



FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 37
XA70/25

Lord President
Lady Wise
Lord Ericht

OPINION OF THE COURT

delivered by LORD PENTLAND, the LORD PRESIDENT

in the appeal under section 58 of the Planning (Listed Buildings and Conservation Areas)
(Scotland) Act 1997

by

ALLIED VEHICLES LIMITED

Appellants

against

THE SCOTTISH MINISTERS

Respondents

and

HISTORIC ENVIRONMENT SCOTLAND

Interested Party

Appellants: Burnet KC; Campbell Smith LLP
Respondent: A Sutherland; The Scottish Government Legal Directorate
Interested Party: Crawford KC; Morton Fraser MacRoberts LLP

7 July 2026

Introduction

[1] This appeal concerns a challenge to the decision made by Historic Environment Scotland (HES) to list as a building of special architectural or historic interest, in terms of

section 1(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the exterior of a disused cinema at 124 Balmore Road, Possilpark, Glasgow. It is shown in this photograph:



[2] The cinema was designed by James McKissack who was one of Scotland's most prolific cinema architects. It opened in 1933 and was known as the Mecca. The cinema originally seated 1,620 people and was intended to serve the new Glasgow Corporation housing estate being developed at High Possil and Parkhouse in light of the Wheatley Housing Act passed in 1924¹. The 1924 Act aimed to alleviate the severe post-War housing crisis by promoting an expansion of publicly funded housing for low-income families.

[3] HES and Glasgow City Council (GCC) consider the building to be an architectural landmark in the streetscape and its wider setting in Possilpark. It is considered to be of social interest for its association with town planning, leisure and industry in the early twentieth century.

¹ The Housing (Financial Provisions) Act 1924

[4] The building continued in use as a cinema until 1968, having operated as the Vogue cinema since 1950. It was thereafter used as a bingo hall until the 1990s when it closed. Since then the auditorium has not been used.

[5] Allied Vehicles Group purchased the building in about 2005. Cracks in the exterior rendering were repaired, the canopy was removed, new roller shutters were fitted over all the ground floor doors and windows and further repairs have since been made to the roof.

[6] The appellants now own the building. They have aspirations to redevelop the site as a vehicle showroom with flats above. They do not yet have planning permission for such a scheme.

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

[7] The 1997 Act creates a scheme for the designation by HES of sites and places of historic importance. Designation ensures that these sites and places are legally recognised through the planning system and other regulatory processes. Protection is achieved through a two stage process: first, a statutory duty is placed on HES to compile a list of buildings of special architectural or historic importance with a view to the guidance of planning authorities (section 1(1)); and second, planning authorities must have special regard, when considering whether to grant consent for any works, to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses (section 14(2)).

[8] Certain other features of the statutory scheme are relevant for the purposes of the present appeal. Section 3(1) allows a planning authority, if it considers that a building in their district which is not a listed building is of special architectural or historic interest and is in danger of demolition or alteration in such a way as to affect its character as a building of

such interest, to serve a building preservation notice (BPN) on the owner, lessee or occupier. A BPN remains in force for six months from the date it is served (section 3(3)). It ceases to be in force if HES lists the building or notifies the planning authority that it does not intend to do so (section 3(4)). While a BPN is in force the provisions of the 1997 Act apply as if the building to which the BPN relates were a listed building (section 3(5)). If HES notifies the planning authority that it does not propose to list the building the authority must immediately notify the owner, lessee and occupier of this and is not entitled to serve another BPN in respect of the building for a period of 12 months (section 3(6)).

[9] Sections 6 and 7 provide for a system whereby listed building consent must be obtained from the planning authority for the demolition, alteration or extension of a listed building. In addition to the provisions governing listed building consent, section 59(1) provides that in considering whether to grant planning permission affecting a listed building or its setting, a planning authority must have special regard to the desirability of preserving the building, its setting or any features of special architectural or historic interest.

HES Guidance

[10] HES has issued guidance explaining the approach it adopts in deciding whether to designate buildings as being of special architectural or historic interest (*Designation Policy and Selection Guidance*, 2019). In the section headed “Development proposals and designation” the following is stated:

“The legislation that sets out what can be designated is brief. It allows us to designate regardless of other factors such as development proposals. However, in carrying out designation work, we will act proportionately in line with the Scottish Regulators’ Strategic Code of Practice. This code expects that the functions we fulfil are transparent, accountable, consistent, proportionate and targeted where needed.

In practice, this means that we normally avoid intervening unnecessarily in the planning process or other regulatory processes where there are development proposals by adding a new designation. This may also extend to reviewing existing designations.

We consider the individual circumstances of each case. In deciding whether to designate a site or place or amend an existing designation while there are ongoing development proposals, appeals or enforcement, we will consider:

- the implications of designation on development proposals
- the effect of the proposed development on the significance of the site or place
- the extent to which plans have been developed for the site or place – where these are particularly advanced, we will not normally list or schedule”.

[11] In a subsequent passage the guidance continues as follows:

“In urgent cases, planning authorities may consider serving a Building Preservation Notice (BPN) if it appears to them that a building is of special architectural or historic interest and is in danger of demolition or alteration which would affect its character. This is a form of temporary listing. Once a BPN has been served we have six months to assess the building for listing. We may list a building in these circumstances even if there are development proposals at an advanced stage.”

Core facts

[12] On 7 July 2023 a third party requested HES to list the building. HES informed GCC of the request.

[13] On 21 November 2023 the appellants applied to GCC for a building warrant authorising them to demolish the building. On 20 December 2023 GCC informed HES of the building warrant application.

[14] GCC granted a warrant for demolition of the building on 22 December 2023. On that date or shortly afterwards the appellants began to demolish the building.

[15] On 4 January 2024 HES visited the building for the first time. Its officers did not inspect the interior of the building as they were not satisfied that it was safe to do so. The appellants provided recent photographs of the interior showing that it had been completely

stripped out with no fixtures and fittings remaining apart from the structural steel of the auditorium. The front foyer had been refitted for retail use.

[16] On 12 January 2024 HES issued a decision (by way of a detailed report of handling) determining that the building met the criteria of special architectural or historic interest. The report set out a comprehensive assessment of the history and characteristics of the building. The assessment concluded that the building met the criteria for listing because it was a rare survival of a 1930s cinema which retained its architecturally distinctive character to the main elevation; it was a notable example of the work of James McKissack; the cinema was an architectural landmark in the streetscape and its wider setting in Possilpark; and it was of social historical significance for the association with town planning, leisure and industry in the early twentieth century. Taking account of the loss of the interior, HES assessed the building's level of importance as category C.

[17] Notwithstanding its assessment as to the building's historic and architectural interest, HES decided not to list the building because development proposals were at an advanced stage. The handling report noted that the building was the subject of demolition proposals, namely demolition of the building in terms of a building warrant. The report explained that in line with HES's policy and practice, it would not be proceeding with listing the building "at this time" because of the advanced development proposals of which HES had become aware during the course of its assessment. The report referred to the section of HES's *Designation Policy and Selection Guidance* where it is explained that the individual circumstances of each case are considered; the guidance also explained the approach taken where there are ongoing development proposals. In this case HES decided that the extant warrant for demolition meant that it should not list the building "at this time".

[18] The handling report also explained that HES understood that GCC had been asked to serve a BPN, that this was a separate process and if such a notice was served HES would make a separate decision.

[19] On 15 January 2024 GCC served a BPN. On the same date GCC asked HES to consider the building for listing.

[20] On 18 January 2024 HES again visited the site and proceeded to re-assess the building. It carried out a consultation exercise between March and May 2024.

[21] On 3 June 2024 HES issued a second designation handling report. The report noted that in line with HES's policy it may list a building once a BPN has been served even if there are development proposals at an advanced stage. HES had reviewed its previous assessment. Of particular relevance was the section in the *Designation Policy and Selection Guidance* referring to development proposals and BPNs. On this occasion HES decided to list the exterior of the building as category C. It did not consider the interior or roof and roof structure to be of special interest.

[22] Thereafter the appellants appealed against the listing to the Scottish Ministers under section 5B of the 1997 Act. The appeal was determined by a reporter appointed by the respondents. On 11 July 2025 the reporter dismissed the appeal; the appellants have now appealed to this court under section 58 of the 1997 Act.

The reporter's decision

[23] The appellants did not dispute that the building was of special architectural and historic interest. The reporter agreed. He noted that the building had undergone significant changes over its lifetime. It had recently been subject to demolition to the extent that the interior, roof and roof structure no longer remained. The exterior had been subject to

unsympathetic modifications and additions, including roller shutters. What remained of the building retained significant special architectural and historic interest which merited its being listed.

[24] Procedural fairness was an important factor to be considered. HES's second handling report did not explain the rationale for changing its decision from not listing in January 2024 to listing in June 2024. HES's guidance was ambiguous in explaining its approach as between cases where a BPN had been served and cases where this had not happened. The timing and course of decisions made in the case was unsatisfactory. A request to list had been made in July 2023, but HES did not conduct an inspection of the site until January 2024 by which time the building was being demolished. This period of delay meant that a building warrant could be sought and granted, authorising demolition. While building standards and planning authority functions within GCC were different, the absence of formal communication between GCC staff regarding the application for demolition was peculiar. By chance an external party alerted planning officers on 20 December 2023 that the building standards department was proposing to issue a building warrant imminently. GCC could have served a BPN at that stage. Had it done so the building warrant would not have been acted upon as the building would have been temporarily listed. The delay in the initial listing decision; the lack of communication between GCC officers; and the hesitancy in issuing a BPN once it was known that the building was at risk of demolition meant that a substantial amount of the building fabric had been removed, including features of special architectural interest.

[25] Notwithstanding these points, the failure by HES to explain fully why it reversed its initial decision and the failure by GCC and HES to act sooner did not mean that the building was not worthy of listing. It was now clear that service of the BPN was intended potentially

to save what remained of the building. HES's previous caution in deciding not to list had been based on the demolition activity being interpreted as development at an advanced stage.

[26] Demolition works had ceased following the listing intervention. There was no planning permission for a redevelopment scheme or any other relevant extant planning permissions for the site. Consequently, there were no active development proposals for the building. Service of a BPN was an exceptional action only rarely undertaken when the need arose. Therefore, despite potentially frustrating demolition and future development proposals there was reasonable justification for HES to list the building.

[27] The reporter considered all the other matters raised including the potential for socio-economic benefits arising from redevelopment; the appellants' investment in the site; and community representations highlighting the benefits of demolition and the need to safeguard the building. He found that none altered his conclusion, which was that the issuing of a BPN was an exceptional action. GCC and HES could have handled the listing process better in relation to communication, reasoning and timing. Nevertheless, these shortcomings did not preclude HES from listing the building. In the circumstances of the case what remained of the building was of special architectural and historic interest. There were no factors which would justify the building not being listed. The appeal was dismissed.

Submissions

Appellants

[28] The reporter erred in law in assuming that the absence of any explicit prohibition on the service of a BPN after an initial decision not to list meant that there was no impediment

to a new assessment and a new and different decision being taken. The reporter failed to understand the purpose of a BPN, which was to allow HES time to make an assessment and determination on whether to list a building where no such assessment had taken place. The BPN was a procedural trigger for the taking of a decision as to whether to list. A BPN was not supposed to provide the GCC with a form of appeal against a decision on an assessment which HES had already taken. It was unreasonable and irrational for GCC to serve a BPN less than 4 weeks after it had issued a warrant to authorise the demolition of the building and only 3 days after HES had completed an assessment of the building and decided not to list it. There had been no change of circumstances that would rationally support HES reaching a different decision.

[29] Section 3(6) of the 1997 Act prevented HES from being required to revisit and change a decision within 12 months of deciding not to list a building. The statutory regime therefore recognised a common-sense point as to the importance of the public being able to rely on recently made decisions and of consistency in decision-making by a public body. The reporter failed to take proper account of the entirety of the statutory scheme.

[30] The reporter failed to act rationally and to give proper, adequate and intelligible reasons for his decision. In criticising HES for failing to explain properly their change in position, the reporter in effect fell into the same error. The service of a BPN was not a relevant material change in circumstances that could justify a different decision (*Weiss Development Co Ltd v Scottish Ministers* [2024] CSIH 23; 2024 SLT 872). It was irrational for the reporter to accept HES's purported explanation for the change in its position. The difference in wording between the HES guidance applicable to section 1 designations and section 3 designations was irrelevant. The issue for HES in both assessments was whether the building ought to be listed. It was irrational for the reporter to accept HES's

explanation for applying its guidance to the same issue in a different way. The purpose of a BPN was to preserve a building for a temporary period to allow HES to make an assessment as to whether or not it should be listed. It was a procedural step to allow HES time to make an assessment. In the present case HES had completed such an assessment and reached its conclusion 3 days earlier following a site visit 11 days previously. It was irrational for HES to take the view that its guidance required it to consider the same issue in a different way.

[31] It was inconsistent and irrational for the reporter to state that demolition was development while at the same time saying that there were no active development proposals. The demolition was stopped as a result of the BPN and HES's listing decision.

[32] The reporter failed to consider a relevant factor. He ought to have considered the significant prejudice caused to the appellants by the authorities' actions together with the public interest and the need for consistency in decision-making.

[33] The listing decision was an interference with the appellants' rights to enjoyment of their possessions in terms of Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950. As a public authority, the reporter was required to ensure that any interference with the appellant's property rights was lawful and justified as a proportionate interference with those rights. The interference was neither lawful nor justified. It failed to strike a fair balance between the demands of the general interest of the community and the protection of the appellants' property rights (*Axa v Lord Advocate* [2011] UKSC 46; 2012 SC (UKSC) 122 at 108).

Respondents

[34] The reporter was correct to conclude that there was no impediment to service of the BPN. The planning authority lawfully exercised its powers to serve a BPN under the

provisions of the 1997 Act. That decision was rational and understandable in circumstances where demolition of the building was imminent. The reporter correctly understood his own role and the relevant provisions of the 1997 Act and was entitled to conclude that the exceptional action of service of the BPN was understandable in the circumstances.

[35] The facts of *Weiss* could be distinguished from the instant case. In that case, the building was not in the process of being demolished. A further distinction could be drawn from the reporter's engagement with the issue of procedural and overall fairness, a feature lacking in *Weiss*.

[36] It was sufficiently clear from the reporter's decision that it was service of the BPN that justified the second decision to list the building. At the time of the first decision, the building was being demolished pursuant to a lawful warrant. At the time of the second decision, the building was not being demolished due to service of the BPN. The reporter was correct to observe that there was no active development.

[37] The reporter was critical of the lack of assertive guidance by HES and of the lack of reasoning in HES's decision. He found the timing and course of decisions to be similarly unsatisfactory. The reporter engaged fully with these issues, concluding that HES's shortcomings did not mean that the building was not worthy of listing. This was a conclusion the reporter was entitled to reach. The reporter clearly took into account the issue of prejudice to the appellants. The reasons in support of his conclusion were proper, adequate and intelligible.

Interested Party (HES)

[38] There was no prohibition on, or impediment to GCC issuing a BPN. The planning authority was entitled to consider if it appeared to it that the building was of special

architectural or historic interest and in danger of demolition. Any unsatisfactory elements in the timing of the decision-making process did not operate to preclude service of a BPN. It was entirely rational to issue a BPN and thereby seek special controls over work to the building if the planning authority had come to the view that the building appeared to be of special architectural or historic interest. The planning authority did not err in law when it issued the BPN.

[39] The first decision of HES was made in a different regulatory and planning context, namely in the context of a building warrant having been granted. The BPN changed the context in which the first decision was made. The BPN was an invitation on the part of the planning authority for HES to intervene.

[40] The second decision did not unnecessarily intervene in the planning or regulatory processes. It permitted the GCC to exercise its development control and planning functions under the 1997 Act and under the Town and Country Planning (Scotland) Act 1997 should a planning application be made. The purpose of the 1997 Act would be thwarted if HES was precluded from reconsidering an earlier listing decision following service of a BPN.

Decision

[41] The appeal raises a short point: was the reporter entitled to hold that the building merited listing. The essence of the appellants' challenge was that the reporter erred in law because it was not open to Historic Environment Scotland (HES) to change its initial decision not to list the building. This argument ignores the important effect of the building preservation notice (BPN). The BPN was served because it appeared to Glasgow City Council (GCC) in its capacity as the local planning authority that the building, which was not a listed building, was of special architectural or historic interest and that it was in danger

of demolition. It therefore requested HES in exercise of the statutory power conferred on a planning authority under section 3 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to consider including the building in the list compiled under section 1 of the 1997 Act. The service of the notice meant that HES became subject to a statutory duty to consider whether to list the building. In the present appeal GCC's decision to issue the BPN is not challenged. The court must proceed on the footing that it was lawfully issued. Insofar as the appellants sought to question the legitimacy of GCC's decision to issue the BPN their submissions are irrelevant in the context of the present appeal.

[42] In exercising its statutory duty to consider listing, as it was invited to do by GCC by means of the BPN, HSE was not bound to follow its earlier decision not to list; it had to exercise its statutory duty afresh. It had to consider its decision in a statutory and regulatory context which differed fundamentally from that which had prevailed at the time of the first decision. The new context was brought about by the service of the BPN. In resolving to issue the BPN, the GCC took the view that the building was of special architectural or historic interest and that it was in danger of being demolished. While it may appear somewhat peculiar (to those not versed in the intricacies of planning and local government) that GCC had previously issued a building warrant authorising the building's demolition and then the same council as planning authority issued a BPN, these involved GCC exercising two entirely separate functions. The effect of the BPN was that the building fell to be treated for the next six months as if it were listed. Therefore, it could not be demolished without listed building consent being granted. Whereas the building had been in the course of being demolished at the time of the first HES decision, the position was

radically different at the time of the second decision because demolition could not lawfully continue.

[43] HES had to take its fresh decision in accordance with its published policy guidance. It duly did so. The *Designation Policy and Selection Guidance, 2019* differentiated between situations in which a BPN had been served and those where this had not happened. In the latter case the guidance stated that HES would not normally intervene in the planning or regulatory process. In the former case the guidance stipulated that HES “may” list a building even if there were development proposals at an advanced stage. The differing guidance was recognised in the first handling report where it was contemplated that GCC might serve a BPN and that if they did take this step that would amount to a separate process requiring HES to make a separate decision.

[44] The circumstances of the present case are distinguishable from those which arose in *Weiss Development Co Ltd v Scottish Ministers* [2024] CSIH 23; 2024 SLT 872. In that case the reporter erred in law by failing to engage with a key aspect of the appellants’ concerns about the overall fairness of the procedure followed by HES; she had failed to address a central issue in the appeal, namely the appellants’ complaint about an unexplained change of view on the part of HES (paras [31] and [32]). By contrast, in the present case the reporter engaged fully with the issue of procedural fairness, describing it as an important factor to be considered (para 10). He went on to criticise HES for not having explained fully in its second decision why it had reversed its first decision (paras 15 and 18). Having addressed the issue of procedural fairness, the reporter proceeded to consider the effect of service of the BPN and concluded that while HES and GCC could have handled communications in a better way, there was no reason why the exterior of the building should not be listed since it

was agreed to be of special architectural or historic interest. We can detect no error of law in the reporter's approach to the issues.

[45] The points taken by the appellants under Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 add nothing to the analysis. It is important to reiterate that the listing of a building does not preclude its demolition or development. Any interference with the appellants' property rights is clearly proportionate and in the public interest. We note also that the reporter took the appellants' circumstances fully into account (paras 19 and 21 of the decision).

[46] The reporter's reasons are adequately and intelligibly explained in his decision.

[47] In the result the appeal must be refused. All questions as to expenses are reserved.