

PE2105/A: Safeguard Scottish Listed Buildings at risk of unnecessary demolition

Scottish Government submission, 8 July 2024

I have considered the issues raised by the petition and information is provided below on the building standards system in Scotland including enforcement powers for local authorities to take action on dangerous buildings under the Building (Scotland) Act 2003.

The building standards system

The building standards system in Scotland is established by the Building (Scotland) Act 2003 (the Act). The system is pre-emptive and is designed to check that proposals meet building regulations. The main principles of the system are that a warrant must be obtained before work commences on site and a completion certificate is accepted by a verifier if, after undertaking reasonable inquiry, they are satisfied the building work meets the building regulations, prior to the building being occupied.

The thirty two local authorities in Scotland are appointed by Scottish Ministers as verifiers to administer the building standards system for their own geographic area. Verifiers undertake independent checks of buildings at design stage and carry out reasonable inquiry during construction prior to accepting a completion certificate.

The purpose of the building standards system is to protect the public interest. It is not intended to provide protection to a client in a contract with a builder. The system is intended to ensure that building work on both new and existing buildings results in buildings that meet the standards, which are set out in building regulations.

The owner or developer is reliant on other professionals (design/construction) to assure them that the work meets building regulations. Building owners are ultimately responsible for the ongoing safety of their own buildings.

Local Authority Enforcement Powers

Building owners are responsible for preventing their buildings falling into a dangerous condition. Should a local authority become aware of a building, which includes a wall, that constitutes a danger to persons about it, or to the public generally, then it has a duty to act under section 29 of the Building (Scotland) Act 2003.

The Act gives local authorities a range of enforcement powers. Local authorities can take enforcement action to deal with buildings they consider to be defective or dangerous. They can serve a notice, and carry out work if the notice is not met, undertake emergency work on dangerous buildings, and recover their costs.

When a local authority considers a building to be dangerous it has a duty to act and it is expected that it will respond immediately. This might include taking urgent action to carry out work, including demolition, as it considers necessary to reduce or remove the danger.

Alternatively where the local authority considers that other urgent action is needed to reduce or remove the danger it may, after giving the owner such notice (if any) as the circumstances permit, carry out the necessary work, or prevent access to any adjacent parts of a road or public place which appear to be at risk.

Where the local authority carries out the work they can recover the associated costs from the relevant owners.

It is for the local authority to determine the most appropriate course of action, taking into account the particular circumstances of each case. The satisfactory management of dangerous building incidents by local authorities is essentially the result of appropriate risk assessment. Each dangerous building case should be dealt with on its own merits, as the local authority considers necessary.

It is not possible for guidance to be specific about the approach required when the instances of dangerous buildings are unique and require a risk-based approach to determining the appropriate action. There are a considerable number of factors which can influence the approach to be taken, examples include:

- the nature and/or severity of the danger (structural decay or damage, fire damage, impact damage, missing building safety features, loose parts of building elements or building fixtures, sudden subsidence, etc..)
- the physical proportions and nature of the building (low-rise, medium-rise, high-rise, spire or tower, viaduct, etc..)
- the geographical location (city centre, rural, remote, etc..)
- the location of the danger (internal only, internal but could affect whole building, external affecting curtilage of building, external affecting a public area, ease of accessibility to do the emergency work etc..)
- the extent of the danger (several affected buildings, only one building or part of building affected, several parts of one building element, or just one part etc..)
- the persons at risk from the danger (general public passing by, building occupiers, unauthorised persons frequenting the building etc..)
- the time of year and/or day (school holidays, public holidays, night time, rush hour etc..)
- the building owner(s) (finding the owner(s), the number of owners, the owner's willingness to recognise danger and resolve matters, the financial/construction resources available to the owner etc..)

- the building occupier(s) (the occupier's willingness to recognise danger, need to temporarily rehouse occupiers, disruption to occupier's business etc..)
- the attendance of other statutory bodies at or permanent surveillance of, the dangerous building (police, fire service, security guards, etc..)
- the availability of emergency contractors (demand for other emergency repairs, public holidays etc..)
- the local weather forecast (high winds, flooding, period of calm etc..).

Local authorities are autonomous bodies whose powers are set out in statute and are entirely separate from the Scottish Government. As long as they act lawfully, it is the responsibility of each local authority to manage its day-to-day business appropriately. Scottish Ministers do not have general powers that would enable them to call on a local authority to account for its action.

Consultation for historic and listed buildings

Section 35 of the Building (Scotland) Act 2003 sets out consultation requirements and limitations for buildings under the following categories:

- scheduled ancient monuments
- listed buildings
- buildings subject to preservation orders, and
- those buildings in conservation areas subject to control of demolition

Ancient monuments are those included in the schedule of monuments compiled and maintained under section 1 of the Ancient Monuments and Archaeological Areas Act 1979. Listed buildings are those included in a list of buildings of special architectural or historic interest compiled or approved under section 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, preservation notices are under section 3 of that Act and control of demolition of unlisted buildings in conservation areas is under section 66 of that Act.

Before serving a notice that requires work (including demolition) in relation to a type of building defined above there must be consultation with Historic Environment Scotland, the planning authority (where this is not the local authority) and anyone else the local authority consider necessary. Where the planning authority is within the same local authority there should still be a properly recorded consultation.

However, where a dangerous building notice is to be served, or urgent work is needed to remove a danger, consultation must be carried out only "if reasonably practicable". This is intended to cover problems requiring immediate action necessary to reduce or remove a danger; in these instances the relevant authorities should be notified subsequently of any such action.

In these instances the relevant authorities should be notified subsequently of any such action as soon as possible. Works undertaken without prior consultation should

be limited to the minimum necessary needed to protect the public until the proper consultations have taken place and any necessary consents sought.

There is also an important limitation on the notices. The effect of the notices 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, i.e. that 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.

When looking to establish if the affected building is of a type to which section 35 applies, local planning authorities hold GIS data on designated and non-designated historic environment assets, and this should always be the first port of call to determine whether or not a building falls under the requirements of section 35.

I suggest that the existing powers contained in building standards legislation, relevant supporting guidance, and the consultative approach taken by local authorities as part of their enforcement duties, are sufficient to ensure appropriate safeguards are in place to protect listed buildings from unnecessary demolition.

Published guidance

The Scottish Government, through Building Standards Division, publishes guidance which local authorities can refer to when making decisions on dangerous buildings and taking enforcement action. These publications include the [Procedural Handbook](#) updated in 2024 and the [Enforcement Handbook](#) first edition published in 2023.

Building Standards Division