

## 5. THE CASE FOR EAST AYRSHIRE COUNCIL REGARDING THE PLANNING APPLICATION

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5.1 EAC's interest extends only to the planning application. It submits that it is only the principle of the change of use of the Old Castle that falls to be considered in that context, and that it is not appropriate to take the proposed refurbishment works into account. These works do not require planning permission and are controlled, separately, under SMC procedures. Only material planning considerations should be taken into account in determining the planning application. The council is satisfied that its approach is consistent with paragraph 54 of NPPG 1, which states that the planning system should not be used to secure objectives that are more properly achieved under other legislation.

5.2 The EAC witness states that, notwithstanding the description contained in the planning application, DML is seeking planning permission solely to change the use of the castle to an annex to the hotel in the Lorimer House. The applicant had confirmed that the castle would be used only for sleeping and lounge accommodation, and that no cooking or food preparation would take place there. The CP and indicative plans had been submitted as background information and the council had treated them as such. Condition 1 in EAC/15 has been amended to reflect that position and to make clear that any permission granted would not include any of the external works indicated on drawing 550/BP, which might amount to development in terms of section 26(1) of the T & CP (S) Act. The hotel annex would use the access arrangements approved under the 2001 outline permission. These include a new road leading from a new junction with the B751 to the west of the Gatehouse to a roundabout at the existing drive, to the north of the Gatehouse. Parking at the walled garden would also be provided as part of that permission. However, details of the parking area should be reserved for future approval. The new septic tank would not represent a risk to the SAM.

5.3 Some of the issues raised by HS in its letter of 12 July 2001 (in EAC/13), when it recommended that planning permission should be refused, are relevant only to the SMC application. The objections by the Scottish Civic Trust (SCT), the Architectural Heritage Society of Scotland (AHSS) and the Ayrshire Archaeological and Natural History Society relate more to the SMC application than to the planning application. The Garden History Society (GHS) referred to the qualities of the immediate environs of the castle, and to the proposals shown on the indicative block plan, which EAC had not treated as forming part of the planning application. HS has already provided a water supply, electricity and toilet facilities to the castle. Whether DML's proposal is necessary to save the building is not an issue for the planning application, nor is public access. The DG allows the nation a significant degree of intervention in the preservation and maintenance of the property.

5.4 The West of Scotland Archaeology Service (WoSAS) had written to recommend that planning permission should be refused. However, a representative stated subsequently that it had no objection to the application, if the building was being treated as being for a change of use only. The fact that WoSAS did not suggest conditions requiring archaeological investigations in the event that planning permission was granted, suggests that it considers that the castle has already been sufficiently investigated and recorded. That said, bearing in mind the advice in paragraph 28 of NPPG 5 against duplication in conditions, it might have been looking to the SMC in that regard.

5.5 DML's proposal is supported by the policies of the development plan, and by other material considerations. As far as the AJSP is concerned, using the castle as a hotel annex would accord with Policy W5, as it would introduce specialist tourist accommodation, which could appeal to a national and international market. The AJSP recognises that Ayrshire is currently under performing in the tourism sector. That applies particularly to East Ayrshire where there is a shortfall in tourist accommodation. Policy G2 does not apply because the proposed change of use would not have significant adverse effects in terms of the factors listed in the policy. While the application site is a heritage resource for the purposes of Policy E20, and the amount of human activity at the SAM would increase, responsible access by day visitors or by overnight visitors is unlikely to have an adverse effect; the new use would have relatively minor consequences for a building that has already been altered and restored. Proposed condition 4, which would reserve details of car parking for future approval, would minimise any impact on the designed landscape.

5.6 The proposed change of use, which is not, in any event, strategically significant, would also be compatible with the AJSP's view of sustainable development. It would also accord with Policy ADS7, in that it could meet a requirement of today (the provision of tourist accommodation at the upper end of the market, linked to the hotel at the Lorimer House) without adversely affecting the SAM (due to the reversibility of the use which allows future options to be safeguarded.)

5.7 Section 25 also requires the proposal to be assessed against the relevant policies in the adopted SLP, notwithstanding its age. In that regard, the wording of Policy 4.7.15 does not accord with the reason for the policy. The former indicates a blanket-ban on development affecting the site of a SAM, whereas the reason is "To afford adequate protection to Ancient Monuments." NPPG 1 states that an application should be assessed against both the terms and purpose of a policy. It is therefore prudent to consider the policy as presuming against development adversely affecting the site of a SAM. HS approached the policy that way when it assessed the planning application. The only effect of the change of use in this case would be to allow people to be accommodated for short periods, in a manner appropriate to the building. The council assessed the proposed use on the basis of the likely human activity within the building, and the furnishings necessary to support that activity. HS also proposes to re-use the SAM. DML's proposal is reversible as the furnishings could be removed with no discernible impact on the SAM or impairment on the enjoyment of the monument. The work that HS has already carried out internally is also a planning consideration. Given these factors, the proposed use would not have an adverse effect on the SAM and would not be contrary to Policy 4.7.15.

5.8 Policy 5.3.9(3) of the adopted plan allows the use of existing buildings in the countryside as hotels. Services agencies are satisfied with DML's proposal and a suitable access can be provided. Building design policies are not relevant to an application for a change of use. Given the circumstances of the building and the use involved, the proposal would not conflict with the aims of Policy 5.3.15, which is to protect recognised wildlife habitats. The SWT stated that it had no objections to the application. That endorses the council's view.

5.9 The main material considerations are the EALP, Government guidance, consultation responses relevant to the planning application, and the impact on the amenity and quality of the castle. As the SLP is considerably out of date, more recent expressions of policy should be given greater weight than the adopted plan. EAC has agreed that the EALP should be

regarded as a prime material consideration where it is relevant to an application. The report of an inquiry to consider objections to the finalised plan (EAC/8) is expected during summer 2002. EAC/16 explains that HS's letter of April 2001 had not been treated as an objection to Policy ENV14, and that there are no outstanding objections to policies relating to the built or natural environment. However, the council's Planning Committee will be advised to clarify its position on the policy, either before the plan is adopted or before it is reviewed.

5.10 The change of use being proposed by DML would accord with the principles of Policies SD1, SD3 and SD7. As far as Policies SD1 and SD7 are concerned, the proposal is to re-use an existing building, with no adverse affect on that building. The proposed use is reversible, in that the furnishings could be removed. It also meets criteria (ii), (iii) and (iv) of Policy SD3 and would be compatible with the aims of Policies ENV1 and ENV3, namely to ensure the preservation of all buildings of historic or architectural importance and other buildings and areas which contribute to townscape character; and to preserve and record the archaeological heritage of the area. In that latter regard, the views of WoSAS are pertinent. The proposal relates to a new business development that satisfies Policy IND10(iii).

5.11 EALP Tourism, Recreation and Leisure policies draw upon the plan's Tourism, Leisure and Recreation Strategy, which seeks to maximise the economic potential of the area for sustainable tourist development. Key elements of the Strategy are to "promote and encourage natural heritage based green tourism in areas of high conservation interest" and to "encourage tourism related developments in areas of tourism potential associated with Local Heritage". As the plan identifies Rowallan Estate as a Miscellaneous Development Opportunity Site with potential for tourism, leisure and recreational use, the application does not require to be assessed against Policy ENV14. The proposed change of use would accord with Policy TLR1, which supports the development of sustainable tourism in accordance with the Strategy. It would also accord with all the criteria of Policy TLR3, including criterion (ii), as it could be implemented with no adverse impact on the heritage resource and the use is reversible. Policy TLR4 would also be met as the outline consent granted in 2001, while not encompassing the castle, provides a specific locational basis for allowing the proposal. None of the matters reserved by that permission have been submitted. However, proposed condition 2 would ensure that the hotel annex use does not commence until the parent facility in the Lorimer House is operating.

5.12 Turning to national planning policy and guidance, NPPG 5 identifies looking after properties in Government care; promoting enjoyment and understanding of the heritage; and encouraging private sector efforts and making financial assistance available to help meet the extra costs of maintaining and restoring heritage properties, as means encouraging the preservation of historic sites. It does not advocate a total prohibition on development, but seeks to balance development and preservation. As regards paragraph 4 of the NPPG, the destruction or demolition of the Old Castle is not being considered as part of this application. The use proposed would not erode the type of environmental asset that paragraph 12 is concerned to protect, and the response from WoSAS suggests that the site's archaeological features have been assessed as thoroughly as possible, within the scope of the application. The setting of the site would not be affected (paragraph 16). The proposed development does not impact adversely on any of the aspects mentioned in paragraph 17, and could positively encourage and nurture the tourism and educational spin offs. As it would also have no adverse effect on the SAM, the "exceptional circumstances" test (which covers a broader range of issues than "need") does not come into play.

5.13 The AJSP and EALP have been prepared to accord with paragraph 20 of NPPG 5. The council also had regard to guidance in paragraph 25, that the preservation of ancient monuments and their setting is a material consideration in determining planning applications. The proposed use can be supported in that context as it would have no adverse effect on the ability to preserve the SAM and its setting *in situ*. The likely consequences for the fabric of the building of putting the change of use into effect are material only to the SMC. In any event, the alterations shown on the indicative plans are not necessarily integral to the proposed use, which could be implemented with very little physical change. The SAM is sufficiently robust to absorb the level of wear and tear likely to be associated with DML's use. Use as a visitor attraction, as proposed by HS, is likely to subject it to similar wear and tear.

5.14 As the castle is a Category A listed building, the proposal ought also to be assessed against NPPG 18. The NPPG advocates a positive approach, emphasising the need to find ways in which the active life of historic buildings and the wider historic environment can be sustained. The council has acted positively in supporting a re-use for the building that is compatible with paragraph 8, and would have no impact on the designed landscape. The proposal would also sit comfortably with the sustainability principles in paragraphs 20 and 25. The NPPG states that the most appropriate use for an historic building is likely to be the use for which it was designed. However, it acknowledges that this may not be possible, and that the "best viable use" should therefore be pursued. In the case of the castle, that would be use as a house. If that use is acceptable in terms of Government guidance, then re-use as overnight accommodation should also be permitted. A positive approach to conservation can result in a wider economic, social and environmental benefits.

5.15 The advice in PAN 42 is more relevant where development would have a definite and quantifiable physical impact. This proposal is benign in that respect. The applicant has confirmed that it was drawn up to minimise disruption to the original fabric. The detailed aspects that WoSAS criticised and/or queried are relevant only to the SMC process. Finally, PAN 42 confirms that consent is required from Scottish Ministers for works which would have the effect of demolishing, destroying, damaging, removing, repairing, altering, adding to, flooding or cutting up the monument. This confirms that any internal works proposed or consequential to the change of use would not be determined by the planning authority, and which would not even need to be consulted.

5.16 The witness agrees that, when he drafted the committee report and his evidence for the inquiry, he had not had sufficient information to fully assess the works done by HS. However, he considers that these works indicate that HS believes that restoring the monument for active use is the best way of ensuring its continued existence. The partial restoration of part of the SAM, and the installation of modern services, indicate the regard that HS has for the building. The change of use proposed by DML is compatible with the goal, expressed in HS/12, of maintaining the heritage resource without an adverse impact. That use would be compatible with the relevant criteria and should be embraced. Granting planning permission would not dilute the importance of the SAM and the protection afforded by the DG and scheduling would remain.

5.17 Questioned, the witness agrees that the fact that a building is a SAM is a major consideration in the determination of a planning application. The charters mentioned by HS witnesses, and the guidance in HS/13 regarding sustainability and minimum intervention, are also relevant. The nature of a resource, and its importance in educational terms, are issues

when considering a change of use. While he had not previously dealt with a planning application affecting a SAM, a selective reading of HS/13 gave him no reason to change his views in this case. Using the castle as a monument open to the public could have a greater impact on the SAM than a use more in keeping with the original use of the castle, which was as a house.

5.18 That previous, residential, use has been abandoned. While the UCO does not require a property to be visited by the public in order to be in Class 10, Rowallan is not a Class 10 use. It also does not have planning permission, or a CLEUD, for that purpose. A SAM can have a usefulness, but is not a use. The DG simply transferred responsibility for maintenance to the State. DML's proposal is therefore to change the castle from a nil use, to a Class 7 use. Section 59(1) of the LB & CA (S) Act does not come into play because it is concerned only with physical development.

5.19 Bats had continued to roost in the castle throughout the major programme of works undertaken by HS. The council had therefore intended to safeguard the roosts by means of a condition to control and monitor the effect DML's works and heating arrangements for the gallery. However, that would only be appropriate if the physical alterations proposed were to be treated as part and parcel of the change of use. If the council's position on that issue was accepted, such controls could only be secured through SMC procedures.

## 6. EVIDENCE FOR THE SCOTTISH CIVIC TRUST

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6.1 Mr Leventhal explains that the SCT is a charity committed to the improvement of the built environment of Scotland. Its aims include encouraging well-informed public concern for the environment, high quality in planning and new architecture, and the conservation and, where necessary, adaptation for re-use, of older buildings of distinction or historic interest. It is frequently consulted by planning authorities on planning applications.

6.2 EAC had consulted the Trust on DML's planning application in April 2001. The Trust's response of 14 June 2001 (in EAC/13) identified one primary concern and 4 ancillary concerns. The primary concern was whether the proposed change of use was required to ensure a future for the building. As the Trust did not believe that to be the case, noting that the castle was in guardianship and was understood to be the subject of works to ensure its continued maintenance, it objected in principle to the application. If permission were granted, despite that recommendation, and if guardianship was relinquished, the 4 ancillary concerns were:

1. the principle of restoration;
2. the nature of the planning application and the impact of a change of use;
3. the implication of granting SMC for occupation; and
4. the relevance of the reasoned justification for the development.

6.3 On the first of these concerns, the Trust states that it could only support the principle of restoration if documentary evidence had been fully explored and assessed in connection with the physical evidence.

6.4 On the second concern, the Trust states that the submitted drawings did not demonstrate the level of intervention that would be required to provide the services that were proposed and that they were not sufficiently detailed to allow a fully informed assessment of the potential impact on the building. It had also pointed to anomalies between the drawings and the CP, and took particular exception to the reference to the use of Rentokil in the Bill of Quantities and to the proposal to re-fit the panelling presently in the Lorimer House in the castle.

6.5 Thirdly, the Trust was concerned that "granting SMC" for the occupation of the building could result in the de-scheduling of the castle, and that its current exemptions from Building and Fire Regulations might no longer apply. It stated that the legal issues surrounding that matter should be clarified prior to any decision "in respect of granting SMC".

6.6 Fourthly, the Trust regarded DML's claim that "the continuing use of the castle for overnight accommodation can be viewed as subsidising the level of curation necessary to open the castle successfully to the public" as flawed and unnecessary; it understood that HS wished to provide curatorial presence when the issue of public access had been resolved. The Trust regarded the potential cost to the fabric and authenticity of the building to facilitate private "guardianship" as too high and too unstable, and that the current GD was far safer.

6.7 Finally, the Trust had drawn attention to “the relationship between granting planning permission and the principle of granting SMC”, and strongly advised that the former should not be considered in isolation, and should not be granted unless the SMC application had been fully assessed and agreed.

6.8 The witness states that the Trust remained of the view that, as the castle is in guardianship, there is no need for a change of use, as its long-term conservation can be considered secure. Planning permission and SMC should both be refused for that reason. That said, section 25 of the T & CP(S) Act is the starting point in determining the planning application. He had not assessed that application against the provisions of the statutory development plan. However, preserving the castle as a building in the landscape (and as a SAM under guardianship) would be consistent with Policy ENV2 of the Consultative Draft EALP.

6.9 The proposed change of use, on the other hand, would be followed by works to install the infrastructure expected by guests of an upper market hotel. As these works would certainly have an adverse impact on a recognised heritage resource, DML’s proposal would not satisfy criterion (ii) of Policy TOUR3 of the consultative draft plan, and therefore would not accord with that policy. Granting planning permission would also be inconsistent with the provisions of section 59(1) of the LB & CA Act. However, the witness concedes that it would be feasible to install some facilities without undue harm to the building, or interfering with its archaeological significance. His evidence was predicated on the assumption that the changes that he had envisaged would occur. DML’s drawings show several bathrooms.

6.10 Public access to the castle is immaterial to its protection, although the Trust considers that it should be encouraged. The SAM is only wind and watertight now because a previous owner had decided that it should be placed in guardianship. The quality of the work that HS had done has to be assessed in the context of the time it was carried out. Lime mortar has only come into use again in the last few years. In deciding whether to re-do work, the potential for damage to the monument, and the availability of funds, would have to be considered. That all said, there is nothing to prevent the current owner from seeking to put it to a beneficial use and to apply for SMC to that end. The recommendation on this SMC application would have to be based on the duty imposed by the 1979 Act to have regard to the long-term future of the building. The ability to implement any SMC that was granted would depend on the terms of the DG, but it would be unlikely to be practical for HS to continue to look after and manage the SAM if DML’s proposal was put into effect. While listed building and scheduling controls are administered under separate statutes, SAMs are afforded a higher status in practice, as a matter of policy. The Trust considers that these should be conserved as found.

## 7. CONSULTATION RESPONSES AND WRITTEN SUBMISSIONS REGARDING THE PLANNING APPLICATION

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7.1 In addition to HS and the SCT, who gave evidence at the inquiry, consultation responses to the planning application received by EAC (in EAC/13 and/or forwarded to Scottish Ministers with the application) can be summarised as follows:

- **The Architectural Heritage Society of Scotland (AHSS)** stated that the castle had been stabilised, conserved, and to an extent restored, and did not require a new use to give it a future. It was unclear how much public access would be retained with DML's proposal. The building should be left unfurnished, and public access made freely available now. Although the plans show minimal interference with the fabric, there would inevitably be damage to the building's integrity; further works might also be required. Until details of the external works referred to had been provided, and the Garden History Society consulted, these references should be deleted from the application.
- **Ayrshire Archaeological and Natural History Society** objected to the application, stating that the owner had prevented members of the Society from gaining access to the castle in September 2001. It was unthinkable that the integrity of a valuable and irreplaceable historic monument should be shattered for commercial gain.
- **The Garden History Society (GHS)** stated that there are almost certainly archaeological traces of former gardens below the surface of the proposed restored garden; and that it regarded that land as highly significant for the setting of the castle, and for these traces. The Society would normally be opposed to any development (such as the gas and water supplies indicated on the drawing) likely to damage or detract from surviving garden features and/or significantly disrupt the sub-surface archaeology. While it might not oppose the principle of a new garden layout, it would be unlikely to endorse any proposals that had not been fully discussed and agreed with HS. Permission for works affecting the garden should be withheld until that agreement had been reached.
- **West of Scotland Archaeology Service (WoSAS)** stated that the castle was not vacant, but a PIC, which was a valid use of the site. It also stated that, although the applicant had attempted to minimise the effects of its proposal on the fabric of the castle, there would be necessary changes that would have an adverse effect on the SAM. WoSAS was not aware of any exceptional circumstances that would allow these to be permitted. The applicant's claim that HS had carried out damaging conservation work was irrelevant as an argument for allowing further damaging work. Having listed, from the plans, examples of potential damage to the fabric and archaeological deposits at the site, WoSAS concluded that, on the basis of the information that had been supplied, the level of damage would be unacceptable. Accordingly, in terms of policy in NPPG 5, planning permission should be refused.
- **Scottish Natural Heritage (SNH)** referred to evidence that the gallery had been used by bats, possibly as a maternity and hibernacular roost, and stated that the property should be surveyed to establish the potential of the building to support roosts. The development of a car park within a sensitive area of the Designed Landscape could reduce the value of this nationally important site.



- **The Scottish Wildlife Trust (SWT)** had no objections.
- **The Scottish Environment Protection Agency (SEPA)** had no objection in principle; but asked that drainage arrangements be agreed before planning permission was granted. Although there was an existing consent for the discharge of sewage from the site, a larger septic tank would be required. Combining foul sewage flow with that from the rest of the development should also be considered, to provide only one discharge to the Carmel Water. Assurances regarding the ability to treat macerated sewage were also sought.
- **West of Scotland Water** made no specific comments.
- **EAC's Roads and Transportation Division** had no objection to the application, subject to the planning conditions relating to the 2001 outline permission being fulfilled prior to implementation of the current application.

7.2 In a letter received shortly before the inquiry, **the Scottish Rights of Way and Access Society** stated that it had no objection to the application *per se*, provided that the route of what it stated is widely regarded as a public right of way through Rowallan Estate, from the Gatehouse to High Todhill Farm, would be preserved.

7.3 In additional correspondence, of 14 June 2002, regarding bats, SNH advised that heating the castle for use as a hotel would make the roof space unsuitable for a hibernacular roost. However, it would be unlikely to have an adverse impact on the maternity colony, provided that the roost entrance would not be blocked and any work likely to cause significant disturbance avoided the period when bats were present (probably March-November). A licensed bat worker should confirm that no bats were present before any potentially damaging work was done. However, if the colony was large, the bats could be audible. If guests found that unacceptable, there could be a serious threat to the roost. If bats were to be excluded, a licence under the Conservation (Natural Habitats &c) Regulations 1994 would be needed.

7.4 Representations received from other parties comprised:

- **Margaret Jamieson MSP** inquired as to the reasons for calling in the planning application, stating that the Rowallan development was a vital tourism and leisure investment in her constituency.
- **Cllr Andrew McIntyre**, leader of East Ayrshire Council, wrote to support DML's planning application, stating that the council had taken an objective view of its impact on the castle, and its planning merits in terms of the economic development of the area. Guardianship and management regimes are not relevant to the determination of the application, which was welcome news in an area that struggles to attract investment. It would be disappointing if sight of that bigger picture was lost, in focussing on the minutiae of these regimes.
- **Mrs Hazel Rae**, Vice President of the Clan Muir Society, stated that she had initiated a petition to the Scottish Parliament in late 2001 opposing the Rowallan development. However, she considered that she had been misinformed by HS representatives, and any objection had since been withdrawn. The current application would not have a detrimental effect on the historic significance of the castle. It would help to ensure

that it would be preserved, and have a positive effect on the Estate and East Ayrshire generally.