

PE1749/A

Historic Environment Scotland submission of 28 October 2019

Summary

We fully recognise the issues being raised by the petitioner and accept that the condition of buildings, including traditional and listed buildings, can have a very serious impact on not only their significance and survival, but also on surrounding communities.

The lack of maintenance of traditional buildings is a nationwide issue. The causes for these issues are complex and difficult, and often long-term. However, it is also important to note that listed buildings in disrepair make up a very small percentage of the whole.

It is not clear to us how the specific measures proposed in the petition would make a substantial difference to this general issue. However, we'll be very happy to engage with the committee to discuss this further if that would be helpful. Our view is that the issue should be considered in the context of all of Scotland's traditionally-built buildings rather than just focussed on listed buildings, and that the overall solutions are likely to be based on influencing changes in attitudes and behaviour

In our opinion the focus should be on addressing the causes of buildings falling out of use and on facilitating active reuse. Where buildings do fall into disrepair, we encourage early intervention and the use of existing legislative powers.

The Historic Environment Policy for Scotland (HEPS 2019) promotes decision-making based on a holistic understanding of significance of heritage assets and the impacts of decisions. Encouraging property owners and other decision-makers to consider the long-term impacts of decisions (for example, to stop using a building) and promoting continued use and reuse in line with HEPS is likely to be a more effective way to avoid dereliction than introducing new requirements as suggested.

The Built Heritage Investment Group, a sector-wide working group, is currently reporting on its work. This report aims to deliver a strategic overview of the value of Scotland's built heritage asset and to inform future decisions related to resource and investment. The group will also report on how policy decisions can affect the effective management of historic buildings. This work is highly relevant to the current petition.

Background to the petition

It is not immediately clear to us whether these questions relate specifically to financial viability being considered at the time of designation (listing) or whether it is a more general point aimed at all listed buildings. However, the former is what is suggested by the question provided to stimulate online discussion, which asks directly '*Formal listing should be accompanied by a viability statement. Do you agree?*' We will therefore answer both the questions in the petition and this more direct question.

...Scottish Parliament (should) urge the Scottish Government to ensure that financial viability studies are conducted on listed buildings requiring restoration and/or maintenance

This suggestion may relate to an assessment being carried out at the time a building is being considered for listing, or more generally being carried out on an ongoing basis to all listed buildings showing signs of disrepair.

Listing is a passive designation, meaning that there are no immediate requirements for the owner of a listed building to maintain their property to a set standard. There is no difference in the responsibilities of owners of listed and unlisted buildings to keep them in good order. Owners of all buildings have a general duty of care in respect of their liability for public safety. However, as set out below, the Act relating to listed buildings and conservation areas does provide powers for local authorities and Scottish Ministers to intervene where a listed building is seen to be deteriorating to a point that its special interest is threatened.

Historic Environment Scotland considers a large number of separate designation requests every year. Currently, we consider only two questions in our decisions on whether a building or structure should be designated:-

The first question is whether a building or structure is of special architectural or historic interest. Since its inception, the listing of buildings has always been a straight appraisal of its merit that doesn't make predictions about future planning matters or running costs. This is so that proposals for change can be considered in terms of an up-to-date understanding of the building and current policy at the time the proposals are submitted. More recently, HES has made modifications to the listing process by introducing the Certificate of Intention Not to List (COINTL) and the specific exclusion of parts of buildings from the listing.

The second question is whether there are development proposals which at such an advanced stage that a designation should not proceed. If (for example) a member of the public or local authority proposes a building for listing, we will not normally progress this if there is a 'live' application for the site already in the planning system.

Introducing a requirement to consider viability as part of a designation decision would also be likely to require a change to primary legislation because the legislation only allows for the special interest to be considered.

While listed buildings which have fallen into disrepair can be of great concern to the communities affected by that disrepair, the scale of the issue nationally is very small. There are around 47,000 listed buildings and only around 1% of occupiable buildings are classed as being of 'critical' or 'high' risk on the Buildings at Risk Register for Scotland, managed by HES.

This petition needs to be seen in the overall context of maintenance of our traditional building stock, and what potential options that might be available to ensure that regular maintenance takes place. In many cases disuse, dereliction and issues of long-term viability arise after an extended period of neglect. This is not an issue

exclusive to listed buildings, and is something that the Scottish Parliament is currently considering in the context of the working group on tenement maintenance.

The options for compelling owners to carry out ongoing repairs and maintenance are very limited. In the context of listed buildings, the powers available to local authorities and ministers require a building to first of all be in such poor condition that there is a risk of loss. The listed building control system is focussed on change being proposed rather than active maintenance.

Introducing new requirements as proposed would first require a detailed scoping exercise to make sure that all of the implications are fully understood. In the first place, the cost of carrying out condition surveys and examining viability would need to be considered in detail. If this requirement was to fall to owners, there would need to be a detailed consideration of the mechanisms for achieving that, and the implications if an owner is not willing. If a condition survey indicated an urgent need for repairs, what would the next steps be, and how would intervention at a local or national level be facilitated and funded?

Introducing a requirement for HES to carry out an assessment of condition or of viability either at the point of designation or on an ongoing basis would be a fundamental shift in the approach, which is currently based on the premise that owners are always responsible for carrying out appropriate repairs.

Our view is that introducing such a requirement would be disproportionate to the scale of the problem. It is important to recognise that the majority of buildings which are newly listed today are in use and have a reasonably sustainable future.

Introducing new requirements specific to listed buildings would also, in our view, run counter to the general policy direction over the last decade or so that promotes the 'mainstreaming' of the historic environment. We want to ensure that, where possible, historic buildings are not regarded in the first instance as difficult or intrinsically complex or subject to undue burdens and that in most cases listed buildings are sustainable, flexible and useful.

A building which is listed today may appear to have a sustainable future but circumstances change over time. It is our view that conducting viability statements on all buildings at the time of listing would also be of limited value as it could only take in the circumstances at the time of listing. For example, a factory listed today may remain in that use for another twenty years and if it were to become redundant after that time the market, opportunities for reuse and individual circumstances for that building would be different from when a viability statement may have been carried at the time of listing. If a listed building comes out of use and is at risk of falling into disrepair then that is a more appropriate time to consider options for its future.

Unless the requirement to carry out financial viability studies was considered to cover either all listed buildings or all buildings considered for listing, there would first of all be a need to agree whether a building was *in need of restoration or maintenance*. Most buildings are in need of some maintenance, and there would need to be a mechanism for assessing the severity of the issue. The need for

'restoration' in its narrowest sense would also need further discussion, because the overall approach to securing a building's future should be decided in terms of how best to protect cultural significance. Restoration may not always be the best answer.

Whether or not there was an automatic trigger to assess the building's condition, it would be necessary to appoint a buildings professional who would then have to decide if the building was in such condition that a more detailed study of its condition and future viability is necessary.

Assessing likely future viability is complex and costly. Viability can be established only after considering a range of factors including the condition of a building, the likely cost of repairs, the value of a building before and after repairs are carried out, a range of potential development options and sources of finance and funding. Carrying out this work at either the stage of designation or as a matter of course for all 47,000 listings would not in our view be an efficient or proportionate use of public funds.

...Scottish Parliament (should) urge the Scottish Government to ensure responsibility of ownership is established for this work

Owners are always primarily responsible for the upkeep of buildings, whether listed or not. As stated above, we estimate that listed buildings account for less than 1% of the buildings in Scotland. Whilst they represent the best of our built environment, we don't think that there would be any particular value in any new legislation or regulations to re-establish the responsibility of owners.

Planning authorities have certain enforcement powers which they can use when they are concerned about the condition of a listed building from the point of view of a loss to its interest or being a threat to public safety. The powers are implemented through Repairs, Urgent Works, or Dangerous Buildings notices. Whilst we are aware of a number of these notices being issued each year, there is some hesitance in the use of these powers because of the resources required to administer them and the financial risk to authorities associated with taking action against building owners.

One of the results of this is that listed buildings can be found in all parts of Scotland in boarded up or derelict condition. This has led to a perception in some places that listing leads to a building's disuse because of the cost of their repair and maintenance or restrictions in what they can be used for. Through our guidance and advice, we are aiming to challenge those perceptions and to facilitate the sustainable reuse of buildings.

...Scottish Parliament (should) urge the Scottish Government to ensure financial assistance is provided where listed buildings are at risk of falling into disrepair

As above, the availability of public funds for the repair of historic buildings is weighted towards helping projects which deliver a wide range of community benefits. In most cases, listed buildings should be treated as any other building requiring regular maintenance, which is the responsibility of the owner.

We are aware that whilst the majority of listed buildings are not at risk of going out of use, there are currently 1732 listed buildings on Scotland's Buildings at Risk Register. Of those, approximately 1600 are occupiable buildings. That figure is still too high, and in response HES is currently producing public-facing guidance on how to bring redundant buildings back into use. We recognise, however, that the majority of buildings on the Register are disused because the owners are unwilling or unable to use them or market them. Whilst these buildings are small in number in the context of Scotland's traditional buildings, we are particularly concerned about the fact that listed buildings are continuing to go out of use.

For these reasons, we have been considering how we can influence policy and attitudes to prevent buildings from becoming disused and the best ways to find sustainable new uses for them prior to becoming at risk. We think it is more relevant to incentivise continued viable uses and investment than to fund repairs arising from disuse.

...The Committee would also welcome a view on what incentives there are for owners of listed buildings to maintain or repair their property if the responsibility, and associated costs shift to the public sector once a building becomes a public danger

Because the vast majority of listed buildings are not at risk of loss through irreversible decline, our view is that most owners take an interest in regular maintenance of their properties. This is likely to be because they take a pride in the appearance of their building and securing its long-term future, or they understand that it's the best way to avoid a reduction in its value and protect their investment.

In this respect, the property market should really secure the long-term future of listed buildings, as for any other buildings. Owners are responsible for upkeep, and buildings should be valued and sold at a price reflecting their condition and location to ensure that the cost of initial and ongoing repairs and maintenance are catered for.

Grants for repairs of historic buildings are available from several sources, including HES. Most grant aid is intended to address a 'conservation deficit' – the gap between the value of a property and the cost of repairs. Most grant aid is targeted towards projects that deliver a wide range of community benefits, and help for individual owners is rarer.

Our experience shows that the majority of concerns about the cost of maintenance come from owners who can no longer afford to maintain a property they have owned for many years, or have bought a property where the valuation or price paid did not account for its repair. The implication here is that because a building is listed, it should be eligible for grant to help the owner maintain it. In the majority of these cases, however, the buildings are likely to need conventional repair in the manner of the rest of Scotland's traditional buildings.

The issue of VAT on the repair of historic buildings is often raised as an impediment to effective management. Fiona Hyslop, the Cabinet Secretary for Culture, Tourism and External Affairs has called for VAT for repairs to listed buildings to be reduced to

incentivise the reuse of historic buildings but this matter is devolved to Westminster and the request has not been taken forward.

...Formal listing should be accompanied by a viability statement. Do you agree?

We do not consider that this is a viable or proportionate proposition; it responds only to a small subset of traditional buildings in poor repair that require attention and comes with a likely high cost of carrying out such an assessment at the time of designation. This is especially because the vast majority of buildings are not at risk of loss through decline or development.