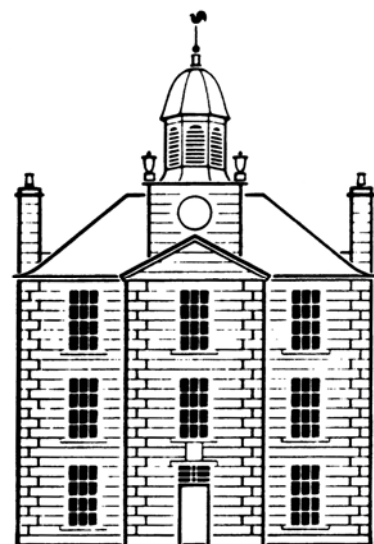


THE ARCHITECTURAL HERITAGE SOCIETY OF SCOTLAND

For the study and protection of Scottish architecture

**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 September 2009



CONSULTATION
RESPONSE

The Architectural Heritage Society of Scotland (AHSS) is an independent membership-based charity that works to promote the study and protection of Scotland's historic buildings. The AHSS welcomes the opportunity to respond to the above consultation as the Society has an interest in all legislation, policy, documents and guidelines that have ramifications for historic buildings.

The AHSS has over 1100 members across Scotland and beyond. Its members work or have an interest in architectural history, architectural conservation, heritage management, planning advice, museums and many other related fields. Contributions to this response have been made by members of the AHSS Council as well as the Officers of the Society.

The AHSS is also a member of the Built Environment Forum Scotland (BEFS) – a network organisation that brings together non-governmental organisations and professional bodies that work with Scotland's built environment. The AHSS supports the separate response of that organisation.

General

As signing up to the *Joint Working Agreement between Historic Scotland and Planning Authorities in relation to statutory casework and consultation* (JWA) is a requirement for any planning authority minded to take part in the scheme to remove the duty to notify and that key information related to the current consultation is included in Appendix 10 of the JWA, we find it very unhelpful that the consultation on the JWA was open only to local authorities and that this document has been finalised and released to planning authorities in advance of the end of the current consultation on the removal of the duty to notify.

In relation to the final JWA, in particular we are very concerned that the final sentence of the second paragraph of Appendix 10, ("...Scottish Ministers could require notification to resume...") in our view, offers an ultimate sanction against any local authority found not to be acting appropriately in relation to buildings for which removal of the duty to notify has been agreed which is at the same time both weak, in terms of its impact on the local authority, and also one that would be very difficult politically for Historic Scotland to apply.

Responses to the specific questions in Section 4 of your consultation are given below:

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)?*

The AHSS is a National amenity body - the Society comments on planning applications across the country, with the following figures recorded for casework in the year 08-09:

AHSS Group		Number of cases
Dumfries & Galloway		313
Forth & Borders		1,939
Edinburgh	1,029	
Borders	300	
East Lothian	535	
Country – Lothians, SW Fife, Central, Islands	75	
Highland		40
Highland	35	
Skye	5	
North East		175
Aberdeen City & Aberdeenshire	136	
Moray	39	
Strathclyde		1,015

Glasgow	889	
Country – Ayrshire, Dunbartonshire, Lanarkshire, Renfrewshire, Inverclyde, Argyll & Bute (South), Loch Lomond and the Trossachs National Park	126	
Tayside & East Fife		738
Perth & Kinross	399	
North East Fife	339	
Dundee & Angus		
Total number of cases		4,220

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?*

The proposed criteria as stated at Section 7, para 30 are:

- Signed-up to the Joint Working Agreement;
- Access to specialist conservation advice;
- Appropriate policies; and
- Supporting processes and monitoring to operate effectively.

The Society endorses the view that Planning Authorities should have access to appropriate expertise. This is not currently the case across the country and we hope that, in order to enable them to sign up to remove the duty to notify some listed building applications, local authorities will reflect on the level of conservation expertise they can access and whether it is sufficient for their needs. It would be helpful to include further guidance on what level of expertise would be considered to be appropriate, as this will obviously vary depending on the volume of casework and other factors. It's not, however, just a question of having access to the resource - it's also one of how it's going to be used in assessing applications. Thus the provision of appropriate policies and procedures, and the monitoring of how these are working in practice on an ongoing basis are also vital to the success of the proposed arrangements.

In order to ensure a consistent quality of decision-making under the new arrangements, it is vital that there is a truly robust policy framework. The current draft Scottish Planning Policy (SPP) represents a considerable weakening of the policy (as found previously in SPP23) at the national level. This implies that there should be a commensurate strengthening in the policy framework at the local level, otherwise a policy vacuum will occur. The Society has real concerns that the protection of the historic environment will be harder to achieve in this vacuum. How is the 'appropriateness' of the policies in place be measured – will their presence be enough to qualify or is there to be a qualitative assessment of their adequacy?

3. *Do you agree with the criteria proposed following the pilot?*

See comments at question 3 above.

In addition, while the listing process is by its nature ongoing, the Society suggests that the adequacy of the current lists in their area is a factor that should be taken into account when determining if the planning authority is suitable to deal with more listed building casework. The lists are years out of date in some areas, with many significant buildings either underrated or not listed at all.

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.*

Yes, but note also the Society's concerns at Question 2 in relation to the weakening of the national policy framework under a new consolidated SPP.

Scope of application types included

5. *Do you think the scope of applications identified in Schedule 1 is appropriate?*

No. As currently drafted, schedule 1 is too vague, and opens up significant areas of interpretation by planning authorities, meaning that there may not be a consistent approach across Scotland.

While any one or two of the types of works listed might constitute minor alterations, the cumulative effect of work in several categories at the same time on the significance of a building could be considerable. We suggest therefore that the assessment has to relate to the impact of the proposal on the architectural or historic significance of the building, rather than simply the nature of the work and overall scale of what is proposed.

Complexity and controversy are related not just to the nature of the works proposed at any particular building. Thus cases where there is significant local community interest or where the significance of a building or structure has been underestimated and therefore not previously recognised through the listing or scheduling processes. For cases such as these, the formal involvement of Historic Scotland in the application process could be beneficial.

Schedule 1 should not be extended to include Category A listed buildings.

Monitoring the scheme

6. *Do you think the method of monitoring planning authorities' decisions during the pilot was effective?*

No. The Society is concerned that no assessment has been made of the quality of the decisions made within the pilot scheme. It would have been wise for Historic Scotland's Inspectorate to consider each of the applications which were not notified and assess whether or not they agreed with the decision reached. Thus it would have been possible to measure the success of the scheme in terms of quality as well as the quantity and speed of processing of the applications.

The different approaches in Glasgow and Edinburgh (with the results 19% and 36% time improvements) shows that internal processes of planning authorities can have as much of an impact on processing times as notification procedures. This has not been adequately drawn out in the analysis of the monitoring process included in the document.

7. *Do you think that planning authorities' decisions should be monitored as part of any future scheme?*

Please explain why/why not.

Yes. It is vital to measure the effectiveness of the scheme not only in terms of whether or not decisions follow local and national policy, but also to seek to find a way of monitoring the impact on the historic environment – is the overall effect a lessening of the level of protection offered to its special character?

8. *Do you think there are other ways which the monitoring could be done?*

Yes. Monitoring should ideally be carried out by an independent body or at least be overseen by a steering group that has outside representation from amenity bodies and other stakeholders.

All cases should be monitored with annual monitoring reports drawn up within a specified timetable and made publicly available.

Some additional monitoring criteria should be included which indicate the sensitivity of the case eg was the decision in agreement with the planning officer recommendation? With amenity body or

other historic environment consultee submissions? Result in the loss of listed buildings or features of interest?

9. *Do you think monitoring information for planning authority decisions on C(S)-listed buildings should also be included?*

Yes. Demolitions of C(S) listed buildings should also be included.

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?*

Annual review. See comments at Question 7 and 8 above.

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?*

Yes. The Society understands that the performance and effectiveness of planning authorities varies across the country and that any individual authorities' performance varies over time. It would be irresponsible for Historic Scotland to enter into an agreement to remove the duty to notify without the real possibility of withdrawing this ability at some future date should the performance of the planning authority become inadequate. The inclusion of some measures by which the quality of the decisions made by the planning authority are measured is vital, as poor performance in terms of the quality of decision-making should be the trigger for the withdrawal of the ability of the planning authority to determine applications without notifying Scottish Ministers. The criteria which must be met if an authority is to continue to make decisions without notification must be clearly spelt out and Historic Scotland must be ready to take the decision to withdraw the removal of duty to notify when the stated criteria are breached, with all the attendant publicity and controversy this may entail.

General

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

Yes, but we have real concerns over the criteria for assessing whether applications are genuinely straightforward or not, the robustness and transparency of the monitoring processes proposed and the likelihood of the sanction of withdrawal of the duty to notify being used in the event of the under-performance of a planning authority.