

## WEST DUNBARTONSHIRE COUNCIL

### Report by the Planning, Building Standards and Environmental Health Manager

Planning Committee: 11 October 2023

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**Subject: Scottish Ministers Decision - Scheduled Monument Consent for Quarrying Operations, Sheephill Fort, Sheephill Quarry, Milton, Dumbarton.**

#### **1. Purpose**

- 1.1** To provide the Committee with an update regarding the Scottish Ministers decision for the above Scheduled Monument Consent.

#### **2. Recommendations**

- 2.1** That the Committee notes the decision of the Scottish Ministers.

#### **3. Background**

- 3.1** The Council agreed to accept the conditions of the Review of Minerals permission (ROMP) for Sheephill Quarry in January 2021. The planning permission granted in 1949 for Sheephill Quarry allows the full excavation of the whole site, which includes the rock under Sheep Hill Scheduled Monument and the agreed ROMP includes this area. The vitrified fort of Sheephill was designated as a Scheduled Ancient Monument by the Secretary of State in 1970. An application was made for Scheduled Monument consent to Historic Environment Scotland on 13<sup>th</sup> September 2021. Previously, Scheduled Ancient Monument Consent (SAMC) was granted in 2002 by Historic Scotland subject to a condition that the archaeological excavation be carried out in strict accordance with a Written Scheme of Investigation and that the loss of the fort shall be mitigated by the excavation, recording and publishing of findings. Although the Planning Committee in November 2021 submitted a response to the Scheduled Monument Consent. It recognised the long complex history of Sheephill Fort and the previous grant of Scheduled Monument Consent. The Council indicated that the Scheduled Monument Consent (SMC) should be refused as Sheephill Fort is an important archaeological site which should be retained. The Council advised that when assessing the application for SMC consideration should be given by Historic Environment Scotland to their own policies relating to Scheduled Monuments and in particular the Scheduled Monument Consent Policy. If Historic Environment Scotland are minded to grant consent the Council would recommend that a strict Written Scheme of Investigation of the loss of the fort is required to mitigate by the excavation, recording and publishing of the findings. This formed the basis of this Council's response to the Scheduled Monument Consent.

**3.2** On 18<sup>th</sup> November 2021 Historic Environment Scotland notified the Scottish Ministers of its intention of grant of scheduled monument consent. On 9<sup>th</sup> September 2022 the Scottish Ministers directed that they would determine the application themselves.

#### **4. Main Issues**

**4.1** The application was considered by means of written submissions and a site visit by a Reporter appointed by the Scottish Ministers for that purpose. The Reporter recommended that scheduled monument consent is granted subject to conditions. The Scottish Ministers agreed with the Reporter's recommendations and has granted scheduled monument consent subject to conditions. The decision letter and associated report is available: <https://www.dpea.scotland.gov.uk/Casedetails.aspx?ID=121939>

**4.2** The Scottish Ministers agree with the Reporter's findings and conclusions with regard to the relevant policy in Historic Environment Policy for Scotland (HEPS) and the Scheduled Monuments Consents Policy (SMCP) which provides specific policies intended to apply to and inform the determination of applications of this type. The SMCP makes clear that the scheduling designation is in order to secure the long-term protection of monuments in the national interest, in situ and as far as possible in the form that they have come down to us. It sets out various principles that apply to scheduled monuments. Of particular relevance to this case is that "The principle of preserving scheduled monuments will only be set aside in circumstances where wider considerations are deemed, on balance, to be of greater importance to the national interest".

**4.3** The Scottish Ministers also agree with the following findings of the Reporter:

- The proposal would be directly contrary to the SMCP, and consequently also contrary to the overarching principles and policies outlined in HEPS.
- Policy documents cannot anticipate or be easily applied to the circumstances of every case, particularly where they are novel or exceptional in some way. In such cases, this does not mean that the policy should be set aside, but it increases the likelihood that there may be justification for a proposal despite being contrary to policy.
- The national policy context in which the 2002 decision (to grant scheduled monument consent for the same works as proposed in this current application) was taken was similar to current policy. This is in that policy presumed against granting scheduled monument consent for developments which would have an adverse impact on scheduled monuments unless there were exceptional circumstances.
- No exceptional circumstances were found to support the 2002 decision. The decision document concluded that the proposal was contrary to the policy that applied at the time. Scheduled monument consent was nevertheless granted.

- 4.4** The Scottish Ministers note that it appears to the Reporter that the 2002 decision was taken in view of compensatory provisions in the Act and the financial liability that Historic Scotland may have faced if consent had been refused. The Reporter's view is that compensatory provisions are not material and should not have a bearing on the decision. The Scottish Ministers do not share that view and consider that in deciding whether or not to grant consent they are entitled to take into account the significant cost implications for the public purse.
- 4.5** Notwithstanding the Reporter's view regarding the issue of compensation, the Reporter still recommends approval of the application. He advises that given the underlying intent of policy in regard to protection of scheduled monuments has not altered (in the time since the 2002 decision), there is a compelling case for maintaining consistency in decision-making in the particular circumstances of this case. In 2002, no exceptional circumstances were presented despite policy seeking to protect scheduled monuments in recognition of their national importance, as it continues to do. The Reporter states that given nothing appears to have materially changed since 2002, he considers that this application should be determined in a manner consistent with the 2002 decision.
- 4.6** The Scottish Ministers however consider that in this case, consistency in itself is not a sufficient reason for approving the current application. The Scottish Ministers are also entitled to reach a different view to that taken in 2002 on the merits of preserving the scheduled monument. The Scottish Ministers have concluded that the proposal is directly contrary to the SMCP and HEPS. However the Scottish Ministers give substantial weight, as a material consideration, to the significant cost to the public purse likely to be incurred in the event of refusing consent, under the provisions in section 7(1) of the Act (compensation for refusal of scheduled monument consent). The liability for compensation in the event of a refusal of consent is likely to amount to several million pounds. The Scottish Ministers consider that this material consideration outweighs the relevant provisions of SMCP and HEPS in this case and justifies a departure from those policy documents.
- 4.7** In reaching this decision, the Scottish Ministers have taken into account the fact that although it is of national importance and can contribute significantly to understanding of the past, the scheduled monument is located within the quarry boundary and is consequently inaccessible to the public. The loss of Sheep Hill, as well as the monument upon it, would result in a complete inability to continue to understand, appreciate or even be aware of its historical existence, importance and original landscape context.

**4.8** The Scottish Ministers agreed with the Reporter that a requirement for archaeological investigations and recording would be consistent with the requirements of policy SMCP4 in the Scheduled Monument Consents Policy. It is justified to require such investigations, in recognition of the site's national importance, but particularly because once it has been destroyed, the only means by which its historical existence would be capable of being understood and appreciated would be through reference to published records. The Scottish Ministers granted scheduled monument consent for the proposed quarrying operations subject to three conditions relating to archaeological investigation work.

**5. People Implications**

**5.1** There are no personnel issues.

**6. Financial Implications**

**6.1** There are no financial implications for the Council.

**7. Risk Analysis**

**7.1** A risk assessment is not required.

**8. Equalities Impact Assessment (EIA)**

**8.1** There are no equalities issues identified.

**9. Consultation**

**9.1** There are no requirements for consultation.

**10. Strategic Assessment**

**10.1** The Council agreed the conditions of the Review of Minerals Permission (ROMP) in January 2021 and it supports the strategic priorities of the Council.

**Pamela Clifford**  
**Planning, Building Standards and Environmental Health Manager**  
**Date: 11<sup>th</sup> October 2023**

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**Appendix:** None

**Background Papers:** Scottish Ministers Decision – Scheduled Monument Consent for Quarrying Operations Sheephill Fort  
<https://www.dpea.scotland.gov.uk/Casedetails.aspx?ID=121939>  
WP 98/076: Review of Minerals Permission

**Wards affected:** Ward 3 (Dumbarton)