

AN APPLICATION FOR SCHEDULED MONUMENT CONSENT AFFECTING THE SCHEDULED ANCIENT MONUMENT AND GUARDIANSHIP SITE OF ROWALLAN CASTLE, EAST AYRSHIRE

PURPOSE

1. To advise Board members of an important and high-profile Scheduled Monument Consent application and to seek views on the Inspectorate's assessment and conclusions.

BACKGROUND

2. We received a Scheduled Monument Consent (SMC) application on 1st September 2006 for the 'conservation and restoration of building to ensure habitable use' of Rowallan Castle.

3. Rowallan Castle, is situated in East Ayrshire, and comprises a multi-period stone-built structure incorporating elements from the 13th century onwards, with earlier archaeological deposits surviving immediately below the courtyard. It is a scheduled ancient monument and a Category A listed building. The designation documents are included at Appendix A and Appendix B. The surrounding parkland features in the Inventory of Gardens and Designed Landscapes. The monument has been in the guardianship of Scottish Ministers since 1950.

4. In 1901 Robert Lorimer was commissioned to construct a new country house at Rowallan, which is also listed Category A. To avoid confusion between the two castles, the more recent Lorimer house will be referred to as the Rowallan New Castle.

5. Rowallan Castle and an area of ground around it is subject to a Deed of Guardianship with Scottish Ministers under sections 12-14 of the Ancient Monuments and Archaeological Areas Act 1979. It is managed on their behalf by the Properties in Care Group of Historic Scotland and a breakdown of their duties in this regard is given in Appendix N.

6. There has been a complex history of recent discussions between the owners and Historic Scotland. Discussions about the possible surrender of guardianship with the owners were well advanced in the 1990s but did not reach a conclusion. In 1995 our Properties in Care Group (PiC) changed its strategy in relation to the castle, stating that the Castle no longer constituted a development opportunity and that they wished to retain it in Guardianship with public access.

7. Nonetheless, a Scheduled Monument Consent application was received from Alexander George & Co (Investments) Ltd on 27th November 2000 for '*completion of renovation and to reinstate building into habitable condition for the owner's use*'. On 8th January 2001 Historic Scotland indicated to the applicant that they were minded to advise refusal of SMC. A planning application was submitted to East Ayrshire Council on 17th April 2001 for the change of use and refurbishment of existing vacant castle to form overnight accommodation in conjunction with hotel. The council notified Scottish Ministers on 31st October 2001 that it had resolved to grant planning permission, subject to conditions, against the advice of Historic Scotland. A conjoined Public Local Inquiry followed, which considered the two applications under the Ancient Monuments and Archaeological Areas Act 1979 and the Town and Country Planning (Scotland) Act 1997. In

July 2003 Scottish Ministers accepted the Reporters' findings and recommendations that Scheduled Monument Consent be refused.

8. A separate application for outline planning permission was submitted in 1999 for a golf course and related leisure and residential accommodation on the Rowallan estate. The Rowallan New Castle was also proposed for conversion to hotel accommodation. Outline planning consent was granted by the Scottish Executive in 2001 following a Public Local Inquiry and development has begun on site. This was an entirely separate process from any Scheduled Monument Consent determination, and did not include any works within the boundary of the scheduled area.

9. The owner feels highly aggrieved about Historic Scotland's actions in relation to Rowallan Castle. He submitted a petition to the Petitions Committee of the Scottish Parliament in October 2006, a copy of which is provided at Appendix C. A hearing was held before the Committee on 17th January 2007. A copy of the Official Report of the proceedings is provided at Appendix D. Historic Scotland's formal response to the Committee on 22nd March 2007 is included at Appendix E. The applicants have more recently submitted a Freedom of Information request relating to the application.

10. In January 2006 Historic Scotland undertook a reorganisation which introduced a more transparent separation of roles between the Properties in Care Group (responsible for guardianship, management and promotion of properties in care) and the Inspectorate (responsible for determining the suitability or otherwise of proposals affecting scheduled ancient monuments including guardianship properties where the applicant may be our own Properties in Care Group or a third party. The new arrangements were explained to the owner's representatives in May 2006.

11. On completion of considering this application, the Inspectorate, on behalf of Scottish Ministers, will give a *provisional view* in writing to the applicant. The applicants then have the statutory right to be heard prior to any final determination. In addition there is a duty on Scottish Ministers to consider any representations made on an application prior to making their determination. This right and the duty are normally discharged through the referral of the application the Scottish Executive Inquiry Reporters Unit (SEIRU) who report direct to Scottish Ministers, advised by the Scottish Executive Development Department Planning Division.

STATUTORY AND POLICY FRAME WORK

12. Nationally important ancient monuments in Scotland are protected under the provisions of the **Ancient Monuments and Archaeological Areas Act 1979**. Once a monument is a 'scheduled monument', it becomes an offence to carry out, without the prior written consent of Scottish Ministers ('Scheduled Monument Consent') any works that would have the effect of demolishing, destroying, damaging, removing, repairing, altering or adding to the monument or to carry out any flooding or tipping on the monument.

13. Where a building is both scheduled and listed, the scheduling legislation takes precedence. Consent for works must be obtained from Scottish Ministers under the 1979 Act, not the planning authority, in accordance with section 55 of the **Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997**.

14. The Scottish Executive has published two **National Planning Policy Guidelines** (NPPG) which apply to the historic environment within the planning framework. NPPG 5 on Archaeology and Planning states in para. 17 that 'scheduled ancient monuments are of national importance and it is particularly important that they are preserved in situ and within an appropriate setting.'

15. Other Scottish Executive Guidance has been issued which is relevant in considering an application for Scheduled Monument Consent. In 2002 Historic Scotland published *Passed to the Future*, which sets out the Scottish Executive's policy for the sustainable management of Scotland's historic environment. In particular, on page 31 it specifies that any '... risk of potentially damaging actions should be minimised by following ... key precautionary principles'. We would also note that these include ensuring that '... any proposed change of use is necessary'. All scheduled monuments have a usefulness or value, in their contribution to 'quality of life', as a resource for historical, architectural, artistic and scientific understanding, and an intrinsic value as evidence of the past development of our society. Rowallan Castle also has a current use as a Property in State Care.

16. Prior to this, Historic Scotland published *The Stirling Charter* in 2000, which set out in the broadest terms its approach to conservation. It has been informed by, and builds on, the body of international conservation charters already in being including the Venice Charter (1964) and the Burra Charter (1979). The Stirling Charter was recognised as forming part of national policy and guidance by Scottish Ministers, thus giving Scottish Executive recognition to the international conservation charters. In particular, Article 2 states that 'there should be a general presumption in favour of preservation: no element of the built heritage should be lost without adequate and careful consideration of its significance and of all the means available to conserve it.'

17. Historic Scotland published in 2001 *Conservation of Architectural Ancient Monuments in Scotland - Guidance on Principles*. This provides guidance to owners and developers as to the practice of Historic Scotland with regard to the appropriate treatment of ancient monuments. As a statement from the Executive Agency charged with the care of ancient monuments, it is relevant to the consideration of this application.

18. In 2006 Scottish Ministers began the process of producing a series of *Scottish Historic Environment Policy* documents (SHEPs). The documents in this series have the same authority as, and sit alongside, the Scottish Planning Policy series and other relevant Ministerial policy documents. *Scottish Historic Environment Policy No. 1: Scotland's Historic Environment* (SHEP 1) (Appendix F) was published in March 2007 (after the current application was submitted) and sets out a framework for the day-to-day work of organisations that have a role and interest in managing the historic environment, including Historic Scotland. It also formally supersedes the policy elements of the 'Stirling Charter' and 'Passed to the Future', although it should be noted that the majority of the policy provisions contained in these earlier documents have been incorporated into SHEP 1.

19. In 2006 *Scottish Historic Environment Policy No. 2: Scheduling: protecting Scotland's nationally important monuments* was published following widespread public consultation, and a copy is attached at Appendix G. This sets out Ministers' policy for scheduling and sets out the criteria for and guidance on the determination of 'National Importance' under the terms of the Ancient Monuments and Archaeological Areas Act 1979. We have drawn on this document in assessing this application.

20. In March 2007 Scottish Ministers also launched consultation draft documents for Scottish Historic Environment Policy: Scheduled Monument Consent: Principles for the conservation of and management of change to monuments of national importance and Scottish Historic Environment Policy: Properties in the Care of Scottish Ministers. Copies are attached at Appendix H and I. Since these have only recently been issued, they have not been taken into account.

21. The applicant has argued that listing is the most appropriate form of designation for Rowallan Castle. Were this scheme to be deemed acceptable, it would be appropriate to consider the most suitable form of designation. It may be necessary to de-schedule the monument as the Act and as is stated in s1(4) of the 1979 Ancient Monuments and Archaeological Areas Act, '... does not apply to any structure which is occupied as a dwelling house by any person other than a person employed as a caretaker therefore or his family'

OUR APPROACH

22. The approach we have adopted follows that adopted for possible works at Castle Tioram on the Moidart peninsula, Lochaber which was discussed by the Board in August 2006. However, as Rowallan Castle is in the guardianship of Scottish Ministers, we have also sought the views of Historic Scotland's Properties in Care Group on the implications of the proposed works for their duties as guardian of the monument on behalf of Scottish Ministers.

23. In considering applications for Scheduled Monument Consent, A guiding principle is that scheduled ancient monuments should be preserved in the state in which they have come down to us, and that any works undertaken at a monument should be the minimum necessary consistent with the preservation of that monument. In each case it is necessary to establish that the works were necessary, the minimum required in relation to the identified issue, and that the proposed works would use appropriate techniques and materials in line with current accepted conservation practice (as set out in *Passed to the Future* and re-stated in *Scottish Historic Environment Policy 1: Scotland's Historic Environment* p30).

24. We accept though that exceptional circumstances can exist where the principle of minimum necessary may not be deemed the most appropriate approach for a particular monument. Two examples here may help illustrate what form these exceptional circumstances might take:

- *Public understanding and enjoyment of the monument.* There are certain circumstances where the public understanding and enjoyment of a monument would be significantly enhanced by an intervention that does not relate to the condition of the monument. The reconstruction of the Great Hall at Stirling Castle for example involved significant structural intervention. This was justified on the basis that the wider public benefit of the works to the monument significantly outweighed the case for leaving the monument in its form before the start of the works.
- *Securing the monument's long-term future.* In the case of architectural monuments, in certain circumstances, a return to active use may be deemed the most viable way of ensuring their continued existence. In the case of Fenton Tower, for example, it was agreed that the re-roofing and adaptation for renewed residential usage could be achieved in a manner consistent with the long-term preservation of monument, where the alternative was probable loss.

25. Finally we have sought to assess the risks associated with any project affecting a scheduled site and how such risk can be managed or mitigated.

THE NATURE AND SIGNIFICANCE OF THE MONUMENT

26. Rowallan Castle incorporates at least seven identifiable periods of construction, illustrating styles of domestic and castellated architecture from perhaps the 13th to the 18th century. It comprises several ranges of stone buildings arranged around a central courtyard, the earliest of which is a ruined tower house of possible 13th century date. Each period of construction and alteration has left its mark on the current layout of the buildings. Archaeological investigation has identified buried remains relating to Bronze and Iron Age activity, emphasising the occupation of this site through several millennia.

27. Rowallan's national importance is recognised through its inclusion in the schedule of monuments. The cultural significance of the monument lies in its intrinsic, contextual and associative characteristics. It survives in very good condition, and its archaeological potential is very high, with a clear sequence of development across millennia. An analysis of the Castle's significance prepared as part of this assessment and drawing on the criteria set out in the annex to SHEP 2 is given in Appendix J. The Historic Scotland Interim Statement of Cultural Significance, prepared for Rowallan in 2005 as part of a programme for all of the Properties in the Care is also attached at Appendix K.

28. Rowallan's significance also lies in its position within the wider context, both geographical and typological, and a summary contextualisation is given in Appendix L. It illustrates an approach to lairdly domestic architecture that is not known to survive with quite this combination of elements elsewhere in Scotland. It has very few closely comparable peers when all of its salient characteristics are taken into account.

29. The Castle has the potential to inform our understanding of the economic, social and cultural history of Scotland. The lack of modern interior finishes in a number of rooms allows the opportunity for visitors to 'read' and to appreciate the evolution of the buildings, and to understand the development of building techniques and styles.

THE APPLICATION

30. The current application has been submitted by Simpson and Brown Architects on behalf of the applicant. It is supported by a Conservation Plan that includes an in-depth analysis of the development of the monument. It also identifies proposed conservation interventions on a room by room basis. The works proposed in the application are described as 'the restoration of the castle to ensure habitable use', although the specific nature of that habitable use is not made explicit. The Conservation Plan states that 'Rowallan Old Castle is manifestly capable of being used as a dwelling house with only a minimum of alteration... [this] ... is recommended as the preferred strategy for securing a sustainable future for the old castle' (section 11.6, pt 6, p 248). In addition, section 11.5.2 ii (p. 244) states that 'Options for domestic use could include the use of the Castle as a hotel annexe, a single private letting facility or as a private residence'.

31. We recognise that Simpson & Brown Architects are experienced conservation architects and have no doubt over their commitment and expertise in carrying out conservation works.

32. The Conservation Plan is rich in detail and makes an interesting contribution to the wider understanding of the monument. We are largely in agreement with the assessment of significance which is given in section 8.0. There are inevitably areas for continuing debate and discussion relating to the location and past function of rooms within the complex, such as the specific location of the 'woman house,' but these are not critical to the assessment of the current application. We would note also the inclusion of critical assertions made about the effect of works undertaken by Historic Scotland in the past.

33. The application for SMC is set out in the form of a conservation plan which deals with the impact on the exterior of the monument and also its interior, on a room-by-room basis. We note that, unusually, the Conservation Plan and the proposals have been prepared as a single document. This means that actions, such as re-harling the exterior, are mixed with more general thematic 'policies' to be applied, and policies applied on a room-by-room basis. Detailed proposals are indicated on a series of drawings.

34. Some proposed actions, such as external harling, would need further justification and technical specification, while others, such as the complete replacement of the entrance front steps, represent a largely conjectural intervention and we note that this is not accompanied by a technical and historical analysis.

35. We have undertaken an assessment of the impact of the proposed works as detailed in the application and supporting documentation on the monument, and believe that there is sufficient information in the application to enable us to reach a provisional view on the proposed scheme.

THE IMPACT OF THE PROPOSALS ON THE MONUMENT

36. We agree with the view of the applicant that the 'building is in sound condition and is generally wind and watertight.' (Simpson and Brown 2006, 163) and we recognise that no significant works to the structure of the monument are proposed.

37. The applicant has made considerable efforts to ensure that the proposed works will minimise disturbance to the historic fabric, given the intended use. However, a significant adverse impact on the monument is unavoidable, and therefore it must be considered against the principle of whether it is the 'minimum necessary' for the long term preservation of the monument.

38. The Conservation Plan includes conservation policies and drawings which set out the proposals for each room and a summary of these proposals is given in Appendix M. These works all relate to the proposed conversion to a habitable use, and related decorative and servicing requirements. While the applicant has attempted to keep these to a minimum, they will involve significant intervention. For example, substantial alteration to surface treatments is proposed, such as re-plastering and lime washing, which would obscure evidence for earlier finishes, and also inhibit the ability to 'read' and interpret the available physical evidence. In addition, the construction of two new bathrooms and a further toilet. would require the installation of new pipes through original fabric, and will alter the environmental conditions for the original fabric within the rooms concerned.

39. While detailed method statements have not been provided for the installation of services, including water and drainage, heating and lighting, a commitment is given in the Conservation Plan to the general principle of minimal intervention to be adopted in their design and installation. It is our belief that some adverse impact of these works is unavoidable, although should the scheme be acceptable on other grounds it may be possible to develop an acceptable mitigation strategy to address this.

40. The Conservation Plan states that 'any new uses intended for the building is likely to be a change of use in building control terms. Relaxations will be required on a number of points.' (Simpson and Brown 2006, 236). The applicant does not indicate whether any discussions have yet taken place with the Building Control Authority, but it is our belief that, in order to meet the requirements of building control legislation, further impact on the fabric of this monument may well be necessary. For example, it is likely that substantial alterations would be required in order to meet the regulations concerned with fire precautions and means of escape.

41. The applicant has argued that '... domestic use would have a much lower impact level on the building ...' (Simpson & Brown 2006, 245) than its use as a 'visitor centre'. The evidence to support this statement is based on people movement within the building, and does not appear to refer to the physical works required in order to achieve a habitable use. It seems likely that the environmental conditions necessary to ensure comfortable living might require further significant intervention once the building was occupied.

42. We recognise that this 'stripped back' condition would not have been visible at the time the building was in use, and we acknowledge that restoring finishes will allow people to see and understand the building as it was at a particular period in the past.

43. Following detailed analysis of the application, we conclude that the character of the monument would change significantly were it to be brought into habitable use. There will be a number of impacts, including the introduction of facilities, servicing and wall treatments, and further impacts are inevitable once it is actively occupied. There will be significant adverse impacts associated with direct physical changes, and there would also be a direct visual effect. The cumulative impact of the proposed works, and the scale of the proposed change, do not constitute the minimum necessary to secure the preservation of the monument.

EXCEPTIONAL CIRCUMSTANCES

44. In coming to a provisional view, and following the approach as set out above, we have considered whether there are any exceptional circumstances in this case that may justify works beyond the minimum necessary. The following circumstances are considered to be relevant:

45. *Public understanding and enjoyment of the monument* – the applicant has stated that 'Regardless of the future use of the building, at least some interpretation should be undertaken in a subtle, unobtrusive and sympathetic manner.' (Simpson & Brown, 2006, 240). It is also stated that 'The building should be made accessible to a reasonable extent', although the specific level and nature of this access is not defined.

46. The proposals do not allow a clear understanding of public access under the scheme, but it is the opinion of Properties in Care Group that 'this would represent a significant reduction on the public's present rights of access.' While we recognise that the property was only open by special request for several years, which was followed by a period of legal dispute with the owner,

in 2005 and 2006 public access was promoted through a number of pre-booked tours which were well attended. This programme will inform a review of their interpretation and operational plans which is due to take place during 2007. We understand that the basis for this review is their preferred approach for ‘...archaeologically-based tours... gives visitors the best possible understanding of the monument, enables the site to be interpreted with no physical impact to the building ...’.

47. There appears to be no evidence to suggest that the public understanding and enjoyment of this monument would be significantly enhanced by the proposed works.

48. *Securing the monument's long-term future* – Rowallan Castle is currently in sound structural condition and substantial works are not required in the short to medium term to ensure its continued preservation. The application includes a Condition Assessment (Appendix III) and a Condition Summary is included at section 4.5 (p. 162), which states that ‘overall, the building is in sound condition and is generally wind and watertight’ (Simpson & Brown, 2006, p163). In addition, Historic Scotland completed a condition survey in 2000, which was lodged as a production in the Public Local Inquiry for the previous SMC application. So far as Historic Scotland as guardians of the monument is aware, there has been no significant change in its condition in the intervening period.

49. Were no other sources of funding available for the conservation and repair of the building, there would certainly be a need to consider carefully whether there might be a significant danger of loss of the monument, and whether, therefore, a scheme for adaptive re-use offered the better option for preserving the monument. However, since Rowallan Castle is a property in the care of Scottish Ministers, and of particular significance, its preservation is always likely to command a high priority.

50. There is no evidence that the long term preservation of the monument is more likely to be secured through the proposed scheme, than the current management.

51. Having regard to our assessment of potential exceptional circumstances we are satisfied that none has been identified which will outweigh the impact of the proposed works on the cultural significance of the monument.

RISKS ASSOCIATED WITH WORKS TO RESTORE A HABITABLE USE

52. *Scope of works.* The applicant has made a serious effort to prepare a scheme which seeks to minimise the impact of the proposed works on the historic fabric of the monument. However, we have some concerns that the cumulative impact of the proposed works and the subsequent occupation of the monument will put such features at risk of damage.

53. *Implementation of a scheme.* There are significant uncertainties relating to this project, particularly where it is unclear until work starts on-site if proposed elements of the scheme can in fact be implemented in the manner indicated in the proposals. However, we recognise that these uncertainties could be mitigated by detailed discussion and planning in advance of works, should the scheme be considered to be acceptable.

54. *Archaeological mitigation.* By their nature, archaeological remains, whether underground or embodied within the structure are unpredictable in their character and importance. The applicant has submitted details of a comprehensive monitoring strategy

including a systematic monitoring regime. And while there is a presumption in favour of the preservation of archaeological deposits in situ, if a scheme is considered to be acceptable it may be that a mitigation strategy could be agreed.

55. *Costs* Experience suggests that such schemes are likely to involve significantly higher levels of costs than a scheme not involving a historic building or site. There are risks therefore relating both to possible unanticipated increases in costs and the possibility of failure or partial completion during the project itself

CONCLUSIONS

56. Rowallan Castle is of national significance, and illustrates an approach to lairdly domestic architecture that is not known to survive with quite this combination of elements elsewhere in Scotland. It has very few closely comparable peers when all of its salient characteristics are taken into account.

57. Following our assessment, we have concluded that:

- i. the works cannot be considered to be the minimum necessary to secure the long-term preservation of the monument, and there are a number of associated risks which would threaten its significance
- ii. there are no exceptional circumstances which would justify the greater intervention entailed by the works proposed in the application;

58. Therefore, it is our provisional view that Scheduled Monument Consent be refused for the proposed works specified in this application.

Malcolm Cooper
Chief Inspector

April 2007

List of Appendices

Appendix A – scheduling document

Appendix B – list description

Appendix C – Copy of the Applicant's Submission to the Petitions Committee

Appendix D – Official Report of the proceedings of the Petitions Committee meeting, 17th January 2007

Appendix E – Historic Scotland's Response to the Petitions Committee, 22nd March 2007

Appendix F – Scottish Historic Environment Policy No. 1: Scotland's Historic Environment

Appendix G – Scottish Historic Environment Policy No. 2: Scheduling Scotland's Nationally Important Monuments

Appendix H – Scottish Historic Environment Policy (Consultation Draft): Scheduled Monument Consent: Principles for Conservation and Management of Change to Monuments of National Importance

Appendix I – Scottish Historic Environment Policy (Consultation Draft): Properties in Care of Scottish Ministers

Appendix J – National significance

Appendix K – Interim Statement of cultural significance

Appendix L – Summary contextualisation

Appendix M – Tabulation of proposed works, by room

Appendix N – Historic Scotland's duties in relation to Rowallan Castle as a guardianship monument

Appendix A - scheduling document