

**ANGUS COUNCIL**

**INFRASTRUCTURE SERVICES COMMITTEE - 20 JANUARY 2009  
DEVELOPMENT STANDARDS COMMITTEE - 27 JANUARY 2009**

**SUBJECT: DRAFT JOINT WORKING AGREEMENT BETWEEN HISTORIC SCOTLAND  
AND PLANNING AUTHORITIES**

**REPORT BY DIRECTOR OF INFRASTRUCTURE SERVICES**

**Abstract: This report comments on and provides a suggested basis for the Council's response to the draft 'Joint Working Agreement between Historic Scotland and Planning Authorities in Relation to Statutory Casework and Consultation'. The consultation introduces the possibility of delegation of most listed building consent cases to planning authorities amongst other important matters.**

**1 RECOMMENDATION**

It is recommended that the Committee:-

1. notes the content of the draft Joint Working Agreement between Historic Scotland and planning authorities; and
2. agrees this report as the basis for the Council's response to the Scottish Government.

**2 INTRODUCTION**

- 2.1 In October 2008, Historic Scotland issued a draft Joint Working Agreement (JWA) to set out the roles of Historic Scotland and planning authorities in relation to statutory casework and consultations. The consultation is largely a clarification of current working practices and it is intended to ensure that all planning authorities and Historic Scotland work consistently and transparently to an agreed standard. Most importantly, the draft JWA raises the possibility of delegating most listed building consent casework to planning authorities subject to agreement on protocol and access to qualified staff. The consultation is open to planning authorities only.
- 2.2 The JWA lays out the role of planning authorities and Historic Scotland and then goes on to discuss when Historic Scotland should become involved in the planning process. One of the most important aspects of the JWA is the potential for delegation of most listed consent cases to planning authorities. At present, any planning authority that is minded to approve an application relating to a Category A or Category B listed building, or the demolition of any listed building or unlisted building in a conservation area, has to notify their intention to Historic Scotland before issuing the consent to the applicant. A number of appendices to the JWA expand upon the circumstances in which Historic Scotland should become involved in the planning process. The JWA also sets out parameters for those planning authorities that may be interested in applying for delegation of listed building consent casework.
- 2.3 A copy of the JWA and the accompanying covering letter have been placed in the Members' Lounge.

### **3 DRAFT JOINT WORKING ARRANGEMENT BETWEEN HISTORIC SCOTLAND AND PLANNING AUTHORITIES – SUMMARY OF KEY POINTS**

3.1 In the preamble to the JWA Historic Scotland states that it is intended to set out the basis for an effective partnership between planning authorities and Historic Scotland. The preamble then goes on to lay out the aims of the JWA which are as follows:-

- manage Scotland's historic environment effectively and efficiently;
- improve performance in handling statutory casework;
- empower planning authorities to provide advice and make decisions locally;
- add value to the Development, Planning and Development Management processes by encouraging planning authorities to engage Historic Scotland where appropriate and as early as possible;
- protect the outstanding universal values of Scotland's World Heritage Sites; and
- encourage partnership between Historic Scotland and planning authorities.

3.2 One of the themes that runs throughout the draft JWA is the need to have access to specialist advice and appropriate policies at planning authority level. Historic Scotland states that where planning authorities have access to specialist advice, and have clear policies for the historic environment, this allows Historic Scotland to devote more of their resources to providing support in other ways. The latter include pre-application discussions where appropriate, the issuing of best practice advice notes and working directly on significant cases.

3.3 The JWA then goes on to discuss the involvement of Historic Scotland in development management casework. There is also mention of strategic liaison between Historic Scotland and planning authorities, a theme that will be picked up under the discussion section of this report. The main body of the JWA ends with a section on delegation of listed building casework. Once again this will be picked up later in this report.

3.4 Six appendices in the JWA cover a range of matters. Appendices 2 and 6 do not require any discussion here but the other four appendices merit consideration in light of the implications for the working practices of Angus Council in its role as the planning authority.

3.5 The covering letter issued with the draft JWA asks planning authorities to respond to a number of specific questions. The response to these questions is contained in Appendix 1 to this report. Appendix 2 to this report summarises the most important issues raised in the JWA.

### **4 DISCUSSION**

4.1 Historic Scotland's role within the built heritage aspects of the planning system covers four main areas of work:-

- statutory designation;
- development planning;
- development management; and
- general advice.

4.2 As regards designations Historic Scotland's main role is at the level of the individual building. Whilst Historic Scotland should normally be consulted on proposals to

designate conservation areas, the work of designation, consultation and subsequent management is carried out largely by the planning authority with input from Historic Scotland as required. The JWA will have little impact on the current arrangements, which seem to be adequate for their purpose so no comment is made in relation to these aspects of the draft JWA.

- 4.3 Likewise, there is a long standing, and effective, arrangement for consultation with Historic Scotland in preparation of Development Plans. Consequently, no comment is made on this aspect of the JWA.
- 4.4 The key aspect of the draft JWA is the relationship between Historic Scotland and planning authorities regarding the heritage aspects of the Development Management process.
- 4.5 In the case of applications to alter or demolish a listed building, planning authorities must notify Historic Scotland (on behalf of the Scottish Ministers) where they intend to grant listed building consent relating to a Category A or B listed building and for the demolition of Category C(S) listed buildings. The annual number of applications for listed building consent submitted to Angus Council is around 100 of which approximately 60 require notification to Historic Scotland. The alteration of a Category C(S) listed building does not require to be notified to Historic Scotland unless it involves demolition. Planning authorities are also required to notify Historic Scotland where they intend to grant consent for the demolition of an unlisted building within a conservation area ('Conservation Area Consent').
- 4.6 There are a number of instances where Historic Scotland has to be consulted on heritage-related applications for planning permission. It is assumed that this is unlikely to be changed at the moment because the requirement for consultation is contained in a Statutory Instrument (the General Development Procedure Order).
- 4.7 Historic Scotland is involved at three stages in the life of an application for listed building consent or where an application for planning permission relates to the built heritage. These stages are pre-application, during the assessment of an application, and post-determination. There is a fourth instance, namely where Historic Scotland is the decision making body. This relates to applications for planning authority-owned listed buildings and the demolition of unlisted buildings within conservation areas that are within local authority ownership. It is understood that the procedures relating to this fourth instance will remain unaltered no comment is made on it in this report.
- 4.8 Paragraph 26 of the JWA states: "It is not always necessary for planning authorities to consult Historic Scotland at pre-application stage. In most cases planning authorities are able to provide sound pre-application advice to owners or developers. In sensitive or significant cases however there may be a role for Historic Scotland and they should be involved as early as possible." The issue of access to specialist advice and the definition of a complex or sensitive issue is discussed in Appendices 3 and 4 to the JWA. This will be picked up later in this report.
- 4.9 Where Historic Scotland considers that a proposal is unacceptable, and raises an issue of national significance, the planning authority will be informed that Historic Scotland requires additional time to consider the proposal. The key point here seems to be whether the proposal raises "an issue of national significance". In practice, very few applications are called in for determination by the Scottish Ministers. Nevertheless, under the current regime there can be considerable delays where

Historic Scotland objects to the decision made by a planning authority. This, in turn, can cause frustration on the part of the applicant. In the event that delegation for most listed building casework was granted, this delay could be removed subject to the planning authority observing best practice and adhering to any protocol that is agreed with Historic Scotland.

- 4.10 There is further confirmation of the pivotal role that planning authorities play in managing the built heritage at paragraph 37 of the JWA: "Planning Authorities are best placed to provide to information and advice to local communities to works on listed buildings and within conservation areas. In addition, they should advise on the need for consent and guide applicants on most proposals. Planning authorities should not normally need to seek general advice from Historic Scotland on these issues".
- 4.11 It is recommended that planning authorities and Historic Scotland maintain a regular dialogue on historic environment issues. The Planning and Transport Division has held regular liaison meetings with Historic Scotland's Area Inspector for a number of years. The meetings are held approximately every 4-6 weeks. Other recommendations regarding liaison between Historic Scotland and planning authorities include an annual meeting between Historic Scotland and local authority representatives. This arrangement has been in place for the last few years: Angus Council has representation at the meetings. A further recommendation is that ways of increasing the awareness of the historic environment amongst planning authority staff are explored. At present the level of expertise that exists within the Planning and Transport Division regarding built heritage issues is relatively high. Whilst it is important to maintain awareness of emerging built heritage issues a fair degree of built heritage expertise exists within Angus Council at the present time.
- 4.12 The final section of the main body of the draft JWA deals with the potential for delegation of listed building casework. The Planning etc. (Scotland) Act 2006 introduced the potential to extend the delegation currently in place for Category C(S) listed buildings. The 2006 Act allows for separate schemes of delegation to be agreed with each planning authority according to the resources and needs of each, and subject to the planning authority being a signatory to the JWA.
- 4.13 Four of the six appendices merit discussion; the other two are purely for information purposes. Appendix 1 deals with the level of information that is required in support of proposals that affect the historic environment. The list of information laid out in Appendix 1 is fit for purpose. Coloured drawings to show new work should be added to this list and a Conservation Statement or a Conservation Plan should be sought for sensitive or complex proposals. Appendix 3 lays out the type of specialist advice that is required for managing the historic environment. The range of specialist advice laid out is appropriate although due prominence should be given to Urban Designers. In addition, due recognition should be given to those officers who might not be qualified to post-graduate level but whose direct, historic environment experience is invaluable.
- 4.14 Appendix 4 lays out Historic Scotland's view on "what constitutes a complex or sensitive issue?". This is to broadly define the parameters of when Historic Scotland may have to assist planning authorities. This appendix should also be read in the context of the statements made in the main body of the JWA regarding planning authorities being best placed to discharge most historic environment functions and

duties. In light of the range of specialist advice available to Angus Council, it is considered that the definition of “complex or sensitive” in Appendix 4 is appropriate.

4.15 Appendix 5 deals with delegation of most listed building consent casework to individual planning authorities. In order to take advantage of this opportunity planning authorities must:

- Sign up to the JWA;
- Have access to specialist conservation advice;
- Have appropriate policies; and
- Have supporting processes to operate effectively.

4.16 A pilot delegation scheme is underway with three planning authorities: City of Glasgow, City of Edinburgh and Perth & Kinross. Historic Scotland will visit all the other planning authorities in Scotland over the coming months. The visits will be to discuss the four points laid out immediately above.

## **5 FINANCIAL IMPLICATIONS**

5.1 There are not any financial implications arising out of the recommendations contained in this report.

## **6 HUMAN RIGHTS IMPLICATIONS**

6.1 There are not any human rights implications arising out of the recommendations contained in this report.

## **7 EQUALITIES IMPLICATIONS**

7.1 The issues dealt with in this report have been the subject of consideration from an equalities perspective (as required by legislation). An equalities impact assessment is not required.

## **8 CONSULTATION**

8.1 The Chief Executive, the Director of Corporate Services, the Head of Finance and the Head of Law & Administration have been consulted in the preparation of this report.

## **9 CONCLUSION**

9.1 Much of the JWA is a reiteration of current policies and procedures together with clarification of how Historic Scotland interacts with planning authorities. The most important issue is the potential for delegating most listed building consent casework to planning authorities. Whilst it will be necessary to examine the fine detail, before agreeing wholeheartedly to delegation, the potential reduction in processing times and empowerment of planning authority officers is welcome.

- 9.2 Angus Council has a long standing and beneficial working relationship with Historic Scotland. Whilst delegation of most listed building consent casework is potentially welcome, it is important that regular dialogue continues, through the regular liaison meetings with Historic Scotland's Area Inspector. Maintaining this arrangement will also assist Historic Scotland in monitoring the effectiveness of delegated powers in the early stages.

#### **NOTE**

The following background papers were relied on to a material extent in preparing the above Report.

- Draft Joint Working Agreement Between Historic Scotland And Planning Authorities: October 2008
- Covering Letter And Questionnaire From Deputy Chief Inspector, Historic Scotland: October 2008

P&T/PM/IAL  
28 November 2008

Eric S. Lawson  
Director of Infrastructure Services

## **APPENDIX 1 – RESPONSE TO SPECIFIC QUESTIONS**

***Q1 – Do you consider that the Joint Working Agreement will be useful? Please explain why.***

The JWA is a welcome development. Angus Council has regular dialogue with Historic Scotland. This dialogue is helpful so the prospect of a formal arrangement is welcome.

***Q2 – Are there any other areas besides those listed where Historic Scotland works with your local authority?***

Angus Council was awarded a substantial sum of money from Historic Scotland under the Conservation Area Regeneration Scheme (CARS) programme. This money makes up part of the City of Brechin THI budget and there is frequent contact with Historic Scotland regarding management of the CARS element of the budget. In addition, there is dialogue between Council Officers and Historic Scotland Inspectors regarding the schedule of repairs for some of the buildings within the THI area. The dialogue is helpful from a financial management aspect and the dialogue on work to buildings in the THI area is beneficial. Several liaison meetings are held with Historic Scotland's Area Inspector every year: these meetings are useful for maintaining ongoing dialogue on a range of built heritage matters.

***Q3 – How effective are the current development plan arrangements between Historic Scotland and your local authority? Can you suggest any improvements?***

The current approach to policy development has worked well over the years.

***Q4 – Do you think Historic Scotland and local authorities should work together more closely to protect World Heritage Sites? If so how would you suggest we do this?***

It is not possible to comment authoritatively on this issue because there are not, currently, any World Heritage Sites in Angus. The main issue here seems to be effective management structures and practices given that World Heritage sites do not confer additional powers to either the planning authority or Historic Scotland. Nevertheless, it is important to ensure that every measure possible is taken to protect sites that are of sufficient quality to merit World Heritage Site status. One way of addressing the potential issues would be to set up a forum so that important issues can be discussed on a regular, and ongoing, basis.

***Q 5 – How should Historic Scotland help resolve issues where they have objected?***

Historic Scotland should include in their letter of objection a detailed narrative on the issues that have led to their objection(s) to facilitate discussion with the planning authority. The reasons for the objection(s) should be explained in the context of the relevant legislation, together with any policy documents that are material to the application. Once Historic Scotland has laid out the reasons for objection a dialogue can take place with the planning authority. In the event that the planning authorities' expert advisers do not agree with Historic Scotland, there should be an arbitration mechanism rather than the application becoming the subject of call in, except in the most significant cases. In practice, dialogue with Historic Scotland usually resolves outstanding issues so the occasions on which applications have to be called in are likely to be relatively few. Moreover, the regular liaison meetings held with Historic Scotland's Area Inspector have facilitated early discussion of issues that might arise at application notification stage. Angus Council's experience in this respect has been very positive.

**Q 6 – Do you think the notification process could be improved? If so how?**

The current notification process has worked quite well. The main issue is provision of adequate information by both the planning authority and Historic Scotland. This applies where planning authorities notify intention to approve an application, or at pre-application stage under the GDPO, and when Historic Scotland notifies objections to the planning authority.

**Q7 – Are there any other ways Historic Scotland and local authorities liaise at a strategic level? If not, should there be?**

The current strategic national liaison meetings are important and should continue. Increasing the frequency of the local authority/Historic Scotland forum from annual to perhaps biannual has merit. Strategic liaison should also take place regarding list re-surveys and the content and subject matter of Historic Scotland advisory publications, such as the Technical Advice Notes. In some cases it might be beneficial to set up short life working groups on specific issues.

**Q8 – Do you think your local authority has the necessary expertise and policies to deal with development proposals relating to the historic environment without reference to Historic Scotland? If so would you be interested in this should it be implemented?**

This authority has access to the appropriate expertise to manage a wide range of conservation-related work, including the Development Planning, Development Management, Urban Design and technical conservation matters. Angus Council currently employs six officers who have post-graduate Conservation qualifications, two who have post-graduate Urban Design qualifications, three who are members of the Institute of Historic Building Conservation, another who is working towards membership and a Development Control Officer who has eleven years of direct Conservation experience and who is, thus, potentially eligible for IHBC membership. This resource provides a sound basis for dealing with the entire range of Conservation-related matters: the Development Management process, through Development Management, enforcement, designation of conservation areas, writing up character appraisals and conservation area management plans, serving statutory notices, preparation of buildings at risk surveys, preparation of technical publications, implementing individual building grants and running area-based grant schemes. There is also liaison between the planning and building standards authorities in respect of dangerous buildings and it is intended to re-introduce the Council-wide protocol for alterations to Council-owned historic buildings. The Council out-sources archaeological services to Aberdeenshire Council and the officers who provide archaeological advice are members of the Institute of Field Archaeologists.

It is important to recognise that there are officers within planning authorities who are not formally qualified in Conservation but who, nonetheless, are capable of dealing with a range of heritage matters. For example, not all officers within the Development Management hold post-graduate Conservation qualifications, but all of them are Chartered Town Planners who have built up considerable expertise over the years. Whilst access to qualified expertise is important it would be unfortunate if experience of working with historic buildings, particularly through the Development Management process, was not given due recognition.

Subject to seeing the fine detail of the protocol, and assessing the resource implications, this authority welcomes, in principle, delegation of listed building consent casework.



A further caveat is necessary. The key issue is consistency of decision-making so if delegation is granted to individual planning authorities there must be a mechanism to facilitate consistency. On the one hand it is important to allow flexibility in handling heritage-related applications – the governing legislation has this flexibility built in – but it is equally important to ensure that there is general consistency once individual planning authorities receive delegated powers to deal with most listed building consent casework. It is expected that the terms of individual protocols between Historic Scotland and planning authorities will maintain consistency of decision-making across Scotland.

***Q9 – Is the list of information required for consultations with Historic Scotland on proposals affecting the historic environment appropriate?***

This authority agrees with the type and level of information laid out in the draft JWA. Additional information should be included such as coloured drawings to clearly identify material that is to be removed and new work. Where the building is of particular importance, or where there are area-based proposals, a Conservation Plan or a Conservation Statement, suited to the subject matter, should be submitted.

***Q10 – Do you agree with the definition of specialist conservation advice provided in Annex 4? If not can you suggest how it should be changed?***

The definition of specialist conservation advice is broadly appropriate but the level of experience is also an important factor in determining ability. And more emphasis should be put on the input of Urban Designers because Conservation has close overlaps with this subject. Technical expertise is important at the level of the individual building. However, the assessment of development proposals within historic contexts and the development of Conservation Area Character Appraisals are design-based exercises. Whilst acknowledging the importance of the IHBC and the IFA as benchmarks, the importance of the area-based skills of Urban Designers should be acknowledged. Appendix 4 makes reference to Urban Design but it is recommended that more prominence is given to the subject in managing area-based design issues within the historic environment.

***Q11 – Which issues do you believe Historic Scotland should remain involved with and why?***

Whilst this authority has a considerable range of qualified officers it is, nevertheless, sometimes necessary to seek Historic Scotland's input. Thus, it is desirable to have the option to involve Historic Scotland at a range of levels within the planning process as it affects the whole range of built heritage and archaeological matters. This involvement is often on matters of architectural history and determining the relative importance of buildings. In addition, Historic Scotland has a national overview of the built heritage and thus has the unique ability to give advice within that context. Rather than list specific situations where Historic Scotland should remain involved, this authority is of the opinion that its own officers should give as much advice as possible, with the option to involve Historic Scotland where it is considered that the latter's expertise would be helpful.

In summation on this question, this authority agrees with the statements in the draft JWA that planning authorities are well placed to give advice on the historic environment. Nevertheless, there is expertise within Historic Scotland that is invaluable and which should remain available to planning authorities.

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**APPENDIX 2: MAIN POINTS IN THE DRAFT JOINT WORKING AGREEMENT**

- The Scottish Ministers expect planning authorities and Historic Scotland to work in partnership to deliver their objectives for the historic environment.
- Planning authorities are central to the effective management of Scotland's historic environment.
- In most cases planning authorities are able to provide sound pre-application advice to owners or developers. In sensitive or significant cases there may be a need to involve Historic Scotland.
- Planning authorities are best placed to provide information and advice to local communities on works to listed buildings and within conservation areas. In addition they should advise on the need for consent and guide applicants on most proposals. Planning authorities should not normally need to seek general advice from Historic Scotland on these issues.
- The level of information submitted to planning authorities and Historic Scotland on proposals that affect the historic environment should be adequate to allow the impact of the proposals to be properly assessed.
- Generally, planning authority officers who give advice on historic environment matters should be qualified in a relevant profession, should have undertaken an appropriate post-graduate conservation course and be a member of the Institute of Field Archaeologists or the Institute of Historic Building Conservation, depending on the role they are expected to fulfil.
- Historic Scotland define a "complex or sensitive issue" as demolition of a building or its substantial alteration, development that affects a scheduled monument or significant development within the setting of a Category-A listed building or a scheduled monument. This sets the parameters for triggering consultation with Historic Scotland over and above those instances where planning authorities may elect to seek advice.
- Planning authorities have the opportunity to approve listed building consent applications on a delegated basis. In order to do this the planning authority will have to sign up to the Joint Working Agreement, have access to specialist conservation advice, apply appropriate policies and have efficient supporting processes. If delegation is granted Historic Scotland will review the decisions taken under delegated authority on an annual basis.