Protecting the natural and cultural heritage of local landscapes: Finding substance in law and legal decision making

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ARTICLE INFO

Keywords:
Law
Landscape
Land use planning
Natural heritage
Cultural heritage

ABSTRACT

Local landscapes enrich the lives of the communities that live and work within them by reflecting their natural and cultural heritage. This heritage emerges from the physical formation of landscape and its relationship with the heritage assets and sites within it, for example, historic buildings, wildlife and protected habitats. This paper seeks to explore how these values are given substance in law and legal decision making. It outlines the conceptual framework for the protection of local landscape values in England and then reflects upon the way in which they are identified in land use planning decisions. It does so by focusing on the narratives that emerge around these values in the reports of Planning Inspectors. Two case studies are used to illustrate the possible challenges that might be encountered in attempting to adopt local and holistic perspectives, and a broad interpretation of the heritage that lies in the local landscape. The paper concludes by considering a possible future research agenda, especially the means of appreciating the role and significance of law in a multi-disciplinary approach.

1. Introduction

‘Local landscapes’ bind communities, their history and culture, to the natural surroundings. Thus, the concepts of natural and cultural heritage are increasingly used to explain the significance of ‘local landscapes’. It is a central contention of this paper that there are inextricable connections between all aspects of ‘heritage’ relevant to the local landscape. This includes heritage assets, such as buildings, ancient monuments and wildlife; defined areas or sites within the landscape; and the ‘heritage’ inherent in its physical formation. The definition and value of cultural heritage has gained much academic attention, whilst natural heritage is a relatively unexplored concept. Nevertheless, both have increasingly been recognised as essential to the value of landscape which is itself a subject of extended intellectual debate of a multi-disciplinary nature. There remains, however, a lack of attention to the connections between the different aspects of ‘heritage’ relevant to the local landscape.

Lawyers are rarely included in the academic debate surrounding the natural and cultural heritage of landscape. Yet, law plays an essential role in providing substantive meaning to these concepts; not just in reflecting prevailing societal views, but in shaping those perceptions. Law from international sources also helps to frame normative understandings of these concepts. The European Landscape Convention (ELC) highlights the value of all landscape and identifies this with the...
concepts of natural and cultural heritage, whilst the World Heritage Convention (WHC) assists in considering how to define these terms and apply them to landscape. Nevertheless, these Conventions adopt a fragmented approach to heritage assets/sites, and that which is inherent in the physical formation of landscape. English law is also focused on the separate designation of landscapes, cultural heritage assets and wildlife; and these separate interests are viewed in narrow terms, i.e., by reference to aesthetic, historical/cultural and scientific value respectively.

Designations in English law identify only aspects of heritage and landscape that are of 'national significance'. 'Nationally significant' natural and cultural heritage can be important from a local perspective. For example, a prominent ancient monument can contribute to the formation of local culture whilst endangered wildlife, such as wetland birds, can viewed as part of both the natural and cultural heritage of that landscape. The natural beauty of landscape can also be significant to local people, notwithstanding its value to the nation as a whole. Nevertheless, there will undoubtedly be features and aspects of local significance. One way of recognising the 'local significance' of landscapes, heritage assets and specific sites and areas of local interest in the landscape, is to introduce formal systems of local designation. English law, however, provides little opportunity for this.

Land use planning law is relied upon to ensure the protection of the natural and cultural heritage relevant to the local landscape. Land use planning in England is focused on the local community interest and grants decision-makers broad discretion to consider a range of relevant issues which should facilitate a holistic perspective. Some constraint is, however, provided by laws on the designation of interests of 'national significance' and national planning policies. The way in which decision-makers identify the natural and cultural heritage values of the local landscape, in practice, is essential in providing substance to those values. This is explored in this paper with reference to the narratives that emerge around these issues in the reports of Planning Inspectors in recovered planning appeals on wind farm development.

Wind farm development often raises issues relevant to 'landscape protection'. A wealth of literature exists on wind farm planning. In general, this focuses on the parameters within which decision-makers operate in assessing the 'impact' of such development, its 'effects' and 'acceptability'. In contrast, this paper focuses on the narrative that emerges around the values of the local landscape as the decision-maker,

in these cases the Planning Inspector, establishes baseline evidence of the values of the local landscape to use in making these judgements. These narratives provide a lens through which to reflect upon the challenges that decision-makers may face in adopting local and holistic perspectives and a broad interpretation of these values. As the aim was not to draw any firm conclusions from these cases, two are chosen for illustrative purposes only.

The paper begins with an explanation of key aspects of the multi-disciplinary debate around the values of landscape and the way in which these are given substance in international convention and English law. It then outlines the framework for decision-making in land use planning in England, including the constraints provided by legal designations, land use planning policy and the necessity of rationality in decision-making. The main body of the paper focuses on the narratives that emerge in the two case studies and the way in which they highlight some issues that might require further research. The paper concludes by drawing together the issues raised in the paper to suggest a possible means of mapping out a future agenda for research. In doing so it pays particular attention the contribution that lawyers may make to the multi-disciplinary debate in this regard.

2. Defining natural and cultural heritage in landscape: academic debate and international convention

'Cultural heritage' is a notion that has attracted considerable academic attention; whilst natural heritage is a concept that has emerged more recently. Cultural heritage can be defined along a continuum from a narrow definition that focuses on 'tangible assets' to one that encompasses broader concerns. It was originally focused on buildings and ancient monuments, but it is now acknowledged to include 'intangible' aspects of cultural heritage including skills, knowledge, craft and beliefs. There is an extensive literature around the values of cultural heritage and a number of attempts have been made to create relevant typologies. For example, the statutory organisation responsible for heritage protection in England, has referred to these values as evidential, historical and communal.

Natural heritage is a concept that is still relatively unexplored, but is clearly related to traditional concerns to protect endangered flora and fauna. Natural heritage can be viewed from an entirely eco-centric perspective, but is equally of anthropocentric concern, most notably where it relates to an aesthetic perspective. An anthropocentric

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10 See discussion from n.29 onwards
11 See discussion from n. 45 onwards.
12 For further discussion of these key aspects of the system see further Stullworth M. Sustainability, Land Use and the Environment (Cavendish, 2002), 105 and 112.
13 A point made by Lee in her work on knowledge and landscape n 5 above, 4.
15 These two concepts are bound by the notion of ‘heritage’. This generally leads us to consider the importance of the ‘conservation’ of those aspects of nature and culture that we wish to hold on to. We can however, make temporal connections between the past and the future in considering the importance of this ‘heritage’ to future generations. On the legal questions in this regard see further Ross A and Zasiniate A ‘The Use of Presumptions and Duties in Sustainable Development Equations: Promoting Micro-Renewables and Preserving Historic Buildings’ (2017) Environmental Law Review 93–112. This perspective is particularly important in landscape given the dynamic nature and the significance of human intervention in their development.
18 See further Fredheim LH and Khalaf M ‘The significance of values: heritage value typologies re-examined’ (2016) 22(6) International Journal of Heritage Studies 466–481. This paper also discusses the significance of these ‘value-based’ approaches.
20 On the relationship between animal beauty and environmental protection see further Hettiger N ‘Animal Beauty, Ethics and Environmental Preservation’ (2010) 32(2) Environmental Ethics 115–134. On the importance of aesthetics to the value of landscape...
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