

CHAPTER 18

The Relevance of Planning Evidence

18.1 Mrs Linge stated that her purpose was to set out HS's view of the relationship of SMC, LBC and planning consent in cases such as this; and to explain why listed buildings policy and procedures are not relevant, and only limited aspects of planning policy are of relevance to the Inquiry.

The Legislative and Policy Background

18.2 Mrs Linge stated that there are three principle Acts which are relevant, to greater or lesser degrees, to the protection of the historic environment. They perform separate functions and, although there are some overlaps, their provisions are not interchangeable. Their separate nature is reinforced by the Scottish Ministers decisions in this case. The separate purposes of these three Acts can be summarised as follows:

Town and Country Planning (Scotland) Act 1997

18.3 Referring to the objectives of the planning system as set out in paragraphs 3-4 of NPPG 1, Mrs Linge stated that the protection of the built (historic) environment is thus only one of three key objectives and many other material considerations which the planning system is required to weigh and balance in the decision making process. NPPG 5 confirms that archaeological matters are a material consideration in the planning system. Where works to monuments scheduled under the 1979 Act also constitute development under the *Town and Country Planning (Scotland) Act 1997*, an applicant requires to obtain both planning consent and SMC before he can proceed. NPPG 5, paragraph 17 gives guidance on the weight which should attach to the preservation of a SAM through the planning system.

Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

18.4 It was stated that this is a part of the Planning Acts and is fundamentally, though not exclusively, about the protection and control of works to historic buildings in use which cannot be protected through scheduling under the 1979 Act. From its inception to the present day the ancient monuments legislation precludes the scheduling of inhabited buildings. That was a source of criticism from the early 1900's. Rather than extend the remit of the ancient monuments legislation, separate legislation was introduced within the Planning Acts of 1946 and 1947 to address the protection of such structures through listing.

18.5 It was stated that there is some overlap between scheduling and listing and that is explained in paragraphs 1.24-1.26 of the *Memorandum of Guidance on Listed Buildings and Conservation Areas 1998*. The non-statutory principles of listing imply inclusion of "all buildings erected prior to 1840 which are of any quality, even if plain, and survive in anything like their original form (*Memorandum of Guidance*, para 1.8a). Some structures within that period in particular may be both scheduled and listed if they satisfy the criteria under both the ancient monuments and listed building legislation. Nevertheless in such cases it is clear from section 55 of the *Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997* that where works affect a building that is both listed and

scheduled, listed building consent is not required and matters will be determined under the 1979 Act.

Ancient Monuments and Archaeological Areas Act 1979

18.6 This legislation is quite separate from the Planning Acts and is the latest in a long series of ancient monuments legislation dating back to the first act of 1882 - the earliest British law for heritage protection. The preamble to the 1979 Act clarifies that its primary purpose is "... to make provision for investigation, preservation and recording of matters of archaeological or historical interest and (in connection therewith) for the regulation of operations or activities affecting such matters..." Its primary concern is the protection, management and control of works relating to a particularly significant class of monuments: those which are deemed to be of national importance and are designated, by Scottish Ministers, as SAMs.

18.7 The effect of scheduling is to require that certain works, defined in section 2, require the consent of the Scottish Ministers. Planning authorities must continue to determine planning applications which affect scheduled monuments, subject to referral to Scottish Ministers if required, but they have no role in the granting of SAM.

Implications for the Castle Tioram Scheduled Monument Consent Application.

18.8 Mrs Linge rehearsed the background to the applications to HC for planning permission and listed building consent, concluding that these "had been determined" and were not a matter for this Inquiry.

Scheduled Monument Consent

18.9 Mrs Linge stated that, the Scottish Ministers determined not to intervene in the planning consent after reaching their provisional view on SMC, and in the full knowledge that a public local inquiry was pending on that matter. It must be presumed that the Scottish Ministers are content with planning matters, except where they impinge on the matter of SMC since that is the sole issue which remains outstanding. Planning issues in their widest sense are not relevant to that issue, only those which overlap with the remit of the 1979 Act.

18.10 It was stated that the 1979 Act provides no specific guidance on what is material in considering whether or not to grant SMC, other than the monument's national importance. Unlike the Planning Acts, it includes no clear requirement to balance other interests, its sole concern relating to matters of conservation. The area of overlap between the planning and ancient monument legislation is thus confined to the conservation issues defined in the preamble to the 1979 Act.

18.11 Mrs Linge stated that HC accepts that this is the case. In his Report to the Planning Committee of 2 June 2000, the Director of Planning and Development states at para 2.3:

" The assessment of impact [on the SAM] is the responsibility firstly of the Scottish Ministers in respect of scheduled ancient monument procedures and will in any case be subject to extensive scrutiny at Public Local Inquiry. The council will make only one contribution among several on this. The assessment of the planning and listed

buildings applications here however must be made on a wider basket of policies throughout the development plan”

and, at para 7.3,

“The Scottish Ministers must provide an opportunity of an inquiry before determining whether or not to grant SMC. Therefore all the archaeological, historical, architectural and cultural significance implications affecting the SAM will be subject to PLI regardless of this planning consideration”.

Thus, in HS’s view, it is the range of issues identified in this last statement which are germane to the determination of SMC under the 1979 Act, not the much wider range of planning issues which have already been addressed in the determination of planning consent.

Implications for “DTZ Piedad Consulting 1999, Castle Tioram Planning Assessment”

18.12 Mrs Linge stated that the main body of evidence in this production, a planning policy review and planning appraisal, is of limited relevance to the matter of SMC. The determination of SMC applications are not dependent on the interpretation and assessment of policies within the development plan nor on the primary test set by section 25 of The Town and Country Planning (Scotland) Act 1979. Those are planning mechanisms which are not part of the 1979 Act. It was stated that, on that basis, only the following parts of Piedad’s planning assessment report are considered to be of relevance to the determination of the SMC application.

The Development Plan

The Highland Structure Plan 1999

18.13 It was stated that, following its approval, with Modifications, by Ministers in March 2001, this is now the adopted structure plan. Policy G6 had been curtailed as part of those Modifications and no longer includes the hierarchy set out in the Piedad Report, but it is of general relevance insofar as the general reference to the cultural heritage will subsume Castle Tioram. Policy BC1, although not quoted by Piedad, is more specific and presumably encompasses SAMs within the term “archaeological sites”. This is the most relevant policy in the structure plan in terms of the 1979 Act, although it does not specifically mention SAMs or the weight which attaches to their preservation.

18.14 HS accepts that some aspects of tourism and access may be part of the monument’s cultural significance (social value). However the promotion of tourism is not a primary purpose of the 1979 Act nor the reason why monuments are scheduled. The promotion of tourism and access need not be dependent upon the restoration of Tioram as a house.

The Lochaber Local Plan 1999

18.15 Policy 3.6.17 specifically includes Castle Tioram, though it places the stress wrongly on its A listing rather than its scheduled status. Since it is a site specific policy it is assumed that it applies to Castle Tioram even as a SAM. Policy 3.6.19 is a general presumption against development which would adversely affect the site and setting of SAMs (as well as other archaeological sites). It accords with national policy in *NPPG 5* and does relate to the principle purpose of the 1979 Act.

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18.16 Mrs Linge stated that, taken at face value, policy 5.2.28, encourages the restoration of Castle Tioram. There must be some doubt whether this is wholly within the council's power, given the monument's scheduled status and the requirement for SMC from Scottish Ministers. There is also some confusion over what "restoration" means in the context of this policy. The report by the Director of Planning Highland Council to the Special Meeting of the Planning Committee of 2 June 2000 (HC1) indicates, at 5.10, that:

"the term restoration as used in policy 5.2.28 was defined to mean that set out in the *Burra Charter* ... Restoration means returning the existing fabric of a place to a known earlier state by removing accretions or by reassembling existing components without introducing new material".

This definition is particularly significant because the applicant has selected the *Burra Charter* as the procedural basis for his application.

National Planning Policy Guidelines

18.17 Mrs Linge stated that NPPGs provide policy guidance, essentially to planners, in terms of the planning legislation and as such are not directly relevant to the 1979 Act. However HS would accept that those NPPGs which focus on the treatment of the historic environment are of relevance, particularly where they provide specific guidance on SAMs.

NPPG 5, Archaeology and Planning

18.18 Mrs Linge stated that parts of *NPPG 5* will be relevant. Referring to Paragraph 31 she noted that this is a general policy which refers to the archaeological heritage in general. The best possible treatment, and whether development can be accommodated, will depend on the status of the monument and the weight which attaches to its preservation. For SAMs that weight is particularly high.

NPPG 18, Planning and the Historic Environment

18.19 Mrs Linge stated that this is of less direct relevance although its title is "the historic environment", and that is defined in para 1 to include ancient monuments and archaeological sites. Drawing on paragraph 2, she contended that *NPPG 5* and *NPPG 18* are designed to be complementary, and policies in one do not necessarily apply to the subject matter of the other. *NPPG 18* contains only two specific references to SAMs and that guidance simply repeats what is already in *NPPG 5*, para 22.

18.20 It was stated that the guidance in *NPPG 18* must be interpreted in the context of the listed buildings legislation. That is primarily about the control of works to buildings in use which cannot be protected under the ancient monuments legislation. The stress in the guidance is therefore on retaining buildings in use and finding alternative uses for redundant buildings. These are not primary concerns of the 1979 Act or of SAM policy. As Castle Tioram is a SAM and the current Inquiry is into consent under the 1979 Act, the listed building legislation, and by extension, its policy guidance are not relevant.

18.21 In para 22 of *NPPG 18*, the concept of "best viable use" is couched in terms of planning permission and listed building consent. There is no reference to SMC. Even within those specific parameters, the policy does accept that "not all historic buildings can be readily adapted to serve new uses..." and the box opposite indicates that "the best viable use

may not necessarily be the most profitable use". For SAMs those two statements are particularly true. It was stated that the point is well made in the specific caveat in the *BS 7913: 1998*, paragraph 6.3.1.

18.22 Mrs Linge stated that paragraph 57 of *NPPG 18* is not relevant to the Castle Tioram application inasmuch as it deals with the concept of "enabling development". Enabling development implies the need for cross subsidy funding from related new development (e.g. housing in the grounds of a large listed building) to fund the restoration of the heritage asset. That is not the case at Tioram.

Planning Advice Notes

18.23 Mrs Linge stated that only *PAN 42*, is of any relevance, and only in general terms. It is designed to support *NPPG 5* and provide advice on good practice "on the handling of archaeological matters within the planning process". It also includes a separate, descriptive section on SAMs and SMC.

Other Material Considerations

18.24 It was stated that as "a statement of government policy in relation to listed buildings and designed landscapes", the *Memorandum of Guidance on Listed Buildings and Conservation Areas 1998* is not relevant to issues of SMC and is thus irrelevant to the present case. The only reference to SAMs within the Memorandum are those which simply confirm the relationship of SMC to listed building consent. HS accepts that the *Stirling Charter* and the *Burra Charter* are of direct relevance.

1999 Castle Tioram Planning Assessment

18.25 Mrs Linge stated that HS accepts that the following parts of the *Castle Tioram Planning Assessment* are, to a greater or lesser extent, of some relevance to SMC issues:

- Para 4.6, The Importance of the Role of the Castle and Island as a Tourist Asset.
- Para 4.10, Support for Cultural Development
- Paras 4.12-13, A Form of Sustainable Development
- Paras 4.17-25, Landscape Setting
- Paras 4.26-28, 4.30-4.33 Impact upon a Scheduled Monument (para 4.29 is excluded as it is based on listed building guidance)

However, the analysis is in terms of planning policy and compliance with the development plan, which are matters not germane to the determination of SMC. Mrs Linge stated that the policies and procedures relating to the limited listed building application and planning application, have limited relevance to the determination of SMC under the 1979 Act, but accepted there is an area of common ground in conservation policy which applies directly to the protection and management of SAMs. Given the national status of SAMs, such policy considerations require to be of national or international weight, and the determination should be found on national issues.