

SCOTTISH HISTORIC ENVIRONMENT POLICY SERIES

LISTED BUILDING CONSENT

ANALYSIS REPORT

National Policy Team
Historic Scotland
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1. INTRODUCTION

1.1 This document fulfils the requirement for an ‘Analysis Report’ set out in the Scottish Government’s good practice guidance on consultation. The objective of this report is to analyse and report on the responses made to the consultation on the Listed Building Consent SHEP, not to set out Scottish Ministers’ comments on or responses to those suggestions. The inclusion of a comment or suggestion does not imply that any contribution is accepted as accurately characterising the actual policy position or operational practice; footnotes provide more information where necessary.

1.2 The Scottish Historic Environment Policy (SHEP) series is a new series of documents which sets out Ministers’ policy for the historic environment and is intended to provide clearer policy direction for Historic Scotland. The SHEPs have the same authority as and sit alongside the Scottish Planning Policy series and other relevant Ministerial policy documents.

1.3 The SHEPs arise from a recommendation in the review of Historic Scotland in 2004-05 that an “Executive endorsed policy statement for the historic environment in Scotland should be developed in consultation with stakeholders...”. The Framework Document of 2004 sets out the role and responsibilities of Historic Scotland, and the respective roles of Scottish Ministers and the Chief Executive, who is accountable to Ministers for the operation of the agency. The SHEPs are mainly about the policies and roles of Ministers, although some operational matters are touched upon.

1.4 The SHEPs vary in content. *SHEP 1: Scotland’s Historic Environment* sets out strategic policy for the historic environment and provides a framework for the day-to-day work of organisations that have a role and interest in managing the historic environment. These include the Scottish Government, local authorities and the range of bodies that is accountable to Scottish Ministers, including Historic Scotland.

1.5 Other SHEPs deal in more detail with established areas of policy, such as Scheduling and Listing and the related consent processes, and for these subjects the SHEPs are intended largely to consolidate and clarify the status of existing policy, while providing an opportunity for public comment on a range of policy and some operational issues. Other SHEPs deal with less-developed areas of policy, such as Gardens and Designed Landscapes or Battlefields. These documents are more exploratory and the consultation versions will often also include more questions about operational matters.

1.6 The draft SHEP on Listed Building Consent (LBC) sets out Scottish Ministers’ policy for the control of works affecting buildings included in the statutory List of Buildings of Special Architectural or Historic Interest, and thus legally protected as ‘listed buildings.’ The LBC system is primarily operated by planning authorities, with the involvement as appropriate of Historic Scotland, on behalf of Scottish Ministers. The document asked a number of questions relating to the principles of sustainable management of the historic environment and to existing definitions and criteria used to determine LBC applications.

1.7 The consultation document was published on 26 March 2007 and the consultation period closed on 3 August 2007.

1.8 Approximately 350 copies of the consultation document were sent to a variety of organisations and individuals. A list of respondents is attached at Annex A. A total of 30 responses were received, representing an 8.5% response rate. A breakdown of responses is provided below. In all cases, responses formed the official response of the organisation. Responses from consultees who agreed that their submissions be made public are available at <http://www.historic-scotland.gov.uk/index/consultations/pastconsultations/responsetoshepconsultationonlistedbuildingconsent.htm>

1.9 This SHEP did not ask explicit questions about the operation of the LBC system, but some respondents made comments on operational matters. While the majority of responses were closely related to the subject of the consultation, others were not. While not relevant to Ministerial policy, we have noted these responses in section 6 ‘Other Issues’ and, where appropriate, will respond to them, or note them for further consideration within Historic Scotland.

Table 1: Responses to consultation by interest group

	Local Authorities	Heritage Bodies	NDPBs ¹	Private Companies	Religious Groups
Number of Respondents	12	10	5	1	2

1.10 During the consultation period, Historic Scotland ran a workshop in conjunction with the Built Environment Forum for Scotland (BEFS). The workshop was attended by seven individuals and representatives of organisations with an interest in the process of Listing and Listed Building Consent. Historic Scotland has received a report from this workshop (available at: <http://www.befs.org.uk/issues.htm>) and although its findings are not included in this analysis report they will be used to inform Historic Scotland’s consideration of the issues.

2. METHODOLOGY

2.1 The response data were recorded and summarised on a Table which sets out the number of positive and negative responses and other issues raised. A frequency count was made of the overall number of responses by interest group and of the responses to each question. A qualitative analysis of the data was then carried out using this information. The summarised data for each question was reviewed and key themes and contrasting views were identified.

2.2 It is important to note that the findings of the report are specific to the responses made to this consultation exercise and cannot reflect the weight or range of views likely to be found within the population as a whole.

¹ Non-Departmental Public Bodies

3. BREAKDOWN OF RESPONSES

3.1 In spite of the large number of documents distributed, only 30 responses were received. Most of the responses received were very detailed. Table 1, above, shows the distribution of responses received.

3.2 The consultation asked four questions, all of which invited yes/no responses as well as respondents' views. Each question elicited a range of responses, some of which expressed approval for existing policy or sought minor amendments or clarification, while others made suggestions which would require policy or legislative change. A breakdown of responses is provided below.

Table 2: Breakdown of Responses to Questions

Questions	Yes	No	Qualified agreement with statement	Suggestions for change	Question not answered
1. Are these reasonable tests to set for applications for Listed Building Consent for alterations? If not, why not?	3	0	14	10	3
2. Are these considerations the appropriate ones to be applied when considering an application for Listed Building Consent? If not then why not?	4	0	7	15	4
3. Are these considerations the appropriate ones to be applied when considering applications for Listed Building Consent for demolition? If not, then why not?	3	0	9	12	6
4. Are there any other principles which Historic Scotland should adhere to when implementing Scottish Ministers' policy on Listed Building Consent? If so, then what should they be and why?	N/A	3	N/A	16	11

4. KEY THEMES

“The tests are reasonable and prudent and moreover they have stood the test of time. The Policy makes it clear that determination of Listed Building Consent should be based upon balanced appraisal and each case must be judged on its own merits”

Non-Departmental Public Body (NDPB)

4.1 The consultation revealed that stakeholders are generally happy with the Listed Building Consent SHEP and that there are no major concerns. A number of dominant themes, however, emerged and these are explored in the following paragraphs. While some of the comments were specific to the four questions being asked of consultees, others were general observations made by respondents about the Listed Building Consent process. In general these indicate that respondents would like more detailed guidance on elements of the Listed Building Consent process and in some cases clearer direction on the operational aspects.

4.2 In Table 2 it can be seen that a substantial number requested minor changes. Around one third of respondents considered the consultation document to be lacking in clarity in some areas and requested further definition of key concepts. It was suggested that further definition of certain terms and justification for listing would import greater clarity into the Listed Building Consent process. For example there was a request for some of the wording to be stronger to avoid ambiguity. Local authorities particularly requested clarification of the term ‘viable’ and asked for the term ‘best viable use’ to be better defined. Many respondents felt that, without clarification, many key terms such as ‘viable’ or ‘significant’ would be open to interpretation by developers and planning authorities. Clear definitions of ‘conservation statement’ and ‘statement of significance’ were also requested by a number of respondents.

4.3 There was a call, repeated by a small number of respondents, for Historic Scotland to provide better guidance in areas of policy covered by the consultation document. Several respondents highlighted the need for advice on what constitutes significant change and one suggested that examples be provided in the text to help applicants and local authorities. Many respondents requested guidance on specific points, for example, if best viable use has not been demonstrated by the applicant, will Historic Scotland support local authorities on applications refused for this reason?

4.4 A number of respondents commented that greater pragmatism should be introduced to the Listed Building Consent regime. In cases where a building was dilapidated and was it was unlikely that a range of applicants would come forward, reuse of the building should be encouraged and the tests of ‘best viable option’ should be less of a priority. One local authority suggested that listed buildings would receive more care if the owners were more comfortable living there and policies which restrict reasonable upgrading to align them with standards of modern buildings might be counterproductive. In addition, overly prescriptive restrictions on development might result in a building being demolished that could otherwise be adapted.²

4.5 There were calls from a small number of respondents for regulatory consolidation. Combining consent regimes was considered to be sensible and logical policy progression, as

² Historic Scotland does not believe this is an accurate depiction of the current operation of the system.

long as the heritage protection regime is not weakened in the process. Two respondents believed that this would lead to greater clarity in the consent process. It was also considered that this would have the potential for placing more emphasis on management agreements as a governing force in both designation and consent processes.

“An advantage of combination would be the de-mystifying of heritage protection controls and raised awareness of the importance of the historic environment in planning issues. Greater clarity and the streamlining of consent processes would also be advantages”

NDPB

4.6 Table 2 on page 5 provides a statistical summary of the responses and should be read in conjunction with Section 5, Summary of Responses.

5. SUMMARY OF RESPONSES

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

5.1 Twenty-seven consultees responded to this question. Although there was agreement that these were reasonable tests to set for applications for LBC, only three respondents answered the question with a simple yes. Fourteen respondents, including a number of local authorities, qualified their agreement with a statement or request for further clarification while ten suggested changes or additions to the text of the document.

5.3 While there was general agreement across the sector that there should be a presumption against development that adversely affects the character of a listed building or its setting, as stated in paragraph 4.3 of the consultation document, this issue elicited a range of responses. The majority of respondents welcomed the flexible approach to balancing adaptation with the retention of the building’s essential character, although there were concerns that this flexibility might be weakened by this presumption. One religious group expressed concern that the aim of sustainable and long term use of a building might be frustrated by this presumption and one non-departmental public body (NDPB) expressed concern that this flexibility may be lost by too prescriptive a reading of this clause. One NDPB pointed out that the impact of change to the character of a building may, in some case, be beneficial and a local authority suggested that this presumption might extended to cover works, as well as development.

..... “there would be concern if any best viable use regime was implemented so rigidly that it placed additional obstacles in the way of re-use”

Local Authority

5.4 Further clarification was sought by a small number of respondents on the policy of taking account of any adverse impact on adjacent listed buildings. There was a suggestion from a heritage body that the reference to adjacent listed buildings in section 4.4 of the consultation document should include unlisted buildings.

5.5 The statement of significance mentioned in section 4.5 of the consultation document was considered by one local authority to require further clarification while another that had initially considered the proposal in this paragraph to be welcome, expressed concern that this additional requirement might lead to delays within the overall planning process.

5.6 It was suggested by nine respondents that further clarification was needed on the notion of ‘best viable use’, with local authorities in particular highlighting this. One local authority suggested that ‘best viable use’ be replaced with ‘an acceptable viable use’, while another questioned the prioritisation of the best viable option. Another local authority suggested that this concept be illustrated by examples in the text. One heritage group suggested that the concept of best viable use should refer to some level of public consultation embedded in the process.

5.7 A small number of respondents considered that it is an ‘unreasonable expectation in the majority of cases’ to have to demonstrate the likely economic or public benefits of their proposals. In addition, a local authority stated that the decision maker does not necessarily need market awareness in situations where buildings are in good condition as there is likely to be a ‘stronger presumption against certain uses’ and the application of section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 is all that should be required.

Question 2 – ‘Are these considerations the appropriate ones to be applied when considering an application for Listed Building Consent? If not then why not’?

5.8 The pattern of responses to this question was broadly similar to the first, with four respondents answering ‘yes’, while the majority either qualified their agreement with a statement or request for further clarification, or made suggestions for additional considerations to be applied when considering an application for Listed Building Consent. In common with question 1, respondents commented on the impact on adjacent listed buildings, and the notion of best viable use.

5.9 One local authority believed that the consultation document had omitted the issue of ‘setting’ of listed buildings while another suggested that in the interests of clarity, the text ‘or setting’ should be added after ‘listed building’ in paragraph 4.7 subsection *c* of the document.

5.10 One religious group stated that ‘best viable use’ would be difficult for an applicant to demonstrate and a local authority repeated their suggestion that ‘best viable use’ be replaced with ‘an acceptable viable use’, while one heritage body suggested changing ‘best viable use’ to ‘best viable alternative.’ Another local authority stated that additional guidelines for applicants regarding ‘best viable use’ would be helpful.

5.11 It was suggested by three heritage bodies and religious groups that the impact of the applicants’ proposals on the streetscape should be an important consideration as changes to a listed building may have far-reaching implications on the character of an area and this should be taken into account even if adjacent buildings are not listed.

“...the streetscape importance of listed buildings is very high, with the listed building often providing a landmark and visual anchor for an area”

Religious Group

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?

5.12 None of the 24 consultees who responded to Question 3 answered ‘no’ to this question, although only three responded with a simple affirmative answer. A further nine, however, qualified agreement with a statement and 12 suggested additional considerations that they felt to be important.

5.13 The majority of respondents who qualified agreement with a comment and/or a suggestion were local authorities. Such comments and suggestions included: a request for guidance on how and when it will be necessary for an applicant to demonstrate how public and economic benefit may come from demolition or development; a more specific description of requirements for applicants to demonstrate understanding of ‘special interest’, more emphasis to be given to the obligation of the applicant to provide investigation of all alternative options to secure the future of listed buildings, and the inclusion of ‘all concerned’ in the text suggests this includes local authorities when the onus should be firmly on the applicant to demonstrate their case rather than on local authorities to defend the status quo.

5.14 Most heritage groups and religious groups that responded to the consultation took the opportunity to answer this question and made suggestions for considerations which could be applied when considering applications for demolition. These were diverse and ranged from the suggestion from a heritage group that there should be presumption against demolition, to the suggestion by a religious group that there should be a more flexible system to secure the future of buildings threatened by demolition. In addition, if proposals for alternative uses were deemed unacceptable, then there should be a presumption in *favour* of demolition.

5.15 There were requests, from across the range of respondents, for clarification of various points relating to question 3. One NDPB suggested that more detailed explanation was needed as to what would constitute ‘the adequacy of efforts to find practical ways of keeping the building’,³ and suggested that examples could improve clarity. For example, test cases could be referred to. Two organisations suggested that further clarification of paragraph 4.11 of the consultation document which covered conditions prohibiting development was needed.

Question 4 – ‘Are there any other principles which Historic Scotland should adhere to when implementing Scottish Ministers’ policy on Listed Building Consent? If so, then what should they be and why?’

5.16 Nineteen consultees responded to this question directly. Of those who responded, only three answered ‘no’. The responses were spread across sectors, as can be seen from Table 3, below. The majority of heritage bodies made additional suggestions in response to this question, while the majority of NDPBs did not answer.

5.17 It was noted that the new Planning etc (Scotland) Act 2006 will bring in a requirement for pre-application discussions to take place on certain applications, before formal submission. There were calls from local authorities, in particular, for listed building pre-application discussions.

³ Historic Scotland 2007 SHEP Consultation on Listed Building Consent, page 14, section 4.10.

“It would not only be a valuable exercise to engage in Listed Building Consent pre-application discussions but it would potentially enable historic Scotland to more easily meet any set targets for dealing with applications”

Local Authority.

5.18 There were suggestions that Scottish Ministers should include a provision in the policy for every local authority to ensure that there are sufficient staff posts to strictly enforce legislation. One heritage body claimed that, as some local authorities do not even have a Conservation Officer, policy can too easily be sidestepped at implementation stage.

5.19 One local authority suggested that further explanation of the justification for listing would impart greater clarity into the Listed Building Consent process and that owners of listed buildings often asked for more information relating to this.

5.20 One local authority suggested that it would be helpful if a paragraph on disabled access and compliance with the DDA⁴ could be added within the context of Listed Building Consent.

Table 3: Breakdown of responses to Question 4 by sector.

	Local Authority	Heritage Body	NDPB	Religious Groups	Private Company
No	2	1	0	0	0
Suggestions for change	6	6	1	2	1
Not answered	4	3	4	0	0

6. OTHER ISSUES

6.1 Most of those who responded to the consultation also took the opportunity to comment on the document as a whole and on wider issues, some of which are either operational matters or would require new or amended primary or secondary legislation. Several issues emerged from these general comments which are listed below.

- Grants should be made available for the physical protection of vacant listed buildings to allow ‘mothballing’ while a suitable use or developer was found.
- There should be clarification on the status of the notes in the consultation document.
- The Memorandum of Guidance should be brought within the suite of planning policy documents in line with the English consent system.
- Building Preservation Trusts should be included as key players in searches for alternative uses to a building.
- Greater use should be made of Building Preservation Notices (BPNs) by councils and raised the possibility of BPNs being issued by Historic Scotland.
- A suggestion for a review of the current policy of not permitting listing to be considered if a planning application is live.
- That certain elements of the interior (e.g. soft furnishings), should be included in a listing.

⁴ Disability Discrimination Act 1995 and 2005

- The suggestion that applicants who wish to return a listed building to its original use, (e.g. the return of offices in city-centre townhouses to their original domestic use), should be exempted from the presumption against development.
- More emphasis to be placed on the character and craftsmanship of interior fixtures and fittings and the importance of artistic interventions (e.g. the Arts and Crafts Movement) to be given greater recognition within the Listed Buildings Consent process.
- Extension of the exemption from formal Listed Building Consent for ecclesiastical uses to other organisations (e.g. rail operators) subject to appropriate controls.
- More engagement between Historic Scotland and the private sector at the pre-application stage.
- Any European Protected Species⁵ or protected habitats that may be present should be taken into account when considering applications for Listed Building Consent.
- The suggestion that the quality of information provided to the owners of listed buildings could be improved so that proper consideration can be given to application.
- The addition of a loss of a finite resource such as embodied energy as a material consideration to strengthen heritage protection and further the wider policy goal of sustainability.
- Mention should be made of setting, specifically landscape context, not only in terms of associated buildings, but also rural landscape settings.

6.2 The consultation on the Listed Building Consent SHEP generated a wide ranging and complex debate about the principles and application of Listed Building Consent. Although there was broad support for most of the draft SHEP, a number of respondents made suggestions for change, in particular increased overall clarity, definition of key terms, and improved guidance from Historic Scotland for applicants and local authorities.

6.3 Scottish Ministers (and on operational matters, Historic Scotland) will give careful consideration to all of the views expressed as part of the consultation process and will consider the policy document further in light of these comments.

⁵ These species are listed on Schedules 2 (animals) and 4 (plants) of the Habitats Regulations 1994 (as amended in 2004 and 2007)

7. ANNEX A

LISTED BUILDING CONSENT CONSULTATION RESPONDEES

Local Authorities

Aberdeenshire Council
Angus
Comhairle Nan Eilean Siar
East Ayrshire Council
Falkirk Council
Glasgow City Council
North Ayrshire Council
North Lanarkshire Council
Perth and Kinross Council
The City of Edinburgh Council
The Highland Council
South Ayrshire Council

NDPBs

Architecture and Design Scotland
British Waterways
Scottish Natural Heritage
Disability Rights Commission
RCAHMS

Heritage Bodies

Cinema Theatre Association
Council for Scottish Archaeology
Friends of Glasgow West
Historic Houses Association for Scotland
The National Trust for Scotland
Scottish Civic Trust
Society of Antiquaries of Scotland
Scottish Property Federation
Scottish Rural Property and Business Association
The Theatres Trust

Private Companies

Network Rail

Religious Groups

Edinburgh Diocesan Centre
Scottish Churches Committee