

# **PE2105/C: Safeguard Scottish Listed Buildings at risk of unnecessary demolition**

## **Scottish Government written submission, 18 November 2024**

Thank you for your letter of 18 October 2024 advising on the outcome of the discussion on petition PE2105 by the Citizen Participation and Public Petitions Committee on 9 October 2024. You have requested a response to the points raised by members to support further consideration of the issues in relation to protecting listed buildings from unnecessary demolition.

I note that a roundtable evidence session with key stakeholders has been agreed to consider the following points:

- how the Scottish Government can be confident that the existing powers contained in building standards legislation and supporting guidance are sufficient to protect listed buildings from unnecessary demolition;
- how local authorities determine whether partial or total demolition is the only appropriate solution to address a safety risk in cases that are considered to be urgent; and
- whether the Scottish Government has considered producing additional guidance to set out the minimum structural evidence required and the provision of appropriate expertise such as the use of an accredited conservation engineer.

Officials in Building Standards Division in Scottish Government met with representatives from Local Authority Building Standards Scotland (LABSS) on 8 November 2024 to discuss current practice by local authorities when taking enforcement action on dangerous buildings. The purpose of the meeting was to understand the approach taken by local authorities and use of expert advice to provide evidence that supports decision-making on partial or total demolition of listed buildings when they are found to be in a dangerous condition.

It should be recognised that the responsibility for stopping any building from falling into a defective or dangerous condition falls to the owner of the building. Buildings that are not properly maintained may become dangerous over time despite efforts by the local authority to work with the owner on improvements before taking statutory enforcement action. A building may also become immediately dangerous as a result of fire, extreme weather, vehicle impacts or other such incidents. Building standards legislation is then relied upon to protect public safety through enforcement action to reduce or remove the danger. However, enforcement action is the backstop and the responsibility of the building owner in protecting listed buildings from unnecessary demolition through neglect and lack of maintenance is key.

LABSS advised that buildings are protected from demolition in the vast majority of cases and a decision to demolish is not taken unless the building or part of the

building is about to collapse due to the irreversible nature of the damage sustained. Wherever possible, the extent of demolition is limited to a part of the building to ensure the minimum necessary action is taken to protect public safety.

The effect of a Dangerous Building Notice on a person required to do work is restricted to work that is not inconsistent with any provisions of the Ancient Monuments and Archaeological Areas Act 1979 or the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Therefore, where the works required by the notice are of a nature that would normally require listed building consent, conservation area consent or scheduled monument consent, that requirement is not affected or removed by the provisions of section 35 of the Act. Even if there has been prior consultation on the serving of the notice, the relevant consents would still be required before carrying out works.

LABSS confirmed that a local authority will not move straight to any demolition action without involvement from a structural engineer instructed by the local authority to provide guidance on all options for next steps with a view to minimising the work to the extent necessary to remove the danger. Furthermore, there is the statutory requirement on local authorities (section 35 of the Building (Scotland) Act 2003) to consult with the relevant authorities before issuing any notice under the 2003 Act powers. While there is an exemption to the requirement to consult where 'it is not reasonably practicable to do so', the Scottish Government consider that this would only apply to cases where demolition was required immediately as a matter of public safety and no other option for removing the danger was available.

In all cases, public safety is the first priority and a dangerous building will be secured with protective Heras fencing or similar to ensure people are unable to enter the cordoned-off area until the danger is removed. This duty to act is a requirement under the Building (Scotland) Act 2003 and when there is an immediate danger to public safety the only solution may be to carry out necessary works and that could include demolition works. However, when there is not an immediate need to carry out work, placing a protective cordon around the affected building gives the local authority time to carry out the necessary consultations and receive advice from the structural engineer, planning colleagues and wider services such as homelessness to ensure there is a comprehensive approach taken in every case.

All dangerous building cases are difficult and require careful judgement. When partial demolition is recommended building standards officers will work closely with their planning colleagues to protect parts of the building wherever possible. A pragmatic approach can be taken in these cases to allow remedial work to be done to protect the character of listed buildings. Historic Environment Scotland understands the need and supports such an approach for listed buildings.

Evidence from structural surveys is always taken into account before a decision whether or not to demolish is taken. However, the low number of accredited conservation engineers in Scotland means that timely access to this type of expertise is not always possible. A local authority will consider the need to involve an accredited conservation engineer, on a case by case basis, following advice from their own structural engineer.

In planning legislation, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 has a role to save listed buildings. The 1997 Act requires that special regard be given to preserving listed buildings and their settings when making decisions on Listed Building Consent applications. There is a strong presumption in favour of retaining listed buildings. Applications to demolish listed buildings should be refused unless their loss has been fully considered and justified. The unauthorised demolition of a listed building is a criminal offence under the 1997 Act, and prosecution is pursued under that Act. In this regard, using building standards legislation, such as dangerous building powers, is only ever a late intervention by the local authority.

National Planning Framework 4 (NPF4) states that development proposals for the demolition of listed buildings will not be supported unless it has been demonstrated that there are exceptional circumstances and that all reasonable efforts have been made to retain, reuse and/or adapt the listed building.

Considerations include whether the: i. building is no longer of special interest; ii. building is incapable of physical repair and re-use as verified through a detailed structural condition survey report; iii. repair of the building is not economically viable and there has been adequate marketing for existing and/or new uses at a price reflecting its location and condition for a reasonable period to attract interest from potential restoring purchasers; or iv. demolition of the building is essential to delivering significant benefits to economic growth or the wider community.

The Scottish Government is confident that existing legislation provides sufficient protection for listed buildings and that local authorities do not consider demolition under building standards legislation unless there is an urgent risk of collapse. Advice from LABSS demonstrates a risk assessed approach is taken to protect the public from harm while working to save the building wherever possible. Local authorities seek to carry out the minimum intervention necessary in each case and highlight that further work to emphasise the responsibility of building owners to maintain their properties would greatly assist with the aim of the petition to protect listed buildings.

Building Standards Division is considering expanding the existing advice relating to listed buildings in the Building Standards Enforcement Handbook and the Procedural Handbook. The additional guidance would be based on best practice from local authorities who have taken action on listed buildings when these or parts of these buildings have been saved and when it has been necessary to carry out demolition works.

Officials will carry out research into the matter to quantify the extent of the issue, develop a detailed understanding of the steps taken and the evidence used as the basis for decision making. This work will be prioritised to ensure the outcomes from the research are finalised by Spring 2025. It is recommended that the findings from the research project are shared with the Committee before any roundtable evidence session is held. This approach will permit Committee members to see the detail of the expanded guidance and consider if further action is required.

## **Building Standards Division**