

Cases 200500739 & 200500763: The City of Edinburgh Council and Historic Scotland

Summary of Investigation

Category

Local government: Planning; handling of planning application

Scottish government and Devolved Administration: Planning; statutory listing of property

Overview

The complainant (Mr C) purchased a detached unlisted house (the House) in a conservation area in September 2003 and engaged in pre-planning application discussion with the City of Edinburgh Council (the Council). The Council advised that, in principle, his proposal to demolish the House was acceptable. Mr C informed his neighbours of his intention to seek the relevant planning consents. They in turn suggested to Historic Scotland that the House should be listed. The planning applications were submitted. The Council issued a Building Preservation Notice (BPN) on 16 June 2004 and Historic Scotland responded by issuing a Category B listing on 30 June 2004. Mr C decided to withdraw his applications prior to them being considered by the planning committee.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) entry was made to Mr C's property by an officer of Historic Scotland without requisite consent (*upheld*);
- (b) Historic Scotland knowingly gave misleading, inaccurate and out of date information to the Council (*upheld to the extent that Historic Scotland gave misleading and inaccurate information about what they had decided*);
- (c) Historic Scotland colluded with the Council to enable the listing of his home (*not upheld*);
- (d) Historic Scotland failed to establish or follow correct procedures by listing the building immediately following service of the BPN (*not upheld*);
- (e) Historic Scotland were inept and incompetent in their production of the listing description of the property (*upheld*);

- (f) an officer from Historic Scotland who appeared on a national radio programme misled the listening public (*no finding*);
- (g) Historic Scotland neglected to inform Mr C, in their letter of 7 December 2004, of his rights and entitlement to come to the Ombudsman (*not upheld*);
- (h) the pre-planning application advice given to him by the Council was faulty (*not upheld*);
- (i) the Council's procedures in validating his planning application were faulty (*not upheld*);
- (j) the Council's planning officer's report to committee on the BPN was misleading, incomplete and biased (*not upheld*); and
- (k) the Council colluded with Historic Scotland (*not upheld*).

Redress and recommendations

The Ombudsman recommends that Historic Scotland apologise to Mr C for the failings identified in the report. She commends Historic Scotland for changes they have made to their procedures for deciding on listing, but recommends that Historic Scotland review the events considered in this report and consider whether they should take further steps to ensure that their decision making and communication processes are clear.

Historic Scotland have accepted the recommendations and will act on them accordingly.

The Ombudsman has no recommendations in respect of the Council.

Main Investigation Report

Introduction

1. On 16 June 2005 the Ombudsman received complaints from a man (Mr C) who is the owner of a detached modern house (the House). He complained that his plans to demolish the House and redevelop the site had been thwarted because of what he saw as collusion between Historic Scotland and The City of Edinburgh Council (the Council). Specifically, he complained that Historic Scotland had pressured the Council into issuing a Building Preservation Notice (BPN) to give Historic Scotland the opportunity to list the existing building while there was a live application.

2. The complaints from Mr C about Historic Scotland which I have investigated are that:

- (a) entry was made to Mr C's property by an officer of Historic Scotland without requisite consent;
- (b) Historic Scotland knowingly gave misleading, inaccurate and out of date information to the Council;
- (c) Historic Scotland colluded with the Council to enable the listing of Mr C's home;
- (d) Historic Scotland failed to establish or follow correct procedures by listing the building immediately following service of the BPN;
- (e) Historic Scotland were inept and incompetent in their production of the listing description of the property;
- (f) an officer from Historic Scotland who appeared on a national radio programme misled the listening public; and
- (g) Historic Scotland neglected to inform Mr C, in their letter of 7 December 2004, of his rights and entitlement to come to the Ombudsman.

3. The complaints about the Council which I have investigated are:

- (h) the pre-planning application advice given to Mr C by the Council was faulty;
- (i) the Council's procedures in validating his planning application were faulty;
- (j) the Council planning officer's report to committee on the BPN was misleading, incomplete and biased; and
- (k) the Council colluded with Historic Scotland.

Background

4. The relevant legislation relating to buildings and areas of special architectural or historic interest is the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the Act). Section 1 of Part 1 of the Act provides for the Secretary of State (now Scottish Ministers) to compile a list of buildings of special architectural interest. Section 1(3) of the Act places a duty on Scottish Ministers, before compiling or approving the list or amendment to it to carry out appropriate consultation with persons or bodies having special knowledge of, or interest in, buildings of architectural or historic interest. Section 3 of the Act enables a planning authority to serve a BPN on an owner, where a building in their district which is not listed but is of special architectural or historic interest and is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest.

5. Historic Scotland is an executive agency which carries out functions on behalf of the Scottish Ministers. These functions include administering the list of buildings of special architectural interest compiled under the Act. Historic Scotland may be consulted by local planning authorities on major developments within Conservation Areas, and must be notified of applications to demolish buildings in such areas. If not listed, demolition requires Conservation Area Consent.

6. In 1998 guidance was produced by Historic Scotland in the form of the Memorandum of Guidance on Listed Buildings and Conservation Areas (the Memorandum). Sections 1.1 to 1.23 of the Memorandum deal with the statutory listing, the principles behind listing, the process, removal of buildings from the list, right of appeal and BPNs. The following points in the Memorandum are relevant to Mr C's complaints:

- in terms of listing buildings built after 1945, buildings of outstanding quality and 'some vintage' may be listed, however, a very high degree of selection is exercised (1.8 d) and in choosing buildings, besides age, particular attention is paid to the works of better known architects (1.8 d i);
- previously listed buildings can be removed from the list, for example because the building may have been altered to destroy its architectural value or because the owner has demonstrated to the satisfaction of Scottish Ministers that the building is not of sufficient interest to merit listing (1.11);
- although there is no formal right of appeal against listing, the Memorandum states that Scottish Ministers are always prepared to

receive and to consider carefully representations to the effect that the building does not merit listing (1.12);

- the selection of buildings for listing is carried out entirely by Scottish Ministers, but it is always open to planning authorities, other bodies or individuals to make suggestions for the listing of further buildings accompanied by adequate supporting evidence (1.16);
- planning authorities are urged to consider the question of eligible buildings for listing on a systematic basis, rather than as an ad hoc response to new development proposals which appear to threaten hitherto unnoticed buildings. When, in exceptional circumstances, a planning authority is considering a request to Scottish Ministers to list following issue of a BPN, any developer interested in the building should immediately be made aware of the fact. The Memorandum states that a building will not normally be listed once a planning application in respect of it has been lodged. However, listing may take place where there is a live planning application, following the serving by a planning authority of a BPN. A planning authority may serve a BPN if it appears to them a building of interest is in danger. Service of the BPN gives the building the same protection as inclusion in the statutory list for a period of six months (1.18);
- in the event of the building subsequently being listed, the BPN ceases to have effect (1.20). Where a BPN is served but statutory listing does not take place, compensation may be sought from the planning authority for costs directly attributable to service of the BPN (1.21);
- a request to list a building which is the subject of a BPN should be accompanied by supporting material and the nature of the threat which gave rise to the BPN should be explained (1.23).

7. Further guidance to planning authorities was issued on 29 April 1999 in the form of National Planning Policy Guidance: 18 Planning and the Historic Environment (NPPG 18). Paragraph 56 of NPPG 18 strongly encourages planning authorities to use their powers to enforce BPNs, where listed buildings are at risk and where all other means of conserving the building have been exhausted.

Investigation

8. The investigation was based on enquiries of both authorities and on interviews with Mr C and his wife (Mrs C) and officers of the Council and of Historic Scotland. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C, Historic

Scotland, and the Council were given an opportunity to comment on a draft of this report.

9. Mr and Mrs C purchased the House as their family home. It is a detached villa within a conservation area. It was built around 1968 by an architect for his own use. The House was not listed as a property of architectural or historic interest, although a reference was made to it in the 1984 Edinburgh volume of *Buildings of Scotland*.

10. On 29 September 2003, Mr C wrote to the Council Planning Department with sketch proposals for the demolition of the House and the construction of three flats.

11. A Council Planning Officer (Officer 1) inspected the site on 7 October 2003. He responded to the sketch proposals in a letter of 14 October. In Officer 1's view, the existing villa was out of keeping with the architectural character of the conservation area and its demolition would be supported in principle. However, he also commented that, in their current form, the redevelopment proposals did not meet the objectives of the local plan or the Council's approved guidelines for Villa Areas. Officer 1 stressed that his comments were 'expressed without prejudice' to any subsequent decision taken by the authority.

12. Following this advice, Mr C appointed a firm of architects to develop the design for his proposed development. His architect had several pre-application discussions with another planning officer of the Council. According to Mr C, in these discussions, support in principle was given for the design being developed.

13. Mr C informed his neighbours on 27 May 2004 of his intention to submit a planning application for consent to demolish the House and replace it with three flats. The following day, one of his neighbours contacted a local heritage association (the Association), the Council and Historic Scotland to lobby against the planning application. The Director of the Association emailed Historic Scotland on Friday 28 May 2004 advising that the planning application had not yet been submitted but one was imminent. He asked whether Historic Scotland might consider listing the House. The first email contact between Historic Scotland and the Council was on 2 June 2004.

14. On 3 June 2004 an officer of Historic Scotland (Officer 2), without prior intimation to Mr and Mrs C, viewed the northern elevation of the House from the private driveway.

15. On Monday 7 June 2004 applications were submitted for consent for the demolition of the House and for planning permission to erect three dwellings on the site. These applications were not immediately validated because, among other reasons, the correct fee had not been paid. The applications were validated on 21 June 2004.

16. On receipt of the request to consider listing the House, the Chief Inspector of Historic Buildings at Historic Scotland (Officer 3) asked a Principal Inspector (Officer 4) to decide the request as soon as possible. Officer 4 was Historic Scotland's expert on the 20th Century. He contacted an external expert on modern movement buildings (Mr E) to advise about the House.

17. Internal emails show that on 9 June 2004 Historic Scotland were not aware whether a planning application had then been received by the Council. On the same day Officer 4 wrote in an email to Officer 3:

'We are waiting for a letter from [Mr E] but know it will support the listing ... I don't believe the house is listable for architectural reasons and [the architect] is not so important as to demand a historical association type listing. Do you agree?'

Officer 3 responded:

'I don't think it is listable, but I am very conscious this is an area where one's own prejudices come into play. I would prefer to be advised. This is your area of expertise and I am, therefore, happy to accept your view,'

18. Mr E's letter was received by Historic Scotland on 10 June 2004. He said: '... we feel that you should consider listing the house. This would ensure that its integrity is not undermined by ill considered alterations, of which there have only been a few so far, and that its simplicity and directness of design are preserved as a document of the Functionalist agenda in 1960's Scotland ...'

The letter contained no confirmation that Mr E had recently inspected the House.

19. Further emails were exchanged between Officer 3 and Officer 4 on 10 June 2004. These show that Officer 3 had 'no idea' how to act and referred the issue to Officer 4. Officer 4 responded: 'I think I am reluctantly persuaded ... We should now prepare a list description and consult with [the Council]'. Officer 3 then indicated that this should be done as soon as possible 'assuming there is no application in today'. Subsequently, Officer 2 drew up and provided Officer 4 with a draft list description shortly before 16:00 that day.

20. On the same day Mr E's letter was faxed to the Council and Officer 4 telephoned the council planning officer responsible for the BPN report (Officer 5) to discuss the case. Later on 10 June 2004 Officer 4 sent the following email to the Council:

'[Historic Scotland] had decided to list but the planning application came in on 8 June so that has prevented us. We would certainly confirm a BPN which I am very glad to hear you will consider. I'm forwarding here a copy of our list description and will follow up with some photographs but I think a site visit is necessary to appreciate the building fully.'

21. Officer 4 confirmed at interview that the listing description was not based on a contemporary (post September 2003) inspection of the House by any officer of Historic Scotland. He said that in retrospect he would have done things differently: Historic Scotland would have looked internally at the House first; the description would have been more detailed and verified; and the phrase in the email that Historic Scotland 'would confirm' should rather had been 'consider favourably'. He said that Historic Scotland did not pressurise the Council and that it had been reasonable to tell the Council the facts.

22. Historic Scotland have subsequently said to me that the draft list description was prepared in accordance with established practice. This included viewing the House from its driveway, from a neighbouring property and from the public realm¹. They also included considering the views of Mr E, photographs supplied by the daughter of a former owner, the reference in the Edinburgh volume of *Buildings of Scotland* and 'internal debate on the merits of listing'. Historic Scotland have said to me that both the draft list description and the final list description are intended to provide a considered statement of why a property merits listing. In a recent letter to Mr C Historic Scotland have said ' ...

¹ Mr C strongly argues that the house cannot be viewed from the driveway, from neighbouring properties or from the public realm and has provided photographs to support this contention.

the decision to list was taken having considered a range of sources of information of which the inspection from the public realm, gate of your driveway and neighbouring property was one element'.

23. At interview, Officer 5 stated that there had been a number of telephone calls and emails to the Council from Historic Scotland stressing that the building was very important. He also said that BPNs were not very frequent (one or two a year at most) and the decision to seek authorisation for their service was usually kept confidential.

24. A report proposing the service of a BPN was prepared by Officer 5 on Friday 11 June 2004. The report was based on Mr E's letter and the listing details supplied by Historic Scotland. The Development Quality Sub-Committee (the Committee) considered the report as an emergency item on 16 June 2004, and service of a BPN was authorised.

25. Officer 5 informed Officer 4 of the Committee decision to serve the BPN later on 16 June 2004. Officer 2 confirmed by return that the listing would be sent as soon as possible.

26. Mr C received a copy of the BPN on 18 June 2004 and spoke with Officer 5 by telephone. According to Mr C, Officer 5 told him that considerable pressure had been placed on the Council by Historic Scotland to serve the BPN.

27. Following receipt of the BPN Mr C applied for listed building consent on 26 June 2004.

28. Historic Scotland stated that the listing proposal was prepared for final agreement on 22 June and received internal authorisation firstly by Officer 3 and subsequently by the then Director of Heritage Policy (Officer 6) on 28 June 2004. The building was listed on 29 June 2004, and notification of listing was sent to the Council on 30 June 2004. The Council informed Mr C of the listing.

29. On 8 July 2004, Officer 4 took part in a National radio programme. According to Mr C, Officer 4 denied that Historic Scotland had put pressure on the Council to serve the BPN. He said that the merits of the building had not been recognised because it was hidden behind high garden walls.

30. At this time, Mr C consulted solicitors and they wrote to Historic Scotland on 9 July 2004 detailing concerns about the listing process.

31. The office of the Solicitor to the Scottish Executive² responded on behalf of Historic Scotland on 5 August 2004, maintaining that Historic Scotland had acted reasonably and within the legislative and policy framework in considering representations that the building be considered for listing.

32. Discussions with Mr C's architect continued and proposals were scheduled to be put before the Committee for determination on 29 September 2004. On 24 September 2004, however, Mr C was alerted to the fact that the reports to committee on both applications would recommend refusal. At that point, Mr C instructed his architect to withdraw the applications.

33. There was further correspondence between Mr C's solicitors and Historic Scotland in which Mr C's solicitors confirmed that Mr C wished to make representations under paragraph 1.12 of the Memorandum with regard to the listing of the House. Following this, Historic Scotland agreed to inspect the House. The inspection of both the inside and outside was arranged with Mr C and took place on 5 November 2004. On 7 December 2004, Officer 6 responded to the request that the Scottish Ministers review their decision to list. Officer 6 stated that Scottish Ministers had reviewed the decision and had reached the conclusion that the House was of listable quality in terms of the criteria for listing and should remain on the list of buildings of architectural and historic interest.

34. On 21 March 2005, Mr C submitted a complaint to the Head of Planning at the Council. He expressed concern at the lack of forewarning of possible listing in pre-application discussions, the delay in validating his agent's application for planning consent, and matters relating to the report to the Committee on 16 June 2004 seeking authority for the service of a BPN. Mr C set out nine specific points. Mr C sought an acceptance from the Council that they had acted unreasonably in serving the BPN, a written apology, refund of his application fees and reimbursement of expenses incurred including his architect's fees.

² On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive. The latter term is used in this report as it applied at the time of the events to which the report relates.

The Council did not admit any fault. Mr C also submitted a formal complaint to the Chief Executive of Historic Scotland on 23 May 2005. He provided a history of the matter and made eight specific complaints. Mr C had by then submitted complaints to the Scottish Public Services Ombudsman's office against the Council and Historic Scotland on 16 June 2005. Historic Scotland responded to Mr C on 28 June 2005.

35. By 15 July 2005 the complaints processes of both bodies were exhausted and I made enquiries of both the Council and Historic Scotland into Mr C's complaints summarised at paragraphs 2 and 3.

36. The Chief Executive of Historic Scotland refuted all of Mr C's complaints except that Mr C's property had been inspected by Officer 2 on 3 June 2004 without prior notice. He apologised unreservedly for this and stated that instructions would be issued to listing inspectors to avoid a recurrence. He subsequently wrote direct to Mr C on 6 October 2005 with an apology.

37. The Council responded, through their Director of City Development, to my letter of enquiry in a letter of 4 August 2005 in which they provided background on the BPN served under section 3(1) of the Act. He refuted Mr C's complaints and stressed that the provisions to serve a BPN given by Section 3 of the Act and Section 1.17 of the Memorandum were in place precisely to protect unlisted buildings that were in danger of demolition.

Conclusions and Recommendations

38. It was entirely proper for Historic Scotland to consider representations made to them that the House should be listed. The fact that the House was in a conservation area meant that, in any event, the views of Historic Scotland would have been sought by the Council in considering whether to grant planning permission. In reaching my conclusions I make no judgement or comment on whether the House is listable because that is not part of the Ombudsman's role. My role is to consider whether Historic Scotland and the Council acted reasonably in the circumstances. By that I mean whether they followed relevant policies and procedures. I will consider the actions of each body in turn.

39. The evidence shows that officers of Historic Scotland had significant doubts as to whether the House was listable. Nevertheless, they expected Mr E to recommend listing. Mr E was asked for his advice and he said 'we feel that you should consider listing the house'.

40. Mr E's advice was received on 10 June 2004. This advice was pivotal because it persuaded Historic Scotland to prepare a draft listing description on the day the advice was received. The draft listing description was based on Mr E's advice and on information which Historic Scotland had prior to receipt of that advice.

41. On the same day that Mr E's advice was received by Historic Scotland, Officer 4 emailed Officer 5 saying Historic Scotland 'had decided to list but the planning application came in on 8 June so that has prevented us'. This was not correct. At that stage Historic Scotland had not decided to list, they had only prepared a draft listing description. According to Historic Scotland's processes a decision to list is made when the Director of Heritage Policy sign it off. This happened on 28 June 2004.

42. The draft listing description was sent to the Council with the email on 10 June. The email said 'I'm forwarding here a copy of our list description'. What was sent was not a list description but a draft list description. That draft description was largely based on information which neither Mr E nor Historic Scotland had verified.

43. The email also said 'We would certainly confirm a BPN'. Officer 4 could not have known this on 10 June. Furthermore, the Memorandum states that where a BPN is served but statutory listing does not take place, compensation may be sought from the planning authority for costs directly attributable to service of the BPN (see paragraph 6).

44. The decision to list was authorised by the Director of Heritage Policy on 28 June. The listing description was identical to that given to the Council on 10 June 2004.

45. The purpose of a BPN, as Historic Scotland acknowledge, is to allow time for a proper consideration of a building's merits. This consideration should include verifying the information on which any decision will be based. Historic Scotland have told me that they would normally expect to confirm a BPN very shortly after they know it has been issued. However, a BPN can be in force for up to six months, giving opportunity to check relevant information. In this case Historic Scotland did not take that opportunity before formally deciding to list the House.

46. I now turn to the actions of the Council. In October 2003 Officer 1 gave advice to Mr C about his planning applications (see paragraph 11). That advice was given without prejudice. Officer 1 ascertained that the building was not listed. At that time he had no knowledge of the historical and architectural associations of the House.

47. The planning applications were validated within two weeks of being received by the Council (see paragraph 15). The Council have said that this is within their normal timescales, and during that time the issue about the correct fee was dealt with and the Council sought and received some further information about site levels.

48. The requirements for issuing a BPN are: that it appears to the Council that a building is of special architectural or historical interest; and that it is in danger of demolition or of alteration so as to affect its character as a building of such interest. The Council were told by Historic Scotland, the organisation charged with assessing whether buildings are of architectural or historical interest, that the building was of such interest. They also knew there was an application for permission to demolish the House. These pieces of information were put to the Committee in a report, and the decision was taken to issue a BPN.

49. Taking all the evidence into account, I have reached the following conclusions.

(a) Conclusion

50. Officer 2 should, as a matter of courtesy, have contacted Mr and Mrs C before her visit. I uphold that part of Mr C's complaint. This has since been resolved with Historic Scotland's Chief Executive's apology (see paragraph 36). I note that instructions have been issued to avoid a repetition.

(b) Conclusion

51. Historic Scotland have said '... the decision to list was taken having considered a range of sources of information of which the inspection from the public realm, gate of [the] driveway and neighbouring property was one element'. I have to say that the evidence available to me raises severe doubts about whether at this stage anything which can meaningfully be described as an 'inspection' was carried out. So it seems to me that the draft list description of

the property sent to the Council on 10 June 2004 was largely based on information which Historic Scotland had not attempted to verify. At this stage in the process this action was not unreasonable. However, the information given to the Council on 10 June 2004 conveyed that Historic Scotland had decided to list when they were only in the process of making this decision. To the extent that Historic Scotland gave misleading and inaccurate information about what they had decided, I uphold the complaint.

(c) Conclusion

52. It was appropriate for Historic Scotland to talk with the Council about protection of a property which was potentially listable. Such conversations are not in themselves evidence of collusion. I do not uphold this complaint.

(d) Conclusion

53. The BPN was approved on 16 June 2004 and Historic Scotland were informed the same day. Historic Scotland normally expect to confirm a BPN very shortly after being notified by the planning authority, and in this case they decided to list on 28 June. Such speed is not of itself evidence of any failing (I will address the issue of the information on which Historic Scotland based their decision in the next paragraph). The decision was approved in accordance with the procedures in place in Historic Scotland at the time in that the listing description was signed off by Officer 3, and by the Director of Heritage Policy (see paragraph 41). I do not uphold the complaint.

(e) Conclusion

54. The purpose of the BPN which was approved by the Council on 16 June 2004, was to give Historic Scotland the opportunity to decide whether to list. Such a decision should have been based on information which Historic Scotland has satisfied themselves was accurate. The draft listing description prepared on 10 June 2004 and the final listing description approved on 28 June 2004 were based on the same information. There is no evidence that Historic Scotland took any steps after 10 June to check the accuracy of that information. I uphold the complaint.

(f) Conclusion

55. I have not investigated this complaint in detail. I accept that Mr C disagrees with what was said on the programme. However, this was not part of any decision making process about his property. I make no finding on this complaint.

(g) Conclusion

56. Officer 6's letter of 7 December 2004 was a response to a request to remove the listing of the House. She was not responding to a formal complaint and in these circumstances did not require to inform Mr C that he could pursue his complaint to the Scottish Public Services Ombudsman's office. I do not uphold this complaint.

(h) Conclusion

57. At the pre-application stage, advice by Officer 1 was given without prejudice. Officer 1 ascertained that the building was not listed. At that time he had no knowledge of the historical and architectural associations of the House. I do not consider that the pre-planning application advice was faulty. I do not uphold the complaint.

(i) Conclusion

58. The planning applications were validated within two weeks of being received. I do not uphold the complaint.

(j) Conclusion

59. The report accurately repeated what Historic Scotland had told the Council about the House. As Historic Scotland are the organisation charged with assessing whether buildings are of architectural or historical importance, this was not unreasonable. The report also conveyed the fact that there was an application to demolish. I do not uphold the complaint.

(k) Conclusion

60. It was appropriate for the Council to talk with Historic Scotland about protection of a property which was potentially listable. Such conversations are not in themselves evidence of collusion. I do not uphold the complaint.

Recommendations

61. I have identified some shortcomings on the part of Historic Scotland (paragraphs 50, 51 and 54). The aim of redress should be, wherever possible, to place a complainant back in the position he or she was in before any maladministration occurred and to minimize the possibility of recurrence.

62. It is not possible to assess what position Mr C would have been in had there been no maladministration. I do not know what decisions the Council

would have taken had Historic Scotland given them accurate information before they decided to issue a BPN. Furthermore, Historic Scotland have subsequently taken steps to verify information about the House and have not changed their decision about listing, although they have amended the list description³. If Historic Scotland had taken these steps before sending the Council a draft listing description Mr C could be in the same position as he is in now. Similarly, Mr C withdrew his planning applications and I cannot know what the position would have been had he not done so.

63. Historic Scotland have revised their procedures for the listing process. Since January 2006 a new listing team has been established. Specific training and internal guidance has been developed, particularly with regard to listing proposals where a BPN has been served. A new guide has been published for property owners about the consequences of listing. These changes are important for ensuring that the risk of recurrence of the events detailed above is minimised.

64. In all these circumstances, the Ombudsman recommends that Historic Scotland apologise to Mr C for the failings identified in the report. While I commend Historic Scotland for the changes they have made to their procedures for deciding on listing; and review the events considered in this report and consider whether they should take further steps to ensure that their decision making and communication processes are clear.

65. Historic Scotland have accepted the recommendations and will act on them accordingly. The Ombudsman asks that Historic Scotland notify her when the recommendations have been implemented.

66. The Ombudsman has no recommendations in respect of the Council.

19 December 2007

³ I should note here that Mr C considers the revised description still contains significant inaccuracies which could have adverse implications for him if he wished to sell the House.

Explanation of abbreviations used

Mr C	The complainant
The House	Mr and Mrs C's home
The Council	City of Edinburgh Council
BPN	Building Preservation Notice
The Act	Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
The Memorandum	The Memorandum of Guidance on Listed Buildings and Conservation Areas
NPPG 18	National Planning Policy Guidance 18: Planning and the Historic Environment
Mrs C	The complainant's wife
Officer 1	A council planning officer
The Association	A local heritage association
Officer 2	A former Historic Scotland Inspector
Officer 3	Former Chief Building Inspector, Historic Scotland
Officer 4	An Historic Scotland Senior Inspector
Mr E	An expert in 'modern movement' buildings

Officer 5	Council planning officer responsible for the BPN report
The Committee	The Council's Development Quality Sub-Committee
Officer 6	Director of Heritage Policy, Historic Scotland

List of legislation and policies considered

PLBCA Act 1997

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

The Memorandum

Memorandum of Guidance on Listed Buildings and Conservation Areas 1999

NPPG 18

National Planning Policy Guidance 18: Planning and the Historic Environment