

## 9. CONDITIONS AND AGREEMENT

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### Planning conditions proposed by East Ayrshire Council

9.1 The proposed planning conditions tabled by EAC (EAC/15) are reproduced in Appendix 2(a). At the conclusion of the inquiry, the council agreed that, if these were imposed, the following amendments should be made:

Condition 1 should refer to “the building outlined in blue” (i.e. the castle) and to “refurbishment of that building”. The reason for the condition should be “To define the scope of the consent hereby granted”.

Condition 2 should be reworded to read “The change of use as approved shall not commence until use of Rowallan House as a hotel, as approved in principle by EAC 98/0356/OL, has commenced. The reason should be reworded to read “To ensure that Rowallan Old Castle is used only in association with the hotel”.

Condition 3: to be consistent with the outline permission, the second sentence should be amended to read “The access road so formed will be 5.5 m wide with 2 m service strips ....”

Condition 4 should refer to details of parking provision. A sentence should be added to require parking to be provided in accordance with the approved details. The reason for the condition should be “To preserve the setting of the listed building and the monument”.

Condition 5 should be reworded to require a scheme for mitigating the effect on bat roosts to be drawn up in discussion with SNH and HS, the scheme to be submitted to the council for approval prior to the commencement of any works, and to be implemented thereafter.

Condition 6: A sentence should be added to require the approved drainage and sewage disposal arrangements to be implemented prior to the commencement of the use of the castle as overnight accommodation. The words “and to preserve the setting of the listed building and the monument” should be added to the reason for the condition.

9.2 EAC stated initially that all of the proposed conditions would meet the 6 criteria in SODD Circular 4/1998. However, it subsequently agreed that condition 2 might make condition 3 unnecessary, as the outline permission requires the access arrangements described to be provided prior to the commencement of the hotel use. It also agreed that mitigation for bats (condition 5) might not be needed if monitoring indicated that they would not be disturbed.

### The applicant's position

9.3 The applicant takes no issue with any of the draft conditions.

## **The position of Historic Scotland**

9.4 HS made no comments on the proposed planning conditions in its submissions. Mrs Linge's remarks are reported at Chapter 4.5.

### **Draft SMC conditions tabled by Historic Scotland**

9.5 The draft conditions tabled by HS (HS/37) are reproduced in Appendix 2(b). HS confirmed at the inquiry that these are intended to apply to the SMC only; noting that draft condition 1(a) should read: The programme shall detail: (i) the works to be undertaken, in terms of the SMC, (ii) the phases in which ... (iii) when such phases ....

9.6 Mr Brodie submits that DML had not proposed any SMC conditions, but had indicated that it would be happy to work under the guidance of HS. However, it would not be appropriate to allow works to proceed without imposing conditions. That said, the draft conditions in HS/37 were submitted for consideration with grave reservations as to their practical implementation and their efficacy.

9.7 As the 1979 Act provides no guidance as to the content or purpose of SMC conditions and no subordinate legislation or advice has been issued, regard should be had to the guidance regarding planning conditions in NPPG 1 and Circular 4/1998. These state that conditions should only be imposed where they are necessary, relevant to the operations or activities to be carried out, enforceable, precise and reasonable in all other respects; that they should be appropriate to the proposal concerned; and that they should be used to achieve a specific end, not to cover every eventuality.

9.8 This SMC application leaves so many details unspecified, it is impossible to devise precise conditions. If an impasse in respect of any areas not yet specified was to arise, it is not clear how that would be resolved. Where proposals are not detailed, it may seem necessary to seek to cover every eventuality. However, conditions, or their implementation, should not be formulated with a view to HS drawing up a detailed scheme to implement DML's general proposal. For the purposes of the inquiry, it must be taken as a given that the castle remains a SAM and in guardianship. The latter poses particular problems for devising conditions as Scottish Ministers are responsible for the maintenance and management.

### **The applicant's position**

9.9 Mr Campbell submits that the draft conditions seek to reserve to Scottish Ministers, on the advice of HS, approval of all architectural drawings, written specifications and method statements in addition to a host of other requirements. As these approvals would require to be obtained after any indication that Ministers were prepared to grant SMC, and the building would remain in State care, the proposal carries the extra advantage of guaranteeing intellectual and artistic integrity for the works by reason of need for HS approval at every material stage. These are HS's own draft conditions, and the applicant considers them to be workable and realistic. "Works" are defined as "operations of any kind..." and there is no real warrant for the proposition that every single detail must be spelled out in advance. In principle, since such works would almost by definition be more complex than routine building work on a new house, there is much to be said for proceeding with caution.

9.10 Defects in the existing CP can be cured, and the benefit of the material so far kept from the applicant can be applied to its proper purpose, which is the long term conservation and evolving use of the Castle in its modern context, as a remarkable example of state and private co-operation to secure the future of a highly important and significant asset. Mrs Grove had accepted that she would have no problem with a condition requiring a CP to be approved by HS before any works commenced.

9.11 The continuation of the castle in guardianship would provide a guarantee, if the project failed. That would be DML's preference. Alternatively, or following the renunciation of the Deed, which Mrs Grove appeared to suggest was a possibility, a condition, or an agreement under section 17 of the 1979 Act, could provide for reversion into State care. HS had agreed to such a recourse in 1991/92 (letters of 7 August, 25 September, 8 October, 26 October (2), and 12 and 13 November, all 1991, and 22 April 1992, in DML/2). It would not be difficult to frame a condition allowing HS to serve a notice containing a demand to remedy some matter of which it disapproved (reasonableness always being assumed), and for the castle to revert to guardianship in the event of failure to comply. A further alternative would be to renegotiate the terms of the Deed.

9.12 The level of public access proposed by DML could also be secured through the grant of SMC, preferably through a section 17 agreement rather than by condition.

9.13 In the light of all that, an intentions letter indicating that Ministers were minded to grant planning permission and SMC, subject to conditions and to an agreement covering the matters outlined, should be issued.

## 10. FINDINGS OF FACT

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We find the following facts, the test in each case being that, on the balance of probability, the outcome will be as stated.

### **General and contextual findings regarding both applications**

10.1 The description of the application site, its surroundings, and the proposals, in Chapter 1, together with the Statutory and Policy Context in Chapter 2, are adopted for their terms.

10.2 Rowallan Old Castle (the castle) is a Category A listed building and, together with an area of surrounding land, is a SAM. The applicant and HS differ as to when the monument was first scheduled. However, it is not disputed that it has had scheduled status at least since 1994. In any event, the criterion for both designations is that the building or monument concerned is considered to be of national importance. "National importance" is not defined in statute. However, as far as scheduling is concerned, we find that this term stands to be assessed in the context that the 1979 Act applies throughout the UK.

10.3 Section 1(4) of the 1979 Act does not allow Ministers to include in the Schedule any structure occupied as a dwelling house, other than by a caretaker or his family. Whether the use proposed by DML (described at finding 10.8) is "a dwelling house", that could no longer be included in the Schedule, and on which Ministers could not incur expenses under section 24, is a matter for legal advice. The power, in section 1(5), whereby a monument can be excluded from the Schedule, or an entry amended, is not stated to apply only in respect of initial scheduling. In any event, we can go no further than to agree with the Reporter at the Castle Tioram inquiry, who stated that, if an ancient monument is restored, and the previous use as a dwelling house resumed, Ministers may move to modify the entry in the Schedule to exclude it.

10.4 The castle, together with some land within the scheduled area, is also the subject of a DG, entered into by a previous owner and the Minister of Works in 1950. The present effect of the deed is that Scottish Ministers have the responsibility of providing for the preservation and maintenance of the monument. The Deed also gives their representatives, workmen and others, and members of the public visiting the castle, free right of access to the castle and to land within the area in guardianship, and the owner free rights of access at all reasonable times. In practice, public access, has for some years, been regulated on the basis of invitation by HS. HS states that it has adopted that practice because of difficulties between it and the applicant.

10.5 The applicant is not entitled to terminate the Deed unilaterally. Accordingly, unless Scottish Ministers agree, under section 14(1) of the 1979 Act, to exclude part of the monument from guardianship, or renounce guardianship, or the applicant succeeds in its challenge regarding right of access for the public, the responsibilities and rights described above will remain. Section 14(3) prevents Ministers from entering into an agreement under section 14(1) unless they are satisfied that satisfactory arrangements have been made for ensuring its preservation after termination of the guardianship; or that it is no longer practicable to preserve it.

10.6 It is likely to be difficult, if not impractical, for the applicant to implement its proposals without contravening the current terms of the Deed. Whether or not guardianship will continue and, if so, on what terms, are legal issues, separate from, and outwith the remit of, the inquiry. Accordingly, our findings are made on the basis that the DG is in place. We find that scheduling and the DG provide for a high level of statutory protection for the monument.

### **The proposals and their context**

10.7 The descriptions of the proposals given in the 2 applications do not coincide. However, they are presented by the applicant as being for the same purpose, namely the use of the castle for overnight letting accommodation, on a house party basis, and for occasional functions, as an annex to the hotel at the Lorimer House that was granted outline planning permission in March 2001.

10.8 Parties to the inquiry agree that, notwithstanding its terms, the outline permission does not include any development or works affecting the castle. However, the present applications are related to that permission, to the extent they would be associated with the hotel at the Lorimer House. Condition 2, proposed by EAC, is intended to maintain that association.

10.9 At the time of the inquiry, work on the development that is the subject of the outline permission had not begun on the ground and reserved matters had not been approved. HS argues that listed building consent for alterations to the Lorimer House to form an hotel has also not been granted. However, the report of the previous Rowallan inquiry indicates that EAC accepts that earlier consents remain extant, and our first accompanied site inspection confirmed that some alterations to that building have already taken place. In any event, the plans in HS/24 indicate to us that implementation of the 2001 permission is likely to have a noticeable affect on the character and appearance of the estate, and the designed landscape in which the castle is located. We have no evidence that the permission is unlikely to be implemented.

10.10 The applicant states that it intends to retain ownership of the estate, other than the housing site, and that the material in HS/24 was produced to canvass interest from potential investment partners. It also intends that title to the castle would remain with DML, or would be passed to a family trust, which may be established. The applicant states that the choice between these alternatives would be made when the direction that the development would take is wholly clear. In either case, the intention is that the castle would be leased to a hotel operator, who has yet to be chosen, subject to conditions regarding the management and use of the building, and to the procurement of a bond to secure maintenance in perpetuity. Having had regard to these factors, we find that the applicant's proposals for the future ownership and management of the castle would rely on arrangements that remain to be put in place.

10.11 The applicant is content to accept the proposition that Scottish Ministers can interest themselves in, and take account of, the general standing of an applicant. However, unless otherwise provided for, planning permission and SMC are not granted on a personal basis, but, respectively, for development and works. That said, we find that sound standing and experience, while not determinative, may provide a degree of reassurance for Ministers in considering proposals affecting a monument and listed building of national importance.

10.12 As far as the first of these factors is concerned, the applicant's main witness and major shareholder, and the companies with which he is, or has been, associated, have a record of involvement in a number of prestigious developments, including large conservation projects. The evidence also indicates that the witness has a keen interest in the castle, that he has considerable knowledge of its history, architecture, and archaeology, and that he has employed that interest and knowledge in formulating the current proposals.

10.13 The applicant states that the development that has already been permitted at Rowallan Estate is fully funded, and that terms for the disposal of the housing site have been agreed. It does not argue that the proposed hotel annex is required to make the project as a whole, or an individual element of it, viable. It is also confident that the annex venture would be commercially successful. However, in the absence of a business plan, financial projections, costings for upkeep, and documentary evidence of operator interest, we are unable to reach a view as to whether that confidence is well-founded. If the annex proved to be uneconomic, the applicant proposes that it would be managed solely as a visitor attraction. We find that the works required to put that latter use into effect might well be different in nature and scope than those required for use as overnight accommodation.

10.14 We find that the castle was in very poor condition when it was taken into guardianship. We also find that it is now structurally stable and in generally good repair overall, following a programme of works undertaken by HS and its predecessors on behalf of the Secretary of State for Scotland, his predecessors, and now Scottish Ministers. These works include a largely new roof (following a fire); new windows; the repointing of external stonework; changes to the interior, including new floors and other timber; a new partition at first floor level; and the installation of some basic services.

10.15 HS agrees that the execution of some of the works that have been done do not reflect current conservation philosophy and techniques. It also agrees that some of these works would not be done today, in that fashion, or in some instances, at all. However, it asserts that they reflect the approach that was current at the time the works were carried out, and that if they had not been done, the castle would not have survived to its present state.

10.16 We find that the very poor condition of the building when it was taken into state care is likely to have required considerable intervention to ensure its survival. We also find that the quality of some past HS work is questionable, although the evidence on what was the appropriate conservation standard at any particular time is inconclusive. In any event, the value of a listed building is dependent, in part, on the authentic age of its elements. That said, these do not last forever, and some replacements over time would have been inevitable. In this case, time and weather, aided and abetted by neglect, have hastened that process. In some areas, what one sees now may bear only a passing resemblance to original finishes, and original construction techniques may not have been faithfully applied. We conclude that the works that have been done have had a significant effect on the fabric of the monument, and that they exceeded what can reasonably be regarded now as compatible with the principle of minimum (or minimal) intervention espoused in current conservation philosophy. We also find that the overall effect of these works on the cultural significance of the monument, as defined in the Burra Charter, has been adverse. However, the applicant accepts HS's Assessment of Significance. It is also agreed that, as it now stands, the castle still has very considerable cultural significance. The precognition that was to have been delivered by

Geoffrey Stell was agreed for its terms. That states, among other things, that Rowallan is a precious resource and that its entire site requires to be treated with great sensitivity.

10.17 HS submits that none of the works it has done, or may undertake, including the programme of works in HS/25, are relevant in considering whether the current applications should be approved. While the applicant is understandably tempted to compare his proposal favourably with HS's past and proposed works, these are not competing proposals in the sense of being applications between which Ministers have to choose. In that respect, DML's proposals stand to be determined on their merits, in terms of their effects on the castle and its surroundings, and in the context of current policies.

10.18 However, we also find that the works that have been done are material to these determinations. Firstly, they contribute to the present state of the monument, and have affected its cultural, archaeological, architectural and historical significance in some respects that are not beneficial. In that context, the comments by Professor Walker that authenticity should be kept in perspective are pertinent. Secondly, the applicant expresses an intention of making good what he describes as "dilapidations".

10.19 We also find that the works proposed by HS are relevant, to the extent that they indicate an intention of making further changes, including undertaking some remedial works. If done, these works are likely to be implemented over a longer timescale than the 9 months in which DML envisages that its works would be carried out.

10.20 The applicant claims that the castle, and its site, are still at risk because HS is not undertaking timeously, or at all, works that the applicant considers are urgent and/or necessary to safeguard and protect the fabric of the building and some external features. However, we find most of the matters listed by the applicant to be relatively minor, and that they are not exposing the castle to immediate or significant risk. While funding for the HS programme cannot be guaranteed, finding 10.13 indicates that this factor also applies to DML's proposals.

#### **The relationship between the planning application and the SMC application and the statutory provisions that apply**

10.21 Planning permission and SMC are governed by different statutory procedures. Both types of authorisation are required where, as in this case, a proposal involves development under section 26 of the T & CP (S) Act, and works under section 2(2) of the 1979 Act. However, section 55(1) of the LB & CA (S) Act means that DML's proposals do not require listed building consent.

10.22 As paragraph 54 of NPPG 1 indicates, the grant of planning permission does not remove the need to obtain other consents, nor does it imply that these will be forthcoming. The same principle applies in reverse, whereby a grant of SMC does not dictate the outcome of a planning application.

10.23 We find no basis in statute for the statement in paragraph 44 of PAN 42 that, in instances of dual designation, ancient monuments legislation takes precedence over that relating to listed buildings. While the respective policy approaches may differ, we find that both sets of legislation have an equal status and apply in parallel, albeit that SMC is a more

extensive and rigorous form of control. Accordingly, a proposal that is within the ambit of both sets of legislation has to be assessed against the statutory provisions and policies that apply to both.

10.24 The T & CP (S) and LB & CA (S) Acts both provide guidance, in section 25 read with section 37(2), and in section 59(1) respectively, regarding the determination of planning applications. That latter guidance relates to proposals that are considered to affect a listed building, or its setting, or any features of architectural or historic interest that the building possesses.

10.25 The 1979 Act provides no equivalent guidance on how an SMC application ought to be assessed, and no Government guidance to the terms of the Act has been published. The presumption against change of use, reconstruction or recreation claimed by HS is not stated in terms. That said, the preamble to the Act states that, in addition to a consolidating function, and the administration of grants, it makes provision for the investigation, preservation, and recording of matters of archaeological or historical interest, and (in connection therewith) for the regulation of operations or activities affecting such matters. We find that regulation under the Act is directed at the purposes for which the Act provides. We find these purposes likely to be achieved by applying the principles of minimum intervention, changing only where necessary to prevent damage or decay, but otherwise leaving *in situ*, in the existing state. Section 2 of the Act, under which the SMC application was made, appears under the heading of Protection of scheduled monuments.

10.26 The 1979 Act affords a SAM greater protection than an “ancient monument”, which is defined in section 61(12), and in respect of which works do not require SMC. Neither of the 1997 Acts, nor the 1979 Act, contain provisions relating to the protection or preservation of the setting of a SAM.

## **The planning application**

### *The proposal*

10.27 We find that it is the material change of use of a building, and building, engineering or other operations that would materially affect its external appearance, that amount to development requiring planning permission, in terms of section 26 of the T & CP (S) Act.

10.28 As regards use, a SAM may have a value, or a usefulness, by the very fact of its existence. However, we find that, for planning purposes, it is not a “use”, but a designation. Whether Rowallan Castle has a use within Class 10 of the UCO is debatable. However, that is academic as far as the need for planning permission is concerned. The castle has not been occupied as a house for over 100 years. That period, its condition at the time the Minister of Works was approached with a view to assuming responsibility for it, and the intentions of previous owners, support the view that its use as a house has been abandoned. The castle also has no history of use for hotel related purposes. The applicant accepts that use for the purpose stated in the application is a material change and requires planning permission.

10.29 There is no statutory definition of “refurbishment”, to which the application also refers. The evidence indicates that the CP and drawings that were submitted as “background information” were not intended to be binding as far as this application is concerned, and in

some respects have been overtaken by events. However, we find that their purpose was to inform the planning authority of the applicant's general intentions at that time with regard to changes to the property.

*The statutory provisions that apply to the determination of the planning application*

10.30 We find that this application is for a development that would affect a listed building, and could affect its features of special architectural or historic interest and its setting. We therefore find that, in its determination, the following statutory provisions apply:

- (1) Section 25 of the T & CP (S) Act, read with section 37(2), which requires the application to be determined in accordance with the provisions of the development plan, unless material considerations indicate otherwise.
- (2) Section 59(1) of the LB & CA (S) Act, which requires special regard to be had to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which the building possesses.

10.31 We reach finding 10.30 on the basis that section 55 of the LB & CA (S) Act does not exempt SAMs from the provisions of section 59; and that there is nothing in the terms of section 59(1) to indicate that it is to be applied to SAMs only in respect of setting. Accordingly, special regard must be had to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses. As far as the building is concerned, "preserving" has to be given the meaning in section 59(3). This extends to such alterations as would not be seriously detrimental to the character of the building. We find that building character encompasses a wide range of factors, and that it covers both the physical and aesthetic features of a building, and less tangible aspects such as historical, social and cultural associations that may also be manifested in its fabric or its being.

10.32 In the light of the case *Campbell v City of Edinburgh*, and the fact that section 59(1) requires "special regard" to be had, we find it to be appropriate to assess the application against that provision in the first instance.

*Assessment of the application against the provisions of section 59(1) of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997*

10.33 EAC submits that only the principle of the change of use falls to be considered in the context of this application, and that it is inappropriate to take account of the nature of the proposed refurbishment works. The applicant's planning witness, on the other hand, agrees that the physical consequences of putting a change of use into effect can be a material consideration in determining a planning application. We find that the council's approach fails to address the statutory requirement to pay special regard to the desirability of preserving the building in terms of section 59(3), and of preserving any features of special architectural or historic interest which it possesses. We also find consideration on the council's basis likely to be superficial and that special regard should be had to the consequences, for the character of the building and for such features, likely to arise from the implementation of the proposal. This finding applies, irrespective of whether these consequences amount to development requiring planning permission.

10.34 We find that DML's proposal would preserve the castle, to the extent that it would remain in place. However, the building is unsuited as it stands for use as overnight accommodation in association with an hotel. In particular, the only existing sanitary provision is a small toilet on the ground floor, there are no bathroom facilities, and the present heating system is unlikely always to be conducive to comfortable living conditions because it is designed for conservation purposes. Accordingly, putting the building into a state suitable for the purpose proposed would inevitably involve some changes, particularly to its fabric.

10.35 We find that the character of the castle is more than the sum of its physical parts or indeed its appearance; these have been described earlier in Chapter 1. Its character is bound up also in its history, its place in East Ayrshire, the cultural links with the Mure family and their aspirations, the Renaissance and other periods of its architecture.

10.36 We find that, in the context of this building as a whole, the use that is proposed may be capable of being accommodated without serious detriment to the external character of the listed building. The evidence indicates that the rooflights shown on the submitted plans, and the exterior harling, which is not mentioned on the application form, are not essential in order to implement the proposal. We also accept the applicant's submission that, managed as proposed, the fabric of the castle would be safeguarded against the intense level of use normally associated with an hotel. Some of the concerns expressed by HS appear to derive from assumptions regarding the manner in which the use would operate in practice. These concerns may not be realised, or may depend on further works, for which no SMC application has been made. There is also the possibility that relaxations to the BSR could be obtained. In that regard, the Memorandum states that new uses for old buildings may often be the key to their continued survival and that sympathetic consideration will be given to any applications for the relaxation of the regulations that may be referred to Ministers.

10.37 We have found, at finding 10.34, that putting the building into a state suitable for the purpose proposed would inevitably involve some changes, particularly to the internal fabric of the castle. We find that these changes would include at the least the introduction of additional toilet and bathroom facilities, and a replacement heating system (both shown in the plans submitted with this application, as background information); together with additional or new lighting and associated fixings, fixtures and fittings, to supplement or replace the existing somewhat rudimentary arrangements. We find the introduction of such facilities would require physical alterations that are unlikely to be easily reversible. We also find designing and executing the requisite alterations so as to improve the prospect of reversibility likely to increase the degree to which they would be visible. These findings apply, irrespective of whether a dry or a wet heating system is provided. The CP also lists a range of other works, which could, to varying degrees, be intrusive. We also find that use for the purpose proposed could well expose some delicate interior features to risk. It would be unrealistic to expect paying guests always to treat their accommodation with the high degree of respect merited by such features.

10.38 We also find that refurbishment would amount to significantly more than the refurnishing to which EAC referred. It is also possible (notwithstanding the possibility of BSR relaxations) that other statutory requirements may mean that the proposal presented at the inquiry under-estimates the consequences that would arise in practice. While the castle has been the subject of considerable research over the years, the interpretation placed on some

aspects of its history and evolution, such as the jettied chamber over room G11 suggested by the applicant, are conjectural. That increases the case for following the principles of minimal intervention and reversibility in order to avoid the loss or obscuring of evidence, or diminishing options for the future.

10.39 However, as stated at finding 10.35, building character is more than just external, or indeed physical appearance. The likely effect of the physical changes outlined above would also be experienced in the understanding of the castle and its character. The change of use to some rooms would disguise their historical importance; the priority likely to be given to guests' comfort rather than authenticity could obscure or diminish the cultural significance of the castle. We find that the castle has undergone and accepted significant changes over its history, and recent works have also reduced its cultural value. However, notwithstanding this, we find the proposed change of use unlikely to be able to be introduced without being seriously detrimental to the character of the building. The physical changes likely to be required would also be unlikely to preserve *in situ* some features of architectural and historic interest, such as the bed recess timbering in F13 (42).

10.40 We find that the setting of the castle comprises not only its immediate surroundings, including the former garden area, and its situation adjacent to the Carmel Water and driveway, but also the sense of place given to the listed building by its location within Rowallan Estate and its designed landscape. Neither the application nor the background information gives details of the restoration and/or rebuilding of the garden and the barn walls. However, amplification provided at the inquiry was to the effect that the walls would simply be restored to their condition found in recent years. We also find that there is likely to be scope for a garden design that need not have an adverse effect on the setting of the listed building. Archaeological investigation could be required by means of planning conditions, or, if SMC was to be granted, in the context of that application. NPPG 5 counsels against the duplication of conditions.

10.41 The applicant does not intend to provide dedicated parking or vehicular access arrangements for this proposal and guests would use the facilities that are to be provided for the development that already has planning permission. That development, which already has permission, is likely to affect the setting of the listed building. Foul drainage, if taken to the treatment plant proposed for the 2001 development, could generally follow the route to the existing septic tank. DML proposes that any new water supply pipe would follow the route of the existing water supply.

10.42 Having paid the special regard that section 59(1) requires, we find that the proposed use could be introduced without harming, and accordingly could preserve, the setting of the listed building. However, on the evidence available, we find that it is unlikely to be capable of being introduced without causing serious detriment to the character of the listed building and without harming some features of special architectural or historic interest in the building. Accordingly, the building and these features would not be preserved.

#### *The development plan*

10.43 The statutory development plan comprises the Stewarton Local Plan (SLP), adopted in 1986, and the Ayrshire Joint Structure Plan (AJSP), which was approved by Scottish Ministers in 2000.

10.44 We find that the planning application stands to be assessed against policies 4.7.13, 4.7.15, 5.3.9, and 5.3.15 of the adopted Stewarton Local Plan.

10.45 As far as Policy 4.7.13 is concerned, this application does not include the demolition or part demolition of the listed building. However, on the basis of finding 10.42, the proposal is likely to be detrimental to the character of the listed building. On that basis, the negative presumption in this policy would apply.

10.46 As the proposal is for a development that would affect the site of a SAM, the negative presumption in Policy 4.7.15 would also apply. However, the approach to determination set out in paragraph 44 of NPPG 1 includes looking at the aims and objectives of a plan as well as the detailed wording of policies. We find that this encompasses the purpose of policies. The purpose of Policy 4.7.15, to afford adequate protection to AMs, does not imply the absolute prohibition on development that the terms of the policy suggest. On the basis of finding 10.42, this development affecting the site of a SAM is unlikely to satisfy that purpose.

10.47 We find that the proposal would accord with Policy 5.3.9, which excepts the use of existing buildings as hotels from its prohibition on commercial or industrial development in the countryside. We find no support in the plan for the submission, by HS, that the policy requires a locational need to be demonstrated.

10.48 The SLP Proposals Map identifies Rowallan Estate as an LWS. Any development on the estate would therefore run counter to the negative presumption in Policy 5.3.15. However, the purpose of the policy is to protect important wildlife habitats which have been identified by the SWT, which does not object to the proposal. In the context of a policy that applies to the entire estate, we find the proposal unlikely to put an important wildlife habitat at risk. The possible implications for bat roosts are considered, at findings 10.61 and 10.62 below, in the context of Policy G2(D) of the AJSP.

10.49 The SLP pre-dates the approval of the AJSP, by over 13 years. It also pre-dates current national planning policies and guidance, including those relating to sustainable development. We find that these factors reduce significantly the weight that the plan can reasonably be accorded. NPPG 1 states that, while there is an expectation that development proposals that are in accordance with the development plan will be granted planning permission, other considerations, such as more recent expressions of policy and planning guidance, may outweigh the policies of the plan, and that similar circumstances may apply where plans are out of date and less relevant to changed circumstances. Parties to the inquiry agree that the adopted plan should be given little or no weight.

10.50 The approval of the AJSP by Scottish Ministers, in January 2000, sets a new strategic planning context, in which the promotion of the concept and principles of sustainable development plays a major part. Putting an existing building to a new use can often be consistent with these principles. However, to be sustainable in terms of the AJSP definition, a proposal has to be shown to improve the quality of life, whilst conserving the environment for future generations.

10.51 That said, the plan's development strategy for Ayrshire (the ADS) is based on a number of key statements of strategic intent, which also include the promotion of economic

growth. The plan also states that the strategy, together with the industrial, residential, commercial, environmental and transport policies that support it, and the Strategic Development Guidelines in the plan, are inter-related and complementary; that it is vitally important to recognise that the objectives of one policy should not be achieved at the expense of another; and that the plan has therefore to be read as a whole, and no one part taken out of that context. To that end, individual policies are heavily qualified.

10.52 As far as the plan's Strategy policies are concerned, we find:

- that putting an existing building to a new use can reasonably be regarded as a sympathetic industrial and business development in terms of Policy ADS1, and is likely to make some contribution to local economic growth, the economic well-being of residents, and the prosperity of Ayrshire's business enterprises, albeit relatively modest. While the proposed nightly rental would be considerable in itself, financial assessments are stated to be based initially on 50%-65% occupancy. In addition, the applicant does not argue that the present proposal is necessary for the viability of the housing, hotel and leisure development that has been permitted, but that it will be an occasional centrepiece of the hotel component of that development. The employment figures quoted at paragraph 3.1.17 relate to the development of the estate as a whole. No employment figures are provided for the castle annex, which would accommodate up to 6 bed-spaces, and would have no live-in staff.
- that the proposal is unlikely to undermine the guiding principle in Policy ADS5, whereby the countryside is to be protected for its own sake. The changes likely to be introduced to the adjacent countryside by the implementation of the 2001 permission are also a consideration in this context.
- as far as Policy ADS7 is concerned, we find the scale of the proposal unlikely to be significant, in the context of Ayrshire. However, a proposal relating to a building of acknowledged national importance cannot reasonably be regarded as other than significant in nature. Accordance with the policy stands to be assessed in the context of the associated text, which states that the concept of sustainable development at an Ayrshire level requires, among other things, the promotion of development which meets the needs of today .... and safeguards options for future generations. If the applicant's expectation that the works involved in implementing the proposal would not be reversed was to be realised, options for the future would be reduced.

10.53 We find that the proposed use (particularly if combined with public access) would accord with the AJSP's objectives for tourism to the extent that it would provide a new tourism development opportunity, would provide an additional tourist facility, could encourage longer stays over a longer visitor season, and could encourage diversification in a non-coastal part of Ayrshire.

10.54 As regards Policy W5, we find that the proposal, which is for a very high-quality and highly specialised form of accommodation, would increase the range and improve the quality of tourist and visitor facilities in this part of Ayrshire. However, the encouragement given by the policy is subject to other relevant AJSP and local plan policies.

10.55 Policy W6 is also qualified, with reference to the safeguarding of the natural and built environment. We find that the latter includes SAMs, in respect of which our previous findings are relevant.

10.56 Of the features of local distinctiveness (relevant to this application) that Policy E1 seeks to conserve, we find, on the basis of findings 10.40-10.42, that the proposal could be implemented while conserving the setting of the castle (feature A). In view of the landscape changes likely to be introduced by the development that has already been permitted, and the fact that these would trigger the implementation of this proposal, we find it unlikely to have a significant effect on the historic designed landscape at Rowallan Estate (feature D).

10.57 With regard to Policy E20, we find, on the basis of findings 10.36-10.39, that the proposal is likely to have an adverse effect on a listed building and on an archaeological location.

10.58 As far as Policy G2A is concerned, on the basis of findings 10.36 and 10.40-10.42, we find the proposal unlikely to cause unacceptable visual damage or intrusion. There is also no reason to expect unacceptable pollution, flooding, or erosion (Policy G2B and G2C). The proposal is to use drainage arrangements that would be provided for a development that has already been approved. SEPA does not object in principle to the proposal. The water authority made no comments.

10.59 In terms of Policy G2D, on the basis of finding 10.48, we find the proposal unlikely to prejudice the use and enjoyment of a natural environment location. Its effect on the use and enjoyment of this built heritage location would depend on the nature and extent of access for visitors in addition to letting guests, and the extent to which the proposed use affected their ability to appreciate the monument.

10.60 The applicant is willing to allow public access to the land around the castle, to the tower and courtyard, and to a clan room and museum throughout the year. It is also willing to provide access to the remainder of the site for up to 49 days per year, when the castle would not be let. We find public access to the entire site unlikely to be a practical proposition at times when the castle was being occupied, as those renting very expensive, high quality accommodation are likely to expect exclusive use and privacy. However, public access on up to 49 days per year would still represent greater public access than is currently provided, notwithstanding the terms of the DG. The evidence also indicates that HS's proposal for public access could be hampered in practice by the limited extent of the guardianship area. However, if DML's use were to be implemented, visitors would see the intact areas of the castle albeit adapted and furnished for use as present-day overnight accommodation. On this point, we find the proposal to be neutral with regard to the enjoyment of a built heritage location.

10.61 The proposal would not affect agricultural land (Policy G2E). As regards Policy G2F, for the reason stated at finding 10.48, the proposal is unlikely to cause unacceptable damage to existing habitats on land at Rowallan. The only species that could be at risk is bats, which are reported to use the eaves of the gallery, possibly as a maternity and as a hibernaculum roost. We find it likely to be feasible to implement the proposal so as to avoid physically affecting that area and there is no obvious reason why the work could not be programmed to avoid periods of the year when bats are likely to be most vulnerable to disturbance. Prohibiting chemical treatment of timber, which is also likely to be desirable for conservation reasons, could be achieved through conditions.

10.62 However, SNH states that the heating of the building, which is a likely consequence of use as overnight accommodation, could make the roofspace unsuitable for a hibernacular roost. It also states that bats in a maternity colony could sometimes be audible, which might not be acceptable to guests. We find that to be an understandable reaction that could well pose a further threat to roosts. However, as matters stand, there is no clear evidence that the effect of the proposal on a protected species would pose an insurmountable constraint to development. In these circumstances, there is at least a reasonable prospect that the type of monitoring and mitigation suggested by the council would provide the basis for identifying a suitable solution. As a condition to that effect would not relate to the investigation, preservation or recording of the monument, it would fall within the ambit of any planning permission that might be granted.

10.63 As the application site lies outwith a settlement in a Rural Protection Area, the proposal would require to fall within one of the 3 exceptional categories of development in Policy G5 in order to conform to the structure plan. Category A is that a proposal must have a demonstrated site specific locational need. In that regard, we find that the applicant's proposal is directly associated with the application site, and that it can only be realised there. However, it arises from a wish to satisfy an aspiration or desire, rather than from necessity. The applicant does not argue that it is required to ensure the viability of the overall scheme, or for administrative or operational reasons associated with it.

10.64 The mixed development that has already been permitted at Rowallan has the potential to make a significant contribution to the local economy. Having had regard to findings 10.52 and 10.63, we find justification for the proposal in terms of social and economic benefit to the community (Category B) likely to be modest. As regards Category C, the proposal would contribute to rural land diversification, to the extent that it would be associated with the overall scheme. The proposal has no bearing on the operational needs of agriculture or forestry (Category D).

10.65 Policy G8 is directed at the allocation of land in local plans that seek to conform to the AJSP. The factors listed in the policy are therefore considerations for land allocations in the finalised EALP.

10.66 Our overall findings regarding accordance with the statutory development plan are, firstly, that the applicant's proposal would accord with Policies 5.3.9 and 5.3.15 of the adopted local plan, but that the negative presumptions in Policies 4.7.13 and 4.7.15 would be likely to apply. Secondly, we find that it would be likely to accord with some AJSP provisions and policies, specifically those relating to tourism, local economic benefit, the safeguarding of the settings of listed buildings, of designed landscapes, and of natural environment locations, habitats, and protected species, agricultural land, and servicing considerations; and that it would have a neutral effect on the enjoyment of this built heritage location. However, we find that it is unlikely to be a sustainable development in terms of the AJSP definition, and that it is likely to have an adverse effect on this listed building and archaeological location. We further find that the proposal does not accord with the structure plan because it does not arise from a site specific locational need.

### **Material considerations**

#### *The finalised EALP*

10.67 The finalised EALP, which supersedes the consultative draft version of the plan to which the SCT refers, is not part of the statutory development plan. It will only achieve that status when it is formally adopted by EAC. At the time of the inquiry, the report of an inquiry regarding objections to the plan was awaited. The terms in which the plan may be adopted are therefore subject to change. However, its recent date, its requirement under section 11(5) of the T & CP (S) Act to generally conform to the AJSP, and the fact that it takes account of most recent national planning policy and guidance, mean that it merits significant weight. In that regard, finding 10.49 is pertinent.

10.68 The EALP's primary strategic aim is to promote sustainable development to maximise the potential of East Ayrshire, and improve the quality of life of its residents. That primary aim is supported by 6 more specific aims of which AIM 2 and AIM 3 are relevant to this application. We find that the proposal would contribute to AIM 2, which is to facilitate the expansion and diversification of the East Ayrshire economy and maximise the economic potential of the area for industrial, business, commercial and tourism development. As far as AIM 3 is concerned, we find that it would have little or no discernible effect on the character, appearance and amenity of East Ayrshire, in terms of landscape quality, the natural environment or areas of natural heritage importance. However, on the basis of our findings this far, it is unlikely to serve to protect, conserve or enhance its built heritage importance.

10.69 Accordance with Policy SD1, which reflects the primary strategic aim, turns on whether the proposal would adhere to the principles of sustainable development. As the finalised plan defines that concept in the same terms as the AJSP, finding 10.52 (in respect of Policy ADS7) applies equally to this policy.

10.70 To overcome the negative presumption in Policy SD2, the proposal would require to be acceptable in terms of Policy SD3. In this case, categories (ii), (iii) and (iv) of the latter policy fall to be considered. These raise issues very similar to those in Policy G5 of the AJSP. On the basis of findings 10.63 and 10.64, we find that the proposal has not been fully justified in terms of site specific locational need, that it would have a modest social and economic benefit to the community, and that it would contribute to rural land use diversification, to the extent stated in the latter finding.

10.71 Policy SD7 provides support and encouragement for the sympathetic upgrading, re-use and conversion of existing properties throughout the plan area, in pursuit, among other things, of the aim that development should proceed in a sustainable manner. The applicant has clearly devoted thought to its proposal. However, achieving sympathetic treatment in the case of a building of national importance is likely to require exceptional care. On the basis of our findings this far, we find that aspiration unlikely to be fully achieved by this application.

10.72 As far as Policy IND10(iii) is concerned, DML's proposal is for a small-scale business development that would be associated with a larger leisure, recreation and tourism development. Assessed in terms of the impacts listed in the policy, which refer to the surrounding environment, we find that it would be a sympathetic business development.

10.73 We find that the proposal would assist in achieving the plan's prime objective with regard to Tourism, Leisure and Recreation, which is to exploit the potential of East Ayrshire for further growth in that sector, by helping to expand and diversify the area's economic base;

and to promote East Ayrshire as a tourist and visitor destination. A very high quality, specialised form of accommodation would help to address the deficiencies in the range, quality and variety of tourist accommodation that the plan identifies as a characteristic of the area. Access for the public could improve the quality of life for both residents and visitors. The applicant's proposal for a clan room, museum and interpretation would provide an association with the history and heritage of East Ayrshire. Areas of Tourist Potential listed in the plan include Country Houses and Estates.

10.74 On the basis of findings 10.52 and 10.69, we find that the proposal is unlikely to draw support from Policy TLR1.

10.75 We find that the proposal would accord with Policy TLR3, other than in terms of its likely adverse impact on a built heritage resource that requires conservation.

10.76 We find that the proposal would not accord with Policy TLR4, because it does not have a site specific locational need, and because it would not accord with Policy TLR3.

10.77 We find that Policies ENV1-3 are not hierarchical, but are directed at different aspects of the historic environment. Our findings in respect of each of these policies are as follows:

- Policy ENV1: we find, on the basis of our previous findings, that this proposal is unlikely to protect, preserve or enhance the listed building and the SAM. However, we have found that it could be accommodated while preserving the setting of the listed building. As no works are proposed outwith the scheduled area, the setting of the SAM would not be affected.
- Policy ENV2: we find that the proposal would accord with this policy to the extent that it would retain, restore (in that the applicant is willing to make good "dilapidations"), and use a listed building. Neither demolition nor part demolition are proposed. However, findings 10.37 and 10.38 indicate that the use would be likely to involve changes of a nature other than those encouraged by the policy.
- Policy ENV3: we find, based on previous findings, that the proposal would retain most of the archaeological resources of the site, but would not fully preserve all of them. The alternative, whereby investigations and recording would take place, applies where the primary aim of preservation cannot be achieved. The best construction that we can place on this policy is that it expects preservation, unless there is justification for departing from that principle.

10.78 As regards Policy ENV4, we find that the proposed development could be undertaken so as to be sympathetic to the setting of the building. The applicant proposes to restore walls to their recent state. Finding 10.40 is pertinent to the proposals for the garden.

10.79 With respect to Policy ENV5, we have found, at finding 10.10, that implementation of the 2001 permission is likely to have a noticeable effect on the character and appearance of the designed landscape at Rowallan. We find the current planning proposal, which would rely in part on facilities to be provided as part of that development, unlikely in itself to have a significant effect on the designed landscape.

10.80 As matters stood at the time of the inquiry, the EALP Proposals Map identified Rowallan Estate as a Miscellaneous Development Opportunity Site and Policy ENV14 did

not apply to this proposal. The outcome of EAC's intended consideration of the representation by HS regarding the policy is not known to us, and we cannot anticipate its consequences for the terms of the policy.

*National planning policy guidance and best practice advice*

10.81 NPPG 1 states that development and conservation are not mutually exclusive objectives, that the aim is to resolve conflict between objectives, and that planning policies and decisions should not prevent or inhibit development unless there are sound reasons for doing so. We find this amounts to a recognition that a balance has to be struck between potentially competing objectives, in which the rights of the individual are respected, while acting in the interests of the wider community.

10.82 The NPPG also confirms Scottish Ministers' commitment to sustainable development, among other things through promoting regeneration, the full and appropriate use of land and buildings, and conserving important historic and cultural assets. It advocates development plan policies that favour the most sustainable option, promoting development that safeguards and enhances long-term needs. When conflicts between objectives arise, decisions in line with local priorities and needs, as identified in the plan, are advocated.

10.83 NPPG 5 is also underpinned by the concept of sustainable development, explaining that the Government seeks to encourage the preservation of sites and landscapes of historic and archaeological interest, so that they may be passed on in good order to future generations. Ways of meeting these aims identified in the NPPG include encouraging private sector efforts, and making financial assistance available to help meet the costs of maintaining and restoring heritage property. However, the NPPG also identifies archaeological remains as a finite and non-renewable resource, to be regarded as part of the environment to be protected and managed. It identifies the primary policy objectives as preservation wherever feasible, and that where this proves impossible, there should be proper recording, analysis and publication. It also looks to the development planning system to meet the need for development, along with the need for preserving archaeological remains, and for minimising the conflict between these needs.

10.84 The NPPG does not preclude development at SAMs. It also identifies encouraging private sector efforts among means of meeting its aims of preserving sites and landscapes of archaeological interest, so that they may be passed on in good order to future generations. However, its policy approach, in paragraph 17, is that SAMs are of national importance; that it is particularly important that they are preserved *in situ* and within an appropriate setting; and that developments which would have an adverse effect on them, or on the integrity of their setting, should not be permitted unless there are exceptional circumstances. In that regard, we find the fact that the proposal would mean that the castle would not be physically moved does not amount to preservation *in situ*. The NPPG states that the preservation of a SAM and its setting is a material consideration in determining a planning application. On the basis of our previous findings, this proposal would not serve to preserve the monument.

10.85 NPPG 5 does not expand upon what might amount to "exceptional circumstances" for the purposes of this policy approach. However, the weight given to the importance of the archaeological features where a SAM is concerned, is that it is deemed to be of national importance. It would therefore be reasonable to expect any development that ran counter to

the principle of preservation *in situ* to be permitted only where circumstances are deemed to be of greater importance to the national interest than adherence to the principle of preservation. Our finding in this regard is therefore in broad accord with the findings of the previous Rowallan inquiry and that of the Castle Tioram inquiry.

10.86 We have no evidence that the applicant's proposal, which we find unlikely to preserve the monument, is likely to be greater importance to the national interest than adherence to the principle of preservation. We make this finding having had regard to the fact that the castle is in state care, that it has a high level of statutory protection, and that it is not at immediate or significant risk. We also find that it is not a building for which a use must be found in order to secure its preservation.

10.87 Paragraph 31 of the NPPG states that the ultimate objective with regard to the matters with which it is concerned is to secure the best possible treatment of the archaeological heritage, while at the same time accommodating the need for the development. Findings 10.13, 10.63 and 10.70 indicate that the need for this development has not been established.

10.88 NPPG 15 identifies ways in which the statutory land use planning system can assist rural areas achieve sustainable development. It also confirms the Government's commitment to the protection, conservation, and enhancement of the historic environment to that it can be enjoyed today, and passed on in good order to future generations. This will often be best secured through appropriate productive use of historic buildings. However, it also stresses the importance of avoiding works that will have a harmful effect, including on listed buildings, SAMs, and archaeological sites.

10.89 On the basis of findings 10.23 and 10.24, and of the stated scope of NPPG 18, which includes designed landscapes, we find that this NPPG is also a material consideration for this proposal. We also find that NPPG 18 complements NPPG 5, and that it is not subservient to it. It promotes a balanced approach, where preservation is secured, while accommodating and responding to present day needs.

10.90 The consideration of the concept of alternative and "best viable use" in NPPG 18 is not stated to exclude SAMs. We also find that conservation, including for SAMs, should not be backward looking if it is to accommodate and respond to present day needs. However, having had regard to NPPG 18's complementary role relative to NPPG 5, and to the principles set out in the latter, we find that "best viable use" is a concept that sits more easily on listed buildings. In any event, the expectation is that there will be minimum impact on the special architectural and historic interest of the building; that applications are accompanied by sufficient information on the historical, architectural, environmental, and archaeological significance of a site so that the impact of the proposals can be assessed and justified. On the basis of our previous findings, we find this proposal unlikely to meet these expectations. Our finding that the building is not at immediate or significant risk lessens the argument for introducing the use proposed by the applicant.

#### *Other published policy and guidance*

10.91 The Memorandum of Guidance on Listed Buildings and Conservation Areas sees new uses for old buildings often as the key to their continued survival. However, on the basis of our findings this far, there is no evidence that the survival of the castle is in doubt. The

Memorandum also recognises that planning permission in principle for a change of use, without supporting plans, calls for special care to determine whether a listed building can reasonably fulfil the new use without undesirable destruction or sub-division of interior work. We find the level of works proposed in this case, and the additional works that are likely to be required, but are not detailed, are likely to cause harm to the building's interior.

10.92 We find that, as the first statement of the Executive's policy for the sustainable management of Scotland's historic environment, Passed to the Future should be accorded significant weight. It recognises the value of retaining and, where possible and right to do so, re-using existing structures; and that the historic environment is not static, and has been continually adapted to meet changing needs. However, it stresses the importance of being sure that the impact of actions is clearly understood. Significantly, it concludes that, if this cannot be assessed with confidence, then following the precautionary principle, damaging actions should be avoided. Among the principles promoted are that changes of use should only be allowed if they are necessary; that change should be avoided where effects cannot be adequately assessed; that impact should be mitigated; and that any interventions kept to a minimum and sympathetic to the historic character of the building. We find that the impact of the actions proposed in this case are potentially damaging to the castle, although the precise impact cannot be assessed with confidence, and that the precautionary principle applies. Avoiding change would therefore accord with this policy expression.

10.93 International charters are generally to the effect that intervention in historic monuments should be the minimum necessary for conservation and to retain cultural significance; reversible where possible so as to avoid unnecessary loss of evidence or matters of significance; and that any works should proceed on the basis of an informed, sound and well-researched understanding, and assessment of the nature of the resource and its implications. The Stirling Charter draws on these earlier charters. We find that this planning proposal would not satisfy the thrust of that advice because it is likely to go beyond the degree of intervention that is necessary for conservation.

10.94 BS 7913:1998, while meriting perhaps lesser weight than the material considered above, advises that alteration should always be kept to a minimum and, if possible, be reversible. Significantly, it also distinguishes SAMs from listed buildings as justifying preservation on cultural grounds alone, not necessarily depending on continued use, and an ability to earn their keep. We find that the castle has a usefulness in terms of the BS, although this does not amount to a use in planning terms.

10.95 We find that the 1979 Act, in itself, is not a material consideration for the planning application, but that the policies, guidance, and philosophy approach that apply to SAMs are material. The most significant of these are considered above. The principles in HS/12, which are drafted to refer to works, are considered in the context of the SMC application.

#### *Other matters*

10.96 With regard to other sites, circumstances are seldom identical. Culzean and Cliveden, their size and spatial arrangements apart, are not SAMs. While HS has adopted a restoration approach at other sites, such as Stirling Castle, and the applicant also refers to an arrangement at Balgonie Castle, each case has to be determined on its merits. HS/12 states that, in general,

restoration rather than conservation would not be considered as acceptable for scheduled monuments.

10.97 Our findings this far address the main archaeological, historic and servicing issues raised by consultees and other third parties who made comments or representations regarding the planning application, to the extent that these are material to this determination. We have also addressed the potential economic and tourist benefits of the proposal, which are raised in other representations.

10.98 Of those that remain, no right of way through Rowallan Estate has been legally established. In any event, the proposal does not involve physical works that would obstruct any such right as might exist.

10.99 NPPG 1 advises that conditions imposed on a grant of planning permission can enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission. The conditions proposed by EAC would restrict the permission to the intact area of the castle and address servicing issues and bats, but exclude any consideration of the likely physical consequences of introducing the proposed use into this building. We consider the possibility of other conditions in Chapter 11

### **The application for Scheduled Monument Consent**

#### *The statutory provisions that apply to the determination of the SMC application*

10.100 Findings 10.1-10.23 and 10.25-10.26 apply to both applications, and therefore form part of our consideration of the SMC application.

10.101 We find that the development plan, the EALP, the T & CP (S) Act and the LB & CA (S) Act, have no bearing on an application for SMC. While NPPGs 5, 15 and 18, and PAN 42, are directed at the planning system, NPPGs indicate Government policy. We find that their general principles regarding scheduled monuments, which are consistent with international and other national guidance, also hold good for the purposes of this application.

10.102 The 1979 Act does not provide for the making of an outline application for SMC or, as a consequence, for granting SMC in outline.

10.103 Section 2(4) of the 1979 Act allows SMC to be granted for works, either unconditionally, or subject to conditions.

10.104 The 1979 Act does not specify the level of detail to be provided in an application for SMC. However, finding 10.100, the purposes of the Act (finding 10.24), and the acknowledged national importance of SAMs, indicated that an SMC application should be accompanied by sufficient detail regarding the nature and extent of the works for which consent is sought, to allow an informed assessment of their implications for the monument concerned. That finding is also consistent with published policy and guidance, including Passed to the Future, international charters, the Stirling Charter and the guidance in HS/12.

10.105 Against that background, DML's frustration at finding itself in what it regards as "a half-way house", when it wishes only to establish that its proposal is acceptable in principle,

is understandable. However, it is also understandable that HS representatives were reluctant in April 2001 to encourage further work while they remained opposed to that proposal, also in principle.

#### *The proposal*

10.106 We also adopt finding 10.33 in our consideration of the SMC application at this stage. That is to the effect that the castle is unsuited to use as overnight accommodation in its existing state, and that putting the building into a state suitable for that purpose would inevitably involve some changes, particularly to its fabric. The SMC application is for works to give effect to the changes mentioned in that finding, and other changes.

10.107 The only excavation for which SMC has been sought is for a drainage track, in an unspecified location.

10.108 The application, when made, was accompanied by the CP and by drawings, subsequently augmented by other drawings, in amplification. The applicant's ranking of that material in descending order of precedence - namely the most recent, larger (1:20 and 1:50) scale drawings, the 1:100 scale drawings, and finally the CP - accords with established convention.

#### *The drawings*

10.109 The larger scale plans are selective, relating only to limited areas of the monument where bathroom and toilet facilities, and some associated pipework, are proposed.

10.110 For the remainder of the building, smaller scale drawings, some indicative in nature, are provided, together with a series of internal perspective sketches.

#### *The Conservation Plan (CP)*

10.111 The CP provides other information regarding the proposed works, including a methodology statement and a draft Bill of Quantities. It also includes assessments of the historic resource of the castle and the estate, its significance/heritage merit, and defining issues (in terms of vulnerability).

#### *The basis for judging the application*

10.112 We find that scheduling and the DG (which means that the castle is a PIC), which combine to provide for a high level of statutory protection for the monument, are also considerations in this context.

10.113 That said, we find that the owner of a SAM, including a PIC, is entitled to seek to introduce a use to a monument and to apply for SMC for works to that end. The charters and other published policy and guidance recognise the rights and duties of an owner.

10.114 We find that the basis for judging any such application must begin with the purposes for which the 1979 Act provides. These are stated at finding 10.25. In the absence of guidance in the Act itself, or of published Government guidance as to how these purposes are

to be applied, we also find that the principles in international charters, including the Valletta Convention, and from which the Stirling Charter is derived; and Passed to the Future, for the reason stated at finding 10.92, should also be accorded significant weight. These principles are summarised at findings 10.92 and 10.93, and are adopted herein. The principles in BS: 7913:1998 also stand to be applied, on the basis stated at finding 10.94.

10.115 HS/12, which provides guidance on principles regarding The Conservation of Architectural Ancient Monuments in Scotland, refers to the restoration of a monument for active use. It therefore acknowledges the possibility of a use for a SAM, other than as a SAM. However, it advocates, in common with other guidance, adherence to the principle of preserving the built heritage as far as possible in the state in which it has come down to us, and is passed on to future generations without further changes of evidence.

10.116 We adopt finding 10.94 for the purposes of this determination. That is to the effect that BS 7913:1998, while meriting perhaps lesser weight, advises that alteration should always be kept to a minimum and should, if possible, be reversible. It also sets SAMs apart as justifying preservation on cultural grounds alone, not necessarily depending on continued use and ability to earn their keep. As stated there, we find that the castle has a usefulness and value in terms of the BS. In the context of this SMC determination, the finding that this use is not a use for planning purposes, is irrelevant.

10.117 We find that any proposal for SMC should be based on a soundly-based and well-considered conservation strategy, derived in turn from a full understanding and assessment of the cultural, historical, architectural and archaeological significance of the monument concerned.

*Assessment of this application against the principles identified at 10.112-10.117*

10.118 The evidence that is available for this application is, in varying degrees, incomplete, in some respects inaccurate, and in some other respects inconsistent. The drawings do not show matters that would be an integral part of the installations that are proposed. For example, the routes of pipework and electrical cabling are omitted, the routes of flues and the locations of any slate vents; light fittings and other electrical fixtures, are not shown, nor is the balanced flue for the boiler. The means of fixing these installations, and how they would be integrated into the fabric of the building are either not shown, or are unclear. The applicant also acknowledges some errors e.g. a radiator is shown in front of panelling in G11; and some sketches are wrong, such as the panelling of MacGibbon and Ross, and the decorative woodwork in the solar.

10.119 For the reasons explained above, the drawings and the CP are insufficient to allow us to reach an accurate and fully informed view regarding the physical impact on the monument. However, evidence provided by the applicant at the inquiry is that it proposes to run cables and pipework through floor voids, and through sleeves through walls, and drop-downs from the roof space. It suggests that chimneys would be used for venting bathrooms and toilets, or that, alternatively, slate vents could be used. We find that this is certainly possible. However, it is not clear from the limited information provided, how this would be achieved without impacting on the visual character or appearance of the castle. Surface mounted wiring and pipework would be obvious 21<sup>st</sup> century additions, particularly as the evidence indicated that, for the use proposed, these would inevitably be extensive. "Pyro" cabling was suggested as one form of protected cabling that could be used, but this too would be visible.

10.120 With regard to finishes and their effect, DML proposes a range of finishes, throughout the castle, including for example, the re-pointing of stonework (F6), lime-plaster (G10) and protective panelling (F7). The descriptions on the drawings and in the Bill of Quantities are not always consistent. Its witness explains that new plasterboard and plaster ceilings would be installed on a sub-framework - in line with the precedent set by HS - so that services and insulation could be hidden without fixing directly to the structure. It is also prepared to accept advice from HS on this area. He also accepts that insulating and lining the attic A2 (49) with plasterboard would limit the extent to which the depth of rafters would still be seen, contrary to the illustration in the CP.

10.121 We find that there is no obvious rationale behind the proposed finishing schedule; and that it is unclear whether it would represent the authentic appearance at any one given time (or primacy date). That said, it would to some extent reflect the importance of preserving key elements (e.g. the cob-partition), albeit not for public exhibition. The proposed roof lining in A2 would reduce the apparent depth of rafters, but there is no conclusive evidence that this is how they would have been seen either in the 19<sup>th</sup> century or earlier. We find the applicant's proposal is not significantly at odds with the approach that has been adopted to date. We therefore find that the range of finishes proposed would not be inconsistent with the concept of preserving the cultural or architectural significance of the castle.

10.122 The applicant states that painting and decoration would generally follow the precedent set by HS, although it is evident that so far, this is limited to specific areas (e.g. G16 and F16). The drawings and Bill of Quantities refer in generic terms to 'gloss and

emulsion' paint systems, but the DML witness states that he would take HS advice on the matter. He also acknowledges the importance of the painting systems found in the Solar G10 (22), but no specialist report is included in the CP.

10.123 Our finding on this matter is that the evidence on the archaeology of painting found at the castle, suggests a complex matrix of paint layers dating from several hundred years. The lack of detail regarding this matter leads us to conclude that the proposals are poorly defined. However, we are satisfied that omissions might be capable of being resolved by way of a suitably worded condition.

10.124 Finding 10.36 is relevant to the possible implications of the BSR and the Fire Precautions (FP) Act 1971. In that regard, the applicant states that the Firemaster has appraised the proposals and accepted, in a letter of 1 July 2002, the principle of use as an annex to the hotel. The letter also states that a certificate under the FP Act would not be required if the sleeping accommodation was for less than 6 persons, provided that it was at ground or first floor level only. There is further guidance on other regulations.

10.125 The applicant states that his proposal could meet these terms. However, we note that the definition of ground/first floor is nebulous, because of relative ground levels outside. If the BSR definition is taken, then only the basement and ground floors could be used, and this is clearly not what DML had in mind. Since the Firemaster has inspected the site and discussed the proposals with the applicant we take the view that his understanding of ground and first floors are as described earlier. Notwithstanding BSR technical requirements, the evidence indicates that there is unlikely to be an insurmountable obstacle to the issue of a certificate under the FP Act.

10.126 Acceptance by the Firemaster may lead one to expect that fire safety could be achieved. However, we find that certification under the FP Act is not the same as approval under the BSR. The latter cover a number of areas that are not covered by the FP Act. The question of relaxation is central to the applicant's case, since DML accepts that the conversion cannot fully comply with the BSR. We accept that in certain criteria, a relaxation may be permitted on the grounds that compliance would serious harm the character and/or appearance of the castle. That outcome would be consistent with finding 10.36. However, the evidence suggests that when personal safety is concerned (e.g. fire and means of escape), relaxation may more difficult to obtain. The evidence is not wholly conclusive in either direction since no application has been made, and technical opinions are couched in equivocal terms. However, it is possible that problems could be encountered in either meeting the BSR or in obtaining a relaxation that would allow the works to be done, without a significant impact on the fabric of the castle.

10.127 The applicant advances a view regarding some aspects of the construction and appearance of the castle. These include the suggestion that there was a jettied chamber (known colloquially as a minstrel's gallery) above room G10 (22), looking over what would have been the dining room G11 (21), and having access from a staircase between G11 and G6 (33). It is also suggested that the attic A2 (49) would originally have had a corniced ceiling, although DML is not proposing to put one back.

10.128 We find both these theories to be conjectural and therefore of questionable value. In particular, the former is difficult to understand since the gallery would have been formed at a junction between 2 distinct periods in the evolution of the building. The latter would also

be unusual though not unique, with part of the ceiling sloping down to the eaves. In these respects the proposals would run counter to:

- Article 9 of the Venice Charter (HS/3).
- Articles 1.8 of the Burra Charter (HS/4).
- Paragraph 7.3.2.1 of BS7913:1998 (HS/9).
- Paragraphs 2.13 and 16.2 of the Conservation of Architectural Ancient Monuments in Scotland (HS/12).

10.129 A correct view regarding the nature of works that would best serve to preserve a SAM is not the exclusive preserve of the State and its agencies. However, on the basis of our findings this far, we find that the level of detail that has been provided falls short of what is required to adequately demonstrate the likely full effect of the proposals. We also find some proposed finishes and treatments, where these are specified, to be ill-judged, and to be based on inadequate justification.

10.130 We have already found, at 10.36, that some of HS's concerns may not be realised, but that in other respects the proposal under-estimates the consequences that are likely arise in practice. Findings 10.118-10.120 and 10.122-10.126 confirm that probability in a range of respects, as the drawings that have been provided leave considerable room for conjecture. The fact that some room uses might yet alter indicates that the proposal could be at an evolving stage.

10.131 The CP remedies some omissions. However, its usefulness is undermined by some inconsistencies, both with the drawings, and internally, including between the Methodology Statement and the draft Bill of Quantities, and by the fact that it omits some relevant assessments. We also find that it falls short in its prime purpose, which is to provide a framework for considering the significance of the monument, its needs, how these are to be met, and subsequent management. The rationale and choice of mean heritage values are of limited assistance in providing a considered assessment of the qualities considered. The applicant acknowledges shortcomings in the following respects:; information is lacking in a number of matters, and there are inconsistencies in the presentation of information; and that these could undermine the validity of its conclusions. We find that the level of detail that is provided falls short of what could reasonably be expected in this case, in order to fully assess the impact of the SMC application for works.

10.132 While the castle has been the subject of considerable academic study, the evidence, including the precognition of Geoffrey Stell, indicates that there are some imponderables for each phase, and that the entire site ought to be treated with great sensitivity.

10.133 We find that the works that are proposed in this case would go beyond the degree of intervention necessary for conservation - such as the introduction of extensive plumbing and heating, the removal of the bed recess, which is unsuited to everyday use, and the necessity for specialist treatment of the cob partition, on account of the bathroom use proposed in room F7. We also find that some of the materials in the Bill of Quantities, are inappropriate and go beyond the conservation needs of the castle.

10.134 That said, we have already found that HS works have had an adverse effect on the cultural significance of the building. The applicant's willingness to make good what it describes as "dilapidations", at its own expense, in co-operation with HS, might be a factor in favour of its proposal. In that regard, the applicant's submission (reported at paragraph 8.3.3) regarding the *Rose Theatre Trust* case is referred to for its terms. However, these works would be subsumed within a larger package of works that also includes other works that are not remedial but are intrusive, and are required only to put DML's proposed use into effect. In addition, some do not appear in the CP, or in any of the drawings that have been provided for this application.

*Long term -possible safeguards for the future*

10.135 HS submits that the protection that is afforded by scheduling and guardianship provide the highest level of State protection and must be fully understood for an assessment of both applications and for an understanding of what protection may be lost if SMC is granted.

10.136 HS also submits that current statutory protection may not continue if SMC is granted. HS claims that, either as a matter of legal necessity or practical consequence, the castle, if not the wider scheduled area, would be de-scheduled if DML's proposals are implemented. It states that, in that event, while the castle would remain a listed building, it would be under a less comprehensive and stringent protection regime.

10.136 We find the issues of whether occupation would result in the de-scheduling of the monument, and any implications of this SMC application for the DG to be legal matters, separate from our consideration.

10.138 We make the following findings regarding the "fundamental concerns" expressed by HS in January 2002 as reasons for their intended advice to Ministers that SMC should be refused:

1. We find this to be a matter that is appropriate to address in our reasoning and recommendations.
2. We find that this concern is based on an interpretation of section 1(4) of the 1979 Act and to be a matter on which Ministers may wish to take legal advice.
3. We find that a measure of public access need not be incompatible with use of the castle for overnight accommodation. Implications for the DG are a separate issue
4. The applicant is willing to maintain the monument and to provide a measure of public access to it. Its proposals for long-term maintenance remain to be put in place. In the context of this application, and leaving aside the issues of the DG and scheduling, we find that public access could, in theory, be secured through an agreement under section 17 of the 1979 Act.

10.139 As regards the "secondary concerns", we find shortcomings in the technical competence of the applications. We also find, on account of omissions, errors and inconsistencies in the information that has been provided that the application does not

indicate clearly how the works would be done. No architectural project design has been submitted.

*Conditions*

10.140 The 1979 Act makes provision for a grant of SMC, subject to conditions. However, it does not make specific provision for a grant of SMC in outline. We find that to be consistent with the fact that "works" are likely, by their nature, to be specific. Having had regard to the purposes for which the Act provides, and to SE policy, we also find that, in order for SMC to be granted, sufficient information should be provided to make clear the nature and extent of the works that are proposed, so that an informed view can be reached on the likely impact on the monument.

## 11. REASONING AND RECOMMENDATIONS

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11.1 The 2 applications that were considered at the inquiry seek authorisation under two separate statutory regimes, to put into effect what is essentially the same proposal. That proposal is to use Rowallan Castle for overnight letting accommodation, on a house party basis, and for occasional functions; it would form an annex to an hotel relating to Rowallan Estate that was granted outline planning permission in March 2001. Each of the applications stands to be determined on the basis of the statutory provisions and policies that apply to the application concerned. These provisions and policies derive, among other things, from the fact that the castle is a Category A listed building and a SAM, and stands within a designed landscape included in the Inventory.

### Reasoning regarding the planning application

11.2 The statutory basis for the determination of this application is stated at finding 10.30. On that basis, we find the determining issues to be:

- (1) whether the proposal would serve to preserve the listed building, or its setting, or any features of special architectural or historic interest which the building possesses;
- (2) whether the proposal would accord with the provisions of the statutory development plan; and
- (3) if the proposal does not serve to preserve the listed building, its setting, or any of its features of special architectural or historic interest, or does not accord with the provisions of the development plan, whether there are material considerations, including the reasons put forward in support of the proposal, that justify granting planning permission.

11.3 As far as the first determining issue is concerned, we have found (at finding 10.33) that, in the context of this application, regard should be had to the consequences for the building, its setting and its features likely to result from the introduction of the proposed use.

11.4 Having paid the special regard that section 59(1) requires, we have also found (at finding 10.42) that the proposed use could be introduced without harming, and accordingly could preserve, the setting of the listed building; but that it would be unlikely to be capable of being introduced without causing serious detriment to the character of the listed building, which derives from a wide range of factors. We have also found that it is unlikely to be capable of being introduced without harming some features of special architectural or historic interest in the building. On that basis, the character of the building, and these features, would be harmed and would therefore not be preserved.

11.5 Our findings with regard to accordance with the statutory development plan are summarised at finding 10.66. These are to the effect that the applicant's proposal would accord with some policies in the adopted SLP, but that the negative presumptions in Policies 4.7.13 and 4.7.15 would be likely to apply. These policies seek to protect listed buildings and to provide adequate protection for SAMs (findings 10.44-10.48). However, as stated at finding 10.49, approval of the AJSP, and publication of national planning policies and guidance, all of which post-date the SLP, reduce significantly the weight that this plan can reasonably be accorded.

11.6 We have also found that the proposal could accord with some AJSP provisions and policies, specifically those relating to tourism, local economic benefit, the safeguarding of the settings of listed buildings, of designed landscapes, and of natural environment locations and habitats and protected species, agricultural land and servicing. However, we have found that it is unlikely to accord with the AJSP definition of sustainable development, that it would be neutral with regard to the enjoyment of the castle as a built heritage location, and that it is likely to have an adverse effect on this listed building and archaeological location. We have also found that the proposal does not have a site specific locational need (findings 10.52 and 10.63). We conclude that the proposal would not accord with the development plan.

11.7 The aspiration of the AJSP that the objectives of any one policy should not be achieved at the expense of another is laudable. However, compromise is often inevitable and, in practice, a balance has generally to be struck. We conclude that such a balance stands to be applied in this case. NPPG 1 states that, where conflicts between objectives arise, decisions should be taken in line with local priorities and needs, as identified in the development plan.

11.8 As the provisions of the AJSP are underpinned by the concept of sustainable development, we conclude that the plan regards adherence to that concept as important for Ayrshire. We also conclude that to adhere to that concept, development ought to be shown to improve the quality of life, whilst conserving the environment (including the built environment) for future generations. For the reasons explained in our findings (10.37-10.39) we conclude that it has not been shown that this proposal would achieve these things.

11.9 In reaching these conclusions, we have had regard to paragraph 54 of NPPG 1, to the effect that the planning system should not be used to secure objectives that are more properly achieved under other legislation, but that this can still be a material consideration. In that regard, NPPG 5 states that the preservation of a SAM and its setting is a material consideration in determining a planning application.

11.10 Our conclusions regarding the first 2 determining issues bring the third issue into play. As far as material considerations and reasons put forward in support of the proposal are concerned, the finalised EALP has been prepared to conform to the AJSP. Our findings regarding the finalised plan are similar to those regarding the AJSP, summarised at 11.6-11.8 above.

11.11 NPPG 5 also does not assist the applicant's case, importantly, for the reason explained at finding 10.85. The NPPG also looks to the development planning system to meet the need for development, along with the need for preserving archaeological remains, and for minimising the conflict between these needs. The ultimate objective of paragraph 31 is to secure the best possible treatment of the archaeological heritage, while at the same time accommodating the need for the development. In that regard, we conclude, as stated, that the need for this development has not been demonstrated. In any event, the expectation is that there should be minimum impact on the special architectural and historic interest of the building; and that applications are accompanied by sufficient information on the historical, architectural, environmental, and archaeological significance of a site, so that the impact of the proposals can be assessed and proposals justified. On the information available to us, we find that this proposal would be unlikely to meet these expectations.

11.12 We find nothing in other national planning policy and guidance (findings 10.91-10.92) to justify setting aside the principles in NPPG 5, which sets out the Government's policy on how archaeological remains and discoveries should be handled under the planning system. In particular, we have no evidence that the applicant's proposal is likely to be of greater importance to the national interest than adherence to the principle of preservation. We also conclude, on the basis of finding 10.92, in respect of Passed to the Future, that the precautionary principle applies in this case; the evidence indicates that avoiding the proposed change would accord with this principle. International charters are consistent with the broad thrust of government policy expectations (finding 10.93).

11.13 The applicant states that proposals are no worse than the precedent that has been set by the actions of HS. However, we conclude, for the reasons explained, that these actions do not set a standard that it is desirable to follow, particularly in the context of current conservation philosophy. We reach this conclusion, notwithstanding the applicant's willingness, expressed in the context of its SMC application, to make good what it describes as dilapidations.

11.14 Having had regard to paragraphs 11.10-11.13, we find no material considerations or reasons that would justify granting planning permission, as an exception to the provisions of the development plan, for a proposal which we find likely to have adverse consequences for a listed building and monument of national importance.

#### **Recommendation regarding the planning application**

11.15 On the basis of the foregoing, **we recommend that planning permission be refused.**

11.16 If that recommendation is not accepted, and planning permission is granted, the 6 conditions proposed by EAC (subject to the amendments agreed at the inquiry, and to a further amendment explained below) should be imposed. The standard 5 year time limit in terms of section 58(1) of the T & CP (S) Act should also be imposed, as condition 1, and the subsequent conditions renumbered accordingly.

11.17 The amendments agreed at the inquiry are set out in paragraph 9.1 of this report. Although condition 2 (now condition 3) might appear to make condition 3 (now condition 4) unnecessary, the permission would be free-standing from the 2001 outline permission. We therefore see merit in imposing both conditions, for the purposes of clarity. However, as the new access does not form part of the current application, wording along the following lines is suggested:

4. The principal access to, and egress from the application site shall be by way of the new junction to be formed with the B751 to the west of the Gatehouse that is required to be provided, under condition 11(a); as part of the housing, hotel and golf course development granted planning permission by Scottish Ministers on 15 March 2001 (ref P/PP/75/96/SF/124).

For consistency, condition 2 (now condition 3) should also refer to the permission of 15 March 2001 (ref P/PP/75/96/SF/124).

11.18 Given the tenor of development plan tourism policies, we regard public access also as a planning issue. That said, the DG affords a right of access for the public. However, if

Ministers consider that it would be prudent to secure public access through the planning permission, to guard against the possibility that this right is successfully challenged, then an additional condition is suggested (as condition 8):

8. No development shall begin on the site until a scheme for the provision of public access to the site and the castle has been submitted to, and agreed in writing by, the planning authority. The approved scheme shall be adhered to subsequently, unless the planning authority agrees to any variation.

*Reason: to ensure the provision of public access to this location, consistent with planning policies.*

11.19 Our recommendations regarding conditions are drafted on the assumption that Ministers are content to leave physical alterations to the building entirely to SMC procedures. If that is not the case, then condition 1 (now condition 2) should reserve details of any physical alterations for future approval.

### **Reasoning regarding the application for Scheduled Monument Consent**

11.20 There is no guidance in the 1979 Act on how an SMC application ought to be assessed, and no published Government guidance to the terms of the Act. However, having regard to the purposes of the Act, and of scheduling, we find the determining issues for this application to be whether it would preserve the monument *in situ*; and, if not, whether there are reasons of greater national importance to justify setting that principle aside.

11.21 It is necessary to keep authenticity in perspective. However, even in that context, the proposal, in a number of instances, would go against the principles of minimum intervention and reversibility that are the pillars of international conservation guidance, now adopted as national policy. The lack of information, inconsistencies or errors that exist in some areas do not inspire confidence that the proposal would accord with these principles. We conclude that it would not preserve the monument *in situ*. We also have no evidence, nor does the applicant claim, that there are reasons of greater national importance than adherence to the principle of preservation.

11.22 The position might have been different if the building required to be rescued from serious or significant risk, or deterioration. However, that is not the case here, although the applicant's stated intention of making good substandard work would be a benefit. On the basis of the current proposal, that would be achieved at the cost of further significant intervention. In practice, that too would be unlikely to be reversed. Moreover, it could mask features of cultural and/or historic significance. It would also limit options for the future. Omissions and/or inconsistencies also indicate that the proposal is still at an evolving stage. We conclude that this is not a sound basis on which to grant SMC.

11.23 Proceeding on the basis sought by the applicant - and in the absence of such information - could also involve subsequent requests for consent for other works, which would be difficult to refuse, yet be of adverse impact. Potential but as yet unconsidered needs are therefore also relevant to whether the present works should be granted consent. Uncertainties surrounding technical submissions under the BSR are one of the issues that could be pertinent in this regard, although precise impacts are uncertain until an application is made.

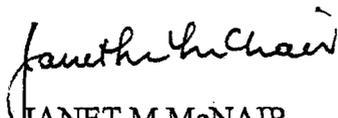
11.24 We have considered whether the deficiencies in the application could be remedied by conditions or by a legal agreement. However, there is no provision for granting SMC in outline. We conclude, for the reasons advanced by HS, that the considerable amount of outstanding information needed to give full consideration to the proposal would render it unsafe to rely on this mechanism. Because the CP lacks critical sections, it would also be a pre-requisite for any conditions to include a fresh, or revised CP.

11.25 We find granting SMC subject to the draft conditions that HS tabled with grave reservations, tantamount to granting SMC in outline. The applicant's further suggestion, that a CP could be required to be provided by condition, would turn the logical order of proceeding (expressed in finding 10.93) on its head. We conclude that a grant of SMC on the basis suggested by the applicant is likely to provide a hostage to fortune for the future.

**Recommendation regarding the application for Scheduled Monument Consent**

11.26. On the basis of the foregoing, we recommend that Scheduled Monument Consent be refused.

11.27 However, if that recommendation is not accepted, the draft conditions tabled by HS (subject to the amendment reported at paragraph 9.5) should be imposed.

  
JANET M McNAIR  
Reporters

  
ROGER WILSON

30 December 2002