



Report to the Scottish Ministers

PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (SCOTLAND) ACT 1997

Report by Sue Bell, a reporter appointed by the Scottish Ministers

- Case reference: NAL-ABS-001
- Site Address: 11 Old Market Place, Banff, AB45 1GE
- Application by Eastside Discount Centre
- Application for Listed Building Consent ref. APP/2018/1990 dated 13 August 2018, called-in by notice dated 30 January, 2019
- The works proposed: Demolition of Dwellinghouse, 11 Old Market Place, Banff
- Date of accompanied site inspection: 29 April 2019

Date of this report and recommendation: 9 July 2019



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Demolition of the existing dwellinghouse at 11 Old Market Place, Banff to allow for the erection of boundary walls and hardstanding.

• Case reference	NAL-ABS-001
• Case type	Listed Building Consent
• Reporter	Sue Bell
• Applicant	Eastside Discount Centre
• Planning authority	Aberdeenshire Council
• Other parties	Historic Environment Scotland Architectural Heritage Society of Scotland The Scottish Civic Trust
• Date of application	13 August 2018
• Date case received by DPEA	30 January 2019
• Method of consideration and dates	Written submissions Accompanied & unaccompanied site inspection on 29 April 2019
• Date of report	9 July 2019
• Reporter's recommendation	Refuse Listed Building Consent

Summary

The application is for listed building consent to allow the demolition of a listed building and its replacement with boundary walls and hardstanding.

The property is a 19th century two-storey three bay traditionally built structure. It is a Category C Listed Building, located within the Banff Conservation Area. It lies adjacent to the Eastside Shopping Centre.

The applicant considers the building to be derelict and not capable of economic repair. He wishes to demolish it to create additional space for his business, which lies adjacent to the building.

Applications for planning permission and listed building consent were considered in tandem by the Banff & Buchan Area Committee of Aberdeenshire Council. Objections to the proposal were received from Historic Environment Scotland and the Infrastructure Services (Built Heritage) section of the Council. Representations from the Architectural Heritage Society and Scottish Civic Trust also raised objections to the proposal. These objections can be summarised as the demolition of the building would be a loss to the local built environment and that the proposal was not fully justified to demonstrate compliance with local and national policy that safeguards listed buildings.

The Council's planning staff recommended refusal of the proposal on the grounds of insufficient information to justify demolition of a listed building. Following a site inspection,

the planning committee were minded to grant listed building consent. They considered that the building had no significant features or value to the historic setting of the conservation area; the building was derelict and the cost of bringing back into habitation would be prohibitive; the property was in a flood plain and so may not be able to be brought back into habitable use; and the economic benefit of the application would far outweigh any potential detriment.

The legislative and policy framework within which this proposal should be considered is set out in Section 2 and the views of the parties in relation to this proposal are set out in Sections 3 and 4.

In section 5, I consider the evidence provided by all parties against the legislative requirements of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, and the national policy framework including Scottish Planning Policy 2014 and Historic Environment Scotland Policy for Scotland (HEPS) and supporting “Managing change in the historic environment” guidance notes published by Historic Environment Scotland.

The applicant has provided some information about the anticipated costs of restoring the building to residential use, its anticipated value once restored, a statement in support of demolition of the building, and a statement about the economic benefits that would arise from demolition of the building. I find that these documents fail to provide sufficiently robust and rigorous support for the contention that the building is incapable of retention, either for domestic use or for some other purpose. I am also not persuaded that the demolition of the building would lead to economic benefits of regional or national significance to justify the building’s demolition.

I do not agree with the applicant’s views that the ‘C’ listing of the building means it is of low value and that it may no longer have special interest. The building remains on the list of buildings of special architectural or historic interest; Historic Environment Scotland has not been asked to re-assess the special interest of the building; and I observed that the features identified by the council as contributing to the building’s special interest appear to be present. I also note that all buildings on the list are treated equally under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The applicant is concerned that the building’s location within an area of low flood risk would preclude its use for residential use. Whilst acknowledging that there is a flood risk associated with the building’s location, I have not been provided with compelling evidence that this risk is not capable of being mitigated, or would prevent the retention or use of the building for some purpose (residential or otherwise).

Considered together, I do not consider that there is sufficient evidence that every attempt has been made to retain this listed building.

Recommendation

I recommend that Listed Building Consent be refused.

If this recommendation is not accepted, additional information and a list of suggested planning conditions is appended at the end of this report.

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DPEA case reference: NAL-ABS-001

The Scottish Ministers
Edinburgh

Ministers

I conducted a site inspection and sought further written submissions in connection with an application for Listed Building Consent at 11 Old Market Place, Banff. The accompanied site inspection of the property took place on 29 April 2019 and I also carried out an unaccompanied site inspection of the immediate area surrounding the application site on the same date.

The site inspection was attended by the applicant, his agent, and a representative of Aberdeenshire Council.

A Direction was issued by Scottish Ministers to call in the application on 30 January 2019. The Direction was issued in view of the potential loss of a listed building, which has not been adequately justified in line with national policy to protect the historic environment. Ministers considered that this raises issues of national importance that would benefit from further scrutiny.

The application had been considered by the Banff & Buchan Area Committee of Aberdeenshire Council on 6 November 2018, who were minded to grant listed building consent against the advice of Historic Environment Scotland.

Following the site inspection on 29 April, I wrote to all parties to seek further information on certain points and to enable the applicant and others to respond to matters raised by the council. All other parties who had submitted representations and consultations to the council were invited to take part (opt in) to any further process. The applicant was given the opportunity to comment on the responses submitted by the council and Historic Environment Scotland in response to my questions and points of clarification.

My report takes account of all the written submissions and documents and my observations made during the site inspection. A list of these is supplied at the end of my report. All documents associated with this application can be found on the DPEA public website.

CHAPTER 1: BACKGROUND

Background, Site location and description

1.1 The proposal is for the demolition of the existing dwelling house at 11 Old Market Place, Banff to allow for the erection of boundary walls and hardstanding. The property is a category C listed building and located within the Banff Conservation Area. It is also situated within Banff town centre as defined by the Aberdeenshire Local Development Plan 2017 settlement statement.

1.2 The building is a two storey, three bay, traditionally built structure dating from the 19th century. It has a centre door. The regular timber sash and case windows have been replaced with non-conforming windows at least ten years ago. The exterior is harled with painted margins, and the roof is slate with coped end stacks. The house is currently uninhabited.

1.3 The property faces and is accessed from Old Market Place. It is surrounded to the north, east and south-east by the Eastside Shopping Centre and faces a small housing development (Crown Court) on the opposite side of Old Market Place to the south-west. Plans showing the location of the application site form Appendix 1 to the [Report to Banff & Buchan Area Committee dated 6 November 2018](#) and Figure 02A provided with the [application to Aberdeenshire Council](#).

1.4 The application is to demolish the building to create an area of hardstanding enclosed by a new 3-metre high blockwork wall to create an enlarged and enclosed yard area for the adjacent Eastside shopping centre.

1.5 Two applications were submitted by the applicant for the demolition of the existing dwelling house and construction of the hardstanding and boundary walls: APP/2018/1638 for Full Planning Permission and APP/2018/1990 for Listed Building consent. These were considered in tandem by the Banff & Buchan Area Committee of Aberdeenshire Council owing to differing appeal routes applicable to Full Planning and Listed Building applications.

1.6 The background to the applications was set out in a [Report to Banff & Buchan Area Committee \(6 November 2018\)](#), which also summarised the consultation responses and representations received. These included an objection to the proposals from [Historic Environment Scotland](#). The applications were recommended for refusal. At its meeting on 6 November 2018, the committee resolved to approve the application. Under the terms of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, where a Council is minded to grant permission for an application where there is an outstanding objection from a Government Agency, it must refer the matter to Scottish Ministers. Scottish Ministers were notified of the Council's intention to approve the application via letter dated 22 November 2018.

1.7 On 30 January 2019, Ministers decided, in terms of Section 11 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to require the application to be referred to them for determination. Accordingly, a [Direction](#), given in terms of Section 11 was issued on that date.

1.8 Ministers issued the Direction in view of the potential loss of the listed building, which it was considered had not been adequately justified in line with national policy to protect the

historic environment. It is considered that this raises issues of national importance that would benefit from further scrutiny.

CHAPTER 2: LEGISLATIVE AND POLICY CONTEXT

2.1 The principal legislation relating to protection of listed buildings is set out in the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. National policy is set out in "[Scottish Planning Policy 2014](#)" and in "[Historic Environment Policy for Scotland](#)" 2019 and supporting documents. The requirements set out in the local development plan are also relevant considerations.

Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

2.2 The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 sets out the legislation in relation to the identification and protection of buildings of special architectural or historic interest. It also sets out duties for the identification and protection of areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance, as conservation areas.

2.3 When considering applications for listed building consent, Section 14(2) of the Act places a duty on the planning authority or, as the case may be, the Secretary of State, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

2.4 S64 of the same Act requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area

2.5 Section 15 of the Act allows for conditions to be applied to any listed building consent that may be granted.

Scottish Planning Policy 2014

2.6 The purpose of [Scottish Planning Policy](#) is to set out national planning policies which reflect Scottish Ministers' priorities for operation of the planning system and for the development and use of land. It is non-statutory, but is a material consideration in determining applications for listed building consent.

2.7 Paragraph 141 requires that change to a listed building should be managed to protect its special interest while enabling it to remain in active use. It explicitly states that listed buildings should be protected from demolition or other work that would adversely affect it or its setting.

Historic Environment Scotland Policy for Scotland (HEPS)

2.8 An updated "[Historic Environment Policy for Scotland](#)" (HEPS) was published in May 2019. This replaced the HEPS 2016, which was current at the time that the application was originally considered by Aberdeenshire Council.

2.9 HEPS is designed to support and enable good decision-making about changes to the historic environment and is an important consideration in relation to listed building consent. It sets out six broad policies, which are supported by a series of principles for the recognition, care and sustainable management of the historic environment. Of greatest

relevance to the current application are Policies HEP3 and HEP4 and their supporting principles.

2.10 Policy HEP3 requires that plans, programmes, policies and strategies, and the allocation of resources, should be approached in a way that protects and promotes the historic environment. Policy HEP4 requires that changes to specific assets and their context should be managed in a way that protects the historic environment. Opportunities for enhancement should be identified where appropriate. If detrimental impact on the historic environment is unavoidable, it should be minimised. Steps should be taken to demonstrate that alternatives have been explored, and mitigation measures should be put in place. In short, there is a strong presumption in favour of retaining listed buildings.

2.11 The document sets out a number of core principles for managing change:

- some change is inevitable;
- change can be necessary for places to thrive;
- caring for the historic environment benefits everyone, now and in the future;
- good decisions take a long-term view;
- good decisions reflect an understanding of the wider environment;
- good decisions are well-informed, transparent, robust, consistent and proportionate;
- good decisions should make sure that nothing is lost without considering its value first and exploring options for avoiding its loss;
- and to manage the historic environment in a sustainable way, its cultural significance and the cultural significance of elements within it have to be understood.

Further guidance on the application of these principles is contained in the “Managing Change” series published by Historic Environment Scotland.

Managing change in the historic environment: demolition of listed buildings (2019)

2.12 “Managing Change” is a series of guidance notes produced by Historic Environment Scotland. The series supports national policy for planning and the historic environment. This includes updated guidance on demolition of Listed Buildings, which was published in April 2019.

2.13 “[Managing Change in the Historic Environment: demolition of Listed Buildings](#)” advises that applications to demolish listed buildings should be refused unless their loss has been fully considered and justified. Planning authorities should only approve applications for demolition of a listed building where they are satisfied that the building is no longer of special interest; or the building is incapable of meaningful repair; or the demolition of the building is essential to delivering significant benefits to the economic growth or the wider community; or the repair of the building is not economically viable and it has been marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable period; and where there are no opportunities for community ownership.

Aberdeen City and Shire Strategic Development Plan 2014

2.14 The [plan](#) provides a spatial strategy and sets out a direction for future development in the North East. It includes a number of general objectives. Those of most relevance to the current application are those which promote economic growth; and maintaining and improving the region’s built, natural and cultural assets.

2.15 [Policy HE1 Protecting Historic Buildings, Sites, and Monuments](#) provides protection for all listed buildings and encourages their protection, maintenance, enhancement, appropriate active use and conservation. Development will not be allowed that would have a negative effect on the character, integrity or setting of listed buildings. Protection is extended to conservation areas through [Policy HE2](#). Development that would not preserve or enhance the appearance or character of a conservation area will not be allowed.

CHAPTER 3: CONSULTATION RESPONSES AND REPRESENTATIONS

Consultation responses

3.1 Four consultation responses were received:

3.2 [Historic Environment Scotland](#) objected to the proposal on the grounds that the demolition of the building would be a loss to the local built environment; and that the proposal is not fully justified in terms of supplying sufficient supporting information to demonstrate compliance with applicable local and national policy regarding the removal of listed buildings.

3.3 [Infrastructure Services \(Archaeology\)](#) did not object to the application, but requested that in the event of approval, conditions requiring various surveys and further items of information are compiled and submitted prior to any works commencing.

3.4 [Infrastructure Services \(Built Heritage\)](#) objected to the development on the basis of a lack of satisfactory supporting evidence, without which the proposal was considered to conflict with both local and national policy. It was considered that the proposal conflicted with both national guidance and Policy HE1 of the 2107 Aberdeenshire Local Development Plan.

3.5 **Infrastructure Services (Roads Development)** had no comment to make on the application.

Representations

3.6 Two valid representations were received.

3.7 The [Architectural Heritage Society](#) does not support the demolition of the listed building as a solution to its being derelict. It considers that arguments that the costs of refurbishment of the property would exceed the worth of the property would encourage owners to allow buildings to deteriorate. It also questions the stated public and economic benefits of the proposals.

3.8 The [Scottish Civic Trust](#) objected to the proposals on the grounds of the loss of a listed building without adequate evidence, and the loss of a listed building within a conservation area. It supports the points raised in the Historic Environment Scotland response.

CHAPTER 4: PARTIES' POSITIONS

4.1 A summary of the positions expressed in responses to the original application considered by Aberdeenshire Council was set out in Section 3. Since that application was originally considered, Historic Environment Scotland has published updated national policy and guidance in relation to the historic environment, including listed buildings. I therefore invited parties to opt-in to comment on the implications of that guidance in the light of the current application. Some parties were also invited to provide clarification of points raised in their submissions to the original application. The following summary draws together the responses made to the original application and following the opt-in procedure and requests for clarification. The position of those parties who did not opt-in has already been summarised in Section 3.

Applicant

4.2 The applicant considers that the existing house is in a derelict condition and that refurbishment or restoration of the building is not economically viable. He has provided a report and estimated costs for bringing the property into a habitable condition. This states that the house is in very poor condition and would need to be totally gutted and the roof may have to be removed as several rafters/sarking would need to be replaced. All the electrical and plumbing works would need to be replaced and so would the floors. The property would also require to be re-slatted and re-harled. The costs for these works were estimated as £158,000 excluding VAT. The applicant anticipates that the market value of the restored 2-bedroom property in a commercial area would be in the region of £80,000 - £90,000.

4.3 The dwelling adjoins the Eastside Discount Centre, which is operated by the applicant. It does not form part of the operation of the Eastside Shopping Centre and without significant demolition it would not be realistic to adapt it to be part of the retail business. The opportunity to convert the building into some ancillary use for the business was investigated, but this is neither practical nor economically viable due to its layout and the structural works that would be necessary to fully stabilise the building e.g. the south-east gable would have to be taken down and rebuilt.

4.4 The applicant considers that options for refurbishing the property are limited by the proximity of fire exits and escape stairs to the Eastside Shopping Centre. This means that openings for windows/ doors etc. could not be formed on the north-east elevation of the property.

4.5 The applicant notes that HES guidance is that the best use for a listed building is the one it was originally designed for i.e. residential. The applicant does not consider that the building could realistically be brought back into use as a residential property as the site is liable to flooding. He considers that even if planning approval for residential use were granted (which he considers unlikely), it would not be possible to get home or business insurance on a building located within a zone prone to flooding.

4.6 Deliveries to the rear of the Discount Centre are made via a gate located immediately to the south-east of the property. The yard area is fairly small and constrained and the applicant considers that space is at a premium. He believes that the increased space arising from the demolition of the building would allow his business to operate more efficiently and successfully, in turn creating employment and facilities for the towns of Banff and Macduff. The applicant is also involved in community projects and helping other businesses where

possible, so if his business is successful, he is able to pass on benefits as appropriate to the local community, creating public benefits.

4.7 In response to a request for clarification, the applicant has stated that he does not consider that the building is of special interest. In his view, the property is only 'C' listed so is of, at most, local importance and a lesser example of its type. It is not part of a group of other listed buildings and has been altered in the recent past through the addition of PVC windows.

4.8 The applicant considers that alternatives to demolishing the property have been explored. He proposes that as the viability of retaining the building for an appropriate use has been ruled out, that demolition would be carried out in accordance with Historic Environment Policy for Scotland HEP3 and HEP4. He has further suggested that part of the south-west elevation of the property could be retained in view of mitigation measures for the loss of the building.

Aberdeenshire Council

4.9 The decision to approve the application was made by the Banff & Buchan Area Committee of Aberdeenshire Council against the recommendation contained in the report to committee.

4.10 The [Minute of the committee meeting](#) reports that the Committee's reasons for departure from the local development plan were that the C listed building had no significant features or value to the historic setting of the conservation area; that the building was derelict and the cost of bringing it back into habitation would be prohibitive; that the property was in a flood plain so may not be able to be brought back into habitable use; and the economic benefit of the application would far outweigh any potential detriment.

Historic Environment Scotland (HES)

4.11 Historic Environment Scotland (HES) [objected](#) to the proposals because they considered that the proposed demolition of the C listed building would be a significant loss to the historic environment and the demolition was not justified in terms of national policies.

4.12 Since HES responded to the application, it has published updated national policy and guidance ("[Historic Environment Policy for Scotland](#), May 2019 (HEPS)" and "[Managing Change in the Historic Environment: demolition of Listed Buildings](#), April 2019 (MCG)"). In its response to my procedure notice dated [28 May 2019](#), HES has confirmed that although the former tests in relation to demolition have been set out in a slightly altered form in the new guidance, and further clarity introduced, it does not consider that their meaning has altered, and hence it does not consider that its position on the application has changed.

4.13 HES does not consider that the brief statement on the cost of refurbishment/restoration of the building exceeding its market value, and the valuation figure provided by the applicant's architect, provide clear evidence that repair of the building is not economically viable. It notes that there is no evidence to suggest that the building has been marketed to potential restoring purchasers. It would wish to see the following evidence included with a full feasibility report and options appraisal:

- valuation of the existing building and site from an appropriately qualified property valuer;

- full building condition survey identifying the repairs required, from an appropriately qualified building professional;
- costed schedule of repairs, from a suitably qualified quantity surveyor;
- cost of demolition work and making good the site for additional delivery/storage space;
- estimate of the value of the repaired building.

4.14 In addition, HES notes that no detailed statement is provided to show that demolition is essential to delivering significant benefits to economic growth or the wider community. Nor is there a comprehensive feasibility report and options appraisal to show that there is no practical way of realising the stated benefits without demolishing the building. It does not consider that the brief statement provided by the applicant provides detailed specific evidence of significant wider public benefits. In HES' view such benefits often form part of wider strategies at national or regional level, such as major transportation schemes or significant regeneration projects.

4.15 HES has confirmed that the new HEPS is a high-level document which concentrates on the entirety of the historic environment, rather than offering detailed advice on specific assets, building elements or works. However, it refers to a core principle, set out on page 14 of the document, that good decisions make sure that nothing is lost without considering its value first and exploring options for avoiding its loss. On the basis of information submitted with the application, HES does not consider that sufficient effort has been made to retain the building, and thus its view is that demolition is not justified.

4.16 In response to points raised about the location of the building within a flood plain, HES does not consider that this provides sufficient justification for demolition of the building. It does not consider that any evidence has been provided to confirm that the building's location within a flood zone would prevent it from being brought back into habitable use. In particular, it notes that there does not appear to be a feasibility study that includes an options appraisal for reuse of the building for residential purposes, including adaptation to address any flood risk issue, or adaptation to a non-residential/non-habitable use. It notes, that whilst it would be preferable if the building were brought back into residential use, if that were not feasible then there could be other options for sympathetic adaptation of the building to facilitate other types of use. Historic Environment Scotland would expect this to be addressed as part of a feasibility study and options appraisal to demonstrate that every effort has been made to retain and reuse the building, and to show that a decision on a proposed demolition is a last resort.

CHAPTER 5: REPORTER'S REASONING AND CONCLUSIONS

5.1 The main issue in this application is whether the proposed demolition of this listed building is justified.

5.2 Section 14(2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 sets out that in considering whether to grant listed building consent, the planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest that it possesses. This legal requirement is supported through National policy as stated in Scottish Planning Policy 2014 and HESP (2019), which set a strong presumption in favour of retaining listed buildings. *"Managing Change in the Historic Environment: Demolition of Listed Buildings"* (2019) sets out factors that should be

considered when determining if there are exceptional circumstances that justify demolition of a listed building. I now consider each of these below.

The special interest of the building

5.3 The report prepared for the Banff & Buchan Area Committee of Aberdeenshire Council describes the special interest of the building as: “*The two storey, three bay, traditionally built structure dating from the 19th century...*” and “*It has a centre door and regular timber sash and case windows with four-pane glazing (these have been replaced with nonconforming windows at least 10 years ago). The exterior is harled with painted margins, and the roof is slate with coped end stacks. In short, a typical small traditional Scottish dwelling house of its time, characterising the backcloth of our varied historic towns such as Banff.*”

5.4 In response to my procedure notice, Aberdeenshire Council provided the following [description](#) of the special interest of the listed building: “*The early two storey property is sited on the north east boundary of the town and considered to incorporate elements of an earlier structure. A restrained 3 bay building with a central door, natural slate roof and a traditional harl finish with margins.*”

5.5 The council considers that the property previously formed part of a terrace group on the eastern side of the Old Market Square. It is considered to be a simple Georgian building, which not only makes a valuable contribution to the appearance of the immediate townscape, but also to the broader character of this part of the Banff Conservation Area.

5.6 During my site inspection I observed that the windows have been replaced with modern non-conforming designs, but that the features described by the council as contributing to the special interest of the property (3 bay building, central door, natural slate roof, harl finish) were present. I saw that the building continues to make a contribution to the appearance of the immediate townscape and the broader character of this part of the Banff Conservation Area.

5.7 The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 provides for listing those buildings considered to be of special architectural or historic interest; it does not specify listing categories. These are advisory and do not carry legal weight. Thus, all listed buildings receive the same level of statutory protection.

5.8 Likewise, S64 of The Planning (Listed Buildings and Conservation Areas) (Scotland), requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. This requirement applies to any buildings or land within the conservation area, and is not specific to listed buildings of a particular category.

5.9 One of the principles set out in Historic Environment Policy for Scotland is that good decision making should make sure that nothing is lost without first considering its value. It is possible to request a review of the status of a listed building. Historic Environment Scotland has indicated that it has not been asked to carry out such a review in connection with the building that is subject to this application.

5.10 I conclude that the building has not been subject to a recent review of its listing status, and so remains on the list of those buildings considered to be of special architectural or historic interest. It therefore benefits from the statutory protection that are afforded to

such buildings. Based on my observations, I find that the building retains those features that are identified by Aberdeenshire Council as contributing to its special interest and that the building contributes in a positive manner to the streetscape and wider conservation area.

The ability to make a meaningful repair of the building

5.11 The applicant argues that the property is in a derelict condition. In evidence, he has provided a copy of an estimate for restoration works. The estimate includes a broad list of works required to restore the property, but this falls short of the full condition assessment by appropriately qualified and experienced professionals that “Managing Change in the Historic Environment: demolition of Listed Buildings” (2019) states would be required to justify demolition. Whilst the building estimate questions the economic viability of undertaking such works, there is no suggestion that the building is incapable of repair.

5.12 During my site inspection, I observed that from the front, the property does not appear derelict. However, I saw that it was in a poor state of repair internally and especially to the rear. All rear openings to the building have been boarded up or otherwise blocked; there were substantial cracks in the structure in some areas, there were also signs of damp and water ingress in several rooms; parts of ceilings had collapsed; and there were missing floor boards.

5.13 “Managing Change in the Historic Environment: demolition of Listed Buildings” (2019) notes that if repairing a listed building cannot preserve its special interest, it is not capable of meaningful repair. This could be the case where there would need to be an extensive loss or replacement of fabric, or where the building has inherent design failures, or where a timber structure has decayed so much that no original material can be saved. However, that is not the case here, where much of the structure of the building is intact. Whilst the rear gable would require to be stabilised and I accept that a substantial amount of work would be required to bring the building to a habitable or usable condition, I have not seen any evidence of factors that would prevent a meaningful repair of this property.

Economic benefit of proposals

5.14 I observed that the space for vehicle movements within the yard that services the applicant’s business is very limited. I do not doubt that the additional space that would arise from the demolition of the property would ease vehicle movements and provide for external display areas. However, it is difficult to see how this would equate to economic benefits to the wider community. The applicant has not supplied any evidence of how any constraints from the existing space impact on his business, nor has he supplied an estimate of the economic benefits that he sees accruing from the additional space, such as the number of additional jobs that would be generated or that demolition of the building is necessary to realise those benefits.

5.15 Nor has the applicant provided any tangible evidence of the ways in which he currently contributes to the local community or what contributions would be made in the future as a result of the demolition of the building. In any case, the broad benefits described by the applicant are vague and non-specific and appear to be at best, local benefits. The proposals do not meet the description of “such economic or public significance that their benefits may be seen to outweigh the strong presumption in favour of retaining a listed building” or “form part of wider strategies at national or regional level” such as major transportation schemes or

significant regeneration projects as set out in "[Managing Change in the Historic Environment: demolition of listed buildings](#)" as possible justification for demolition of a listed building.

5.16 In conclusion, I do not consider that the demolition of the building would result in economic benefits of regional or national significance as required by policy guidance.

Economic viability of repair

5.17 The applicant has provided a single estimate of costs to restore the building to habitable use and also a statement of the anticipated market value of the restored property. These demonstrate that the estimated costs of repair would significantly exceed the anticipated market value of the property as a domestic dwelling.

5.18 "[Managing Change in the Historic Environment: demolition of Listed Buildings](#)" (2019) states that a property should be marketed for sale, to demonstrate that every effort has been made to secure a buyer who would retain the building. No evidence has been provided that the site has been offered for sale.

5.19 I find that the estimate for repairs is very brief, and does not provide a fully detailed building condition survey and costed breakdown of all the works that would be required as set out by Historic Environment Scotland. There is no evidence that the applicant has offered the property for sale, nor is there any evidence of why this would not be feasible. There is no assessment of costs for repairing or restoring the building for some alternative use associated with the business. I do not consider that there is an adequate demonstration that the repair of the building is not economically viable.

Community ownership

5.20 There is no indication that there is any interest or potential in community ownership of the building.

Other considerations

Local Development Plan

5.21 The [Aberdeen City and Shire Strategic Plan](#) 2014 identifies the need to protect built heritage assets. The Aberdeenshire Local Development Plan also contains policies that aim to safeguard and protect historic features ([Policy HE1: Protecting Historic Buildings, Sites, and Monuments](#); [Policy HE2: Protecting Historic and Cultural Areas](#)). The proposed demolition would not meet the requirements of either of these plans in respect of built heritage.

Flood risk

5.22 The applicant has suggested that it may not be possible to bring the dwelling back into domestic use, owing to its location within a flood zone. He indicates that the site has flooded in the past, and even if planning approval for residential use could be obtained, it would be difficult to obtain home insurance. The planning committee also noted reservations about flood risk as a material reason for permitting demolition of the dwelling.

5.23 Following a request for further information, the Council has [supplied copies of maps](#), based on SEPA flooding information that show the location of the application site in relation to flood risk. These show that the property lies on the periphery of the low hazard zone of

the extent of coastal flooding; and within the extent of the low hazard zone of river flooding. It is not considered vulnerable to surface water flooding.

5.24 Historic Environment Scotland does not dispute that the property lies within a flood zone, but does not see this as a justification for allowing demolition of the building.

5.25 Based on the maps provided, I conclude that the property lies within areas identified by SEPA as at a low hazard risk from flooding both from both the coast and rivers. However, I am also aware that those maps are intended to be indicative only, and that the actual risk of flooding may be different to that indicated by the plan. In that respect, I note the comments by the applicant that the site has experienced river flooding in the past.

5.26 Nevertheless, I accept the view of Historic Environment Scotland that the implications of the level of flood risk and whether or not those risks could be mitigated, has not been demonstrated. Nor has there been any evidence provided that the building's location within a low hazard flood zone would preclude residential use or indeed any use of the property, and that any risks could not be mitigated against. I therefore do not consider that there is adequate information to conclude that the location of the property, within identified low hazard flood zones, is sufficient reason alone to justify demolition of the property.

Potential for residential use

5.27 The applicant has referred to the proximity of the rear of the building to the fire escapes that are attached to the north-west wall of his business. During my site inspection, I observed that it is difficult to walk along the rear of the application property without needing to step around or bend under parts of the fire escape. The windows and rear door of the property are now blocked, but if restored, these would be over-looked and/or significantly impeded by the fire escape. Should the property be brought back into habitable use, I note that with the existing arrangements, there would be no safe external amenity space to the rear of the property. I consider that this would limit the attractiveness of the property to a prospective purchaser. Nevertheless, as indicated above, there is no evidence that the property has been marketed to prospective buyers.

5.28 Whilst Historic Environment Scotland has indicated that the best use for a listed building is usually the one for which it was originally designed, that does not preclude consideration of alternative uses. In this case, although the applicant has stated that he has considered the possibilities of retaining and incorporating the building for ancillary use for his business, he has not provided any evidence of what uses have been considered, or specific details as to why such use was not feasible, other than to state that it is neither practical nor economically viable due to its layout and the structural works required to stabilise the building.

5.29 I do not consider that sufficiently detailed information has been supplied to demonstrate that all measures have been taken to preserve this listed building.

Overall conclusions

5.30 I conclude that there would be substantial challenges in bringing 11 Market Place back into the purpose for which it was originally designed (residential use). The costs of repair would exceed the likely market value of the restored property. The proximity of the rear of the building to the operational business of the applicant, including the external fire

escapes, would mean that access to the rear of the property would be difficult or undesirable. In addition, the location of the property in a flood zone, albeit at low risk, would present additional challenges in terms of the provision of flood mitigation measures.

5.31 Nevertheless, the law is clear that demolition of a listed building should be the last resort after all other options for retaining it have been considered and discounted. I am not convinced that all options for retaining this listed building have been explored to the level required to justify demolition of a building included on the list of buildings of special architectural or historic interest. There is no evidence that the building has been marketed to potential restoring purchasers, nor has there been a clear demonstration that all possible options for alternative use of the building, including non-residential use, have been fully explored or would be prevented as a result of an unacceptable flood risk that could not be mitigated. Further, there is insufficient evidence that the proposed demolition of 11 Market Place would be essential to delivering benefits to economic growth or the wider community on a regional or national scale.

5.32 I find that the features that represent the special interest of the building are present and whilst there is no doubt that the building is in poor condition, there is no evidence that it is not capable of repair. I conclude that the proposals would fail to preserve the building as required by Section 14(2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and that listed building consent should be refused. They would also fail to preserve or enhance the character or appearance of the Banff Conservation Area.

5.33 If this recommendation to refuse listed building consent is not accepted, Section 7 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (as amended) sets a requirement to allow Historic Environment Scotland the opportunity to carry out recording of the building. The Infrastructure Services – Archaeology Service of Aberdeenshire Council proposed wording for a condition to enable it to undertake recording, and this is included in Appendix A to this report.

5.34 The council has also indicated if listed building consent were granted, it would wish to see a condition that the proposal should seek to retain the façade of the property and that applicable external materials be applied to any new elements introduced into the site. The applicant has also suggested as mitigation that part of the south-west elevation could be retained. I consider that amending the proposal to retain the façade would represent an alternative proposal, and goes beyond what could reasonably be required by condition. In addition, I conclude that any condition relating to the finish of the proposed wall should form part of any planning permission that is granted for its installation, rather than listed building consent.


Reporter

Appendix A. Proposed Conditions

Programme of archaeological works

1. No works in connection with the development hereby approved shall commence unless an archaeological written scheme of investigation (WSI) has been submitted to and approved in writing by the planning authority and a programme of archaeological works has been carried out in accordance with the approved WSI.

Reason: To safeguard and record the archaeological potential of the area.

2. Should the archaeological works reveal the need for post excavation analysis the development hereby approved shall not be occupied unless a post-excavation research design (PERD) for the analysis, publication and dissemination of results and archive deposition has been submitted to and approved in writing by the planning authority. The PERD shall be carried out in complete accordance with the approved details.

Reason: To safeguard and record the archaeological potential of the area.

Advisory Notes:

Recording by Historic Environment Scotland

Section 7 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (as amended) sets a requirement to allow Historic Environment Scotland the opportunity to carry out recording of the building prior to its demolition.

Works by archaeological organisation

Any archaeological survey, watching brief or archaeological works required by a condition attached to this planning permission must be undertaken by a suitably qualified archaeological organisation.

Level 1 Standing Building Survey

A full photographic survey of the interior and exterior of the building, including all exterior elevations and the building's setting, with the addition of measured floor plans and elevations and a written account of the building's plan, form, function, age and development sequence. Surveys must be submitted in a digital format. A more detailed specification of the survey can be obtained from the Council's Archaeology Service.

Development Brief

A written specification prepared by the Aberdeenshire Council Archaeology Service for the applicant outlining the nature of the specific archaeological work required under the archaeological planning condition, and which includes information on the archaeological background of the development site. This document can be used by the applicant in the tendering process, and should be used by the appointed Chartered Institute for Archaeologists (CIfA) member archaeological contractor to inform the Written Scheme of Investigation.

Written Scheme of Investigation (WSI)

A written specification produced by the appointed Chartered Institute for Archaeologists (CIfA) member archaeological contractor on behalf of the applicant which outlines in detail the proposed scheme of archaeological investigation. The WSI shall include details of what archaeological works will be carried out and how; how any encountered archaeological remains will be dealt with; how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the written scheme of investigation will be provided throughout the implementation of the programme of archaeological works; the reporting process; and the potential for post-excavation requirement. The WSI must be submitted to the planning authority for approval before being implemented. The contents of the WSI must conform to the relevant national and CIfA standards and guidance.

Post-Excavation Research Design (PERD)

A written specification for the post-excavation analysis of artefacts and samples recovery during the excavation phase or archaeological works, prepared by the appointed Chartered Institute for Archaeologists (CIfA) member archaeological contractor on behalf of the applicant. This should include a project design for the post-excavation work, a costed assessment for this work, and costed proposals for the publication of results. The PERD must be submitted to the planning authority for approval. Once the PERD has been agreed, written confirmation must be provided to the planning authority demonstrating that an agreement is in place between the applicant and the appointed CIfA member archaeological contractor, committing the applicant to fund the post-excavation work and for said work to be completed by an agreed date.

Securing post excavation research design

When any post excavation research design is required through the implementation of a programme of archaeological works, the analysis, publication and dissemination of results and archive deposition requires to be agreed and secured between the developer of the site and the archaeological contractor undertaking the archaeological works on the site before it will be agreed in writing by the planning authority.

Appendix B: Application Documents and Schedule of Plans

[Application to Authority](#) - dated 13 August 2018.

[Supporting Statement](#) (Builder's quote)

[Statement of Public Benefit](#)

[Justification Statement](#)

[Justification for Demolition](#)

[Location Plan](#)

[Proposed Plans and Elevations](#)

[Existing Plans and Elevations.](#)

Appendix C: Written submissions and other relevant documents

Consultation and representation responses

[Consultation response from Historic Environment Scotland to application](#)

[Consultation response from Infrastructure Services \(Archaeology\) to application](#)

[Consultation response from Infrastructure Services \(Built Heritage\) to application](#)

[Representation from the Architectural Heritage Society to application](#)

[Representation from the Scottish Civic Trust to application](#)

[Applicant's response to procedure notice](#)

[Applicant's comments on further written submissions](#)

[Historic Environment Scotland response to Procedure Notice](#)

[Historic Environment Scotland comments on applicant's further written submissions](#)

[Aberdeenshire Council response to Procedure Notice](#)

Council documents

[Report to Banff & Buchan Area Committee \(6 November 2018\)](#)

[Minute of Banff & Buchan Area Committee \(6 November 2018\)](#)

Policy documents

[Scottish Planning Policy 2014](#)

[Historic Environment Policy for Scotland 2019](#)

[Managing Change in the Historic Environment: demolition of Listed Buildings 2019](#)

[Aberdeen City and Shire Strategic Development Plan 2014](#)

Aberdeenshire Local Development Plan 2017 [Policy HE1](#), [Policy HE2](#)