important historic parks and gardens to be accompanied by a system of statutory control has been made at least since the resolution passed by ICOMOS in 1975. More recently the Royal Town Planning Institute in a discussion document advocated,

*'a system of 'listed garden consent' ... to bring under control proposals which change their character',*

whilst acknowledging that,

*'This is, however, a difficult area, since gardens are living things that change from decade to decade.'* (RTPI, 1993)

The introduction of a system of statutory control for historic parks and gardens is certainly not without its practical problems. The concepts on which such a system could be based are the subject of the next section.

## **SECTION 2 : AN EXPLORATION AND ANALYSIS OF '*STRUCTURE*', '*DECORATION*' AND '*CHARACTER*'**

### **2.1 Introduction.**

The previous section outlined the history of moves to protect historic parks and gardens. Some form of statutory protection, as has incrementally occurred over the last 100 years for other elements of the historic environment, would be a logical development, justifiable on similar grounds. In thinking about the development of a system of statutory control there are a range of examples of existing systems one can turn to for developing ideas, and these are considered to some extent in the next section. However, the aims and objectives for the protection of each element of the heritage are distinct. Therefore in considering options for the protection of historic parks and gardens it is first necessary to consider what the overall objective of such a system should be. In developing potential models of statutory control it is important that is based on conceptual thinking which is cognisant of the particular issues which relate to historic parks and gardens.

The only systematic enquiry in to the options which may exist for statutory protection for parks and gardens undertaken to date was by a working party convened by the Garden History Society (GHS). The work of the working party is considered more fully in the next section. However, in considering the overall objective of a system the working party stated,

*'In response to the question, what are we trying to protect and from what, the working party concluded that we are not seeking to interfere in the 'gardening of a site'; it is generally not necessary or desirable, and it would certainly not be feasible. We are concerned with protecting the broad structure from irreversible and harmful change.*

And,

*'It was adamant that, given the living nature of parks and gardens, any such constraints must not restrict good gardening, but should target the threat of catastrophic alterations to a site's structure; and that protection must go hand in hand with incentives and support for restoration and management via the taxation system and grant aid.'*

This touches on a key issue recurrent in debates about historic parks and gardens. Unlike other elements of the historic environment a new and dynamic element has to be brought in to the equation - living matter. Furthermore, underpinning much writing on this subject is an assumption that most parks and gardens have been created for pleasure, and that if they are to continue to provide such pleasure they require active management, through gardening. This is viewed as unlike, say, the occupation of a listed building, where there is a practical and economic incentive to maintain the structure. Following this line of reasoning '*protection*' should not interfere in day to day management and reduce the pleasure which gardening gives, and therefore make it less likely to happen.

However, the key distinction is perhaps not the presence of living matter and its maintenance requirements per se - buildings also require active management to survive - but the relative transience of much, but not all, living fabric. Bedding plants, for example, are short lived, but an established healthy oak tree may easily have as long a role in design as a sash window made of oak. Combined with this is an attitude that gardening should be a pleasurable activity, not over circumscribed by bureaucratic controls.

The detailed operational objectives which may be demanded of a system of statutory protection are considered in the next section. However, it is reasonable to start with the premise that such a system should aim to protect the key qualities of sites, whilst interfering as little as possible in day to day management.

## **2.2 '*Structure*' and '*decoration*'.**

In conceptualising means by which it might be possible to develop a system of statutory protection for historic parks and gardens the GHS convened working party made the key distinctions of '*structure*' and '*decoration*'. They state:-

*'The structure includes the land form itself, the main blocks of woodland and other tree planting (e.g. avenues), the open grassland, large bodies of water, the boundary, and principal views... The decoration comprises the short-term elements such as flower and*

*shrub planting; elements which require frequent maintenance and replacement, and moveable features such as statuary. While it is integral to the site's nature, changes to the decoration do not involve irreversible change.'*

This distinction between structure and decoration is extremely useful but complex, it being not straightforward where the boundary between the two lies. It gives a potential means of distinguishing between works which would affect the intrinsic qualities of a site and more superficial works which, though they could radically alter the appearance of a site, would not have as fundamental an affect. It is an approach that has been subsequently used by others. For example, it was a central feature in Gateshead Council's successful bid for English Heritage Conservation Area Partnership funding for Saltwell Park, a municipal park in Gateshead (Pendlebury and Campbell, 1994).

In order to consider the issue of structure and decoration further a series of case studies have been undertaken to analyse what constitutes which element in a range of sites. Later in the section the potential impact of a range of works is considered against each site. One potential element of structure not explicitly considered was views. Views are composed and formed from a number of other factors considered, for example, tree planting. Thus views are considered implicitly under the design and experience of space.

Before the case studies are described it is worth briefly considering the concept of '*character*' as another potential means of conceptualising the key qualities of historic parks and gardens and the impact works may have on those qualities.

### **2.3 '*Character*'**

A concept also considered by the GHS convened working party was '*character*'. This derives from conservation area legislation - briefly discussed in 1.8.2 above. The main advantage of the term character is its flexibility. An explanation of the concept as applied to historic landscapes, supported by examples of appeal decisions, has been given by David Lambert and Vincent Shacklock (Lambert and Shacklock, 1995). They state,

*'For example, where a golf course is proposed in a park, the developer may agree to building it without bunkers, with minimal earth-moving, with graded mowing regimes to minimise grass patterning, and with a*

*planting plan which avoids flowering cherries, silver birch, mountain ash, Leyland Cypress and the like. But at the site visit there remains a feeling that there will be a loss of something special and important in this landscape. That something can usefully be described as "character"..."*

At Burley-on-the-Hill, a degraded parkland in Leicestershire, in a planning appeal over the insertion of a golf course in to the estate the prospective developers argued that their proposals were bound to be ameliorative. However, in dismissing the appeal the Inspector concluded that it would '*alter the character of the historic grounds*' - he used character to consider the landscape in a wider context than just the present visual appearance. In an appeal over the creation of a new vehicular access to Bedford Square gardens, London, the Inspector used conservation area character as a means of discussing subtle factors such as the site's role as a place of recreation and of retreat from city life. In judging the potential impact of work on the case studies, character has been used in addition to structure and decoration.

## **2.4 The Case Studies**

In selecting case studies it is important to choose a range of sites which may best illustrate differences of those criteria which may influence site structure. Roberts (1995) in her analysis of the English Heritage Register considers sites by original function (functions identified are domestic, institutional and public amenity), date of development and geographical spread. Perhaps the key factor amongst these, when considering issues of structure and decoration, is function, and the least relevant geographical spread. A key attribute this ignores is scale; registered sites vary enormously in geographical scale and this may reasonably be felt to affect what is considered structure in a particular case.

The case studies selected represent a cross-section of site types and scales. A further factor that has influenced the selection of case studies is that they are located in the north-east and known to the author. This has some limitations given the southern bias in the Register remarked on by Roberts; for example, at the time of writing there are no institutional sites on the Register in the north-east. The principal case studies considered, all included within the English Heritage Register, are:-

- Saltwell Park - a municipal park,
- Gibside - a large landscape park,
- Lindisfarne Castle - a small garden,

- Newcastle General Cemetery - an early nineteenth century cemetery,
- Jesmond Dene - a private pleasure ground, later a public park.

For each of the case studies a brief context is given for the site type and the site and its function and design are briefly described. These are followed by a series of tables which analyse decoration and structure.

As part of the analysis undertaken the concept of structure was developed in two ways. Firstly, a basic problem which arose in this analysis is that on most sites there is much that can be considered structure. It was therefore considered appropriate to distinguish between major and minor structure. If the aim of a system is to be one of limited intervention, and principally to prevent disastrous changes, then the inclusion of all elements potentially definable as structure for a large country estates of several hundred acres could create an unwieldy and onerous bureaucratic system. Secondly, structural elements of design were grouped into three principal categories:-

- definition of space; those elements of design which enclose and create space,
- features within space; elements within an area which may provide foci around which the design of space is organised (major structure), or maybe incidental (minor structure), within a space,
- experience of space; those elements which facilitate the experience of the design of space.

This categorisation of structure helps the consideration of the design and structure of sites, though it needs to be understood that the three categories are closely linked in the overall design process.

### **2.5 Case study 1 : Saltwell Park, Gateshead : 8 hectares : Grade II on the English Heritage Register.**

Saltwell Park is a large municipal park opened in 1876. The public park movement can be traced to the early nineteenth century with the gradual opening out of the London royal parks to the public. However, it was the middle of the century before the establishment of purpose designed parks for all to enjoy developed momentum. A recent paper by Taylor (1995) summarises the most common motivations for the development of public parks and the factors which underpinned their design. It was hoped that parks would offer some relief from overcrowding, poverty, squalor, ill-

health, lack of morals and so on. Action was stimulated by a combination of genuine philanthropy and self-interest borne of fear of revolutionary ferment. Parks were intended to bring the countryside into the town; but a particular vision of the countryside - one in which nature is organised and artfully displayed. They are designed to show nature as a scientific specimen and as ennobled by art and, perhaps most of all, to act as a civilising influence and promulgate a virtuous society.

Saltwell Park was designed by Edward Kemp, a notable landscape designer of the period, and for the most part falls within the design conventions outlined above (Gateshead Metropolitan Borough Council, 1994). Its principal relatively unusual feature was the inclusion of an existing house and garden within the design, which had been developed, somewhat idiosyncratically, but extremely successfully, over the previous twenty years. Kemp chose to make only minor adaptations to this part of the site in order to improve circulation. The garden is based around a romantic turreted villa. It is encircled to the west and south by two sets of retaining walls treated as castellated belvederes. The house is approached from the east or west by either descending or ascending an incised dene treated as a romantic landscape feature. This forms the southern section of the park. In the northern section of the park open fields were incorporated using a more conventional municipal park plan. The overall feel is of open parkland with strong peripheral tree planting and the space entered via sinuous paths and tree clumps. Along the upper side is a formal promenade broadwalk, terminated by shelters. At the centre is a refreshment pavilion with an axial view down to a large irregularly shaped lake. The park was subsequently extended to the south. Though some intensification of use has taken place through the insertion of additional uses, in essence the 1876 design remains intact.

Saltwell Park incorporates aspects of all the factors underpinning the development and form of public parks outlined above. It was Gateshead's second park and superseded a relatively informal open space which had a reputation for all sorts of activity considered radical or anti-social by the middle classes. Saltwell Park was intended to be a more controlled environment. When developed it was largely surrounded by open, rather wild, fell fields. Thus nature was tamed and organised. The scientific study of the natural world was facilitated through, for example, the inclusion of aviaries within the park. Art was provided for by architectural and floral embellishments and through the design of space; the use of a terrace for commanding views over the park had by this time become a common device.

The design, and therefore the structure, of a park and garden is determined by the its function. As a municipal park Saltwell had to accommodate a number of functions from the outset and subsequently a number more. It has always accommodated both formal and informal recreation of various types, and had to combine those with a suitable moral, educational and artistic framework. This produced a series of distinct areas or character spaces, making for a complex site structure. At Saltwell this is made more so by the incorporation of a pre-existing garden or pleasure ground and the largely skilful and sympathetic subsequent insertion of a variety of other uses. Table 3.1 therefore shows a wide range of elements which contribute to the major site structure. Trees are used extensively in the Park, and though they are used as ornamental features, their major function is to define and separate spaces. Walls and fences are similarly used to create areas of distinct character. There are a series of major features around which space is organised, some of which are landscape features such as the artificial lake or the natural but '*enhanced*' dene, and some of which are buildings, such as Saltwell Towers or the Refreshment Pavilion which faces the lake from the top of the slope. In some places monuments have the same function; in others, though of intrinsic importance and quality, they are incidental to the design. Some areas, such as the bowling greens, can best be considered as features, and again though of importance, of relatively minor significance in the context of the overall Park design and are often screened so as not interfere with the design. Circulation through the Park is of crucial importance, whether it be a formal promenade, such as the Broadwalk along the east side of the Park, or the serpentine path which leads a visitor from the entrance down to the lake. Other elements crucial in forming the character of Saltwell Park, such as summer bedding out displays, can only be considered decoration, though the actual beds may reasonably be considered part of the minor structure of the Park.

## **2.6 Case Study 2 : Gibside, Gateshead : c.150 hectares : Grade II\* on the English Heritage Register.**

Gibside is a large landscape park, the major part of which was laid out between 1722 and 1767 on the basis of design principles established in the earlier part of this period (Desmond, 1994). Landscape parks were essentially developed to show the wealth, prestige and aesthetic preferences of their owners. The early eighteenth century was a crucial phase in the development of the landscape park. The dominance of the formal garden, based on French styles, was replaced with a uniquely English development of informal landscape. The bringing of the wider park into landscape composition was aided by factors of a social and economic character - in particular the great improvement of previously poor land for agriculture (Jellicoe et al, 1986). The term

*'improvement'* also became synonymous with the laying out of parks and gardens. Philosophical ideas about nature were also evolving and an appreciation of *'natural beauty'* evolving.

For landscape design, these trends led to a broadening of the design to include the wider estate, and a gradual trend to break down the formality of the composition. This ultimately would result in the archetypal Capability Brown landscape, devoid of any formal elements other than the buildings. However, in between lay a transitional period as the shackles of formality were gradually loosened.

There has long been speculation on who designed Gibside. There is a reference in Estate papers to payments to Stephen Switzer for preparing at least one plan. Switzer was a very notable landscape designer and writer of the period. Whether or not he planned the landscape the design seems to follow his principles. Switzer strongly believed in incorporating a whole estate within a design and this was to be best accomplished by establishing one or two great axial lines, or *'boldest strokes'*.

The landscape at Gibside was developed on an epic scale by George Bowes after he inherited the estate in 1722. The core of the landscape design consists of a series of intersecting axial avenues allowing lengthy and striking views. Buildings and other features were introduced to terminate these views and at places where the avenues intersect. Perhaps the key fulcrum of this layout is a mound, which acts as a *'rond point'*, where axes intersect. It is placed at the north end of the Hollow Walk on the principal and most spectacular axis which connects the Chapel and the Monument and includes the Grand Walk. To the north there is a vista over the Round Pond and to the south-east up over the Octagon Pond to the Banqueting House on the brow of the hill. Cutting through the formal layout is a serpentine drive, designed to allow brief and changing views of the various features of the Estate as the Hall is approached. The landscape was adorned with a series of magnificent buildings, principally by the nationally renowned architects Daniel Garrett and James Paine. Planting was used at Gibside to give a series of visual contrasts between, for example, dense woodland and open parkland and broad vistas and confined serpentine walks. Particular species such as limes and yew were used to line particular walks.

After Bowes' death further developments were mainly complementary to the character which he had established. The temptation to remodel the Estate to modern

tastes was avoided leaving Gibside a well preserved landscape of the early to mid-eighteenth century.

Gibside is a landscape whose major structure is the product of one grand design, albeit implemented over a forty five year period. This derives from the Switzer philosophy of including the whole of a park in the overall design. This major design survives relatively intact and is currently undergoing a process of gradual repair by the National Trust. When laid out it had functions involving ornament, prospect and productivity (Desmond, 1994). Planting was used to give a series of visual contrasts between, for example, dense woodland and open parkland and broad vistas and confined serpentine walks. In addition to this design for show and pleasure it is clear that the natural topography of the site was exploited for views across the Derwent Valley and that both open land and woodland were used for productive activity. The area close to the house was used for more intimate gardening, largely developed after George Bowes time; a finer grain of landscape. The sense of this has largely been lost and therefore in considering the structure of the site it is largely the George Bowes grand plan we are concerned with.

This is largely defined by woodland blocks and the spaces left between them, both by way of defined vistas and more substantial blocks of open land. The site has also been significantly engineered in key places and this land modelling and uses of retaining walls forms an important part of the structure. This includes, for example, formal terracing on the vista to the Banqueting House and in the construction of the Grand Walk, and the large retaining wall by the River Derwent adjacent to the site of the former Bath House. The major obvious features in the landscape are the grand sequence of buildings used for terminating vistas but landscape features such as the ornamental ponds and the '*rond point*' are important also. Circulation and the importance of the historic routes is of crucial importance - one of the key elements in the whole design is the sequence of intended '*events*' to be enjoyed by the visitor arriving on the serpentine drive. The arrival of modern day visitors at the opposite end of the Estate is considered a problem in a sensible appreciation of the designed landscape (Desmond, 1994).

### **2.7 Case study 3 : Lindisfarne Castle, Holy Island : <0.1 hectare : Grade II on the English Heritage Register.**

The garden at Lindisfarne Castle is a small walled garden created by Lutyens as part of his restoration of the castle in the first decade of this century, and planted to a plan by Jekyll of 1911 (Tooley and Tooley, 1982). Edwin Lutyens and Gertrude Jekyll (especially in partnership) are the most famous English landscape gardeners of this period. In the late nineteenth century land, which for centuries had been an unshakeable investment, began to lose its value and from the 1880s there was a series of agricultural depressions. This caused the decline and break up of many agricultural estates. At the same time a new industrial and commercial bourgeoisie were acquiring and building property in the countryside. Not having an interest in the large tracts of land around their properties the new country houses were smaller with smaller gardens.

In commissioning their houses the many of the nouveau riches chose Arts and Crafts architects who were able to offer a comfortably English vision of the country gentleman in his manor house. The Arts and Crafts movement, inspired by the likes of Ruskin and Morris, represented a reaction to Victorian mass production and sought to revive concepts of designer-craftsmen who understood the materials of their craft. In gardening this produced a fashion for modest cottage gardening, old fashioned flowers and traditional garden craft (Jellicoe et al, 1986).

The Lutyens - Jekyll partnership was particularly successful for straddling competing trends in gardening tastes of the time, achieving a balance between the natural approach to garden design advocated by the likes of William Robinson, and the more formally architectural views of the likes of Reginald Blomfield.

The restoration of Lindisfarne Castle, and the development of the small garden, was undertaken for Edward Hudson who, as the proprietor of *Country Life*, was an important figure in the popularisation of the Arts and Crafts and a belief in the superiority of all things rural - the essence of England lying in the countryside. The garden lies some 450 metres from the castle, though one its functions is to be viewed from there. At less than 0.1 hectare it is, by some way, the smallest site in the north east on the English Heritage Register. It is a walled enclosure roughly quadrilateral in plan. The geometrical layout uses two vanishing points to create the illusion of greater size and is planted to reinforce this perspective. There are five island beds with a central bed surrounded by rectangular and L-shaped beds. It was planned in part as a '*jardin potager*' with shrubs, roses and herbaceous plants mixed with vegetables.

The garden at Lindisfarne is quite different from the other case studies under consideration in this section. The key factor which distinguishes it from the other sites is scale. Given its modest size its design principles are necessarily different from the other sites though in functional terms it is a pleasure garden as Jesmond Dene and even Gibside, if without the grandiloquence.

When considering the structure of the garden a much finer grain has to be applied. Each of the hard elements, the enclosing wall and the paths, form the major structure, as do the spaces left - the arrangement of beds. The other key element which gives the garden its character is the planting. This in many respects is crucial; the planting plan supplied by Jekyll is her input into the garden design. However, given its transitory nature the majority of the planting must be considered as decoration. Though without the planting the garden loses virtually all its interest, the retention of the major structure allows accurate re-instatement of the planting.

#### **2.8 Case study 4 : General Cemetery, Newcastle upon Tyne : 4 hectares : Grade II on the English Heritage Register**

Newcastle General Cemetery was developed by the Newcastle General Cemetery Company, formed in 1834. The development of the modern cemetery emerged in the early nineteenth century as a result of religious and sanitary reform movements. On the one hand non-conformists were arguing for public burial grounds where burial and the right to use the services of one's own denomination were not limited to members of the established church; on the other hand sanitary reformers objected to the increasingly speedy disinterment of bodies necessary in overcrowded urban churchyards to allow room for burials. Prior to the Burial Act in 1853, which gave local authorities the power to close churchyards that had become full, the development of cemeteries was largely undertaken by private companies. As these cemeteries were being developed prior to the development of public parks they were also exploited as recreational landscapes.

The earliest cemeteries were often developed in a style derived from the landscape park. The major influence in changing this was John Claudius Loudon. He argued that cemeteries should have their own distinctive design and he invoked a style adapted to the sombre requirements of the setting. He evolved a principle of beauty based on symmetry. His designs were tightly organised visual relationships; man's hand is

evident not hidden. He advocated the planting of evergreens both to give a sombre atmosphere and to enable easier maintenance, there being no autumn leaves to clear (Green et al, 1995).

The Newcastle General Cemetery Company was formed in 1834 and commissioned John Dobson to design the buildings which comprise the mortuary chapels at the main north entrance. The site is triangular and enclosed by a two and a half metre high wall. The main drive runs through the centre of the site from north-east to south-west and a walk runs parallel to the north wall. The cemetery has two informal areas of open space both given seclusion by groves of trees and shrubs, negotiated by serpentine paths. Loudon was thrilled by Dobson's design and wrote that the entrance would

*'never be mistaken either for an entrance to a public park or to a country residence.'* (cited in Green et al, 1995)

Cemeteries form quite a distinct category of designed landscape. In most cemetery design the distinction between structure and decoration is perhaps clearer than most other forms of landscape. In laying out a cemetery the designer is providing a framework into which the decoration, the monuments, will be inserted, and over which he will have no control. Though there are exceptions to this, some cemeteries have showpiece central monuments for example, it will always be the case that monuments will be added incrementally. Perhaps the only complete exception to this are war cemeteries, though in modern times burial authorities have effectively exerted more aesthetic control by, for example, restricting the size and materials of monuments. However, in Victorian times the main governing factor on monument design and scale was the wealth and inclinations of the family of the deceased.

At Newcastle General Cemetery there is a strong design structure. The lodges, the enclosing wall, the terrace style path along the north side, the serpentine path crossing the site, the subsidiary paths and the tree clumps are all key elements of the site's structure. However, the monuments, though they are unarguably decoration, are crucial to character. Within the cemetery are areas which have been cleared of monuments, apparently for a subsequently abandoned road scheme. These present a barren appearance and indicate how little meaning the site would have without the array of nineteenth century monuments elsewhere.

## **2.9 Case study 5 : Jesmond Dene, Newcastle upon Tyne : c18 hectares : Grade II on the English Heritage Register**

Jesmond Dene is now a public park but was originally laid out in the 1850s in relation to Jesmond Towers, the home of Lord Armstrong. The topography around Tyneside and Wearside is characterised by numerous steeply incised small valleys or denes. In the nineteenth century these urban areas were expanding rapidly. Denes were land that could not usually be easily developed and the opportunity was taken to enhance them as romantic landscape features in a number of ways. Some, such as Roker Park in Sunderland, were developed as public parks with the motivation of enhancing the location for speculative development. Others, such as Chowdene in Low Fell, Gateshead, were exploited by the development of a number of houses at their edge, and yet others became the private preserve of one owner, of which Jesmond Dene is the grandest example. The main design influence which was being brought to bear was that of the '*wild garden*'. This trend, which started in the 1840s, involved mixing exotic trees into native deciduous woodland and introducing shrubs and herbaceous species as undercover (Elliot, 1986).

The impact Armstrong had in transforming the dene from a natural dene is not very well understood or documented, though it seems there was a definite intent to '*improve*' the landscape using a '*wild garden*' approach. Within the dene there are remnants of ancient woodland and industrial development which Armstrong adapted to his own picturesque use. He seems to have intervened most at the bottom of the valley along the course of the Ouseburn. Waterfalls, weirs and rock islands were created along with four of the present day footbridges and much of the footpath network. Some conifers, such as Lawson's Cypress were introduced, along with a much greater variety of shrubs and herbaceous plants. The upper slopes were largely left as native deciduous woodland. After the Newcastle Corporation was gifted the dene by Armstrong in 1883 further exotic plantings were introduced, particularly in the period 1905-7.

An analysis of the landscape today (Newcastle City Council, 1994) divided it into a number of categories. The principal categories are defined as woodland, ornamental shrub beds and related features, grassland and water. Woodland is perhaps the key component of this and this is sub-divided into three broad categories. The first category is '*natural woodland*' including remnant ancient woodland and areas that seem to have been planted without exotic introductions. Secondly, there are areas

defined as *'Victorian parkland'* or *'wild garden'* where native tree species are interspersed with exotic species and with an under-storey of broad-leaved evergreen shrubs. These areas impart a fairly enclosed sombre atmosphere to the landscape, which typify the Dene's Victorian character. Thirdly, there are areas described as *'urban savannah'* with a variable cover of trees over a mown grass field layer.

The character of Jesmond Dene was formed through using an existing natural asset and enhancing its picturesque qualities using conventions of the period. As such the concept of *'design'* can be quite elusive as it is a gently transformed landscape, rather than one which has been laid out as such. The principles which underpin this style of gardening were embodied by William Robinson in *'The Wild Garden'*, published in 1870, though in many respects he was embodying gardening practices which had been developed over the previous forty years (Elliot, 1986). One aspect of this is a shift of emphasis on the importance of the plants in a garden, rather than the way in which they are configured into a design.

The definition of space at Jesmond Dene involves a combination of the topography of the site, which is largely natural, combined with the predominance of woodland blocks interspersed with the occasional grassland clearing. Spaces are not organised around the major features, as for example takes place at both Saltwell Park and Gibside. Rather the features form a series of incidents to be experienced on one's progression through the dene in a far more informal manner than the almost ceremonial approach to Gibside. It is a matter of fine judgement which of these *'incidents'* should be considered major structure and which minor. What is clearly part of the major design and structure, however, is the series of paths which lead through the dene.











## **2.10 Analysis of 'Structure' and 'Decoration'.**

Tables 2.1-2.5 show the analysis of structure and decoration for each of the case studies. Though there are elements of the landscapes which are common between a number of the sites, topography and paths were the only two judged to be universally present and to form part of the major structure. Topography is a fundamental characteristic of landscape and is likely to form part of the major structure of any site. Circulation routes formed part of the major structure in experiencing space in each of the case studies. Paths and drives are likely to form an important means of the experience of space with most sites, though there may be examples where this is not the case.

Other elements were deemed to be major structure on each site they occurred, but were not present everywhere. This included, for example, woodland. There are unlikely to be many sites where an element which is of the scale implied by woodland would not form part of the major structure which define space. In the sites considered buildings were felt to form part of the major structure at the four sites where they are present. However, this would not apply to all the buildings on those sites. Buildings therefore may form part of the minor structure or be purely incidental to the design of a site.

Other elements commonly, but not always, form part of the major structure. Walls, for example, form part of the major structure at four of the sites. However, in Jesmond Dene, where many walls are present, they were considered to only be minor structure. Other elements can act as either structure or decoration, depending upon circumstance. Monuments are perhaps the most startling example thrown up by the case studies. At Newcastle General Cemetery, where monuments have been incrementally inserted in to an overall layout, they can only be considered as decoration, even though they form a crucial and dominant landscape element, whereas at Saltwell Park some of the monuments are focal points for important spaces and should be considered as major structure. Conversely shrubberies were felt to act as decoration at Saltwell but major structure at the cemetery.

In summary, though there is only a limited number of case studies used, and though the precise role of particular elements on particular sites can be debated, it can be clearly seen that different types have different types of structure. Therefore, though there are landscape elements which usually form part of the major structure, a

particular landscape element might act as major structure, minor structure or decoration in different circumstances.

Following the site by site analysis of structure each site was then considered against a standard list of hypothetical works. The list is not exhaustive; it is a sample list of works which might most commonly occur and be thought to have a significant affect on a site. These are considered against two criteria:-

- affect on the structure of a site: an appraisal of whether the works may affect the structure of the site, and if so whether there is the potential for this to be to a major affect. Major potential affects are then further sub-divided between the reversible and non-reversible. Non-reversible in this context means where there is likely to be a significant loss of historic fabric, making future '*repair*' impossible, though not necessarily preventing '*restoration*'. This concept is discussed in more detail below,
- what affect the works may have on the character of the site. The concept of '*character*' has been considered of some importance given its flexibility. As will be seen, the affect of works on structure of a site is not necessarily co-terminus with affect on character.

The assessments are made on an informed judgement. In a number of cases the categorisation selected are debatable. However, they are not intended to be definitive. Rather their purpose is to help inform a debate of the nature of interventions on historic sites and to give an understanding of the key issues.

## **2.11 Reversibility and Non-Reversibility**

Though the concept of reversibility is not contained in statutory guidance it is an important factor stressed in philosophies of historic conservation (e.g. Feilden, 1994). Feilden, referring to buildings, states,

*'Any proposed intervention should (a) be reversible or repeatable, if technically possible, .... (d) allow the maximum amount of existing material to be retained, (e) be harmonious in colour, tone, texture, form and scale if additions are necessary, but should be less noticeable than the original material, while at the same time being identifiable....'*

Reversibility is not a justification for intervention into historic fabric. However, it provides a valuable objective for interventions if they are otherwise justifiable. Non-reversible interventions are less desirable as they do not allow the possibility of the cultural artefact, in this case park or garden, to revert to its original state. Non-reversible in this context has essentially been defined as where there is likely to be a significant loss of historic fabric, making future '*repair*' impossible, though not necessarily preventing '*restoration*'. The operations assessed in Table 2.6 below which are seen to be as most consistently involving non-reversible change are the felling of areas of trees, the demolition of buildings and walls and earth re-modelling. The planting of new trees and the relocation of circulation routes consistently have a major impact on structure, but in most cases these are reversible.

## **2.12 Issues arising from the case studies.**

The analysis in Table 2.6 shows that different elements which go to make up landscape play different roles in different situations. Consequently the importance works may have on a landscape varies on a site by site basis; what may be incidental work on one site may be fundamental on another and vice-versa. For example, works which might be considered very minor on some sites, such as the re-surfacing of paths, would be of great significance at Lindisfarne Castle garden. This has potentially significant implications when one is considering systems to bring into control major works to a site. If a system is to be all embracing then it either needs to be cast very broad or tailored on a site by site basis.

This is further complicated by the concept of character. Works which have a minor or even no affect on site structure may, nevertheless, have a radical affect on the aesthetic qualities of a site. At Gibside, the alteration of buildings, changes in agricultural land use and the re-surfacing of paths may all have a major affect on the character of the landscape without affecting the structure. Inappropriate plantings at Lindisfarne would similarly not affect structure but would drastically affect character. This emphasises the narrowness of an approach based on structure; the controls (outlined in the next section) exerted over ancient monuments and listed buildings for example are far more inclusive, and the controls over conservation areas, though weaker, do take explicit cognisance of '*character*'. Therefore, though perhaps the overriding aim should be the ability to prevent damage to structure, this in itself would not prevent works which have an undesirable impact on character.

Though each site has a different structural composition and range of works which may affect its major structure there are certain common themes. The felling of groups of trees, inappropriate tree planting, demolition of walls, demolition of buildings, earth remodelling, hydrological works and path or drive relocation come up consistently as works which will have a potential affect on site structure. The variance tends to occur with factors which are limited to particular types of site. For example, fences and railings exist at most of the case studies. However, it was only with Saltwell Park, where they form part of the boundary enclosure, that they were considered part of the major structure. This would be true with other historic municipal parks where iron railings are the traditional means of enclosing sites. Though removing beds would have an impact on the structure of three of the case studies it was only at Lindisfarne Castle that this was considered to be a major impact, given their central role in a small and delicate site.

The existence of common themes in structural form, albeit with significant exceptions pertaining to particular sites or types of site, does suggest a possible alternative form of statutory control to an all embracing system i.e. a system of control which encompasses most works which would affect major structure on most sites, but which would quite clearly not be all inclusive. An explicit decision would be made to create a system which covered most '*structural*' works on most sites but which left significant gaps.

Perhaps surprisingly the only works from the sample works list not considered to have either a major impact on structure or character are the felling of specimen trees and the removal of hedges. However, this is to a degree a product of the case studies selected and it would be possible to think of situations where these elements play a greater significance.

### **2.13 Summary.**

In an effort to define the key characteristics on which a system for the protection of historic parks and gardens should focus this section has, through the use of case studies, considered the concepts of '*structure*', '*decoration*', and '*character*'. Character is necessarily linked to the particularities of a site, though it is a concept which has been of some use in the consideration of planning applications. The components of structure and decoration are more transferable between sites, but as the case studies show, sites can have quite different structural composition, and a particular landscape

element may perform different roles in different situations. This demonstrates the problem of formulating a system which is broad enough in its scope to bring effective protection without introducing a bureaucratic behemoth. The next section considers wider objectives for a system of protection and forms such a system might take.

### **SECTION 3 : ANALYSIS OF ALTERNATIVE MODELS OF STATUTORY PROTECTION**

#### **3.1 The Garden History Society convened working party.**

The only systematic enquiry into the options which may exist for statutory protection for parks and gardens undertaken to date was by a working party convened by the Garden History Society. A discussion paper was produced in May 1993, though this has not been published in any form. The working paper was subsequently presented to the Association of Garden Trusts in October 1993. It should be stressed that the report produced is not Garden History Society policy.

The work encompasses a thorough preliminary appraisal of a number of potential forms of model for statutory protection and some of the additional key concepts which would need to be evolved. The report produced was considered by the working party as very much a first draft, requiring substantial development and revision before it could be considered a detailed proposal. It is understood that this has not been pursued as yet. The working paper, despite these qualifications, is nevertheless a key document on this subject. The working party was comprised of an eminent group of garden history professionals, all appearing in a personal capacity.

The working party's remit was to explore the desirability and feasibility of some form of extension to the existing legislation to give historic parks and gardens a degree of specific protection. They concluded that a modest extension to the existing planning system would be both desirable and feasible. To quote from their report:-

*'Registered parks and gardens are recognised as an integral part of the heritage, but at present there is no duty to conserve them for future generations. They have an anomalous status in planning law at present, which leads to inconsistent attitudes from decision makers*

*and national agencies. A degree of statutory responsibility towards them would help to remedy this.*

*Such an extension in itself would not necessarily promote the conservation of these sites however, and the working party favoured a twin system of constraints and financial incentives. It was adamant that, given the living nature of parks and gardens, any such constraints must not restrict good gardening, but should target the threat of catastrophic alterations to a site's structure; and that protection must go hand in hand with incentives and support for restoration and management via the taxation system and grant aid.'*

### **3.2 The alternative models.**

The working party considered a number of existing forms of protection for other parts of the heritage and the environment, in order to learn whether any of them offered, in total or in part, models for a form suitable to historic parks and gardens. The models of control which were considered were those which apply to:-

- sites of special scientific interest;
- scheduled ancient monuments;
- listed buildings;
- conservation areas.

Ultimately the working party concluded that none of these models is wholly suitable for historic parks and gardens and proposed a new hybrid model. This they termed '*Registered Garden Consent*'. It is intended to be broadly analogous to listed building consent, but because it is addressed at areas not individual structures, based on conservation area concepts. It is aimed only to address changes to site structure and intended to be linked to grant assistance.

Designation would, as with the existing Register, be the responsibility of English Heritage but with designation being registered as a land charge. The Secretary of State's consent would be required for works which affected the site's structure. Specifically additional controls would consist of:-

- control over demolition of unlisted buildings (from conservation area legislation);
- automatic Article 4 direction;
- felling or works to trees (Tree Preservation Order provisions);

- works or operations affecting the hydrological regime - seen to be the only innovation and justified on the critical importance that water is perceived to play in many historic parks and gardens.

There are a number of unresolved issues in this model - to be expected as the working paper was produced as a first draft for discussion. These include:-

- The nature of an automatic Article 4 Direction. An Article 4 Direction withdraws permitted development rights set out in the Permitted Development Order. Permitted development is a term applied to works which whilst constituting development (the normal test for whether planning permission is required), under the terms of the PDO do not require planning permission. Therefore when an Article 4 Direction is introduced planning permission becomes necessary for those works affected. The schedules of permitted development rights set out in the PDO are long and complicated and therefore careful thought would be needed over the precise form this should take. It is also worth noting that the introduction of an Article 4 would mean that planning permission, not Registered Garden Consent, would become necessary.
- The nature of controls which would be introduced over hydrological works. There is no precedent for this concept in historic conservation legislation. There is a range of controls over hydrology operated by the Environment Agency and others though the rationale for these powers is governed by factors such as the need to sustain water supply and prevent pollution. Very careful consideration would therefore be required over devising the practical application of this element of control.

Procedurally the system would be based on listed building legislation with much of the decision making delegated to local authorities, after consultation with EH and the Garden History Society. Similar appeal and enforcement procedures would apply.

In essence the working party viewed Registered Garden Consent as a consolidation of existing powers. However, a key function would be to give sites a clearly defined place and importance within the planning system. There is also clearly an eye to practicality in terms of resources required, in that it is seen as significant advantage that such a system would not, it is argued, require substantial increases in administrative resources from English Heritage or local authorities.

The paper produced by the working party is the only serious attempt to date to construct a possible model that statutory control over registered historic parks and gardens might take. However, it is considered that the conclusions drawn raise a lot of questions that a more detailed critical appraisal of the model proposed, together with the alternatives put forward, is required.



### **3.3 Brief analysis of alternative models in terms of *'structure'*, *'decoration'* and *'character'*.**

To consider the effectiveness of the potential models of protection further they were first considered against the series of sample works set out in Table 2.6. A judgement was made as to whether permission for a particular type of work or operation would be required with each of the models. The necessity for other forms of permission already needed was also considered. The results of this are set out in Table 3.1. A number of conclusions can be drawn from this. Firstly, the Sites of Special Scientific Interest model is a site specific model and therefore potentially any operations can be brought into the regime. The listed building and scheduled monument models potentially include most works which might affect a site given their all embracing controls. More selective are the conservation area and Registered Garden Consent models.

As the key model under consideration here it is worth briefly summarising the findings on the proposed Registered Garden Consent. In particular it is worth highlighting those works which would not be brought within control under this system. These are: inappropriate tree planting; hedge removal; earth remodelling; the construction of new buildings; changes in agricultural land use; the removal and introduction of new seating; the removal of beds and formal games areas. Due to the complicated nature of permitted development and uncertainty over the precise form of the proposed automatic Article 4 direction it is unclear whether alterations to buildings, path or drive re-location and path re-surfacing would be brought in to planning control. Some works are likely to require planning permission such as the construction of new buildings, the alteration of non-domestic buildings and earth remodelling (though there are significant permitted development rights for certain types of development e.g. agriculture, including agricultural buildings) and some are unlikely to have an influence on structure (removal or introduction of seating), though these may affect character. Therefore, Registered Garden Consent leaves a fairly lengthy list of works which may affect site structure or site character not brought within control.

Though a crucial factor, the ability to control works which might affect the structure or character of a site is only one objective a system of statutory control would need to satisfy. The next section considers a range of other objectives.

To test these alternative objectives a goals - achievement matrix was formulated and Registered Garden Consent and the other models considered evaluated against these objectives. The objectives were derived by the author based on:-

- systematising the objectives set out by the working party and,
- extrapolating other objectives implicit in conservation legislation, guidance and practice.

### **3.4 Objectives for protection.**

The objectives identified are described below.

**3.4.1 Duty to protect.** The effects of the imposition of a statutory duty to protect historic parks and gardens on local authorities are somewhat intangible. In theory it should mean that local authorities would at least be forced to address seriously the issue in a way in which they don't have to currently. Stacey (1992) found that two third of authorities in her survey had no officer specifically responsible for parks and gardens issues, which suggests that such issues are unlikely to be considered in a systematic and serious way. A statutory duty should force local authorities to address these issues, for example, through using existing provisions as means of protection.

**3.4.2 Assessment.** In a system of regulation it is an important objective that appropriate skills and knowledge exist for appraising proposals. One concern frequently raised over the introduction of controls over parks and gardens is the paucity of expertise in this area available to planning authorities. It is considered that these skills are only currently available at a national level; this attitude is evident in the Garden History Society working paper for example. Stacey (1992) discovered only two local authorities employing officers specifically to deal solely with historic parks and gardens matters in a survey of ninety five authorities, and these were understood to be the only examples nationally at that time. Against the need to obtain expertise must be balanced the knowledge of particular sites and circumstances which is only ever likely to occur at a more local level. Two potentially contrasting goals are, therefore, that both expert opinion and local knowledge are fed into the decision making system.

The second part of the assessment goal relates to the extent that the different protection systems consider only the narrow direct impacts on sites concerned or,

conversely, are cast more widely to include issues such as setting. It would generally be considered more desirable for account to be taken of setting as this is important in the conception of many parks and gardens and crucial in certain landscapes, such as many eighteenth century parklands where the whole visible horizon may be included within a composition. Nor is impact on setting necessarily confined to visual impact, as the appreciation and enjoyment of parks and gardens can depend on other senses; so, for example, the noise generated by a major road may be prejudicial to the character of a site.

**3.4.3 Protect and Enhance.** The goals in this section can broadly be divided between preventing harm and promoting good. Two of the principal factors in preventing harm are considered in much greater depth in the previous section. These are:-

- the ability to prevent harmful development. *'Development'* here means both developments requiring planning permission and also those interventions which may be considered harmful which are normally outwith planning control,
- *'character'* - a very general and flexible criteria, which extends beyond appearance,
- and thirdly, in addition to preventing harmful major impacts on a park or garden, it is a desirable goal to prevent poor day to day management.

Promotion of good is again defined under three headings:-

- to enable repair or restoration, necessitated by neglect or past inappropriate interventions,
- to encourage the production of a management plan; often seen as the key tool in a broad and considered approach to a site being taken. It can also be a useful mechanism for gaining permission for a portfolio of works for a period of time ahead and therefore circumvent the need for cumbersome and repetitive applications for permissions to undertake works,
- more broadly, to encourage good management.

**3.4.4 Sanctions.** It is important that appropriate sanctions exist in the event of a control system being infringed. Usually this would take the form of a system based on either prosecution and fine and / or enforcement, whereby if an offence is proven and shown to be unacceptable there is a requirement to make good. It is important that the ability to prove a case is not made unduly difficult and that the potential fines are

such a level to provide a realistic deterrent. It is also a desirable goal to have reserve powers to intervene in the event of extreme neglect. This tends to undertake one of two forms: firstly, a power for the responsible authority to take urgent works by default and to recharge the owner, and secondly, powers for the local authority or Secretary of State to acquire a site compulsorily where extreme neglect can be demonstrated and where an owner has failed to respond to statutory notices requiring remedial works.

**3.4.5 Operation and Resources.** A system of protection has resource implications and needs to be able to operate in a manageable way. The goals under this section are:-

- small scale operations exempt. It is desirable that very small scale operations do not require permission so that owners and administrators are not overloaded with numerous small applications,
- for a system to be flexible, so that it can respond to the widely varying circumstances that maybe found at different sites,
- to avoid onerous day to day bureaucracy,
- for a system to as non-adversarial as possible. It was considered by the working party that building in negotiations as an integral part of a system lessens the adversarial nature of control systems,
- protection systems have resource implications for the administering bodies, in this case, the local planning authority or English Heritage. Increased workload on English Heritage may take the form of casework or in needing to substantially enhance the primary information source of the Register,
- different systems may have different degrees of acceptability to owners.



### **3.5 The alternative models : an analysis.**

Table 3.2 sets out an attempt at a full analysis of the potential models under consideration. Each of the objectives, and the adaptability of the various models needs to be briefly considered.

**3.5.1** Each of the models considered explicitly places a **duty** to protect on the agency of state responsible for its operation, albeit phrased in a variety of ways, and therefore with slightly varying weight and interpretation. With listed buildings (LBs) and conservation areas (CAs) this is particularly geared at local planning authorities, and with sites of special scientific interest (SSSIs) and scheduled ancient monuments (SAMs) at the Secretary of State (SoS) together with English Nature (EN) and English Heritage (EH) respectively. This sort of provision could very easily be built into a system of registered garden consent (RGC).

**3.5.2** As SSSIs and SAMs are administered by specialist government agencies they can be reasonably expected to benefit from direct expert input and **assessment** but lack some of the local knowledge and accountability that would come from a local authority. LBs and CAs are the opposite, with consultation to specialist agencies on relatively few LB applications and with very little external involvement on CA matters. RGC as proposed would be operated by local authorities on powers delegated to them by the SoS, as LBs. However, with RGC there would be notification of all applications allowing for more consistent expert input. With SSSIs, SAMs, and LBs there are specific consent procedures which apply directly to works on the site, in addition to any planning permission necessary (though in the case of SSSIs receipt of planning permission can obviate the need for consent from EN). In CAs the usual form of consent for works is planning permission, the system of conservation area consent being limited to demolitions. None of the systems have direct control over works which might affect setting but in all cases it is a material factor in considering planning applications. Affect on the setting of a registered park or garden is already a material consideration when considering planning applications.

**3.5.3** The key factor of the ability to **protect** and prevent harmful development is the subject of the previous section. Of the existing systems this is weakest with SSSIs where there is no ultimate control, and second weakest with conservation areas. It is stronger with the other two systems which have their own purpose designed controls. The aspiration is clearly that RGC would be able to prevent harmful development, but

as has been seen previously this is open to some doubt, particularly with non-typical sites. With SSSIs and SAMs a more systematised pro-active approach is taken to their management than is usually the case with LBs and CAs, and in the case of SSSIs there is strong encouragement, and financial assistance in the preparation of a management plan. Indeed, over recent years assistance towards the preparation of a management plan for registered parklands in the countryside has been available through the Countryside Stewardship Scheme, originally administered through the Countryside Commission and now through MAFF. However, this funding is not linked to any legislative system and is therefore not secure.

Perhaps another key factor is how much a system might assist in the **enhancement** or proper repair or restoration of registered sites. In addition to financial mechanisms local authorities are obliged to *'formulate and publish proposals for the preservation and enhancement of conservation areas'* (Department of the Environment and Department of National Heritage, 1994) (though there is considerable debate about how much local authorities actually fulfil this obligation in practice). As RGC is based around conservation area legislation it would be quite easy to incorporate this sort of provision which, in theory, would mean that each registered site would receive some sort of strategic consideration.

**3.5.4** All the systems considered have some form of **sanction** against unauthorised works, though with SSSIs and SAMs these are rather notoriously weak and generally only apply to owners and occupiers. A number of the systems allow for compulsory purchase as a matter of last resort with severely neglected sites and this would be quite easy to build into a system of RGC. LBs also have a system for *'urgent works'* but this is less likely to be of use with parks and gardens, which tend to decay more gently and without the dramatic and rapid deterioration that can occur with buildings.

**3.5.5** A huge potential issue in the practical **management** of sites is balancing the protection of sites against requiring permissions for all small scale operations that might take place. CAs tend to be relatively laissez-faire, but designation in itself does not prevent many damaging works from going ahead. The LB system is much more restrictive but has relatively little tolerance of minor works. The most promising model in this respect is that for SSSIs which identifies what works might be damaging on a site by site basis. The most flexible tool is that of the CA, developed for use at the core of historic settlements, but subsequently successfully adapted to a

wide variety of situations. As well as parks and gardens this includes such diverse use of designation as the Settle - Carlisle railway line.

The onerousness or otherwise of the need to respond to bureaucracy has been considered on the basis of whether systems interfere in management operations or are restricted to more definite acts of change. This needs to be balanced with the desirability of influencing management operations. To reinforce a point already made, a system which encourages management plans, and gives permission for works on this basis, is perhaps the key way of satisfying both objectives. RGC aspires to be non-onerous but the suggested automatic Article 4 Direction could well be in conflict with this objective; this depends precisely which permitted development rights are removed. The SSSI and SAM systems encourage dialogue between owners and administrators and are therefore seen to be less inherently adversarial than the LB and CA systems.

The working party clearly saw the use of resources required to administer a system as a key factor. Those systems administered from the centre would demand much more of EH, in particular the SSSI model which requires substantial additions to the Register. With the local authority administered models resources are not considered an issue to anything like the same degree given the relatively small numbers of sites within any one local authority area.

Finally, with regard to acceptability to owners, it has been presumed that no system is likely to be warmly received by owners collectively, but that the preference is likely to be for the least interventionist system.

### **3.6 Two models of protection.**

In summary the working party proposed model of Registered Garden Consent has significant advantages of simplicity and flexibility but also significant weaknesses. A recurrent theme on the negative side is the broad brush nature of the system and its consequent failure to respond to the issues which might arise across the wide variety of sites included in the English Heritage Register, a heterogeneity that is likely to grow as the Register develops. For a system to be more effective it needs to be either more all embracing in the nature of its controls or have the flexibility to be tailored to the needs of individual sites. An all embracing system has the major disadvantage of leading to a large and cumbersome bureaucratic control system. The only existing

model which allows the tailoring of a system to the factors which pertain to an individual site is the SSSI model. It is therefore considered that two alternative models need to be considered, the Registered Garden Consent model borne principally out of conservation area legislation and a model developed from SSSI concepts, which for the sake of convenience we might term '*Registered Garden Permission*' (RGP). There are problems with adopting the SSSI model, discussed below, but the basic philosophy of site identification being based on standard quality criteria, rather than other factors such as amenity, is the same as with the national historic environment designations and provides a perfectly reasonable starting point for considering a system.

These two models are radically different in many ways but there are elements, in response to the objectives set out above, they might share. These are briefly discussed before the two proposed models are considered in more detail.

**3.6.1 Common themes.** One element which could be introduced on its own and would inevitably form part of a wider system of control is a statutory duty to protect historic parks and gardens. If a system of control were introduced which was operated by central government, through English Heritage, then such a duty should be imposed on local authorities which would affect the operation of powers such as the granting of planning permission. Such a duty could and should be imposed on other bodies who through the operation of their powers may have an influence on historic parks and gardens. This would include the Forestry Authority and the Environment Agency, for example. The duty would be linked to the effect of any proposed works on the '*character*' of a park or garden, given the usefulness of this concept discussed in the previous section.

It is clear that if a system of statutory controls were to be effective that it would need to be ultimately backed by an effective portfolio of sanctions. In the case of parks and gardens this should be threefold, including enforcement provisions whereby there is a requirement to make good, punitive prosecution provisions - of particular use when making good is not possible, and statutory notices requiring repairs to decayed fabric to be undertaken, which if not complied with would lead ultimately to compulsory purchase.

**3.6.2** The essence of a system of **Registered Garden Consent** is that a simple step forward can be taken from existing systems of control and it can be administered with

relatively little extra resources or effort. In many ways it would be acknowledgement of the sort of forces (discussed in section 1) that are at work anyway, whereby local planning authorities are using existing means of control to intervene in historic parks and gardens issues. The RGC model attempts to consolidate and refine those mechanisms and introduces relatively little of great novelty. As a model it does have great strengths, particularly its simplicity, and it would be a major aid in making a coherent system to prevent inappropriate interventions in many, but by no means all, sites.

However, as put forward by the working party, there are a number of issues with RGC, briefly discussed above, which would need to be considered which remain unresolved. These are now briefly considered. If the automatic introduction of an Article 4 Direction were linked to RGC consideration would need to be given about which permitted development rights should be withdrawn. The automatic withdrawal of rights relating to dwelling houses, the type of Article 4 Direction most commonly linked with conservation areas, would not be particularly be relevant to parks and gardens as large numbers of dwelling houses are rarely going to be a significant component of registered sites. The parts of the PDO to which consideration should be given are:-

- Part 2 Minor Operations, Class A concerning gates, walls and fences - though this could be very bureaucratic in practice;
- Part 6 Agricultural Buildings and Operations - a key area with many sites. The permitted development rights are long and complex and differ on different scale land holdings but consideration would need to be given to rights relating to the erection of buildings and engineering operations (such as those relating to private ways, hard surfacing and the deposit of waste);
- Part 7 Forestry Buildings and Operations - similar to agriculture;
- possibly Part 12 Development by Local Authorities, given their major land owning role;
- Parts 14 and 15 Development by Drainage Bodies and the Environment Agency, given the importance attached to hydrological works,
- parts of Part 17 Statutory Undertakers, for example overhead lines,
- Part 24 Development by Telecommunications Code Systems Operators.

In considering the nature of the provisions which might apply to hydrological works it is worth considering the system as it applies to SSSIs, the only one of the existing

models which has any direct connections with the water regulation system. Under a range of existing legislation the Environment Agency, water and sewerage companies and internal drainage boards are obliged to consult English Nature before granting abstraction licences, discharge consents, and land drainage consents either within an a SSSI or elsewhere if it is considered that a SSSI might be affected. As with other SSSI provisions this has proved weak due to poor drafting of the legislation and the lack of any teeth should any breach of the required consultation process occur (Hughes, 1992, Ball and Bell, 1995). However, it would seem to provide a model which could be applied to Registered sites if suitably tightened. Indeed this could occur independent of any means of statutory control. The Environment Agency would have a duty imposed on them to take into account the importance of protecting historic parks and gardens, and be required to consult English Heritage (and the Garden History Society) on any works that might affect a site and to take account of their views before determining applications.

The other provision of the RGC which it is worth briefly examining is that relating to trees. The working party propose a specific linkage with Tree Preservation Order provisions. The precise nature of this is not made clear; various types of TPO exist depending on whether protection is being extended to individual trees or groups of trees. At its most detailed it may prove unduly onerous. A better linkage to make, which would be adequate for most sites, is perhaps to the requirements of felling licences. A felling licence is required from the Forestry Authority for the felling of trees above a certain size. Though this control is based on commercial rather than amenity factors the Authority is under a duty to consider such factors as landscape (Ball and Bell, 1995). If a tree is also covered by a TPO the application goes to the Forestry Authority who may either refer it to the local planning authority for determination, or it may refuse the licence, in which case compensation is payable, or it may grant a licence. Before it grants a licence the Authority must consult with the local planning authority who may object, in which case the matter is referred to the Secretary of State for determination. For historic parks and gardens it may be sufficient for this consultation process to take place rather than full TPO provisions, which could still be imposed in especially sensitive sites. However, the exclusions from felling licence provisions would need to be redefined as these currently include trees in gardens and public open space.

**3.6.3** The alternative model advanced is that of **Registered Garden Permission** (RGP), based on the SSSI system. The first point to make is that SSSI system is

considered to be badly flawed in a number of respects which would need to be addressed as part of RGP. The provisions which apply to SSSIs derive primarily from the Wildlife and Countryside Act 1981. It is often argued that the sections on SSSIs were hurriedly, and badly, drafted and that generally there is an ideological attitude of voluntariness and permissiveness that makes the legislation effectively toothless (e.g. Ball and Bell, 1995). Currently owners or occupiers must notify English Nature before carrying out any defined potentially damaging operation (PDO). However, four months after this notification, or earlier if consent is obtained, the operation can go ahead unimpeded, unless it requires and fails to get planning permission. It is an offence to carry out a PDO without going through this system, but the maximum penalty is only a £2,500 fine. Liability for an offence only rests with an owner or occupier, damage caused by others does not constitute an offence.

Crucially the system does not therefore provide a mechanism for stopping damaging works. Rather its essence is to give a breathing space to English Nature so that they may negotiate a management agreement with the owner or occupier. The system of Nature Conservation Orders which exists in parallel to the SSSI system has slightly stronger provisions than exist with SSSIs, but the same inherent problems (Ball and Bell, 1995). The effectiveness of the provisions on SSSIs was summed up by Lord Mustill in *Southern Water v Nature Conservancy Council* in the following words,

*'It needs only a moment to see that this regime is toothless, for it demands no more of the owner or occupier of an SSSI than a little patience..... In truth the Act does no more in the great majority of cases than give the (Nature Conservancy) Council a breathing space within which to apply moral pressure, with a view to persuading the owner or occupier to make a voluntary agreement.'* (cited in Ball and Bell, 1995)

The fundamental change which would need to be made to the SSSI system in creating RGP is to change the inherent nature from a consultation process to one of permission. Given the nature of the system, operating around a series of operations defined by English Heritage, it should probably be operated by EH with consultation to local planning authorities. In theory it would be possible to create a scheme of delegation for some works to local planning authorities, akin to that which exists for listed buildings, though it is argued below that this would not be necessary. The process of seeking permission should be linked to the planning / listed building process with defined time limits in which applications should be determined (rather than the open-ended scheduled monument consent process) accompanied by an

appeals procedure. The possibility for seeking advance permission through the submission of an agreed management plan should be explicitly incorporated. With a system of RGP each site would have its own list of Potentially Damaging Operations (PDOs). The SSSI system does not include concepts of character but with RGP it may be possible to include PDOs for works which were felt to affect character but not structure. The tailoring of controls on a site by site basis is the great recommendation for the RGP approach, allowing effective control without introducing unwieldy all embracing inappropriate controls over all sites. A generic list of PDOs should be evolved which would form a menu from which the appropriate selection would be derived for each site. Unusual site specific factors could be added to this.

The working party raised a number of other criticisms of the SSSI model. One disadvantage argued is that SSSIs tend to be relatively small and applying the SSSI model to whole estates would be cumbersome. However, by the end of March 1992 SSSIs covered over 7% of the land area of Great Britain, and in some regions a far higher percentage with some upland moorland SSSIs being over 10,000 hectares (Ball and Bell, 1995). Other problems presented, such as perceived problems with tone, could be relatively easily addressed.

The inherent great disadvantage of the RGP system is the resources which would be required, and in particular, the resources which would be required initially in deriving a standard set of PDOs and their application across all the sites on the Register. There would also be a continuing need for more resources in the administration of the system and potentially in providing incentives for management, repair and restoration through either grants or the taxation system. This may seem hopelessly unrealistic in a period of great restraint in public sector finance and activity. However, it is worth briefly considering how onerous in resource terms setting up and administering a system might be - the wider issue of incentives is considered in section 4.

Firstly, it is worth briefly considering the number of sites at issue. In 1994 there were approximately 1200 sites on the English Heritage Register, a figure that is anticipated to rise to around 1500 (Roberts, 1995) . This compares with:-

- 3,621 SSSIs in England (March 1992 )(Ball and Bell, 1995);
- 13,740 Scheduled Ancient Monuments (December 1993);
- 443,470 Listed Buildings (December 1993)(both English Tourist Board, 1994);
- 9,121 Conservation Areas (1996)(DoE & DNH, 1996).

It can be seen that the number of Registered parks and gardens is relatively small and likely to remain so, especially when set against the huge numbers of listed buildings, or even against the other area based designations. The resources required at the inception of a system are inevitably large but this can be achieved without the creation of large permanent teams of staff. The expedited re-survey of listed buildings in the 1980s was achieved by employing consultants to undertake the work through to recommendation stage and consultants are already used to assist in the re-survey process for the development of the Register. Once created the relatively small numbers of sites should not necessarily impose an enormous burden of extra work, and the whole point of a Potentially Damaging Operation based system is that it can be tightly focused on those works that would be damaging to the structure or character of a particular site.

Perhaps one of the major problems when considering resources is the place parks and gardens have in English Heritage's responsibilities. For English Nature SSSIs are an important part of the statutory framework of nature conservation and are thus accorded a high priority. Parks and gardens still seem to have a rather peripheral status with English Heritage, dating back to the 1983 National Heritage Act which enabled - but did not require - English Heritage to create the parks and gardens Register. English Heritage have only recently acquired a statutory function with parks and gardens through the requirement for them to be consulted on works affecting grade I and II\* sites. At its peak English Heritage employed a team of seven on parks and gardens issues; a number which, following the passing of casework to non-specialists in regional teams, was reduced to two (Jacques, 1995). This does not appear to indicate a high priority. Nebulous discussions taking place over the possible creation of a '*Conservancy*' for parks and gardens may address this issue (Jacques, 1995).

European comparisons have shown that it is possible to create forms of protection and to resource such systems both in terms of appropriate administrative staff and fiscal benefits. Indeed, Roberts (1996) has shown how the introduction of statutory protection in Berlin led to the creation of a specialist department, which in turn led to the development of a city-wide coherent plan for the management of a large portfolio of historic space.

It is therefore considered that the resources required to create and administer a system are not insuperable. As with the will required to create a system, it depends on the priority given to protecting this very special cultural asset. The desire for statutory protection, combined with the resources to achieve conservation, can sometimes come from surprising sources. A recent *'Country Life'* editorial (referring specifically to landscape parks) stated,

*'Given the supreme position of the landscape park in British culture, the increasing desire of the public to visit the countryside and the need to replant after a century of little maintenance, COUNTRY LIFE proposes that Britain should make replanting our parks a high ambition for the millennium. The Trustees of the Millennium Commission are looking for projects that are new and brave. Our proposal satisfies both criteria.'*

and they continue,

*'A system of protection would need to be implemented at the same time as replanting, to prevent what is still a threat: the parks being built over.'*

*There are 1,100 parks and gardens on the register compiled by English Heritage. The register does not, alas afford statutory protection comparable with that given to listed buildings.'* (Country Life, 1994)

## **SECTION 4 : RELATED ISSUES - FISCAL SUPPORT AND GOVERNMENT GUIDANCE**

### **4.1 Introduction.**

Systems of control rarely stand in isolation. This section briefly considers two associated matters; financial incentives and guidance to accompany statutory control.

### **4.2 Existing fiscal support.**

The issue of financial incentives, *'carrots'*, to go with the *'stick'* of statutory control is a key one. The European experience described in section 1 shows that the systems

which work best are those that are linked to financial benefits - there is more incentive for owners to comply with the system and less resistance and ill-will towards its introduction. Though in the UK the imposition of controls in order to protect the national heritage has been by no means always accompanied by financial compensatory measures, it does in principle seem reasonable to provide these to a degree, given the undoubted additional responsibilities and costs coming within statutory control can bring. Historically, the development of conservation regimes can often be seen to follow a three stage process: inventory; control; assistance.

Some provision for grant assistance towards some Registered sites already exists. The only form of grant currently available across all site types and in both urban and rural areas comes from English Heritage, though this is restricted to grade I and II\* sites. These grants were developed as a permanent grant scheme following a preliminary allocation of money in response to storm damage in 1987 and 1990 (Jacques, 1995). Funds are extremely limited and grant is specifically excluded from some works, such as desilting lakes, due to the costs often incurred. In 1993/94 the allocation was a modest £360,000 and in 1994/95 this dropped to £140,000 (English Tourist Board, 1994). Grants are for capital works only; there is no provision for management agreements whereby revenue payments are made for management operations - a limitation frequently criticised (e.g. White, 1995). Both English Heritage and Countryside Stewardship (considered below) require the production and agreement of a management plan, which in itself is grant-aidable, before grants are given, though as Sales has pointed out these tend in practice to be limited studies for comparatively short term restoration (Sales, 1995).

The other principal source of grant which has made specific provision for parks and gardens over recent years has been the Countryside Stewardship scheme, originally created by the Countryside Commission but now administered by MAFF. Stewardship is only available for works in parklands and therefore, not only does it not cover urban sites, it only covers parts of many sites where it is obtainable, any formal gardens being excluded (Countryside Commission, 1992). Unlike the English Heritage scheme it does provide for management operations as well as capital works. The objectives for Stewardship are somewhat different from the pure conservation objectives of English Heritage and there is a strong emphasis, including financial support, on developing public access and interpretation. Parallel to Stewardship are grants available from the Forestry Authority for the replanting and management of woodland.

Some funding for historic parks and gardens has started to become available from the European Union (EU). The Commission have operated a number of themed conservation grant programmes and in 1993 the theme was parks and gardens. Only a small number of sites were assisted across the Union. Other EU schemes have occasionally been used to support parks and gardens work.

Many other sources of finance have been used to assist historic parks and gardens, though conservation issues are not necessarily central to these other sources. Some local authorities have successfully bid for Conservation Area Partnership funds from English Heritage, more normally focused on groups of buildings (Gateshead Metropolitan Borough Council 1994, 1995). The advent of the National Lottery, and specifically the Heritage Lottery Fund (HLF) has opened a new possibility for parks and gardens funding. Grants have been given to a range of parks and gardens projects, the largest to date being £4,917,420 to the National Trust towards the purchase and restoration of Croombe Court, Worcestershire (Garden History Society, 1996). However, lottery funds are only available for public and voluntary sector organisations. For the first time in early 1996 the HLF introduced a themed topic, urban parks, which it is keen to receive bids for. In part this represents an acknowledgement that urban parks (and included within the initiative are other forms of urban open space such as cemeteries) have been bypassed by other means of financial support, as well a recognition of the very real problems they are facing.

However, all these schemes are not generically matched to historic parks and gardens. As a result they are either only open to certain sorts of applicant (HLF), certain types of work (e.g. Woodland Grants) or to certain types of site (e.g. Stewardship). Nor are any of these schemes necessarily limited to sites on the English Heritage Register. The exception is the small amount of English Heritage core funding which is limited to the higher graded sites.

Privately owned historic parks and gardens are already potentially eligible for a range of tax exemption. The basic objective of the tax system in this respect is to enable privately owned property, which has a reasonable degree of public accessibility, to remain in private hands. To quote the Board of the Inland Revenue publication on the subject,

*'Buildings of historic or architectural interest, land of historic, scenic or scientific interest form an integral and major part of the cultural*

*life of this country. It has been the policy of successive Governments that this national heritage should be conserved and protected for the benefit of the community. They have taken the view that so far as possible property of this kind should remain in private hands and that its owners should be encouraged to retain and care for it and display it to the public; and that where this is no longer possible the owners should be encouraged to dispose of it to those bodies in this country which have been set up specifically to hold such property in trust for the community'* (Board of the Inland Revenue, 1986).

Though the English Heritage Register is not mentioned in the criteria for assessing whether land can be characterised as *'heritage property'* it is clear that this can include designed or man-made landscapes and the Inland Revenue consult English Heritage on reaching a view over whether land should be so classified (Greenfield and Barton, 1995).

Potential for conditional exemption from tax exists on the following taxes:-

- capital transfer tax (CTT);
- inheritance tax (IHT);
- estate duty (though this of declining relevance);
- capital gains tax (CGT).

A *'Maintenance Fund'* may be created which also enjoys conditional exemption from CTT and IHT, plus income tax may only be payable at the basic rate (with the addition of a percentage applying to all trust funds). Legitimate expenditure from a Maintenance Fund may include, for example, gardeners' wages.

In granting conditional exemption the Inland Revenue require owners to undertake to:-

- manage the land with regard to conserving its natural and historic features;
- agree not to carry out change which would adversely affect the historic interest unless given written consent to do so;
- afford reasonable public access.

Applicants are recommended to prepare *'a simple management plan...specific to the estate and agreed with the appropriate advisory body...'*. There are complicated rules for charging tax if the exemption is lost. The principal factor which triggers taxes

becoming due, in addition to a breach of the conditions set out above, is the sale of the estate to other than a *'heritage body'*.

### **4.3 Fiscal support discussion.**

Public support through grants is therefore reaching historic parks and gardens and tax exemption can be obtained for private property from wealth type taxes if public access exists. However, support is patchy in nature comprised of a raft of sources often not designed with the specific needs of historic parks and gardens in mind. Little of it is tied to the English Heritage Register, the inventory to which statutory controls would need to be linked. It would therefore be desirable to reform and develop support in conjunction with the introduction of controls. This could take the form of grants or tax concessions, or a combination of the two. In considering these two alternatives there is a suspicion that tax regimes tend to be more stable than grant regimes, where resources can fluctuate substantially from year to year. Given the relatively modest sums which attach to most grant schemes at the best of times, it is also easier to achieve the widest benefit through tax concessions; though tax breaks do not benefit public sector owners. In devising support it would be desirable to improve on the traditional building conservation model, where funding is rarely secure and does not reach the majority of the statutorily protected heritage, and the SSSI model (and that found within agriculture, for example), where landowners are paid not to do things - where site protection relies on the landowner accepting the *'carrot'*. This a complex area, a detailed exploration of which is beyond the scope of this paper. Furthermore, the nature of any fiscal regime adopted would depend in part on precisely what form of control were introduced. However, it is worth briefly considering what the ground rules of support might be.

The key instrument in aiding the conservation of historic parks and gardens has been seen to be the management plan. Its role should be made central, both to a system of control and the financial benefits which might support it. The preparation and agreement of a management plan should be a pre-condition of both grant support and tax concession. The preparation of such a plan should in itself receive support; to achieve universality, perhaps most logically through modest grants being made available to all sites. The importance of such long term thinking has been emphasised by owners, such as Lord Cavendish, as well as professionals (White, 1995).

The physical works which might receive financial assistance divide into capital works of restoration or major repair and the more every day works which one might variously describe as revenue, maintenance or management operations. One way of structuring financial support may be to use this basic division and to provide tax concessions for maintenance works to Registered sites and for more major capital works to be funded through grant regimes. Regular tax concessions would hopefully encourage conservation through maintenance. Though conditional tax exemptions exist currently these are geared to wealth taxes; the benefits on income tax are very modest, plus there is no provision for tax deduction in the manner of some other European countries. Grants would become available on those inevitable occasions where restoration or major repairs are required.

Finally, when considering the issue of financial support it is worth briefly recalling that the origin of the motivation for this lies in protecting an important part of the national heritage. It is therefore a valid and important objective to secure some form of public access in return, as already occurs for conditional tax exemptions. Systematic agreements in return for public support are a pre-condition in a number of European countries (White, 1995). It would seem reasonable to make similar linkages in this country. In France the percentage of expenses which can be deducted from taxable income depends upon whether public access exists (Fustier, 1995) and in the Netherlands exemption from wealth and inheritance tax depends upon a reasonable degree of free public access (Sluyterman van Loo, 1995).

#### **4.4 Policy guidance.**

Another concern that has been raised in discussions over the implementation of a statutory controls has been the lack of professional expertise to administer such a system, particularly in the local government sector (e.g. Garden History Society, 1993). Clearly the expertise necessary, and at what institutional level, would very much depend on the nature of the system introduced. This is briefly considered below. It is worth briefly adding that the provision of good quality advice to owners should also be a priority, and especially detailed guidance on the preparation of management plans, to provide something more focused for historic parks and gardens than existing guidance produced by, for example the Institute of Leisure and Amenity Management (ILAM, 1991).

This is perhaps a critical issue with the Registered Garden Consent model. In essence, as has been discussed, this is a pragmatic low key extension of existing systems of planning control. It does, however, leave decision making at local planning authority level. From a situation where only two local authorities (both counties) in the country are known to employ specialist historic parks and gardens staff (Stacey, 1992) it is difficult to envisage the majority of local authorities acquiring appropriate in-house expertise; understandably so given the relatively small number of sites the vast majority of districts will contain. It is possible that more specialists would be employed at county level. However, coverage would be bound to be patchy, especially as local government reorganisation creates more single tier authorities. Moreover, experts at county level would still be one step removed from the key decision making level in the districts. In this context, the importance of detailed guidance to local planning authorities would be crucial. It could follow the form of existing conservation advice, as for example set out in various English Heritage advice notes and by the Government in Annex C of PPG15, which tend to comprise description accompanied by checklists, or alternatively it could be a more systems based methodology as is being developed with environmental appraisal. Due recognition of the diversity of site type beyond the landscape park would be needed and this might need to encompass some form of site typology.

Guidance to administrators is perhaps less of an issue under the alternative model of Registered Garden Permission. It is suggested that this system would be administered by English Heritage. This would require more staff, though under RGP it is suggested there would be strong incentives to produce a management plan, reducing the amount of day to day input required by administrators. There is a danger with this model that parks and gardens conservation comes only to be associated with those sites on the Register, and the thousands of lesser but significant sites around the country become forgotten. The aspiration would be therefore to emulate the sort of relationship which exists between English Heritage and local authorities on archaeological matters, where local authorities sustain a close link with the subject, even though statutory controls lie with the Secretary of State.

## **SECTION 5 : SUMMARY AND CONCLUSIONS**

## 5.1 Introduction

There has long been a recognition of the cultural significance of the historic parks and gardens of England. However, it was only in 1983, and enabling legislation to create the English Heritage Register, that this legacy began to achieve codified state recognition. Subsequently the protection of historic parks and gardens has come a long way, through the development of official guidance, through evolving case law and through the activities of some local authorities and amenity bodies - the Garden History Society in particular - appalled by the continuing destruction of many important landscapes and with a determination to prevent this continuing. The English Heritage Register has matured to become an important planning tool. However, historic parks and gardens still lack the specific, tailor-made controls other elements of the heritage enjoy. In the meantime the losses continue, as Lambert in particular has chronicled (e.g. Lambert, 1994). Though the introduction of statutory controls would not be without major political and significant technical problems experience from elsewhere in Europe has shown that this can be achieved. In the absence of statutory controls Stacey (1992) has vividly demonstrated that local authorities are increasingly seeking to introduce protection through other methods.

## 5.2 Registered Garden Consent

In an effort to advance the debate on statutory protection, the Garden History Society co-ordinated working party examined potential models statutory protection might take. Finding none of the models examined in itself entirely satisfactory they proposed a hybrid model borrowing from conservation area and listed building legislation and adding some new elements. This they termed '*Registered Garden Consent*' (RGC). It is a pragmatic response to the problems faced, with a cognisance of the sensitivity of the issue of introducing controls and the difficulties in securing additional resources to administer such a system.

The working party work takes the debate a long way forward. RGC is particularly designed to prevent damage to the essential '*structure*' of sites, whilst not interfering with the every day gardening of them; with the '*decoration*'. The RGC model is a thoughtful and considered proposal and would probably enable most major structure on most sites to be protected. However, there does appear to be significant weaknesses in the model. The diversity of sites on the Register means that many damaging operations on many sites would stay outwith controls, an issue explored in

depth in section 3 above. Lindisfarne Castle Garden, for example, could be completely destroyed, apart from the surrounding walls, without needing RGC. A criticism that can be levelled at many of the debates concerning statutory protection is that they tend to suggest that the term '*historic parks and gardens*' can be used synonymously with '*landscape parks*' in private ownership. There is an element of this in the thinking behind RGC. This is not surprising; landscape parks form a major part of the English Heritage Register. However, it would be more desirable to construct a system which is sensitive to the spread of site types found on the Register; a spread which is broadening as the Register develops.

In constructing a model for statutory control structure is a key factor, but as we have seen the concept of '*character*' is also important. The two concepts are not synonymous; character may be drastically altered without affecting structure. This is shown clearly with the examples of the removal of gravestones in Newcastle General Cemetery or the inappropriate planting of Lindisfarne Castle Garden. RGC only allows character to become a consideration when works which are having some other impact are proposed and require RGC, planning permission or some other form of consent; in themselves work affecting character would not require consent.

In section 3 the other potential objectives of a system of statutory consent were considered. The RGC model scored quite well here; its main weakness is its lack of linkage to management processes. RGC would be a planning tool which comes into play when a significant intervention on a site requiring permission is proposed; it does little or nothing to promote the careful stewardship of sites in-between times.

### **5.3 Registered Garden Permission**

As part of the analysis of RGC it was compared along with the existing regulatory models used for heritage and nature conservation. It emerged from this analysis that the SSSI model in particular has significant strengths. As currently constituted it also has significant weaknesses, in particular its inability to ultimately prevent harmful development. However, it was considered that with modifications, it constitutes a good alternative model to RGC. For ease of identification it has been termed Registered Garden Permission (RGP). It is felt that RGP has two major advantages over RGC.

Firstly, the controls attached to RGP would be tailored to individual sites through a menu of Potentially Damaging Operations (PDOs). This is considered to be a major advantage. The alternative with RGC, or other models, is universal controls. However, how can a universal system be effective at Lindisfarne, which is less than 0.1 hectare, and reasonable at Gibside, which is 150 hectares? PDOs would be geared towards protecting the essential structure of a site, but could also potentially be used to protect other factors considered vital to character.

Secondly, the RGP model has the potential to be much more closely linked in with the management of sites; the active conservation process. We saw at the beginning of this working paper that the conservation of sites is a higher aspiration than the objective of protecting them from harmful interventions, worthy in itself. As Goodway has put it '*we should be trying to conserve **processes and systems** and ...conserving **objects** (is) second best*' (Goodway, 1995). The SSSI philosophy is much more closely linked to such concepts than traditional planning tools and it is felt that RGP, with a strong emphasis on the production of management plans, is more likely to be successful in aiding active conservation.

It is clear that RGP would require more resources than RGC, both to set up and probably to administrate; though it was concluded that the additional resources required should not be considered extreme if the conservation of historic parks and gardens is to be given the priority and status it undoubtedly warrants. In setting up a system a major task would be preparing lists of PDOs for each site. RGC is intended as a system to be administrated by local authorities, who it is felt could absorb this responsibility with no extra resources. RGP is fashioned as a scheme to be administered from the centre, either by English Heritage or by some new body such as a '*Conservancy*'. This would require new resources, but would have the benefit of properly skilled personnel, something lacking in most local authorities. Care would need to be taken that local knowledge and expertise was fed into the process. This highlights a particular danger of RGP, that the conservation of historic parks and gardens could come to be seen as exclusively concerned with the English Heritage Register, and the conservation and protection of the vast numbers of sites of more local importance forgotten.

#### **5.4 Conclusion**

Historic parks and gardens represent a great cultural legacy in this country. Their importance, and the need to protect and conserve them, has received increasing attention. However, their position, devoid of any statutory protection remains anomalous.

This paper is an attempt to examine the conceptual and technical issues which underpin the introduction of a system of statutory protection for historic parks and gardens. There is a long history of efforts to draw attention to this great cultural legacy. Protection is now happening through the planning process and the hi-jacking of a range of protective tools originally conceived for other purposes. It is contended that this action by local authorities and others is legitimate but flawed. Far better would be to introduce a system of protection tailor-made for historic parks and gardens. The paper tries to consider how this might be effected in practice. Two possible models of control are advanced for debate: one originated by a Garden History Society convened working party, the other by the author.

On the basis of this preliminary analysis it is felt that RGP represents the optimum model for statutory protection and RGC a more pragmatic response. With either the right surrounding institutional framework would be an important element of successful implementation. Ultimately it is considered that either would represent a significant step forward in protecting a priceless element of the heritage of this country. For though the protection of historic parks and gardens has made a great leap forward in the last dozen years, losses continue apace.

It is clear, however, that further work is needed. Firstly, the case for statutory protection needs to be clear and strong. There will be substantial political resistance to the introduction of controls, and if the argument is to succeed it must be overwhelming. Though there is evidence of catastrophic change taking place a systematic and statistical digest would be of benefit, demonstrating numbers of sites undergoing damaging change and the rate at which it is occurring. Secondly, the possible models of statutory control set out in this paper, Registered Garden Consent and Registered Garden Permission, must be considered first attempts to conceptualise possible systems of control only, whose primary purpose is to act as a focus for debate. Much further work is required, both on the principles which would underlie any such a system and the detailed form it would take.

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