

Citizen Participation & Public Petitions Committee

2nd Meeting, 2021 (Session 6), Wednesday, 1
September 2021

PE1852: Increase planning protection for Scottish battlefields

Note by the Clerk

Petitioner	George Kempik on behalf of Group to Stop the development at Culloden
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to designate historic battlefields with a heritage status and implement a stricter planning framework to protect them.
Webpage	petitions.parliament.scot/petitions/PE1852

Introduction

1. This is a new petition that was lodged on 17 March 2021.
2. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe A**.
3. While not a formal requirement, petitioners have the option to collect signatures and comments on their petition. On this occasion, the petitioner elected to collect this information. 21,205 signatures and 798 comments have been received. Members may wish to note that petitions lodged in Session 6 can collect signatures only.
4. The Committee agreed to seek advanced views from the Scottish Government on all new petitions before they are formally considered. The Committee has received a response from the Scottish Government and this is included at **Annexe B** of this paper.
5. Two submissions have also been received from the petitioner. These are included at **Annexe C** of this paper.

Scottish Government submission

6. The Scottish Government submission explains that it delivers support for the historic environment through sponsorship of Historic Environment Scotland (HES), which is Scotland's leading public body and whose purpose is to investigate, care for and promote Scotland's historic environment. HES is responsible for designating scheduled monuments, listed buildings, inventory gardens and designed landscapes and inventory battlefields.
7. Since 2011, HES has identified nationally important battlefields by designating them. Proposed sites are assessed under Section 32b (1) of the Ancient Monuments and Archaeological Areas Act 1979. Where a site meets the criteria HES adds it to the inventory.
8. The list is maintained by HES and currently contains around forty significant battlefields in Scotland. Designation provides additional consideration in the planning system both in terms of local development plans and individual planning applications. HES encourages participation in its decision-making, to ensure the inclusions of shared knowledge and local understanding.
9. The Scottish Government advises that it has strengthened the safeguards in place for designated battlefields in the planning system. In March 2019 a [notification direction](#) was issued requiring authorities to alert the Scottish Government to new planning cases for non-householder development that may affect any designated historic battlefields.
10. As a result, the Scottish Government can have a national overview of development that is affecting designated Historic Battlefields. It also offers the Scottish Government the opportunity to put in place additional safeguards and, if necessary, intervene.
11. The submission notes that the Scottish Government's Planning and Architecture Division (PAD) has been notified of 167 applications within historic battlefields under the Historic Battlefields Direction.
12. The Scottish Government explains that current legislation, planning regulations, national policy and related guidance already sets out the recognition and protection principles for Battlefields.
13. The Scottish Government notes there is provision in the planning processes for wider views to be considered as part of any planning application. It also states that it welcomes discussion with individuals and groups about any specific concerns they have with development proposals affecting Battlefields.
14. The submission highlights that responsibility for planning proposals and local planning matters rests, in the first instance, with the local planning authority. Planning legislation requires that applications are determined in accordance with the development plan for the area, unless material considerations indicate otherwise. In reaching a decision the planning authority is expected to have

regard to all material factors, including views from consultees and representations submitted to them.

15. The Scottish Government highlights that whilst Scottish Ministers do have powers to call in certain planning applications for ministerial consideration, they do so sparingly and only where a proposal raises issues of national importance. It cites an example in November 2020 of where Ministers called in, and ultimately refused permission for, an application due to its adverse impact on Culloden Battlefield.
16. The Scottish Government concludes that, as there is a system in place which follows a clear assessment process to designate Historic Battlefields and which affords them additional consideration in both development plans and planning procedures, it believes it already recognises, values and protects the precious cultural heritage contained in Scottish Battlefields.

Petitioner submissions

17. In their first submission, PE1852/B, the petitioner states that they appreciate the substantial steps and measures already in place. They feel, however, that these measures are not sufficient to provide protection to such historic areas such as the Scottish Battlefields.
18. The petitioner highlights the example of Culloden Battlefield, which they explain has seen repeated applications for permission to build on sites within the battlefield area or very nearby. They believe that, if granted, these applications would severely damage the unique atmosphere of the battlefield yet, in their opinion, only minor tweaks are made to such applications in order to try to gain permission to build.
19. It is the petitioner's contention that developers continue to apply for planning permission believing that, if they submit enough applications, they will eventually succeed.
20. The petitioner therefore asks that the Scottish Government strengthens its current measures to ensure that should the Scottish Government reject a planning application on historical protection grounds, no further applications are permitted from the developer.
21. The petitioner further suggests the creation of a Compulsory Purchase scheme, run by the Scottish Government rather than the local Planning Authority, to give it the power to purchase such land from developers to ensure it is preserved for posterity.
22. In their subsequent submission, PE1852/C, the petitioner reiterates their concern about the persistence of some developers to try to overturn planning refusals or circumvent the proper planning process.

SPICe briefing

23. The SPICe briefing highlights that whilst inclusion in the HES Inventory offers battlefields no specific protection from development, Scottish Planning Policy is clear that—

“Planning authorities should seek to protect, conserve and, where appropriate, enhance the key landscape characteristics and special qualities of sites in the Inventory of Historic Battlefields.”

24. It also indicates that HES provides detailed guidance to planning authorities on the application of this policy in [Managing Change in the Historic Environment: Historic Battlefields](#).

25. The Session 5 Public Petitions Committee previously considered petition [PE1696: Preserving Scottish Battlefields](#), which was lodged by Jack Gallacher on behalf of Bothwell Historical Society on 25 June 2018. This petition was closed on 30 May 2019, when the Convener stated:

“...we will close the petition under rule 15.7 of the standing orders on the basis that the Government considers that there are sufficient safeguards to protect historic battlefields from development and that there is evidence that they have been used in practice.”

Action

26. The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

Briefing for the Citizen Participation and Public Petitions Committee

Petition Number: PE1852

Main Petitioner: George Kempik on behalf of the Group to stop the development at Culloden

Subject: Increase planning protection for Scottish battlefields

Calling on the Scottish Parliament to urge the Scottish Government to designate historic battlefields with a heritage status and implement a stricter planning framework to protect them.

Background

The Historic Environment (Amendment) (Scotland) Act 2011 placed a duty on Scottish Ministers to compile and maintain an inventory of nationally important battlefields. [The Inventory](#) is managed by Historic Environment Scotland and identifies sites which meet the following criteria:

- **Historical associations:** the battlefield should have strong associations with historical events or figures of national significance.
- **Physical remains:** there should be some significant physical remains of the battle, or archaeological potential for remains.
- **Landscape of the battle:** there should be evidence for the wider battlefield landscape around the battle site. This may include vantage points, lines of sight, earthworks, camps, or burials.

It must also be possible to define the battle site with confidence on a modern map.

There are over 40 battlefields listed in the Inventory, ranging from the first battle of Dunbar in 1296 in East Lothian through to Culloden in the Highlands, where the final pitched battle in Britain took place in 1746.

Inclusion in the Inventory offers battlefields no specific protection from development. However, the [Scottish Planning Policy](#) is clear that:

“Planning authorities should seek to protect, conserve and, where appropriate, enhance the key landscape characteristics and special qualities of sites in the Inventory of Historic Battlefields.”

Historic Environment Scotland provides detailed guidance to planning authorities on the application of this policy in [Managing Change in the Historic Environment: Historic Battlefields](#), which advises that:

“When a battlefield is included in the Inventory, the information in the Inventory record must be taken into account when making decisions on planning applications. No additional consent is needed for undertaking works within an Inventory battlefield.

Planning authorities should consult Historic Environment Scotland on proposed developments that might affect a battlefield included in the Inventory. They should then take Historic Environment Scotland’s advice into account when deciding whether permission should be granted for the development. If the advice is that the development should not go ahead, the planning authority must notify Scottish Ministers of this.”

Additionally:

“Strategic and local development plans should set out policies and criteria that apply to the protection, conservation and management of Inventory battlefields. Planning authorities should refer to these policies when considering planning applications.”

A battlefield, or sections of a battlefield, may also be subject to additional planning and/or heritage designations that afford additional protection from development, including listed building, ancient monument, or green belt designations.

Scottish Government Action

The Scottish Government has not taken any recent action to further strengthen planning protections afforded to historic battlefields.

Scottish Parliament Action

The Public Petitions Committee previously considered petition [PE1696: Preserving Scottish Battlefields](#), which was lodged by Jack Gallacher on behalf of Bothwell Historical Society on 25 June 2018. This petition was closed on 30 May 2019, when the Convenor stated:

“...we will close the petition under rule 15.7 of the standing orders on the basis that the Government considers that there are sufficient safeguards to protect historic battlefields from development and that there is evidence that they have been used in practice.”

Key Organisations and relevant links

- **Historic Environment Scotland:** Historic environment NDPB, which manages the Inventory of Historic Battlefields.

- **Scottish Battlefields Trust:** Charity focused on promoting, interpreting, and protecting Scottish battlefields.
- **Royal Town Planning Institute Scotland:** Professional body for town planners, with significant research and policy experience.
- **Heads of Planning Scotland:** Organisation representing senior planning officials from Scotland's 32 local authorities.

Alan Rehfisch
Senior Researcher
March 2021

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Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP

PE1852/A

Scottish Government submission of 17 March 2021

The Scottish Government is pleased to offer the Committee our views on the action called for in the above petition, specifically:

to designate historic battlefields with a heritage status and implement a stricter planning framework to protect them.

The Scottish Government greatly values the contribution the historic environment makes to our culture and economy and recognise battlefields as an important part of our identity and culture. We consider our heritage has an important role to play in shaping our future, so we must ensure it is protected to benefit future generations. Our shared heritage defines who we are as a nation and is hugely inspirational, helping to create a powerful sense of place and providing a backdrop against which we live, work and have fun.

We consider the significance of the local landscapes where momentous historical events took place are vital due to the data they may contain about the course of the battle through physical remains and artefacts still present today. It is also equally important we continue to recognise and respect our Battlefields as sites of remembrance, we are sensitive these sites all over Scotland are places where people fought and died and may have been buried.

Designation

The Scottish Government delivers support for the historic environment through sponsorship of Historic Environment Scotland (HES). HES is Scotland's leading public body for the historic environment whose purpose is to investigate, care for and promote Scotland's historic environment. As such, HES is responsible for designating scheduled monuments, listed buildings, inventory gardens and designed landscapes and inventory battlefields.

Since 2011 HES has identified nationally important battlefields by designating them. Proposed sites are assessed under Section 32b(1) of the Ancient Monuments and Archaeological Areas Act 1979 (the 1979 Act). Where a site meets the criteria HES adds it to the inventory. This is a list maintained by HES which currently contains around forty significant battlefields in Scotland. Designation provides additional consideration in the planning system both in terms of local development plans and individual planning applications.

HES encourages participation in its decision-making, to ensure the inclusions of shared knowledge and local understanding. HES is primarily concerned with views that relate to the understanding of the cultural significance of the sites or places and will also consider comments on the purpose and implications of designation for local places and communities.

Each site included on the HES Battlefield Inventory has an entry on their searchable online portal accessible at <http://portal.historicenvironment.scot>.

HES has published an informative booklet to explain what being on the inventory means and the assessment process it uses for adding battlefields to the inventory. You can find this online here <https://www.historicenvironment.scot/archives-and-research/publications/publication/?publicationId=c59262de-b652-4e68-b88d-a5fe008ff1c8>

There are also other forms of recognition open to sites and significant places in Scotland by consideration for inclusion in online records such as the National Record of the Historic

Environment or the War Memorials Register. Where sites and places have particular associations with significant people or events, they could also be recognised through the Commemorative Plaque Scheme.

The Scottish Government, alongside HES, encourage local communities, local authorities and any other decision-makers to work together to use ways to recognise the sites and places of value to them.

Planning

We have strengthened the safeguards that we have in place for designated battlefields in the planning system. In March 2019 we issued a notification direction requiring authorities to alert us to new planning cases for non-householder development that may affect any of our designated historic battlefields. <https://www.gov.scot/publications/historic-battlefields-notification-chief-planner-letter/>

This allows us to have a national overview of development in the planning system that is affecting designated Historic Battlefields and offers us the opportunity to put in place additional safeguards, and intervene, if necessary.

We can demonstrate the effectiveness of this system as to date, Scottish Government's Planning and Architecture Division (PAD) has been notified of 167 applications within historic battlefields under the Historic Battlefields Direction.

Recognition and protection for Battlefields is already set out in legislation, planning regulations, national policy and related guidance. We welcome discussion about any specific concerns individuals, or groups, have with development proposals affecting Battlefields and we note there is provision in the planning processes for wider views to be considered as part of any planning application.

The responsibility for dealing with planning proposals and local planning matters rests, in the first instance, with the local planning authority. Planning legislation requires that planning applications are determined in accordance with the development plan for the area, unless material considerations indicate otherwise. In reaching a decision the planning authority is expected to have regard to all material factors, including views from consultees and representations submitted to them.

Whilst Scottish Ministers do have powers to call in certain planning applications for ministerial consideration, they do so sparingly and only where a proposal raises issues of national importance. This results in Ministers intervening in a very small proportion of cases each year and, overall, we expect this to continue.

Last year Ministers called in a planning application for the conversion of an existing steading to form a house and the erection of outbuildings at Culchunaig, near Westhill, Inverness (Full details can be found on the planning portal of the Highland Council website - Reference No. 15/02941/FUL). In November 2020, Ministers refused the application due to its adverse impact on Culloden Battlefield.

In conclusion, given there is already a system in place which follows a clear assessment process to designate Historic Battlefields and which affords them additional consideration in both development plans and planning procedures, the Scottish Government believes we already recognise, value and protect the precious cultural heritage contained in our Battlefields.

PE1852/B

Petitioner submission of 16 April 2021

Whilst we appreciate the substantial steps and measures already in place it is clear that these are simply not sufficient to provide protection to such historic areas such as the Scottish Battlefields. In the specific case of Culloden Battlefield, we have seen repeated applications for permission to build on sites within the Battlefield area or very nearby which would severely damage the unique atmosphere of the Battlefield by impinging severely on the visual impact and light/sound pollution in the area, with minor tweaks being made to such applications in order to try to gain permission to build.

We strongly feel that, once the Scottish Government has rejected a planning application on historical protection grounds, that this should be the final step and that no further applications should be permitted from the developer. We feel that developers believe that, if they submit sufficient applications, they will, eventually, succeed in obtaining permission and we would ask that the Scottish Government strengthens its current measures by bringing in a 'final' response to developers that brings to an end this practise of constant resubmission until successful approach. We do appreciate that this may involve the instigation of a Compulsory Purchase scheme, run by the Scottish Government rather than the local Planning Authority, who would have the power to purchase such land from the developers and thus ensure it is preserved for posterity.

Petitioner submission of 26 August 2021

PE1852/C – Increase planning protection for Scottish battlefields

Since this petition was submitted several attempts have been made by various developers to overturn a decision made to refuse planning permission(s).

We strongly believe this shows how determined some developers are to build in the area of the Battlefield and equally demonstrates their total lack of concern for the historical importance of the site.

We would urge the Scottish Government to bring an end to the opportunity for developers to repeatedly submit planning applications with often (very) minor changes once their initial application has been refused. The Battlefield should be treated with the respect and reverence such an historically important site deserves.

We would also ask that strong consideration is given to stopping the trend of obtaining planning permission for a work building, such as a shed, and then later submitting a change of use application to make the building into a residential one.

Culloden and other Battlefields in Scotland are under constant threat of being obliterated by such proposed planning applications, our Battlefields are national treasures and must be robustly protected to preserve them and our history for future generations.