

ITEM No. 1 2

Report No 816/96

ANGUS COUNCIL

RECREATION AND CULTURAL SERVICES COMMITTEE
PLANNING AND TRANSPORT POLICY COMMITTEE

10 OCTOBER 1996
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SUBJECT: GREEN PAPER - "PROTECTING THE BUILT HERITAGE"

**JOINT REPORT BY DIRECTOR OF CULTURAL SERVICES AND
DIRECTOR OF PLANNING, TRANSPORT & ECONOMIC DEVELOPMENT**

Abstract: The Government issued a Green Paper on Scotland's historic buildings in May of this year. A parallel exercise is underway in England and Wales. All Scottish Planning Authorities have been invited to respond to the Green Paper by 30 September. Historic Scotland have indicated that a late response is acceptable. This report analyses the implications of the issues raised in the Green Paper, in terms of policy, resources and procedures.

1 RECOMMENDATION

It is recommended that the Committee notes the contents of the Green Paper "Protecting the Built Heritage" (referred to hereinafter as the "Green Paper"). It is further recommended that the whole of this report is forwarded to the Secretary to the State for Scotland as Angus Council's response to the Green Paper. COSLA has requested a copy of each Authority's response and it is recommended that they receive a copy of this report.

2 INTRODUCTION

2.1 The built heritage is an important cultural, educational and economic asset, the value of which extends far beyond the preservation of individual buildings as an end itself:

- a) Architecture is one of the most visible and permanent cultural statements that any society can make. Our architectural heritage is, therefore, an important expression of our historical and cultural identity;
- b) The evidence contained in historic buildings is a living, educational resource. Historic building fabric of all types, from particular forms of masonry construction to joinery details and even the layout of rooms can tell us much about how old buildings were built and used;
- c) Public interest in the built heritage is continually growing and as that interest grows, there will be a parallel growth in public interest and support for the conservation of the heritage. That interest is evident in the expanding amenity society and Building Preservation Trust movements;
- d) Economically, historic buildings and settlements represent an important resource. In 1993, the Scottish Tourism Economic Activity Monitor assessed the revenue income of tourism in Angus at just over £42 million. Clearly, the quality of the natural environment is a major attraction but the unspoilt appearance of our towns, villages and major historic buildings is probably a factor in attracting

visitors to Angus. In fact, Government has acknowledged that conservation plays a key part in fostering economic development by creating an environment that is attractive to inward investors and visitors. National Planning Policy Guidance Note 5 (Archaeology and Planning) and Planning Advice Note No.42 (Archaeology) acknowledge the relationship between conservation of the historic environment and economic development. As the public become more aware of the value of their heritage and thus demand better measures for its protection, the economic development role of conservation may well increase;

- e) Environmental sustainability is emerging as a central theme of planning policies. The recent Planning Advice Note No. 49, "Local Planning", advises Planning Authorities to take account of the energy embodied in existing buildings in assessing applications for demolition. There is, therefore, a strong interface between heritage conservation and environmental sustainability.

- 2.2 Given that historic buildings are a precious and non-renewable resource, it is important to ensure that they are managed effectively. It is equally important to ensure that the legislative, financial and procedural arrangements relating to heritage issues are properly constituted. Consequently, the Green Paper requires careful analysis to ensure that the implications for Local Authorities are fully assessed.

3 STRUCTURE OF THE GREEN PAPER AND METHOD OF ANALYSIS

- 3.1 The Green Paper is divided up as follows:-

Part I - Introduction

Part IIA - Ancient Monuments and Archaeology

Part IIB - Removal of Ecclesiastical Exemption

Part IIC - Removal of Crown Community: Built heritage aspects

Part IID - National Heritage Memorial Fund

Appendix 1 - Draft Self-Regulation scheme for the control of proposed works to the interiors of buildings in ecclesiastical use

Appendix 2 - Draft framework for dealing with repairs to neglected buildings in Crown ownership.

- 3.2 Each section raises a number of relevant issues and invites comments as necessary. Rather than attempting to analyse the entire Green Paper in detail, this report focuses on those issues which have resource and/or procedural implications for Local Authorities. Members who require further details on specific issues may consult the copy of the Green Paper in the Members' Lounge.

4 COMMENTS ON SPECIFIC ISSUES

LISTING OF MODERN BUILDINGS

- 4.1 Opinion is split on the issue of listing modern buildings. One school of thought is that the existing listing criteria should be amended to take account of modern defects, thermal inefficiencies, etc. while a second school of thought believes that this should be considered only after the building has been listed. On balance it is probably more appropriate to list only those modern buildings which have a reasonable future life. Otherwise the principle of listing will be diluted if radical changes arising out of modern defects, thermal inefficiencies etc. are the only means of prolonging a building's life. The rather scant discussion in the Green Paper makes a proper analysis of the issue difficult so the Council is advised to request further information before replying specifically.

HOW CAN WE (HISTORIC SCOTLAND) IMPROVE CONSULTATION?

- 4.2 In regard to consultation, the existing procedures appear to have worked reasonably well to date. Historic Scotland's Inspectors usually approach owners of buildings under consideration for listing, because of the additional information that can be obtained. While listing decisions should continue to be the subject of professional judgement, there are good, public relations reasons for incorporating an explanatory process within pre-listing procedures. Some owners undoubtedly find the listing process confusing and intimidating; once Historic Scotland have listed a building, it is left to the Local Authority to explain the reasons for and implications of, listing, on a regular basis. Accordingly, it is strongly recommended that Historic Scotland should be legally required to provide explanatory material to owners of buildings being considered for listing. This should include full details of the reasons for, and the implications of, listing. Enshrining this within legislation would greatly assist Local Authorities and would, quite rightly place the educational onus firmly onto the body responsible for listing, i.e. Historic Scotland. The present system uses up scarce resources at Local Authority level.

SEPARATION OF A BUILDING'S INTERIOR AND EXTERIOR

- 4.3 At present, Local Authority Conservation and Development Control Officers are usually able to deal with minor changes to listed building interiors by a simple exchange of letters. A similar process is used where a building has lost most or all of its interior features; retail premises are the most common example. This system has worked well in practice, and has not caused any real problems. If it was proposed to list some buildings for their exteriors only, it would be necessary to re-survey all existing listed buildings in order to identify those where the interior is of no architectural or historic interest. On the Government's own estimate, this is a task which could not be completed until sometime after 2050. It is probably best to continue the present approach and to include a clear statement in the list description of new listings, where the interior was of no interest. Existing listings would receive the same treatment as and when they were resurveyed.

HERITAGE CONTRACTS

- 4.4 The Green Paper suggests that there is a case for establishing more clearly the joint interests of Historic Scotland and Local Authorities through a system of heritage "contracts". These documents could set out the responsibilities and plans which Historic Scotland and the individual Local Authority have for the built heritage in each area. They could cover such matters as the Local Authority's plans for the built heritage (the key features of which would be presented in the context of their development plan) and standards that Historic Scotland expect to be followed in dealing with Listed Building and other built heritage consents. A key feature of such heritage contracts would be that they would set clear and public targets for the conservation and enhancement of the built heritage in each area. They would have to be reviewed on a regular basis which would provide an overall assessment of the condition of the built heritage in the area and the impact that Historic Scotland and Local Authority policy and casework decisions have had.
- 4.5 Superficially, this appears to be an attractive proposition. However, the resource implications of this proposal are potentially enormous. It is unfortunate that the only information in the Green Paper on how the heritage contracts would work is an indication that "reports on the operation of heritage 'contracts' would be published in some form". If the contracts contain specific proposals to apportion additional resources from Historic Scotland to Local Authorities then they could be a welcome initiative. At present however the resources of both Historic Scotland and Local Authorities are more stretched than they have ever been. It is difficult therefore to see how the existing resource levels could accommodate working up the details of the heritage contracts. The corollary to the suggestion that the contracts "would provide an overall assessment of the condition of the built heritage in the area and the impact that Historic Scotland and Local Authority policy and casework decisions have had", is one of considerable resource commitment on the part of the Local Authority. The existing resources within the Department could only cope with this level of work at the expense of existing programmes and procedures. Until such time as full details of the proposed heritage contracts are made available, the Council is strongly advised to withhold from commenting specifically. Resource implications notwithstanding, the heritage contract proposal, if it is properly constituted, could have considerable potential for strengthening the management of historic buildings.

LISTED BUILDING CONTROL: THE SECRETARY OF STATE'S INVOLVEMENT

- 4.6 Where Historic Scotland and the Local Authority have agreed on a heritage contract as described above, it is proposed to allow the individual Local Authority to determine all heritage consents without reference to Historic Scotland with the exception of the following:-
- the demolition of any Listed Building;
 - the demolition of any building in a Conservation Area designated by the Secretary of State as outstanding;
 - any proposed works to a Category A Listed Building;
 - proposed works to a Category B Listed Building in an Outstanding Conservation Area.

- 4.7 Once again this proposal is superficially attractive but full details of how the heritage contracts would work are required before it is possible to advise the Council one way or the other. Full details of the proposed heritage contracts are a pre-requisite to a specific commitment. The Green Paper also asks whether the Secretary of State should retain reserve powers to restore his involvement. Irrespective of the details of the heritage contracts it is recommended that the Secretary of State should retain reserve powers to restore his involvement in heritage consents to ensure consistency of decision-making. While delegation would be helpful, it must not lead to fragmented and diluted decision-making.

DESIGNATION OF CONSERVATION AREAS

- 4.8 It is proposed that the designation of a new Conservation Area must include a statement identifying the special features of the area that it is considered desirable to conserve or enhance. This requirement would be incorporated in legislation.
- 4.9 At the time of writing work is progressing on the District-wide Local Plan and one of the proposal in the Local Plan is to review existing and proposed Conservation Areas. As part of this process it is intended to prepare a character statement for each Conservation Area. The proposal is therefore, already in hand and it will provide a useful development control policy basis. The Council is advised to respond positively - there are no major resource or procedural implications.

REPAIRS AND URGENT WORKS PROCEDURES

- 4.10 Subject to the comments received, it is proposed to amend the legislation relating to repairs and urgent works procedures as follows:-
- a) allowing the service of repairs/urgent works' notices on Listed Buildings which are also Scheduled Monuments, e.g. Brechin Round Tower, which are currently immune from these procedures;
 - b) requiring Local Authorities to keep a register of repairs notices which would be trawled during property enquiries;
 - c) to allow unlisted buildings within Conservation Areas to be subject to repairs/urgent works' notices - at present the procedures only apply to Listed Buildings.
- 4.11 Experience in operating the existing repairs/urgent works' procedures suggests that all three proposals are welcome. None of the three have any real resource implications unless it was decided to step up the repairs/urgent works' programme in any way. Moreover, it is taken as read that costs incurred in operating proposal a) will be recoverable. The Council is advised to respond positively to these proposals, but only on the assumption that this will not leave the Council with additional costs.

PART IIA - ANCIENT MONUMENTS AND ARCHAEOLOGY

REMOVAL OF FINDS FROM SCHEDULED SITES

- 4.12 The proposal to make it an offence to remove finds from scheduled monuments is to be welcomed. The present caveat of "unless to do so would damage the monument" being removed makes sense, but this will place a further burden upon the work of our museums. Items brought to our museums from scheduled monuments for identification are already scrutinised closely and our staff do try to ascertain whether illegal methods e.g. metal detectors were used to discover finds. At present we attempt to bring any such finds which are likely to be considered "Treasure Trove" to the notice of the Treasure Trove secretariat at the National Museums of Scotland. While it is not our role to police scheduled monuments, our Acquisitions Policy precludes us from accepting any material which may have been acquired in contravention of the law relating to Archaeological sites. **This proposed change in the law will mean that all material found at scheduled sites will come into this category.** No proposals are made here as to how this will be policed, or how the added burden on local museums will be addressed.

URGENT WORKS/DELEGATION OF SCHEDULED MONUMENT CONTROLS TO LOCAL AUTHORITIES

- 4.13 The proposal to delegate urgent works measures for buildings which are scheduled, but not listed, to Local Authorities is potentially dangerous in that the proposed amendment would not empower either the Secretary of State or the Local Authority to recover the cost of such repairs from owners. Equally, the delegation of Scheduled Monument controls to Local Authorities requires additional resources to be diverted as and when Scheduled Monument Consent applications are made. Consultation with Historic Scotland suggests that Scheduled Monument Consent applications in the Angus area rarely enter into double figures in any one year. The process involved, however, is very detailed and requires particularly specialised knowledge. Whilst a certain amount of knowledge in respect of standing ruins is available within the Department of Planning, Transport and Economic Development, the consideration of such applications really falls within the remit of archaeologists. If these applications were delegated to Local Authorities, then the Council would either have to provide an archaeological service in-house or to contract the work out. The Green Paper indicates that the issue would be considered when agreeing a heritage contract. Given that it is not possible to comment on the acceptability or otherwise of the proposed heritage contracts the Council is advised to withhold from replying specifically to the delegation proposal until such time as sufficient information is made available.

MANAGEMENT AGREEMENTS

- 4.14 The proposal that Local Authorities may have extended powers to enter into management agreements with owners of ancient monuments is a potentially exciting one. However, the paper makes no mention of making resources available to Local Authorities wishing to take on such responsibilities. Without such assistance, the proposal looks doomed to the same fate as the 1979 Areas of Archaeological Importance AC II. Within Angus, Historic Scotland, for example own and manage a number of properties of considerable importance in attracting visitors. Arbroath

Abbey, Edzell Castle are the two main centres, but the outstanding Pictish Stones, especially at Aberlemno and St. Vigean are also of material significance. Should this part of the Green Paper become law, there will be a distinct opportunity for the development of an integrated approach in Angus towards Heritage tourism.

STATUTORY DUTY TO MAINTAIN SITES AND MONUMENTS RECORDS

- 4.15 Our Museums Service has administered an archaeological Sites and Monuments record (SMR) since 1977. This has always been on an ad hoc basis due to the lack of any central support in terms of resources, including free access to the National Monuments Record (NMR) for Angus information. Since the 1 April 1996, when Historic Scotland withdrew their archaeological advice to Local Authorities, the Angus SMR has attempted to fulfil that role despite the lack of staff resources and access to the NMR. By making it a statutory duty on all Local Authorities to maintain a SMR resources will be required, whether they do so directly or enter into an agency agreement with an independent organisation. In Angus it would be possible to enter into an agreement with the Scottish Urban Archaeological Trust (SUAT) in Perth who formerly provided a service for Historic Scotland until 1 April 1996. They would, however require a fee for such a service, and no mention of either financial assistance or the availability of NRM information is made here.

PART IIB - ECCLESIASTICAL EXEMPTION

- 4.16 At the present time, ecclesiastical buildings in use as such are exempt from listed building control. It is proposed to change this by making works to the exterior of churches subject to listed building control. This proposal is very welcome and the Council is advised to respond positively.
- 4.17 In regard to interiors it is proposed to implement a system of self-regulation for those willing and able to implement it combined with fall back powers to enforce listed building control measures where self-regulation is not possible or has failed. Details of how the self-regulatory scheme might function are set out in the Green Paper. Ideally, all works to church interiors should be subject to listed building consent. It should be noted however that the Church of Scotland could not be legally compelled to apply for listed building consent even if the proposal passed into law because of prior legislation which safeguards the church's position. Accordingly, the draft self-regulation framework seems to be the best option. The proposals in the draft self-regulation scheme as outlined in Appendix 1 to the Green Paper are first class and should be commended. The only point worth making is that the Local Authority should also receive a copy of the record referred to in paragraph 4 of the draft self-regulation scheme. The Council is advised to respond positively.

PART IIC - REMOVAL OF CROWN IMMUNITY

- 4.18 While it is the Government's stated aim to put Crown bodies in the same position as private owners of historic buildings, it has to be recognised that this can only be done insofar as it is consistent with their wider responsibilities and the Crown's constitutional position. In view of these latter considerations, the proposals in the Green Paper are a welcome initiative and can only improve the rather unsatisfactory mechanisms that exist at present. The Council is advised to respond positively.

5 FINANCIAL IMPLICATIONS

- 5.1 The financial implications of the proposals in the Green Paper are unquantifiable at present; the document is silent on the matter. It is almost certain, however, that the additional/delegated responsibilities will require additional, and possibly substantial finance.

6 CONSULTATION

- 6.1 The Chief Executive, Director of Law & Administration, Director of Finance and Director of Property Services have been consulted in the preparation of this report.

7 CONCLUSIONS

- 7.1 At the beginning of this report it was indicated that a parallel exercise is underway in England and Wales. Copies of the English and Welsh Consultation Document have been obtained for comparative purposes. (Copies of both documents are available in the Members' Lounge.)
- 7.2 There is an alarming inconsistency of approach evident from a comparison of the Green Paper with the parallel English and Welsh document. Moreover, the similarity of layout, together with a number of textual similarities suggests that one document is based on the other. If this interpretation is correct, either the Scottish Green Paper is a much diluted version of its English and Welsh counterpart, or, the latter is a lengthier and far superior version of the Scottish Green Paper.
- 7.3 The failure of the Green Paper to analyse the issues properly before inviting comments on specific issues is also a source of concern. To amplify this the Committee is referred firstly to paragraph 6 of the Green Paper which devotes one sentence to the issue of listing modern buildings before inviting comments on how this could be achieved satisfactorily. The English and the Welsh Document devotes several hundred words to an analysis of the issue, actually states the Government's opinions on the matter and even frames the question within a specific context. It would be interesting to receive an explanation for this and several other differences of analysis.
- 7.4 The lack of detail in the Green Paper is particularly unfortunate given the age of the primary Scottish legislation, namely the Town and Country Planning (Scotland) Act 1972. The implicit statement in the Green Paper is that the Scottish legislation has operated satisfactorily to date. This is not the case; the consensus view amongst Scottish conservation professionals is that the primary legislation in this country is outmoded, unwieldy and urgently in need of an overhaul.
- 7.5 It is appropriate to highlight the following subject areas which do not appear in the Scottish Green Paper, but which are thoroughly debated in the English and Welsh Document:-
- A. Provisional Listing (Paragraphs 2.13 - 2.15);
 - B. Economic and Financial Considerations (Paragraphs 2.20 - 2.25);
 - C. Listing and the Development Process (Paragraphs 2.26 - 2.35);
 - D. The Relationship between Listing and Conservation Area Controls (Paragraphs 2.36 - 2.39);
 - E. Determination of the Need for Listed Building Consent (Paragraphs 2.53 - 2.54);

- F. "Class" Listed Building Consents (Paragraph 2.55);
- G. Demolition (Paragraphs 2.56 - 2.57);
- H. Plant and Machinery (Paragraph 3.2);
- I. Demolition in Conservation Areas (paragraphs 3.13 - 3.15).

These issues have legislative implications, cut across national boundaries and affect the conservation of the cultural heritage throughout the United Kingdom. The issues are intelligently debated in the English and Welsh Consultation Document and it is not at all clear why they have been omitted from the Scottish Green Paper.

- 7.6 The opening of any public debate on heritage issues is long overdue and represents a welcome initiative. Some of the proposals contained in the Green Paper are very welcome; examples of this include the proposal to restrict Crown immunity and to lift most of the ecclesiastical exemption relating to work to listed church buildings. On close analysis however the Green Paper fails in a number of areas. In effect, it is a missed opportunity.
- 7.7 Above all the Green Paper is wholly silent on the issue of additional resources. Unless this issue is properly addressed many of the proposed changes will simply become an exercise in off-loading workload and responsibilities by Historic Scotland. The Council is strongly advised to request substantial additional information before committing itself to any of the proposals in the Green Paper which have additional resource implications.

NOTE

The Green Paper, "Protecting the Built Heritage" and the Consultation Document, "Protecting our Heritage", were relied on extensively in preparing the above Report.

AA/PM/KW/IAL
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Alex Anderson
Director of Planning, Transport & Economic Development

Gavin Drummond
Director of Cultural Services

