

CHAPTER 24

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

24.1 I have found (in the absence of detailed guidance in the 1979 Act, subordinate legislation under the Act, and government policy statements or guidance under specific reference to the Act as to how the control of intervention with a SAM is to be exercised), that significant weight should be attached to the guidance contained in the international charters referred to in evidence and to the *Stirling Charter*. I therefore consider that it is appropriate to assess the application for SMC, in the first instance, against the provisions of the *Burra Charter* which provided the background to the preparation of the proposals, and the *Stirling Charter*, and to further examine my conclusions by drawing upon the other charters and documents referred to in evidence.

The Statement of Cultural Significance

24.2 The commentary to Article 2 in the *Illustrated Burra Charter* advises that cultural significance (aesthetic, historic, scientific or social value for past, present or future generations) should be retained in whatever way this can be appropriately achieved. Articles 5 and 6 respectively seek to avoid unwarranted emphasis on one aspect of cultural significance at the expense of another, and emphasise the need to understand the cultural significance of the place. I have found that while the *Statement of Cultural Significance* is backed by a significant volume of research material, it is not structured and presented in a manner which allows easy comparison with the expectations of such a statement as set out in *The Guidelines to the Burra Charter: Cultural Significance*. I have found that some aspects of the monument's cultural significance, which are of potential importance, are inadequately addressed. I have found that the statement should be given limited weight. I therefore **conclude** that it does not provide the necessary background to inform any conservation strategy and to ensure conformity with Articles 2, 5, 6, 11 and 17 of the *Burra Charter*. I also **conclude** that to proceed on such a basis would not safeguard the intention set out in Article 3, or the aim set out in Article 9 of the *Venice Charter*.

24.3 In consideration of the *Stirling Charter*, the frailties which I have identified in the *Statement of Cultural Significance* have led me to **conclude** that the proposal does not comply with Articles 5.1 and 5.2. I also **conclude** that the assessment of historical and cultural significance considered to be essential in paragraph 2.7 of *The Conservation of Architectural Ancient Monuments in Scotland* has not been fully provided.

The Conservation Strategy

24.4 Article 2 of the *Burra Charter* seeks to retain the cultural significance of a place. Inasmuch as the cultural significance of the place has not been identified with any certainty, I also conclude that the *Conservation Strategy* which purports to flow therefrom cannot be said to comply with Article 2.

24.5 I have found that the provisions of the 1979 Act are consistent with principles of minimal intervention. "Preservation" is defined in the *Burra Charter*, where the thrust is

the maintenance of the fabric of a place in its existing state and retarding deterioration. It is also defined in the *Stirling Charter* and in *BS 7913: 1998* where the thrust is the state of survival of the building whether by historical accident or through a combination of protection and active conservation. Each of these documents, along with *The Conservation of Architectural Ancient Monuments in Scotland* espouses the principle of minimum intervention for the monument's preservation.

24.6 Allowing my conclusions on the *Statement of Cultural Significance*, the question arises as to whether the *Conservation Strategy*, and the *Technical Strategy* and the proposed uses of the monument and proposals for maintenance which flow therefrom, represent the minimum level of intervention necessary for the monument's preservation. I have found that:

- consolidation of the structure is required to secure the future preservation of the monument;
- the structure is inherently strong and the reintroduction of floors and roofs is not essential to secure its future stability;
- the more selective approach to consolidation, as described by Mr Ruddock, is appropriate to the task of preservation;
- re-roofing would represent a benefit to internal walls, but any benefit which might accrue would be limited, the external walls of roofed buildings being likely to be susceptible to greater water attack;
- an on-site custodian would not be "very much more beneficial" from the point of view of maintenance management;
- the castle presently has a use consistent with paragraph 6.3.1 of *BS7913: 1998*;
- future risk of further loss and ruination (of original material) would not be so dissimilar as to necessitate a distinction to be drawn between the two approaches (restoration or consolidation), either on the grounds of the loss of material or the financial implications;
- the archaeological problems to be addressed at locations adjacent to the building are common to consolidation and reconstruction.
- if the castle is consolidated and interpreted for the public in the manner adopted by HS at other of its monument sites, at least a similar level of understanding would be conveyed.

24.7 Drawing these elements together, I **conclude** that the proposals, which would involve not only the consolidation, but the reconstruction and adaptation of the castle, are not supported by the provisions of the 1979 Act which are consistent with principles of minimal intervention. They are also contrary to the advice contained in the *Burra Charter (Articles 3 and 18)*, *The Stirling Charter (Introduction)*, *BS 7913: 1998 (para. 7.3.2.1)* and *The Conservation of Architectural Ancient Monuments in Scotland (paras. 2.1, 2.2 and 2.5)*. They do not represent the minimum level of intervention necessary for the monument's preservation. In arriving at that conclusion, I have had regard also to the definitions of "restoration" as set out in the *Burra and Stirling Charters*. I have reviewed government policy as set out in paragraphs 17 and 18 of *NPPG 5*, and have concluded that the proposals would not preserve the remains *in situ*. I have also reviewed the guidance contained within the *Venice and Lausanne Charters* and am of the view that the proposals draw no support from these such as would alter my conclusion.

24.8 I **conclude** also that the proposal to reconstruct is further compromised, in terms of the *Burra* and *Stirling* Charters, by the following findings:

- the element of conjecture (in reconstruction) is likely to be material;
- by adopting a primacy date of c1650 the applicant has placed considerable emphasis on that date at the expense of the rest of the building's history;
- having adopted a primacy date of c1650, the reconstruction proposals are not always true to that intention;
- the proposals for reconstructing the castle would, if implemented, produce a building which does not reflect any known historic form;
- the partial presentation, at limited times, of a reconstructed castle, that would be in part conjectural and therefore potentially misleading, would be likely to misinform the public;
- it would be highly improbable in practice that roofs, plaster and harl would be removed at some future date in the pursuit of scholarship.

(Articles 1.8, 2, 5, 11, 17 and 19 of the *Burra Charter*; the Introduction to and Article 5.2 of the *Stirling Charter*; and also Articles 9 and 15 of the *Venice Charter*; paragraphs 2.13, 2.14, 16.2, 16.6 of *The Conservation of Architectural Ancient Monuments in Scotland* and paragraph 7.3.2.1 of *BS 7913: 1998*)

Archaeology

24.9 I have found that:

- the adoption of the applicant's conservation strategy for the castle would not require a comprehensive approach to archaeological investigation embracing the whole island;
- a balance has to be established between the amount that is essential to allow the placement of scaffold footings, and that which would generate meaningful results;
- the more comprehensive, research led archaeological strategy would leave little archaeology on the island for future generations.

24.10 The comprehensive approach to excavation does not appear to me to represent "the least possible physical intervention" as required by Article 3 of the *Burra Charter*. Article 5 of the *Lausanne Charter* allows that "in exceptional cases, unthreatened sites may be excavated to elucidate research problems or to interpret them more effectively for the purpose of presenting them to the public". I have not found the application to be "exceptional" in terms such as would support the near archaeological sterilisation of the site. Having regard also to the provision in Article 5 that excavation "should be partial, leaving a portion undisturbed for future research", I conclude that, on balance, the comprehensive approach does not draw support from the *Lausanne Charter*. Government policy, as expressed in paragraph 17 of *NPPG 5*, states that "Scheduled Ancient Monuments are of national importance and it is particularly important that they are preserved in situ..." and paragraph 18 states a preference for the preservation of remains in situ other than in circumstances where that is not possible. I therefore conclude that the comprehensive approach to excavation preferred by the applicant would be contrary to *NPPG 5*. Paragraph 2.1 of *The Conservation of Architectural Ancient Monuments in Scotland* states that "one of the chief aims of the ancient monuments legislation is to ensure that the most important surviving evidence for our built heritage is preserved as far as possible in the state in which it

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has come down to us...". Paragraph 2.2 states that it is "particularly important that works of conservation involve minimal disturbance to both the monuments themselves and to their wider contexts".

24.11 The inquiry was advised that either of the two options (protect remains in-situ wherever possible or a wider research led programme of archaeological investigation) would be acceptable to the applicant. While I conclude, on balance, that the wider, research led programme is not justified, I also conclude that this consideration does not of itself justify the refusal of the application for SMC. It was submitted on behalf of HS, and I accept in principle, that it would be possible to grant consent for the archaeological research proposals alone. I am however of the opinion that the proposals are so integrated and complex that it would not be practicable, on the basis of the available information, to isolate that element from the reconstruction proposals for that purpose.

Support for the application

24.12 I have found that:

- the application is widely supported by the present day Clanranald;
- the guest book (as a measure of world wide support) is unreliable;
- arrangements for limited access as provided for in the draft Section 75 Agreement, have support in evidence;
- although the basis is uncertain, the application has support in the local community; and
- the application is supported by HC.

The *Burra Charter* aims to provide guidance in respect of locally, regionally and nationally important sites. While weight is given to consulting with "indigenous peoples" (aboriginal peoples in the case of Burra), this consideration requires to be weighed against the status of the monument under the 1979 Act; i.e. as a monument of national importance, and against other findings made in relation to government and international guidance. It was submitted on behalf of the applicant that "conservation decisions should, where the opportunity arises, and the appropriate standards are fully met, be in the interests of the nation as a whole in all respects". Notwithstanding local economic benefits and the support for the application identified above, I conclude that the application should not be considered to be in the interests of the nation as a whole in all respects.

Overall Conclusion

24.13 Drawing these conclusions together, and having had regard to all of the matters contained in evidence to the inquiry, in written submissions and observed by me at inspections of the site, my overall conclusion is that the application would not secure the preservation of the ancient monument as required by the 1979 Act, nor would it, on balance, comply with the terms of government policy as set out in NPPG 5, or the advice and guidance contained in government publications and international charters. I have not identified, in the evidence before me, any matters of national importance, such as would lead me to conclude that the preservation of the SAM should be set aside in favour of reconstruction.

Recommendations

24.14 Accordingly, I **recommend** that the application for Scheduled Monument Consent ref. AMH 955/1/1 be refused. If Scottish Ministers are minded to approve the application, I **recommend** that an intentions letter be issued with a view to allowing the Scottish Ministers and the applicant to conclude an agreement under Section 17 of the Ancient Monuments and Archaeological Areas Act 1979, in order to ensure that any works commenced by the applicant are completed and that funding is available so to do.

Conditions

24.15 HS and the applicant each submitted a list of conditions which they suggested should attach to any grant of consent should Scottish Ministers be so minded. I consider that Circular 4/1998, The Use of Conditions in Planning Permissions, provides a useful guide. That suggests that conditions should only be imposed where they are necessary, relevant to the operations or activities to be carried out, enforceable, precise and reasonable in all other respects. I have reviewed the draft conditions recommended by the applicant and have concluded that condition 1 is unnecessary and superfluous inasmuch the documentation, including drawings, which comprises the application should/would be itemised and docketed in the formal grant of consent. There appears to be a large measure of agreement between the applicant and HS in respect of conditions HS1, HS2, HS5 and HS7.

24.16 I have considered the representations made in respect of HS3 (AC2) and can accept that circumstances could well arise in terms, for example, of the volume of material to be considered, when a four week period for consideration would be inadequate. While I do not consider the elements of conditions AC7 and AC8 to be inappropriate for their terms, I can also accept, as argued by HS, that there is potential for items to be left out. Indeed, details of plaster finishes, some timberwork, decoration, scaffolding and landscaping including courtyard treatment are still not covered in the applicant's consolidated conditions. With regard to HS3, I also consider that the works to be subject of approval should relate to the phasing agreed under HS1(a) (which I have assumed would be those phases incorporated for funding in any Section 17 Agreement under the 1979 Act). I agree that commencement of works should relate to the approval of details, not their submission (HS4). I have therefore proposed re-wording to cover these matters.

24.17 I consider that HS6 should be adjusted, as suggested by HS, to incorporate the provisions of AC10. It was stated in submissions that Scottish Ministers would not be party to a Section 75 Agreement under the 1997 planning Act and I accept that an Agreement under Section 17 of the 1979 Act would be an appropriate vehicle. This should not be incorporated as a condition, but the requirement as described by HS should, as suggested by the applicant, be intimated in an "intentions letter". Condition HS8 is therefore not required. I agree that AC9 could be incorporated in a method statement (outline method of undertaking particularly sensitive sections of the work) for working practice.

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24.18 If Ministers are minded to approve the application, I recommend that the list of conditions as set out at Appendix 3C be attached to any grant of SMC.

I have the honour to be
your obedient servant



DGB DUNCAN
Reporter

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