



BEFS WORKSHOP REPORT on the Scottish Historic Environment Policies (SHEP) consultation documents:

**Listing; the identification of Scotland's special buildings
Listed Building Consent**

... held at the MacDonald Rooms, Hanover Housing Association, Edinburgh on 22nd June 2007

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INTRODUCTION

As part of the Historic Scotland (HS) series of consultations on the Scottish Historic Environment Policy documents (SHEP), this BEFS/HS workshop was an opportunity for stakeholders to consider and comment on the two draft SHEP policy documents on Listing and Listed Building Consent. In addition to BEFS and HS representatives, the workshop was attended by 7 people representing 7 organisations - see appendix 1 attached.

The chair, Graham U'ren, a Director of BEFS, welcomed everyone to the workshop. Graham explained to those unfamiliar with BEFS that the Forum was established 5 years ago to promote a holistic view of the built environment encompassing the historic with the contemporary. He referred to the ongoing consultation process in relation to the series of SHEP documents produced by HS and BEFS involvement in the consultation process. He also referred to the wider context in which the SHEP reports could be considered. He made mention of the heritage legislation review currently taking place in England and the recent recommendation by HEACS to Scottish Ministers that a similar review to take place in Scotland.

On behalf of Historic Scotland, Gordon Barclay recognised the value of BEFS consultation workshops, which have provided the opportunity for helpful discussion, and where points of substance have been made which impact on the final policy documents. He outlined the origins of the SHEP series which had resulted from an internal review of HS in 2003-2004.

One of the HS key performance targets for this year is to launch four SHEPs for consultation and/or in final form. It is anticipated that SHEP 3 will be published soon and potentially the SHEPs on Scheduled Monument Consent and Properties in Care could be finalised by the end of the year. Gordon confirmed that a review of heritage protection legislation in Scotland was contained in the current government's manifesto commitment. The consultation for the Listing SHEP closes on 20th July 2007 and on 3rd August for the Listed Building Consent SHEP, after which an analysis of the responses will be compiled and published.

LISTING

Purpose and Context

Questioned about the status of the proposed SHEP, Historic Scotland confirmed that this section is included to remind the reader that the responsibility of listing lies with the Scottish Ministers under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. It was pointed out that there is a separate statute for scheduling under the terms of the Ancient Monuments and Archaeological Areas Act 1979. The SHEP series of documents have already replaced the Stirling Charter. The Memorandum of Guidance on Listed Buildings and Conservation Areas 1998 is being progressively superseded by the SHEPs and other documents. Historic Scotland clarified that the Scottish Planning Policy (SPP) and the Scottish Historic Environment Policy (SHEP) documents would have equal weight. It was felt that the relationship of the SHEPs to other policy could be made clearer.

It was explained by Historic Scotland that SPP23 on the historic environment was being written with full cognisance of the SHEP series. Planning Division, who held responsibility for the SPP, was considering how they could consult with the sector: Historic Scotland's Local Authority Historic Environment Forum and BEFS could have some involvement in this process.

Asked if the term historic buildings also include scheduled monuments, it was confirmed by Historic Scotland that only listed buildings were referred to as historic buildings, as clarified in the Historic Environment Audit. Historic Scotland explained that most listing pre-dates 1945 and is of traditional construction although conceded that there are many different opinions on this issue. It was agreed that further steps to eliminate the overlap of scheduling and listing would be desirable and that this could be addressed without a review of the heritage protection legislation. Meantime further policy guidance would be helpful. The SHEPs make explicit the legal situation, that where a structure is both scheduled and listed, parts of the listed building legislation are not applied.

The Legal and Administrative Context

It was pointed out by a participant that the note providing detail on the moving date parameter of 30 years referred to in para 3.2 was omitted within note 7. Clarity was sought on the 30 year understanding. It was explained by Historic Scotland that the rolling date of the 30 year understanding is an unofficial guide not intended to apply from the published date of the SHEP Listing publication but instead from any given date in the future, allowing for more buildings to become eligible each year. It was acknowledged by Historic Scotland that perhaps greater clarity was required in explaining this concept within note 7.

Question 1 – Do you have any comments on the criteria set out in Annex A?

It was confirmed that the criteria contained within Annex A are non-statutory guidance. The criteria have been re-drafted and expanded from the Memorandum. The most significant changes have been to expand on the age and rarity of a building and to define the historical association in a more appropriate form. The inclusion of setting within the Annex was welcomed by all.

The point was made by a participant that the categorisation system used within Scotland for listing is superior to the English one. In Scotland listing is graded according to local, national or regional importance. In England the system is far more complex.

It was also noted that the English system includes ***aesthetics*** as a consideration for listing. Historic Scotland responded that although the word aesthetic has not been used within Annex A, its significance is embedded within the criterion for Architectural interest - *Technological excellence or innovation, material or design quality*. It was suggested that aesthetics are a consideration applied to modern buildings and design amongst its users. In conclusion, Historic Scotland felt that the consideration of a building by aesthetics alone presented a more subjective view whereas the intention within Annex A was to be as objective as possible and to ensure aesthetics were defined in more immediate academic terms.

With regard to **public access to information** on listing, the point was made that very often listing is viewed as an elite subject matter and that not everybody understands its significance or the process by which a building is listed. It was hoped that Historic Scotland could overcome this by circulating widely relevant information.

Historic Scotland confirmed that welcome packs are provided in every newly listed building for owners or occupiers outlining the implications of residing in a listed property. It was suggested by a participant that perhaps the standard *statement of significance* relating to each building could be issued to the owners of each existing listing and given mention to it within the notes section of the SHEP Listing document. It was pointed out that an explanation on the subject's significance is now included in the Notes of every new and amended listing. It was confirmed by HS that for these to be prepared and issued to house owners a massive re-survey of existing properties would have to take place for which there are no resources at present. It was pointed out that statements of significance are used for the natural environment within the framework of European Directives. It was stressed that however that the term 'statement of significance' has been found to be compromised by its inflexibility, and HS therefore avoid using such a definition or approach in any field. Historic Scotland's adoption of an *explanatory note of merit* was received warmly.

There was also discussion about the significance of the **condition** of a building in the case for listing, and about *internal features*, which Historic Scotland stated were taken on their merits in each particular case. In response to a question concerning the **local importance** of a building Historic Scotland stated that it should be clear what its significance is within a locality. The Planning Authority was often the best judge of the case for listing on grounds of local significance. An advisory note is available within the Planning System offering guidance in this regard.

Mention was made by a participant of the importance of protecting the layout of conservation areas as much if not more than the buildings. Historic Scotland confirmed that conservation areas can form the basis for listing for group value, alternatively a group of listings be sought to promote a conservation area. It was thought that the designation of conservation areas is significant in dealing with issues of curtilage and setting. It was pointed out that NPG18 is to be replaced by SPP23, and the existing guidance on conservation areas might be expanded to deal with the rural settings in the historic environment. It was recognised that planning authorities do not have adequate resources to address these issues.

Question 2 – Would there be advantage in the creation of a Focus Panel to advise on themes in selection of subjects for listing designations? If yes, please say why.

It was suggested that expert panels could be appointed for particular specialist purposes when the need arises. The example was given of the end of the Cold War period and the subsequent interest in MOD buildings. There was discussion on the use of focus panels representing a particular local authority area or a group of local authorities. It was noted that Architectural Heritage Society of Scotland (AHSS) organises itself this way. Historic Scotland felt however that this was not a realistic way forward when HS was held accountable for decisions and quality control relating to listing. However in more general terms HS thought that a panel with stakeholder representation could be formed to agree

on objectives for the current year, suggesting priority themes for Historic Scotland to focus on.

Question 3 – Do you have any comments on the role of the local authorities in the listing process?

A local authority representative pointed out that there were simply not enough resources for a local authority planning service to take a pro-active stance in the listing process. Historic Scotland commented on the success of the current practice within Glasgow whereby the Local Authority has compiled a list of school buildings which were earmarked for demolition or upgrading. It was felt that this kind of forward planning was effective in ensuring that the listing process could be implemented within a realistic time frame when working with a City Council to upgrade their school building portfolio. It was pointed out that the above model could also be effective in determining the future use for church buildings, using disposal schedules and such resources as the Scottish Civic Trust's '1001 uses for redundant churches'. One local authority participant thought that HS should make a stronger invitation to Local Authorities to make suggestions for listing.

Historic Scotland thought that in some cases listed buildings were perceived as an obstacle by local authorities. It was hoped however that in time a national picture could be obtained by developing schemes similar to the collaborative work on schools with Glasgow City Council.

Question 4 - Do you have any suggestions as to how Historic Scotland might improve its current policy regarding restraint when there is a live application, notably the fact that we can only list when there is a Building Preservation Notice or the works are deemed to be minor?

There were no comments on this question although it seemed to relate well to the principle of closer working with local authorities.

Question 5 – Do you have any comments on the issue of Certificates of Immunity from listing?

It was agreed that the establishment of Certificates of Immunity in Scotland would significantly help the existing situation where local authorities are separately responsible for issuing Building Preservation Notices (BPN). It was felt that by establishing a procedure for Certificates of Immunity, local authorities would feel better supported than they currently do in relation to this area of planning consent and listing. It was suggested that Certificates of Immunity reinforced the erroneous perception that listing stopped change, and that therefore they should not be used. However it was pointed out that they have been welcomed in England where there is no suggestion of this effect, rather one of clarification and avoidance of later challenge and designation.

Question 6 – Do you have any comments on the use of Building Preservation Notices (BPN)?

A local authority participant felt that, in general, local authorities required greater confidence in their authority to issue BPNs. It was felt that the responsibility was an onerous one as the local authority was unsupported in its role, with Historic Scotland unable to become involved in the decision to issue a BPN on a building which is being considered for planning permission. Historic Scotland representatives were sympathetic but encouraged local authorities to use BPNs as an effective way of holding the situation which may or may not lead to listing. Historic Scotland indicated that they would not normally serve a listing on a live planning application. It was pointed out by a participant that the potential financial loss for a developer cannot be ignored.

Question 7 – Do you have any comments on the Scottish Ministers' policies?

In response to a question from the group it was confirmed by Historic Scotland that the area based Lists would be reviewed on a 5 yearly basis.

Question 8 – Are there any further matters which could usefully be addressed within this policy consultation?

In response to a question from the group on the equality impact assessment and its relationship to listing, Historic Scotland confirmed that Scottish Ministers and planning authorities must perform their functions under the Planning Etc. (Scotland) Act 2006 in a manner which encourages equal opportunities, although the provisions merely cross refer to existing statutes. It was confirmed by HS that with regard to access and listed buildings each building would be considered on its own merits. HS went on to say that the rights of individuals have to be balanced against the conservation requirements of the buildings. It was explained that on all Listed Building Consent Applications there is a requirement for an Access and Conservation Statement.

In answer to a question from the floor, HS commented that they were over half way through their **re-survey** of listing on landward areas and burghs and were working increasingly across thematics, with cinemas and canals and continuing with schools in Glasgow. Due to the labour intensiveness of re-survey, HS were reviewing the best way forward for the completion of this work; they had strong reservations for contracting out the work as had happened in the past in England and Northern Ireland.

LISTED BUILDING CONSENT

Purpose and Context

The chair then introduced the consideration of the draft SHEP on Listed Building Consent. He pointed out that the historic environment legislation review had raised the long standing issue of **combined consents** for planning and/or the historic environment. This possibility of combining consents however was still a long way off. Historic

Scotland confirmed that a draft SHEP specifically on Conservation Areas would be issued for consultation during 2008/2009.

The chair sought clarification from Historic Scotland regarding where the definition of 'What is covered by listing?' in Note 2 was taken from. Historic Scotland confirmed that, as in the SHEP Listing document, the Memorandum on Listed Buildings and Conservation Areas was expanded upon to better define the Note.

A workshop participant welcomed the paragraph 4.1 on **sustainable use and management** in the context of Listed Building Consent (LBC), and paragraph 4.6 on the 'sustainable life' of a building. Historic Scotland confirmed that it was hoped to strengthen the links between sustainability and regeneration through the LBC process.

In response to a question about Note 2 (b) and whether a **post-1948 object or structure** that is not fixed to a listed building, or which is within the curtilage of such a building, can be considered as listed, Historic Scotland confirmed it is not but it might be considered for listing in its own right - as has happened at Crathes Castle.

Historic Scotland pointed out that the planning authority is the sole judge of **curtilage** matters although it was felt that this was not widely known. A definition of curtilage has been derived from case law to assist in the handling of this subject. HS however had decided that it would not be appropriate to refer to the relevant case law in the SHEP guidance¹.

It was pointed out that in Note 2 (f), *When is Listed Building Consent required?*, that the word **development** should be added to works i.e. development and works, to cover both the circumstances of planning permission and of LBC. Historic Scotland felt that they did not want to too closely associate themselves with planning and development but rather give a clear indication of what works were deemed to be a requirement for LBC.

It was noted that in Note 2(g), details are given of the circumstances in which LBC is not required, but that 2(g) (iv) leaves an important judgement to the planning authority with regard to a **new free standing building** in the curtilage of a listed building which significantly affects the character of that building. Some further criteria for this might be considered. It was pointed out that the word 'material' is not referred to in regard to the effect of works to the character of a listed building unlike the definition of development in the Planning Act(s).

A workshop participant stated that reference to the special circumstances of **national parks** should be included within Note 2. In Note 2 (h), it was suggested that this be amended to read 'Applications for Listed Building Consent are determined by the **Planning Authority**, unless the Planning Authority is itself the applicant, in which case Historic Scotland would consider the proposal.' So, substitute the word local authority with planning authority.

¹ HS notes: A post-1948 addition (a physical extension) to a listed building is itself part of the listing. A pre-1948 building in the curtilage of a listed building is listed by association. (The extent of the listed building's curtilage is for the planning authority to decide.) A post-1948 building in the curtilage of a listed building is not automatically listed by association with the main listing.

Question 1 – Are these reasonable tests to set for applications for listed building consent for alterations? If not, why not?

It was confirmed by Historic Scotland that the presumption against development adversely affecting a listed building, in paragraph 4.3, is intended to be based on the provisions of the Town and Country Planning Acts and it was agreed that this statement should be checked for its source.²

The principles for statements of significance and best viable use, in paragraphs 4.5 and 4.6, were felt by workshop participants to be extremely valuable in the listed building consent process.

In paragraph 4.6, with regard to the **best viable use** of a building and the fact that it may not be the most profitable use, clarification was sought on what was meant in terms of viable. HS confirmed that 'viable' was used to describe the best purpose or use of a building within the needs and priorities set out in the Local Plan. As described in paragraph 4.6 '... the best viable use will require careful judgement, based on market awareness, technical knowledge and a proper understanding of the relative importance of the different aspects of the historic asset in question.'

It was felt by members that a standardisation of a LBC form would be most helpful in assessing applications. It was thought that HS could devise with Local Authorities, a form with accompanying notes, which would create a more efficient system. It was felt that by drawing up a standardised form, applicants could then be refused consideration if they were supplying insufficient information. At present the application does not define where the onus lies on supplying the information. It was felt that greater clarity was required especially within the demolition section of the application form.

Question 2 – Are these considerations the appropriate ones to be applied when considering an application for listed building consent? If not, then why not?

It was suggested that a general heading 'Alterations' should be used for the above section to draw a clear distinction from that on 'Demolitions' below.

² HS notes: Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, section 59(1): "In considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses".

Question 3 – Are these considerations the appropriate ones to be applied when considering applications for listed building consent for demolition? If not, then why not?

It was pointed out by Historic Scotland that the text had been further developed from the previous guidance with a view to improving on the definition of the crucial issue of what might constitute 'reasonable attempts' in the finding of suitable alternative uses.

Paragraph 4.11 was felt by one workshop participant to place too much of an onus on the Planning Authority.

Question 4 – Are there any other principles which Historic Scotland should adhere to when implementing Scottish Minister's policy on listed building consent? If so, then what should they be and why?

Within this area of the document workshop participants felt that it was vital to encourage early discussions wherever there are proposals for listed buildings to be incorporated within new developments. These might fall into the category for pre-application consultations under the planning reform provisions.

It was felt that 5.3 could be expanded and be more strongly worded in relation to the importance of setting issues in **enabling development cases**. Historic Scotland should indicate more clearly the kind of advice they can give to Planning Authorities in relation to both LBC and planning consent. The way in which the enabling development cross funded the listed building work requires to be considered in detail.

It was requested by a participant that perhaps a paragraph on Listed Building Consent and planning consent could be included within the policy document, perhaps in Annex A.

With regard to notification requirements, it was suggested that there should be more guidance on the nature and extent of supporting information that Ministers would expect with any cases notified to them.

Additional Information

It was felt by a workshop participant that there is a need to expand on disabled access.

Appendix 1: Attendance at the workshop and acknowledgements

Attendance

Participants:

Vicky Cairns, Policy Officer, the National Trust for Scotland

Richard Cartwright, Senior Planning Officer (Conservation) North Lanarkshire Council

Kitty Cruft, AHSS/Garden History Society

Janice Ford Moakler, Project Officer, Development and Regeneration Services, Glasgow City Council

John Gerard, Association for the Protection of Rural Scotland

Elizabeth Graham, Forth & Borders Group, AHSS

Rachel Haworth, Conservation Officer, Perth and Kinross Council

Historic Scotland:

Debbie Mays, Head of Listing

Gordon Barclay, Head of Policy

Ranald Macinnes, Principal Inspector

BEFS:

Fiona Binning, Administrative Assistant

Graham U'ren, a BEFS Director, and Chair for the workshop

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- Historic Scotland and their staff;
- the Chair of this consultation, Graham U'ren;
- and, Fiona Binning for the recording of the workshop.