

**Consultation on the Implementation of the
Removal of the Duty of Planning Authorities to
Notify Historic Scotland
on Certain Types of
Listed Building Consent Application**



**Consultation Report
25 June 2009
CRES Ref: Con1158**

Table of Contents

Section 1: Executive Summary	3
Section 2: Purpose of the Consultation	4
Section 3: The Consultation Process	5
Section 4: Consultation Questions	9
Section 5: How the pilot was designed and operated	11
Section 6: Review of the Pilot	16
Section 7: Issues and Conclusions	20
Section 8: Appendices	22

Section 1: Executive Summary

1. Historic Scotland is pleased to announce the results of this Pilot Project which is designed to improve the way Scotland's historic environment is managed. The pilot is part of Historic Scotland's commitment to improve its partnership with planning authorities and to deliver a better service to all its customers.
2. The proposal to implement the removal of the duty of planning authorities to notify Historic Scotland on certain types of listed building consent application is in line with the [Scottish Historic Environment Policy](#) (SHEP). It will not result in a change in policy, but rather introduces the potential to change current working procedures between Historic Scotland and individual planning authorities.
3. The aim of the pilot was to explore whether it would be possible to protect the historic environment and deliver decisions more quickly to applicants. All of those involved were clear that this should not place an added burden on planning authorities.
4. The pilot ran between 1 October and 31 December 2008 and involved Perth & Kinross, the City of Edinburgh and Glasgow City Councils. Its aim was to explore whether removing the duty to notify Scottish Ministers on more straightforward types of listed building consent application for B-listed buildings would speed up decision-making without impacting on the quality of the decisions made.
5. The four organisations involved have reviewed the pilot, and have concluded that its aim was achieved. Typically, consents for applications determined under the pilot were issued more quickly and in line with policy.
6. In Glasgow and Edinburgh 107 cases were validated under the pilot. 94% of these cases have been determined. On average pilot applications were determined 27 days more quickly than non-pilot category B cases. Just over half of the pilot cases were determined within eight weeks. During the pilot period 39% of all listed building consent cases were determined within eight weeks, compared with only 13.5% in the equivalent period in 2007.
7. If implemented, planning authorities who want to take advantage of the new arrangements will sign a Joint Working Agreement with Historic Scotland, have access to appropriate advice and have the necessary policies, processes and monitoring arrangements in place.

Section 2: Purpose of the Consultation

Historic Scotland is carrying out a consultation on the implementation of the removal of the duty to notify Historic Scotland on certain types of listed building consent for a number of reasons:

- To seek views on whether and how Historic Scotland should take forward the removal of the duty to notify Scottish Ministers on certain types of listed building consent application, as tested by the pilot;
- To explain how the removal of the duty to notify pilot was designed, implemented and reviewed and set out its conclusions; and
- To seek views on a number of specific questions to inform the design of any future scheme should it be taken forward.

Section 3 outlines the consultation process. In addition to any general comments on how Scottish Ministers should implement Section 55(2) of the Planning Etc. (Scotland) Act 2006, it would be helpful if respondents would consider the questions in **Section 4**.

Section 3: The Consultation Process

Introduction

This consultation on the implementation of the removal of the duty of planning authorities to Notify Historic Scotland on certain types of listed building consent application sets out how the pilot was conceived, administered and reviewed. It invites views on the pilot and its findings and in what form it might be offered to all planning authorities in the future.

Responding to this consultation paper

We are inviting written responses to this consultation paper by 25 September 2009. **Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:**

Victoria.Murray@scotland.gsi.gov.uk

or

Victoria Murray
Historic Scotland
Longmore House (G55D)
Salisbury Place
EDINBURGH
EH9 1SH

If you have any queries contact Victoria Murray on 0131-668-8931.

This consultation can be viewed online on the consultation web pages of Historic Scotland at www.historic-scotland.gov.uk/currentconsultations. The consultation, and all other Scottish Government consultation exercises, can also be accessed online from www.scotland.gov.uk/consultations. Printed copies of the consultation can be obtained from Historic Scotland's head office at the address given above. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government now has an email alert system for consultations (**SEconsult**: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form**, which is attached to the covering letter, which can be downloaded from the Historic Scotland Website, as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

You should be aware that Historic Scotland, as an agency of the Scottish Government, is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and, whatever the wishes of the respondent, would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

If you have given permission for your response to be made public (see the attached Respondent Information Form), and after we have checked that it contains no potentially defamatory material, it will be made available to the public in the Scottish Government Library by 23 October 2009 and on the Historic Scotland consultation web page by 30 October 2009. You can make arrangements to view responses by contacting the SG Library on 0131 244 4565. Responses can be copied and sent to you, but a charge may be made for this service.

Following the closing date, all responses will be analysed and considered along with any other available evidence. We aim to issue an analysis report on this consultation process by 18 December 2009 and will reach a decision on whether and in what form to offer any future scheme to all of Scotland's planning authorities as soon as possible.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Victoria Murray as detailed above.

Consultation

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses¹. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (F Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g., analysis of response reports) can be accessed at: [Scottish Government consultations](http://www.scotland.gov.uk/consultations) (<http://www.scotland.gov.uk/consultations>). Those related to Historic Scotland can also be found on the agency's website (www.historic-scotland.gov.uk/consultations).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

¹ <http://www.scotland.gov.uk/consultations>

Regulatory Impact Assessment

The pilot and any associated future scheme will set out how Scottish Ministers propose to use their powers as set out in section 55(2) of the Planning etc. (Scotland) Act 2006 which amended section 13 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997. It is therefore not necessary to carry out a further regulatory impact assessment.

Equality Impact Assessment

Historic Scotland considers it unlikely that removing the duty to notify Scottish Ministers on certain types of applications for listed building consent would have significant equalities impacts, but invites views on the proposed amendments in that regard. We would also welcome any information which may assist us with an assessment. In your response it would be helpful to know what you consider the equality issues to be.

Strategic Environmental Assessment

Historic Scotland has applied the criteria specified in Schedule 2 of the Environmental Assessment (Scotland) 2005 Act to the plan to extend the Removal of the Duty to Notify. We have determined that the plan is exempt from Strategic Environmental Assessment (SEA) under Section 7(1) and have notified the Consultation Authorities through the submission of a pre-screening report to the SEA Gateway.

Section 4: Consultation Questions

Background

1. In what capacity are you involved, or have you previously been involved, with the listed building consent process (e.g. applicant, agent, amenity body, planner, etc)?

Entry criteria

2. What criteria do you think a planning authority should meet in order to qualify for taking on sole responsibility for determining listed building consent applications and what resources do you think may be involved?
3. Do you agree with the criteria proposed following the pilot?
4. It is Scottish Ministers' view that planning authority policies should be in line with national policy before they take on responsibility for determining applications. Do you agree? If not please explain why.

Scope of application types included

5. Do you think the scope of applications identified in Schedule 1 is appropriate?
Please explain your answer. It would be helpful if you could consider whether:
 - anything else be included/omitted?
 - schedule 1 be extended to include category A-listed buildings?
 - schedule 1 be determined by exception rather than inclusion?

Monitoring the scheme

6. Do you think the method of monitoring planning authorities' decisions during the pilot was effective?
7. Do you think that planning authorities' decisions should be monitored as part of any future scheme?
Please explain why/why not.
8. Do you think there are other ways which the monitoring could be done? If yes then how? It would be useful if you could consider:
 - who should carry out the monitoring?
 - should all cases be monitored or just a sample?
 - how frequently should monitoring information be submitted?
 - if a sample of cases are monitored how should the samples be selected?
 - what would be good measures of success, i.e. what kind of information should be submitted for monitoring?

9. Do you think monitoring information for planning authority decisions on C(S)-listed buildings should also be included?
Please explain why/why not?

Review

10. How regularly do you think a planning authority's overall performance should be reviewed and how do you think this should be carried out?
11. Do you think there are any issues that might lead to the withdrawal of the ability of planning authorities to determine applications without notifying Scottish Ministers?

General

12. Do you support the principle of giving planning authorities sole responsibility to issue listed building consent for more straightforward applications?
Please explain your answer.

Section 5: How the pilot was designed and operated

Introduction

1. The Scottish Government recognises that Scotland's planning system is a key mechanism for the delivery of sustainable economic growth. To achieve this decision making should wherever possible be made efficiently, at a local level and within a clear policy framework.
2. In this context Historic Scotland has been reviewing the role it plays within the planning system. By doing this the agency can ensure that its advice is clear and delivered in such a way that it can add value to the planning process.
3. At present planning authorities must notify Historic Scotland, on behalf of Scottish Ministers, if they are minded to approve listed building consent for category A and B-listed buildings and the demolition of category C(S)-listed buildings before they can issue consent. Scottish Ministers then have 28 days to decide whether they wish to call the application in for their own determination.
4. Historic Scotland recognises that many planning authorities have the skills and expertise required to handle certain listed building consent applications without involving Historic Scotland. A reasonable proportion of the formal notifications received by Historic Scotland is returned to the authority without comment, suggesting that the authority has reached an appropriate decision without Historic Scotland's input. In order to explore this further, the agency ran a pilot with Perth & Kinross, Glasgow City and the City of Edinburgh Councils, which removed their duty to notify Historic Scotland, on behalf of Scottish Ministers, on certain types of listed building consent.
5. The aim of the pilot was to explore whether removing the 28-day notification period for straightforward application types relating to category B-listed buildings would speed up decision-making without reducing the quality of decisions. In addition to improving determination times, this new way of working - if successful- would free up some of Historic Scotland's time currently spent processing applications where it adds little value, to provide more advice on development planning, individual cases which raise particularly complex or significant issues, and on skills and capacity building with local authorities.
6. The purpose of exploring removing the duty to notify for certain types of application was not because Historic Scotland considered these applications to be unimportant. Instead, the agency wanted to explore whether the pilot authorities had the appropriate skills and policies in

place to determine certain types of listed building consent without its involvement and it was the purpose of the pilot scheme to test this in practice.

7. The pilot tested how such a system might work and explored how it could be monitored and reviewed, in order to ensure that appropriate decisions continued to be taken in line with policy in the longer term.

Legislative Context

8. On 1 June 2008 section 55(2) of the Planning etc. (Scotland) Act 2006 came into force. This section amended section 13 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997. As a result, it is now possible for Historic Scotland, on behalf of Scottish Ministers, to direct that certain planning authorities can determine listed building consent for certain works without first notifying the agency.
9. Historic Scotland can give a planning authority permission to stop notifying it under the 1997 Act by issuing a Direction. This direction can also be withdrawn.
10. For the pilot project, Historic Scotland issued each of the three pilot planning authorities with The Listed Buildings And Conservation Areas (Removal Of Duty To Notify)(Scotland) Direction 2008 (see [Appendix 1](#)). At the end of the pilot this direction was revoked (see [Appendix 2](#)).

Timing

11. Scottish Ministers are determined that Scotland's planning system should be reformed as quickly as possible. Historic Scotland decided therefore that the pilot should be completed by April 2009. This included gathering information on the applications themselves, monitoring of the applications as they were determined, and the review of the pilot as a whole.
12. The pilot ran from 1 October-31 December 2008, and involved all applications which fell within the scope of Schedule 1 of the Direction and were validated between these dates.

Selection of the Pilot Authorities

13. The three pilot authorities were selected because they had previously indicated to Historic Scotland that they would be interested in taking on greater responsibility for determining listed building consent applications. They were also in a position to work within the pilot's tight timescale.
14. Whilst the three pilot authorities did have conservation expertise in place, this was not the primary reason for their selection.

15. It was recognised that given the short timescale for the pilot, the two city authorities would ensure that a reasonable sample of cases were submitted during the pilot period, whilst Perth & Kinross Council would provide the perspective of a smaller authority.

Design of the Pilot

16. During the six months prior to October 2008, Historic Scotland and the three pilot authorities met regularly to agree how the pilot should work in practice.
17. At these meetings the procedures for running the pilot, the types of applications which were included in Schedule 1 of the Direction and the content and format of the monitoring information were agreed.

Pilot administration

18. Each pilot authority had a lead officer. Glasgow City Council appointed a dedicated planning technician to co-ordinate the pilot with the lead officer. The lead officers for the City of Edinburgh and Perth & Kinross carried out their administration. Historic Scotland had two lead officers who worked with the Inspectorate's listed building consent administration team.

Operation of the Pilot

19. It was agreed that the pilot authorities would decide which applications fell within Schedule 1 and then determine them without any reference to Historic Scotland. This approach was chosen as it would be the fastest and would reflect Scottish Ministers' desire for local decision making. In order to ensure that this ran smoothly it was vital that the types of work identified in Schedule 1 were clear and not open to interpretation. [Appendix 3](#) sets out the process worked.
20. Once the Direction had been issued, the pilot ran according to Terms of Reference which set out what was required of the pilot authorities and Historic Scotland. See [Appendix 4](#).
21. On receipt of a valid application, the pilot authorities decided whether it fell within the scope of the pilot according to the agreed Schedule 1. Each week between 1 October and 31 December 2008 the pilot authorities sent Historic Scotland a list of the applications which they had validated under the pilot.
22. Applications which fell within Schedule 1 were determined without any reference to Historic Scotland. The agency could not change the planning authority's decision once the case had been determined.

23. Once the planning authority had determined the application and issued their decision, they sent Historic Scotland a pack of information (either in electronic or hard copy) which included the completed monitoring pro forma (Schedule 2), so that the agency could monitor and review the process and decision.
24. The three pilot authorities each had in-house conservation expertise. However, the procedures for processing listed building consent applications differed. In Glasgow City and Perth & Kinross Councils listed building consent applications are handled by planning officers with advice from conservation staff, whilst in the City of Edinburgh Council their listed building team handles applications, writes committee reports and decision notices.

Schedule 1: Working out the scope of the pilot

25. The pilot authorities agreed, in discussion with Historic Scotland, the types of applications where they felt the agency added the most value, and those which they were comfortable determining without its input.
26. It was agreed that the pilot would cover more straightforward application types relating to category B-listed buildings only. The list of application types was extensive (see Schedule 1 in [Appendix 1](#)), but did not include works such as façade retention, breaking through the floor plate (for example by inserting a lift or a stair) and large extensions.
27. As each pilot authority was issued with an individual Direction, there was scope for Schedule 1 to differ according to their level of confidence, however the three pilot authorities were comfortable with the same schedule.

Schedule 2: Working out what monitoring information was required

28. Monitoring the pilot was vital for a number of reasons:
 - In order to ensure that the current quality of decision-making was maintained, and ideally improved;
 - To examine the process used by the authorities to determine listed building consent applications;
 - To ensure consistency within and between authorities;
 - To review success of the pilot; and
 - In the longer term, to work out a process which enabled Historic Scotland to ensure that a planning authority continues to meet the criteria, and if not to withdraw the right to determine listed building consent applications without notifying Scottish Ministers.
29. The type of information needed in order to meet these aims, see Schedule 2 of [Appendix 1](#), was agreed by Historic Scotland and the pilot authorities.

30. In addition to allowing Historic Scotland to review the running of the pilot as a whole, the monitoring information was to help the agency consider how it might monitor and review a future scheme. Historic Scotland was particularly interested in information such as whether a decision was taken in line with policy, whether the decision taken was contrary to the planning officer's recommendation and/or whether the application was amended following advice from the authority.

Section 6: Review of the Pilot

Statistics

1. For the purposes of analysis of the pilot it has been agreed to disregard the Perth & Kinross Council statistics. This is because the sample was very small, and as can be seen from the table below and [appendix 6](#), this meant that the results were skewed by a few exceptional cases. The commentary in the following paragraphs relates to Glasgow and Edinburgh cases only. The Perth and Kinross stats are however included in the tables below for information.
2. 107 cases were validated under the pilot, this formed 63% of the total number of listed building consent applications validated by the Edinburgh and Glasgow between 1 October and 31 December 2008. 94% of the pilot cases have now been determined and sent to Historic Scotland for monitoring.

Table 1: Applications Received and Determined for Pilot period 1 October-31 December 2008					
	GCC	CEC	P&K	Whole Pilot Period	Whole Pilot Period w/o P&K
Total B-Pilot cases validated	51	56	6	113	107
Total cases validated	91	77	28	196	168
Total non-Pilot Category B cases validated	12	18	8	38	30
Pilot cases determined so far	46	55	4	105	99
Outstanding pilot cases	5	1	2	8	6

3. The City of Edinburgh Council determined pilot applications 36 days faster than non-pilot B cases and Glasgow City Council determined the pilot applications 19 days more quickly than non-pilot B cases.
4. Just over half of the pilot cases were determined within eight weeks, and 39% of all LBC cases validated during the pilot period were determined within eight weeks. This is significantly higher than for the equivalent

three months in 2007 when on average only 13.5% were determined within eight weeks.

Table 2: Determination times for LBC Applications for Pilot period 1 October-31 December 2008					
	GCC	CEC	P&K	Whole Pilot Period	Whole Pilot Period w/o P&K
Average time to determine pilot cases	60 days	53 days	104 days	72 days	56 days
Average time to determine non-pilot B cases	96 days	71 days	91 days	86 days	83 days
Average determination time for all cases	78 days	57 days	73 days	69 days	67 days
% all validated LBC cases determined in <8 weeks	29%	50%	25%	35%	39%
	Oct-Dec 2007: 7%	Oct-Dec 2007: 20%	Oct-Dec 2007: 16%	Oct-Dec 2007: 14%	Oct-Dec 2007: 13.5%
% pilot cases determined in <8 weeks	43%	61%	0%	35%	52%
% all non-Pilot B cases determined in <8 weeks	0%	17%	33%	17%	8%

Perth and Kinross sample for pilot period was very small. See [appendix 6](#) for explanation.

5. Please see [Appendix 5](#) for the more detailed statistics supplied by each pilot authority.
6. The statistics in the table above do not include applications which were withdrawn.

Scope/Schedule 1

7. The pilot authorities found Schedule 1 easy to interpret and generally comprehensive. They did however note that external ramps and curtilage buildings might usefully have been included.

8. All three pilot authorities suggested that given the extensive nature of Schedule 1, it might be preferable to define the scope of the scheme by exceptions rather than inclusions. Exceptions suggested were:
- Demolition (including partial demolition);
 - Major internal alteration;
 - Façade retention;
 - Roof remodelling (including rooftop extensions); and
 - Large extensions.
- It was agreed that schedule 1, whether determined by exception or inclusion, must be clear and not open to interpretation.
9. A very small number of applications were either included in the pilot by mistake or omitted from it. These cases were easily and quickly amended when the errors came to light.

Schedule 2: Monitoring

10. The weekly lists sent by each pilot authority to Historic Scotland provided helpful information about the volume and nature of cases which were being determined under the pilot. However there were inconsistencies regarding the period covered by the lists, i.e. not always Monday-Friday, and the regularity with which they were sent to Historic Scotland.
11. Each pilot authority handled the detailed monitoring and pro forma completion aspect of the pilot slightly differently. Glasgow City Council appointed a dedicated technical officer to administer the process and were able to extract a reasonable proportion of the information from their Uniform database automatically. This process of using administrative support combined with existing database systems ran smoothly and minimised duplication.
12. Perth & Kinross and the City of Edinburgh Councils both noted that an element of double-handling was necessary in order to provide the monitoring information. In Edinburgh's case in particular this led to some delays forwarding the monitoring information to Historic Scotland.
13. Perth & Kinross and Glasgow City Councils sent the pro forma along with the supporting information in hard copy, whilst the City of Edinburgh Council emailed the pro forma along with a link to the application on their planning portal. In all but a few cases both systems provided the detailed information necessary for Historic Scotland to monitor the process and decisions, though the detail provided did vary between applications.

Determination of applications

14. The applications which fell under the pilot were determined in line with local and national policy, with the authorities demonstrating expertise and skill in their handling.

15. The advice of conservation staff was taken into account in reaching decisions. Indeed one of the authorities suggested that the removal of the “safety-net” normally provided by Historic Scotland meant their advice was given greater weight.
16. Normally planning authorities are only required to notify applications for listed building consent to Historic Scotland when they are minded to approve them, consequently the agency does not usually receive any details of applications which are refused. The pilot monitored all decisions taken by the pilot authorities, so the agency was sent refusals as well as approvals. This information demonstrated very clearly that the pilot authorities were comfortable refusing applications which were contrary to policy. Historic Scotland’s monitoring pro forma is attached separately.

Resources

17. The pilot authorities agreed that the change in procedures during the pilot did not place additional pressure on their resources. Once administrative processes were in place to support the provision of the monitoring information, it was agreed that the small amount of extra work required to send this information to Historic Scotland was offset by the time saved not consulting the agency during the determination of the application. In the longer term it is hoped that this way of working will release some of planning authorities time, allowing them to focus resources on more complex cases and issues.
18. The ability to extract information from existing database systems automatically was clearly a benefit to Glasgow City Council. Perth & Kinross, the City of Edinburgh and Historic Scotland recognised that administering any scheme in the long-term would be far more efficient if it could be supported without or with minimal double-handling.
19. Within Historic Scotland, again once the administrative processes had been refined with the pilot authorities, the impact on resources was not an issue. The short period of the pilot has, however, made it difficult to assess the degree to which Historic Scotland staff time was freed up to allow refocusing of resources in other areas of work.

External Feedback (applicants and agents)

20. Perth & Kinross and Glasgow City Council’s both sought feedback from applicants and agents regarding the pilot. Feedback was positive with improved determination times being welcomed.
21. Some concern was expressed to Perth & Kinross Council and Historic Scotland regarding the ability of planning authorities to make good decisions in line with policy without Historic Scotland’s advice. The evidence from the pilot does not support this concern.

Section 7: Issues and Conclusions

Consistency

22. Each pilot authority administered the pilot slightly differently. Whilst a degree of flexibility was necessary, it was agreed that the smooth running of the scheme would have been improved if all information was exchanged in a consistent format and timescale to a single central address/email.

Composition of Schedule 1

23. Whilst the scope of the pilot worked well and the list contained in Schedule 1 was clear, the pilot authorities found it slightly cumbersome to administer due to its extensive nature. This method was chosen for the pilot to avoid overlooking any significant applications types. Where planning authorities are in a position to take on an extensive range of application types, the format of Schedule 1 may be more usefully defined by exception rather than inclusion.

Provision of Monitoring Information

24. For the purposes of the pilot details of every case determined was sent to Historic Scotland for monitoring. Whilst this did not increase pressure on pilot authority resources, due to the time saved not consulting Historic Scotland during the determination of the application, it did reduce the amount of planning authority and Historic Scotland time freed up. The aim of issuing decisions more quickly was achieved, however the effectiveness of this method of monitoring would benefit from further consideration. Random sampling, once an authority has first demonstrated its skill and expertise in determining applications without reference to Historic Scotland, was one suggestion put forward.

Conclusions

25. The pilot authorities and Historic Scotland agreed that the pilot was a success for the following reasons:
- Decisions were issued more quickly to applicants;
 - Decisions were taken in line with local and national policy, meaning the quality of decisions was maintained; and
 - Historic Scotland's involvement was more proportionate, being focussed on more complex applications and allowing the authorities to make decisions locally where they had the skills to do so.
26. The review of the pilot has highlighted the need to consider how Schedule 1 should be defined. It would also be worth considering whether the monitoring process could be more streamlined.
27. The smooth running of the pilot and the impact on resources worked best where it could be integrated into existing administrative processes and database systems.

28. All three pilot authorities suggested that if a scheme of this nature was to be offered to all of Scotland's planning authorities on a permanent basis capacity building would be helpful. Training delivered by Historic Scotland and planning authority conservation staff were identified as possible ways of achieving this.
29. Any future scheme would benefit from awareness raising both within planning authorities and the development sector.
30. Before signing-up to any future scheme, in order to ensure that it runs smoothly and the quality of decision making is maintained, planning authorities would have to demonstrate to Historic Scotland that they have:
 - Signed-up to the Joint Working Agreement;
 - Access to specialist conservation advice;
 - Appropriate policies; and
 - Supporting processes and monitoring to operate effectively.

Next Steps

31. This report will be placed on Historic Scotland's website for a three month open consultation period.
32. Consultation responses will be reviewed and if a future scheme of this type is supported, it will be implemented taking account of any relevant issues or suggestions raised.
33. All Scotland's planning authorities will then be invited to approach Historic Scotland if they are interested in taking part in the scheme, which will be administered on an individual basis to allow it to be tailored to the needs and expertise of each planning authority.

Jim MacDonald, Deputy Chief Inspector
Victoria Murray, Business Improvement Officer
25 June 2009



Section 8: Appendices

Appendix 1

The Listed Buildings And Conservation Areas (Removal Of Duty To Notify)(Scotland) Direction 2008

Dear «Insert Name of Recipient»

NEW PROVISIONS AND REVISED GUIDANCE RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS.

B-LISTED BUILDINGS

On 1 June 2008, section 55(2) (further amendment of the listed buildings Act) of the Planning etc. (Scotland) Act 2006 ("the 2006 Act") came into force. This section amended section 13 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 ("the 1997 Act"). As a result of this, it is now possible for Scottish Ministers to direct that certain specified descriptions of applications for listed building consent submitted to certain specified planning authorities will no longer be required to be notified to them under section 12 of the 1997 Act. Scottish Ministers have agreed that from 1 October until 31 December 2008, a pilot scheme will run with the City of Edinburgh Council, Glasgow City Council and Perth and Kinross Council to help understand how such arrangements will operate in practice.

The Listed Buildings And Conservation Areas (Removal Of Duty To Notify)(Scotland) Direction 2008 is contained in Annex 1. This Direction disapplies section 12 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 in respect of certain applications for listed building consent for B-listed buildings and requires you to notify the Scottish Ministers of decisions taken on those applications.

From 1 October 2008, therefore, the City of Edinburgh Council, Glasgow City Council and Perth and Kinross Council will be able to grant listed building consent to descriptions of applications as detailed in the direction without first giving Scottish Ministers the opportunity to decide whether or not they wish to call the case in for their own decision. The details of the operation of the removal of the requirement to notify have been agreed separately with each of the three authorities and Annex 1 contains guidance on the operation of the revised system. The requirement to notify all demolition applications for buildings in all listing categories (and for unlisted buildings in conservation areas) to Scottish Ministers will, however, remain as will requirement to notify proposals to alter and/or extend buildings listed at category A and for descriptions of work to B-listed buildings not covered by the direction.

Jim MacDonald

Deputy Chief Inspector

ANNEX 1

(«INSERT NAME OF PLANNING AUTHORITY»)

THE LISTED BUILDINGS AND CONSERVATION AREAS (REMOVAL OF DUTY TO NOTIFY)(SCOTLAND) DIRECTION 2008

The Scottish Ministers give the following Direction in exercise of the powers conferred by section 13(1), (3) and (4) of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 and all other powers enabling them to do.

Citation and commencement

1. This Direction may be cited as the the Listed Buildings And Conservation Areas (Removal Of Duty To Notify)(Scotland) Direction 2008 and comes into force on 1st October 2008.

Removal Of Duty To Notify

2. Section 12 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 shall not apply to applications for listed building consent described in Schedule 1 to this Direction.

Requirement to notify decisions on applications

3.—(1) «INSERT PLANNING AUTHORITY NAME» is required to notify the Scottish Ministers of any such applications made to them and the decision taken by them on those applications.

(2) Nofication under paragraph (1) is to contain the information specified and by in the form set out in Schedule 2 to this Direction.

Jim MacDonald
Deputy Chief Inspector

September 2008

SCHEDULE 1

DESCRIPTION OF APPLICATIONS TO WHICH SECTION 12 SHALL NOT APPLY

The descriptions of applications for listed building consent to which section 12 shall not apply are–

Any valid application for listed building consent for works to a category B-listed buildings which is received by «INSERT PLANNING AUTHORITY NAME» on or after 1 October 2008 and which seeks consent for work described in paragraphs 1 to 8 below [as read with Notes 1 to 3 below.]

External Works

1. The alteration, replacement, removal or installation of:
 - external doors
 - gutters and downpipes
 - railings
 - windows
 - roof coverings
 - rooflights
 - stonework or masonry finishes
 - chimneys
 - steps and external stairs
2. Single storey extensions where:
 - the floor area of the resulting building is up to 20m² greater than the original;
 - the height of the resulting building would be below the height of the highest part of the original; and
 - the development would be less than 4m in height.
3. Installation of:
 - modern fittings (e.g. aerials, alarm boxes, CCTV, plant ducts and associated fixtures);
 - utilities (e.g. electrics, gas, plumbing, telecommunications etc.); and
 - micro-renewables.
4. Alteration, replacement or installation of:
 - shopfronts;
 - awnings;
 - ATMs; and
 - signage.

Internal Works

5. Subdivision of rooms
6. Creation of openings between rooms (excluding perforation of floor plates and ceilings)
7. Installation of modern fittings (e.g. suspended ceilings, kitchens, bathrooms, office furniture, bookcases etc.)

8. Alteration, replacement, removal or installation of:
- floor surfaces and finishes;
 - doors and associated joinery;
 - shutters, pelmets and rods;
 - modern services (electrics, gas, plumbing, telecommunications etc.);
 - tiles;
 - chimney pieces/fireplaces;
 - decorative plasterwork;
 - decorative wall coverings, fixed tapestries and decorative paints (which form part of an architectural scheme);
 - built-in furniture (e.g. pews, wardrobes, cupboards); and
 - decorative timber joinery (e.g. panelling, dado rails, picture rails, skirting boards).

SCHEDULE 2

Monitoring pro-forma: Information to be sent to Historic Scotland by Local Authority once an application has been determined

PLANNING AUTHORITY TO COMPLETE		
Field Name	Type of input/options	
Planning Authority ID	Free text	
Name/address of listed property/site	Free text	
Council	Edinburgh	
	Glasgow	
	Perth & Kinross	
Description of proposed works	Free text	
Date validated	Date: dd/mm/yyyy	
LBC delegated	Y/N	
Date LBC determined	Date: dd/mm/yyyy	
Time taken to determine application	XX Days	
LBC Decision	Granted	
	Granted with conditions	
	Refused	
Delegated issues	External alterations	External doors
		Gutters and downpipes
		Railings
		Windows
		Roof coverings
		Rooflights
		Stonework & masonry finishes
		Chimneys
		Steps & external stairs
		Single storey extension
		Modern fittings
		Utilities
		Micro-renewables
		Shopfront
		Awning
	ATM	
	Signage	
	Internal Alterations	Subdivision of rooms
		Creation of openings between rooms
		Installation of modern fittings
		Floor surfaces and finishes
		Doors and associated joinery
		Shutters, pelmets and rods
		Modern services
		Tiles
		Chimney pieces/fireplaces

		Decorative plasterwork
		Decorative wall coverings
		Built-in furniture
		Decorative timber joinery
Information included	Application form	Y/N
	Supporting information	Y/N
	Conservation officer advice	Y/N
	External representations	Y/N
	Relevant correspondence	Y/N
	Committee/Officer Report	Y/N
	Approved plans	Y/N
	Decision Letter	Y/N
	Other	Free
Was site visit carried out?	Y/N	
Date site visit was carried out	dd/mm/yyyy	
Have amendments to the initial submission (as a result of your advice) resulted in improvements to the approved scheme?	Y/N + explanation of amendments and why	
Relevant local policies/guidance	Free text/list	
Does decision follow local policy/guidance?	Y/N	
Relevant national policies/guidance	Free text/list	
Does decision follow national policy/guidance?	Y/N	
Justification if policy was not followed	Free text	
Was application determined in line with the planning officer's recommendation?	Y/N	

Note 1: Repair

Repair using matching materials would not normally require listed building consent. Repair is normally regular maintenance, using matching materials, to remedy defects, decay (e.g. caused by normal weathering or wear and tear) or damage. The object of repair is to control decay without damaging the character of the building or altering the features which give it its historic and/or architectural importance or removing historic fabric unnecessarily.

Note 2: Total replacement or extensive repair

Total replacement or extensive repair of an element, e.g. window or door, will result in the significant loss of historic fabric and should not be considered to be repair, therefore LBC would be required. The decision on whether works constitute repair is for the local authority and is ultimately a judgement exercised in light of Note 1 above, so there will always be grey areas where opinions vary. The important issue is to ensure that the replacement of sound elements such as windows or doors is not undertaken without consent as a repair.

Note 3: Curtilage

Free-standing development within the curtilage of a listed building does not require listed building consent.

GUIDANCE

NON-NOTIFIABLE ISSUES

The Schedule of Non-notifiable Issues is a list of application types or issues which, under the The Listed Buildings and Conservation Areas (Removal of Duty to Notify)(Scotland) Direction 2008, can be determined by the pilot local authorities without reference to Historic Scotland. When the application has been determined, the local authority will provide Historic Scotland with the information set out in the pro-forma to allow the Pilot Scheme to be monitored and reviewed.

Cases are non-notifiable not because the issue being considered is unimportant, but rather because the local authority has the appropriate skills and policies to determine the application in line with national policy. If an application is non-notifiable this does not assume that the work proposed is acceptable or that listed building consent will be granted, neither does it set aside the normal principle of seeking to retain the special interest and character of a listed structure.

Under section 12 of the 1997 Act a planning authority may not grant consent for an application for listed building consent without first notifying it to Scottish Ministers so that they can decide whether or not to call the application in for their own decision. Scottish Ministers have the power under section 13 (1) and (4) of the 1997 Act to direct that such notification shall not be required of a particular planning authority or authorities for specified classes of application. The above direction (which will take effect from 1 October 2008) will exempt from notification such descriptions of applications for listed building consent for B-listed buildings as listed in Schedule 1 above. «INSERT PLANNING AUTHORITY NAME» will be entitled to grant listed building consent for valid applications as detailed in the direction which are received on or after 1 October 2008 without notifying Scottish Ministers.

Given Scottish Ministers' direct responsibility for the statutory lists, it will be necessary for «INSERT PLANNING AUTHORITY NAME» to notify Scottish Ministers, with the information contained in the monitoring pro-forma (see Schedule 2), of all decisions taken on delegated cases. The principal aims of such notification (apart from the simple updating of list information held) are to enable Scottish Ministers to consider the impact of authorised changes to the building's listability, and to assess whether the particular planning authority has determined the application in line with the agreed process and policies.

All applications for listed building consent for category A-listed buildings, category B-listed buildings for matters other than the descriptions of application which are set out in the above direction and all demolition applications (including applications for the demolition of unlisted buildings in conservation areas) must continue to be notified to Scottish Ministers.

[Return to Legislative Context](#)

[Return to Schedule 1: Working out the scope of the pilot](#)

[Return to Schedule 2: Working out what monitoring information was required](#)

Appendix 2

Revocation of The Listed Buildings And Conservation Areas (Removal Of Duty To Notify)(Scotland) Direction 2008

Dear «Insert Name of Recipient»

REVOCAION OF LISTED BUILDINGS AND CONSERVATION AREAS (REMOVAL OF DUTY TO NOTIFY) (SCOTLAND) DIRECTION 2008

I wrote to you on 29 September with details of a pilot scheme which Scottish Ministers intended to run from 1 October to 31 December 2008 with the City of Edinburgh Council, Glasgow City Council and Perth and Kinross Council, which removed the requirement for these planning authorities to notify Scottish Ministers on certain types of listed building consent applications for B-listed buildings. At this time I issued your Council with the Listed Buildings and Conservation Areas (Removal of Duty to Notify)(Scotland) Direction 2008 (“the 2008 Direction”) – I have attached a copy of the 2008 Direction and my covering letter for ease of reference.

On 31 December 2008 the above pilot scheme will come to an end. Annex 1 contains the Direction revoking the 2008 Direction. From 1 January 2009, therefore, before granting listed building consent to descriptions of applications as detailed in the 2008 Direction, your Council must first give Scottish Ministers the opportunity to decide whether or not they wish to call the case in for their own decision.

Please note that paragraphs 3(1) and (2) of the 2008 Direction continue to have effect until your Council has notified Scottish Ministers of the decisions taken by you on all applications received during the pilot period, 1 October to 31 December 2008, and provided the information set out in Schedule 2 of the 2008 Direction.

Yours sincerely

Jim MacDonald
Deputy Chief Inspector

ANNEX 1

(«INSERT NAME OF PLANNING AUTHORITY»)

THE LISTED BUILDINGS AND CONSERVATION AREAS (REMOVAL OF DUTY TO NOTIFY)(SCOTLAND) REVOCATION DIRECTION 2008

The Scottish Ministers give the following Direction in exercise of the powers conferred by section 13(1), (3) and (4) of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 and all other powers enabling them so to do.

Citation and commencement and interpretation

1. (1) This Direction may be cited as the Listed Buildings and Conservation Areas (Removal of Duty To Notify)(Scotland) Revocation Direction 2008 and comes into force on 31 December 2008.

(2) In this Direction “the 2008 Direction” means the Listed Building and Conservation Areas (Removal of Duty to Notify) (Scotland) Direction 2008.

Revocation of the 2008 Direction

2. Subject to paragraph 3 the 2008 Direction is revoked.

Savings of requirement to notify decisions on applications

3. Paragraph 3 of the 2008 Direction (requirement to notify decisions on applications to Scottish Ministers and requirement for notification to contain specified information set out in Schedule 2 of the 2008 Direction) continues to apply in relation to any application for listed building consent to which the 2008 Direction applies which was received during the period 1st October 2008 to 31st December 2008.

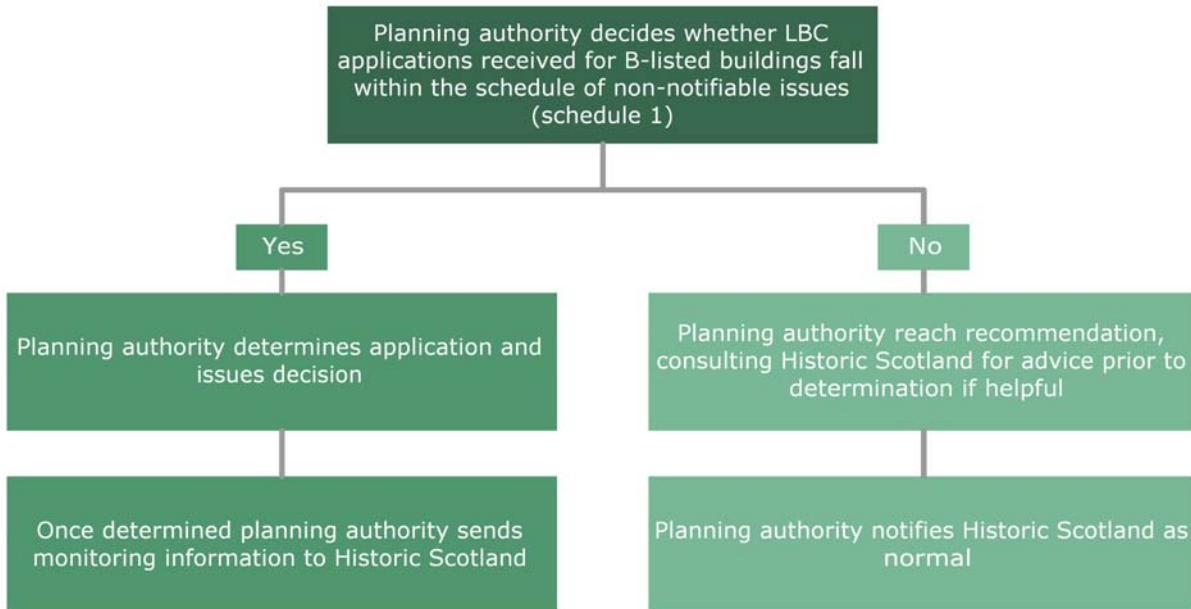
Jim MacDonald
Deputy Chief Inspector

17 December 2008

[Return to Legislative Context](#)

Appendix 3

Process for determining applications



[Return to Operation of Pilot](#)

Appendix 4

Terms of Reference for Pilot

1. The pilot will run in conjunction with the City of Edinburgh Council, Glasgow City Council and Perth & Kinross Council for valid applications for certain types of listed building consent for B-listed buildings (Schedule 1) received between 1 October and 31 December 2008.
2. The pilot will follow the terms set out in The Listed Buildings and Conservation Areas (Removal of Duty to Notify)(Scotland) Direction 2008.
3. Applications for listed building consent will be submitted to the relevant planning authority and the planning authority will decide within three days of validation, according to the agreed schedule of non-notifiable issues (see Schedule 1), whether the application falls within the scope of the pilot.
4. Each week the planning authority will send Historic Scotland a list of valid applications which fall within the schedule of non-notifiable issues or a nil return to:

Historic Scotland's Inspectorate
Room 2.31
Longmore House
Salisbury Place
Edinburgh
EH9 1SH

or

Hs.inspectorate@scotland.gsi.gov.uk
5. The subject box/title of all weekly list letters/emails will contain: "Council Name: Weekly list of non-notifiable cases received".
6. a) the planning authority will determine non-notifiable applications and issue decision without reference to Historic Scotland; or
b) the planning authority will notify all notifiable applications which they are minded to approve to Historic Scotland to handle in the normal way.
7. In the same week as they issue the decision notice, the planning authority will provide Historic Scotland (to the same address as above) with the required monitoring information (see Schedule 2) to allow them to monitor and review the process.
8. The subject box/title will contain: "Council Name: Monitoring information for non-notifiable case: Planning Authority ID Number".
9. Historic Scotland will record, monitor and review the information received.
10. At the end of the pilot period Historic Scotland and the planning authorities will review its success and discuss any issues arising.

If you have any queries about the above process please contact:

- 1) Victoria Murray (Victoria.murray@scotland.gsi.gov.uk or 0131-668-8931),
or
- 2) Jim MacDonald (Jim.Macdonald@scotland.gsi.gov.uk or 0131-668-8582).

[Return to Operation of Pilot](#)

Appendix 5

Pilot Authority Statistics

City of Edinburgh Council

October-December	2007 (all B applications)	2008 (B and B Pilot applications)	B Pilot 2008
All applications determined	83	47	38
Approved – total	76	38	32*
Approved - %	91.6%	80.8%	84.2%
Refused – total	7	9	6
Refused - %	8.4%	19.1%	15.8%
Delegated – total	79	46	37
Delegated - %	95.2%	97.8%	97.3%
Committee – total	4	1	1
Committee - %	4.8%	2.1%	2.6%
Number determined in 2 months	17	33	28
% determined in 2 months	20.5%	70.2%	73.7%
Number determined in 3 months	63	46	37
% determined in 3 months	75.9%	97.9%	97.4%

NB A total of 61 applications have been received as part of the B Pilot exercise, however, as of 17 February 2009, when these figures were produced, only 38 had been determined.

* One application was determined with a mixed decision which was included in this figures as 'approved'

Glasgow City Council

	2007	2008
Applications for LBC valid between 01/10 and 31/12		
Category A	32	18
Category B	64	12
Category CS	7	10
Category B Pilot	NA	56
	2007	2008
Applications for LBC valid between 01/10 and 31/12 Determined between 01/10 and 31/12		
Category A	5	1
Average Days Taken	56 days	55 days
Category B	8	0
Average Days Taken	65 days	NA
Category CS	4	6
Average Days Taken	54 days	52 days
Category B Pilot	NA	19
Average Days Taken	NA	49 days
Average No of days to determine non pilot	60 days	53 days
Average No of days to determine pilot	NA	49 days
	2007	2008
Applications for LBC valid between 01/10 and 31/12 Determined between 01/10 and 04/02 of following year		
Category A	12	6
Average Days Taken	73 days	89 days
Category B	23	2
Average Days Taken	73 days	75 days
Category CS	5	6
Average Days Taken	59 days	52 days
Category B Pilot		31
Average Days Taken		52 days
Average No of days to determine non pilot	71 days	72 days
Average No of days to determine pilot	NA	52 days
	2007	2008
Applications for LBC valid between 01/10 and 31/12 Determined between 01/10 and 06/04 of following year		
Category A	23	14
Average Days Taken	80 days	85 days
Category B	46	7
Average Days Taken	81 days	96 days
Category CS	7	10
Average Days Taken	66 days	72 days
Category B Pilot		46
Average Days Taken		56 days
Average No of days to determine non pilot	80 days	83 days
Average No of days to determine pilot	NA	60 days

Perth and Kinross Council

HS Pilot: comparison stats		
	LBC cases valid 01/10/07-31/12/07	LBC cases valid 01/10/08-31/12/08
total no. LBC cases determined	32	21
total no. cat B. LBC cases	15	11 (4 pending consideration)
no. pilot cases	9	6 (2 pending consideration)
average time to determine all cases (days)	118	73
average time to determine pilot cases		104
average time to determine non-pilot cases		66
average time to determine non-pilot B cases	All B cases 132	91
% all LBC cases determined <8 weeks	16	25
% pilot cases determined <8 weeks		0
% non-pilot cases determined <8 weeks		41
% non-pilot B cases determined <8 weeks	All B cases 0	33

[Return to Statistics](#)

Appendix 6

Explanation of Perth & Kinross Statistics (provided by Perth & Kinross Council)

The pilot was approached with a 'business as usual' attitude by officers, as it would give an unfair idea of the operation of an ultimate permanent scheme if we had attempted to handle cases in a different way from normal purely because they were part of the pilot. This includes the practice of negotiating improvements to cases, even if this sometimes involves the time extending over the 8 week period. The stats simply reflect this. In addition you will see our stats - pilot and non-pilot - have significantly improved since the same period in 2007 owing to general improvements within the planning service that have been undertaken independently of the pilot.

There were only 2 non-pilot category B cases determined during the pilot period, one of which was refused in only 46 days (08/02263/LBC, Pathgreen farm, Forgandenny), and the other was a resubmission of a previously-refused proposal where all the earlier issues had been ironed out before resubmission (08/02016/LBC, Land N of Braemore House, determined in 86 days). Hence the average determination time of the two was unusually short.

A third has now been determined: 08/02022/LBC, Crieff Hydro Hotel which was fairly contentious, requiring additional justification, and took 140 days to determine. The overall average for non-pilot B cases is therefore now 91 days.

There is not a single, identifiable reason why we had a smaller proportion of pilot cases than the other two authorities, other than simple happenstance - by coincidence, we had a high number of withdrawals of LBC cases, and particularly B cases, after receipt or validation which were therefore discounted from the final results, and also a fairly high proportion of the B cases involved types of alterations which did not fall within the schedule of non-notifiable issues.

See next page for breakdown of each pilot case.

Breakdown of each Perth & Kinross Council pilot case:

Reference	Address	Valid	Decision	Days	Comment
08/01835/LBC	5 Waterside Cottage	07/10/08	Refused 09/02/09	126	The significant time taken was owing to this officer's pressure of workload
08/01972/LBC	Dull Church	07/10/08	Refused 18/03/09	163	This LBC was associated with a full planning application for change of use, which attracted significant levels of public objection, and had to be prepared for determination by committee.
08/02214/LBC	Kenmore Hotel	14/11/08	Approved 19/01/09	67	The issues involved in this case were fairly straightforward, requiring minimal negotiation, and were resolved quickly.
08/02261/LBC	Knock Castle Hotel	01/12/08	Pending		This case is awaiting resolution of design amendments.
08/02272/LBC	Braco Castle	01/12/08	Approved 30/01/09	61	This case was determined relatively quickly because the issues had been resolved at pre-application stage.
08/02463/LBC	Fortingall Hotel	24/12/08	Pending		This case has been held up awaiting resolution of an environmental health issue.

[Return to Statistics](#)