



# Enabling development and the conservation of heritage assets



English Heritage is the government's statutory advisor on the protection of England's historic environment

Royal Holloway Sanatorium

'I consider that English Heritage's policy statement on Enabling development and the conservation of heritage assets, published in June 1999, provides the basis for considering enabling development'

**Planning Inspector's report concerning Coleorton Hall, Leicestershire, October 1999**

# Foreword

In June 1999, we published a Policy Statement, Enabling development and the conservation of heritage assets, advocating a presumption against enabling development unless it meets specified criteria, the most important of which is that the sum of benefits clearly outweighs the disbenefits. It was intended to amplify and reinforce the well-established guidance set out in PPG 15, Planning and the Historic Environment, especially that relating to applications for the alteration or demolition of listed buildings; PPG 16, Archaeology and Planning; and English Heritage's own earlier advice on enabling development, in Development in the Historic Environment, para 3.4.

This document brings together the Policy Statement and more practical guidance to planning authorities on the assessment of applications – and so, of course, to developers on what they should submit by way of justification. It necessarily concentrates on those areas which are particular to enabling development and other proposals where financial viability is a key issue, rather than common to most proposals affecting heritage assets. Nonetheless, we hope that some sections, particularly that on 'Understanding the figures', will be of wider relevance and value.

The text was compiled by a Drafting Group comprising:

**Paul Drury** (Chair & editor) Principal, Historic Environment Policy and Practice

**Mark Challis** Environmental and Planning Group, Norton Rose, Solicitors

**Kate Clark** Head of Historic Environment Management, English Heritage

**Elizabeth Collins** (then) Legal Advisor, English Heritage

**Michael Coupe** Head of Land Use Planning and Regeneration, English Heritage

**David Tomback** Chief Property Advisor, English Heritage

It greatly benefited from input from other practitioners, inside and outside English Heritage, who answered queries and commented on the Consultation Draft of September 2000.

# Contents

The policy statement	6
Overview	8
The concept of enabling development	12
Reducing the need for enabling development	14
The practical guide to assessment	
<b>1 The planning framework: Roles and responsibilities</b>	16
1.1 The role and responsibilities of the planning authority	16
1.2 Enabling development and the statutory development plan	16
1.3 The importance of planning briefs	18
1.4 The role and responsibilities of the developer	19
1.5 Professional advice	19
1.6 The role of English Heritage	20
<b>2 The legal basis for requiring the financial and other justification necessary to determine applications</b>	21
2.1 Introduction	21
2.2 Full applications for planning permission	21
2.3 Associated applications for listed building consent or scheduled monument consent	22
2.4 Environmental Impact Assessment (EIA)	23
2.5 Transparency and accountability in decision-making	23
2.6 Financial information	24
2.7 The cost of critical assessment	24
2.8 Confidentiality	25
Some relevant appeal decisions: necessity for adequate information	25
<b>Practical points</b>	26
<b>3 Understanding the heritage asset and mitigating impact</b>	27
3.1 The importance of understanding the heritage asset	27
3.2 The first step: Rapid assessment	28
3.3 The second step: Detailed measured survey and analysis	30
3.4 The follow-up: Targeted specialist investigation	31
3.5 The final stage, if appropriate: Conservation and Management Plans	31
3.6 The idea of mitigation	32
3.7 Heritage impact assessment	33
Some relevant appeal decisions: impact on the heritage asset	35
<b>Practical points</b>	36

<b>4</b>	<b>Identifying options</b>	37
4.1	Assessing potential for use	37
4.2	Who can unlock that potential?	39
4.3	Avoid compounding the problem	39
4.4	Fragmentation of assets	40
4.5	Historic entities	41
4.6	Market testing	42
	Some relevant appeal decisions: assessing potential for use	43
	<b>Practical points</b>	44
<b>5</b>	<b>Understanding the figures</b>	45
5.1	Background	45
5.2	Financing development	45
5.3	Development appraisals	46
5.4	Conservation deficit	46
	Some relevant appeal decisions: need of the owner or the building	47
5.5	Calculating the market value of a completed scheme	47
5.6	Site value: Have they paid too much?	48
	Some relevant appeal decisions: purchase price, site value, holding costs	50
5.7	Other potentially valid development costs	52
5.7.1	Costs incidental to acquisition	52
5.7.2	Design and construction costs	52
5.7.3	Statutory and other charges	53
5.7.4	Interest charges	54
5.7.5	Letting and sales costs	54
5.7.6	Deductions from costs	54
5.8	Developer's profit	55
	Some relevant appeal decisions: developer's profit	56
5.9	VAT	57
5.10	Due diligence	57
5.11	The importance of sensitivity analysis	57
5.12	Assessment of repair and conversion – reasonable works, reasonable costs?	57
	Some relevant appeal decisions: appropriateness of works	59
5.13	Commissioning development consultants	60
	Some relevant appeal decisions: the need for expert scrutiny	60
	<b>Practical points</b>	60
<b>6</b>	<b>Making the decision</b>	61
6.1	Introduction	61
6.2	Non-historic values and significance	61
6.3	Biodiversity	62
6.4	Sustainability	62
6.5	The balance of advantage	63
6.6	Community participation	65
	Some relevant appeal decisions: weighing the balance	66
	<b>Practical points</b>	67

<b>7</b>	<b>Securing the benefits</b>	68
7.1	Introduction	68
7.2	Definition of nature of development	68
7.3	Condition or obligation?	68
7.4	Planning obligations	69
7.5	Planning conditions	72
7.6	Securing the investment	73
7.7	Securing long-term management	75
	Some relevant appeal decisions: securing the benefits	76
	<b>Practical points</b>	77
<b>8</b>	<b>Monitoring and enforcement</b>	78
8.1	Importance and basis	78
8.2	Breaches of Section 106 agreements and planning conditions	78
8.3	The importance of final evaluation and feedback	79

## Appendices

<b>1</b>	Checklist for applications for planning permission for enabling development	81
<b>2</b>	Model framework brief for analysis or investigation	82
<b>3</b>	Example of a typical development appraisal layout for a single phase development	83
<b>4</b>	Model invitation to tender for valuation and development consultants	85
<b>5</b>	Example Section 106 agreement for securing the objective of enabling development, incorporating a form of bond	87
	References	92
	Legislation	92
	Government guidance	92
	Planning decisions quoted in the text	92
	English Heritage guidance	93
	Other guidance	93
	Further reading	94
	Glossary	94

# The Policy Statement

English Heritage has become increasingly concerned by the damage caused by developments contrary to established planning policy, put forward primarily as a way of benefiting heritage assets, but which destroy more than they save.

Our experience has led us to conclude that there should be a clearly stated presumption against such 'enabling development'. Permission should only be granted if the asset is not materially harmed, and the applicant convincingly demonstrates that on balance, the benefits clearly outweigh any disbenefits, not only to the historic asset or its setting, but to any other relevant planning interests.

English Heritage has therefore produced this policy statement

- to ensure that we offer consistent advice on those proposals for enabling development relating to outstanding heritage assets, which must be referred to us for advice;
- to encourage a rigorous approach by planning authorities to the assessment of proposals for enabling development affecting any heritage asset;
- to help those seeking consent for enabling development by making them aware of the tests that are likely to be applied and the extent of the supporting information required.

This statement applies only to development contrary to established planning policy. It does not apply to proposals to secure the future of historic assets that are in accordance with the statutory development plan and national policy.

The advice in this policy note is intended to amplify and reinforce, and should be used in conjunction with, the well established criteria set out in PPG 15, Planning and the Historic Environment, especially those relating to applications for the alteration or demolition of listed buildings; and PPG 16, Archaeology and Planning.

**Heritage Asset** is used in this statement as shorthand for any component of our historic environment, including

- scheduled monuments and other archaeological remains
- historic buildings both statutorily listed or of more local significance
- conservation areas
- historic landscapes, including registered parks and gardens and registered battlefields.

**English Heritage believes that there should be a general presumption against 'enabling development' which does not meet all of the following criteria:**

- The enabling development will not materially detract from the archaeological, architectural, historic, landscape or biodiversity<sup>1</sup> interest of the asset, or materially harm its setting
- The proposal avoids detrimental fragmentation of management of the heritage asset
- The enabling development will secure the long term future of the heritage asset, and where applicable, its continued use for a sympathetic purpose
- The problem arises from the inherent needs of the heritage asset, rather than the circumstances of the present owner or the purchase price paid
- Sufficient financial assistance is not available from any other source
- It is demonstrated that the amount of enabling development is the minimum necessary to secure the future of the heritage asset, and that its form minimises disbenefits
- The value or benefit of the survival or enhancement of the heritage asset outweighs the long-term cost to the community (ie the disbenefits) of providing the enabling development

If it is decided that a scheme of enabling development meets all these criteria, English Heritage believes that planning permission should only be granted if:

- The impact of the development is precisely defined at the outset, normally through the granting of full rather than outline planning permission;
- The achievement of the heritage objective is securely and enforceably linked to it, bearing in mind the guidance in DOE Circular 01/97, Planning obligations;
- The heritage asset is repaired to an agreed standard, or the funds to do so made available, as early as possible in the course of the enabling development, ideally at the outset and certainly before completion or occupation;
- The planning authority closely monitors implementation, if necessary acting promptly to ensure a satisfactory outcome.

<sup>1</sup> Biodiversity was included in 2001 at the suggestion of English Nature.

The criteria follow a logical order for consideration, and can be used as a checklist, but are not ranked in order of importance.

They may also be helpful in framing exception policies in local plans in relation to enabling development.

## Overview

### What is enabling development?

Enabling development is development that is contrary to established planning policy – national or local – but which is occasionally permitted because it brings public benefits that have been demonstrated clearly to outweigh the harm that would be caused. The benefits are paid for by the value added to land as a result of the granting of planning permission for its development, so enabling development can be considered a type of public subsidy. It has been proposed in support of a wide range of public benefits, from opera houses to nature conservation, but this guidance is concerned primarily with enabling development proposed to secure the future of heritage assets. Nonetheless, the principles are equally applicable to biodiversity interests, which often exist side by side on the same site.

Most development that involves bringing heritage assets into optimum beneficial use, or maintaining them in such use, is in accordance with policy as defined in the statutory development plan. **This is not enabling development.** Its defining characteristics are that it is contrary to established planning policy, and that the gain from contravening policy subsidises a public benefit that could not otherwise be achieved. Thus, unlike most planning applications, financial issues are central to determining proposals for enabling development.

Enabling development varies greatly in form and scale. Whilst often associated with proposals for residential development to support the repair of a country house, it can include, for example, an extension, perfectly acceptable in historic building terms, that is slightly greater than the maximum permitted under development plan policies in rural areas; or a change of use, compatible with the character and appearance of a listed building, but contrary to development plan policy. It may be proposed within the asset or its setting, or on some distant site in the same ownership.

### Why the concern?

Enabling development became a cause of concern because schemes have been permitted that have:

- caused material harm to the heritage asset, its setting, or a larger historic entity of which it forms part. This is generally self-defeating, since it detracts from the very thing that it was intended to preserve. In many cases, inevitable harm rules out the possibility of a solution through enabling development
- not been demonstrated as being necessary, whether in principle or in scale, to achieve the benefit
- delivered the harm but not the benefit, leaving matters worse than before.

Major proposals for enabling development can be amongst the most complex that many local authorities will encounter. Their assessment demands access to a wide range of skills, whilst keeping clearly in mind the question of whether the benefits would outweigh the harm.

**The importance of the planning framework** (Section 1)

The complex task of assembling (by the applicant) and assessing (by the planning authority) an application for enabling development is greatly assisted by appropriate provision in the local planning framework. Exception policies in statutory development plans, and site-specific policies or, more usually, planning briefs for problematic heritage assets where enabling development is likely to be proposed, are highly desirable as a considered starting point. Both applicants and planning authorities need access to the right range of professional skills.

**Quality decisions depend on full information** (Section 2)

Where the appearance of enabling development is crucial to its acceptability – as it often is – outline applications are not appropriate. But full information is necessary not just about physical impact, but also the financial considerations that are fundamental to the decision. Local authorities have adequate powers to demand it. Transparency in decision-making is best achieved through openness.

**The importance of understanding the asset** (Section 3)

The nature and significance of the asset concerned, as a whole and in its parts, is fundamental to any decision about its future. That understanding needs to develop in parallel with the evolution of proposals that should aim to protect significance. Rapid assessment can provide an initial framework, leading to detailed survey and analysis, and targeted specialist investigation. Conservation and Management Plans may be necessary to underpin long-term management, based on a consensus of informed opinion. Heritage Impact Assessment should form the basis of evaluating options, and mitigation strategies devised to minimise detrimental impact on significance.

Assessment is ideally an interactive process between planning authority and applicant, most effectively prior to the submission of a formal application. It necessarily involves consultation with the communities and constituencies whose interests are involved. However, the onus is on the applicant to justify an assertion that a particular form of development is the least damaging way of achieving what may be a common objective.

**Identifying options** (Section 4)

Uses or management strategies must not only be compatible with the historic form, character and fabric of the asset, but be financially viable in the long term. For buildings that have significant market value once returned to beneficial use, this is not usually a great problem; but if they do not, there must be clarity about who will manage the asset in the long term, and how recurrent costs will be met. Normally, the case for subsidy through enabling development depends upon the cost of repair and conversion to beneficial use being greater than market value on completion of those works. Subsidy is necessary if the gap is to be closed, whether from grants, enabling development, or a combination of the two.

Market testing is normally the first step in establishing the need for subsidy. However, some heritage assets form part of a larger historic entity – typically a combination of building, historically-associated contents and land – which if broken up through sale would result in the loss of much of the significance (the cultural value) of the entity. In these circumstances, the objective of enabling development can, legitimately, be to keep the entity together by ensuring that, taken as a whole, it is viable in revenue terms in the medium to long term.

### **Quantifying need** (Section 5)

Establishing and quantifying need is at the heart of any application for enabling development. It would not be reasonable for any planning authority to grant consent unless it was satisfied that need had been demonstrated through the submission of a fully-argued case by the applicant, and rigorous testing by the authority.

Specialist expertise is required to judge whether the extent of works proposed, the costs, the profit levels, and the anticipated final values are fair and reasonable in all the circumstances.

### **Making the decision** (Section 6)

The process of decision-making, its transparency, and the clarity of the reasoning underlying the decision are particularly important when the interests of many stakeholders and a significant public subsidy are involved. Heritage assets are by their nature a finite and irreplaceable resource. Their preservation is therefore a high priority, but this does not automatically justify doing so through enabling development if the disbenefits are demonstrably out of proportion to the heritage value of the asset. The sustainability of the development in the long term, and its impact on all stakeholder groups, often determined by community participation in the decision-making process, are particularly important considerations to weigh in the balance. But enabling development is a legitimate planning tool; if, after full assessment, the balance of advantage clearly lies in approval, planning permission should be granted.

### **Securing the benefits** (Section 7)

Success depends on the benefits of the proposal being properly secured. Legally enforceable arrangements must be put in place to ensure that the commercial element of the development cannot be carried out or used without the heritage benefits on which the scheme has been predicated being delivered first. This will normally require a section 106 agreement, which, where appropriate, should also secure management arrangements to protect the significance of the asset in the long term.

### Monitoring and enforcement (Section 8)

The implementation of the development, and the delivery of planning obligations and discharge of conditions, needs to be actively and formally monitored by the local planning authority. Breaches of obligation or condition must be addressed as soon as they occur. When the scheme is complete, the outcome should be compared with expectations, and the results should inform future decision-making.

### Practical application

The principles are applicable to enabling development of any scale, and the same range of professional skills is usually needed, but they must be applied, and advice sourced, in proportion to the scale and complexity of the project proposed. The guidance assumes, indeed seeks to encourage, the evolution of enabling development proposals through pre-application discussion, so that they are submitted with the necessary supporting information, and determination is not unduly protracted. If, during this process, it appears to an authority that it is unlikely that a case for enabling development can be substantiated, the potential applicant should be so informed at the earliest possible opportunity, to avoid nugatory expenditure on both sides. Whilst the assessment process can be complex, it should be pursued with all reasonable speed, particularly if the asset is deteriorating at a significant rate.



### St Alban's Church

Teddington, London Borough of Richmond upon Thames

This vast church, listed grade II\*, was built in 1886-9 opposite the tiny historic church opposite, but remained incomplete to the west. In 1977 it was abandoned in favour of the old church and became derelict. At a non-statutory public inquiry in 1986, English Heritage opposed the subdivision of the magnificent interior, and subsequently worked with the Diocese of London and Richmond Borough Council to find a better way forward. Land at the west end of the site was sold to the Thames Valley Housing Association for a development of 44 flats designed by the Culpin Partnership. Repair of St Alban's was completed in 1993, with the aid of £500,000 from the land sale and an English Heritage grant of £250,000. It is now held on a long lease from the Diocese by a building preservation trust, and houses the Landmark Arts Centre.

## The concept of enabling development

Many planning applications affect heritage assets. Most either enhance, or are not materially damaging to, the asset or its setting, they conform with statutory development plan policies, and planning permission rightly follows. Creative adaptation and development, which makes the most of the opportunities that historic buildings and places present, whilst respecting their integrity, is often vital to securing their future by facilitating their continued use and enjoyment. It can make a major contribution to regeneration strategies.

By contrast, 'enabling development', whilst it would achieve significant benefit to a heritage asset, would normally be rejected as clearly contrary to other objectives of national, regional or local planning policy. Such proposals are put forward on the basis that the public benefit of rescuing, enhancing or even endowing the heritage asset (and sometimes additional objectives, for example providing employment or affordable housing) would outweigh the harm to other material interests and so justify their being carried out.

This statement addresses only 'enabling development' intended to facilitate the conservation of heritage assets, although the concept has a much wider application in relation to, for example, arts and social projects and the conservation of the natural environment. It is not a statutory term, but was confirmed as a legitimate planning tool in 1988 when the Court of Appeal, in *R v. Westminster City Council ex parte Monahan*, upheld the validity of a planning permission authorising office development, even though contrary to the development plan, on the basis that it would provide funds to improve the Royal Opera House, Covent Garden, unobtainable by other means.

The vast majority of heritage assets survive because they are capable of beneficial use. Their usefulness to, and appreciation by, their owners, not just value in the property market, justify their maintenance, either in their own right or as part of a larger entity. An historic garden, for example, normally adds to the amenities and value of a house. The problem which enabling development typically seeks to address is that the cost of maintenance, major repair or conversion to the optimum viable use of a building is greater than its resulting value to its owner or in the property market. This means that a subsidy to cover the difference – the 'conservation deficit' – is necessary to secure its future.

The scale and range of enabling development proposals varies greatly. Whilst often associated with proposals for residential development to support the repair of a country house, it can include, for example, an extension acceptable in historic building terms, but exceeding the maximum permitted under development plan policies in rural areas; or a change of use, compatible with the character and appearance of a listed building, but contrary to policy. It may be proposed within the asset or its setting, or on some distant site in the same ownership.

*In Northumberland County Council-v-Secretary of State for the Environment, (1989) JPL 700, 702, it was held that the land to be benefitted does not have to be in close proximity to the land which is the subject of the application.*

Our protective legislation is based on a consensus that the cost of the constraints on owners of heritage assets is outweighed by their cultural value, the benefits which they bring to present and future generations of society as a whole. Only when their value to their owners, whether intellectual or financial, does not facilitate their maintenance does the community have to weigh the size of the subsidy necessary to maintain them against the less tangible cultural heritage value of the assets.

The essence of a scheme of 'enabling development' is that the public, typically the community in a particular area, accepts some disbenefit as a result of planning permission being granted for development which would not otherwise gain consent, in return for a benefit funded from the value added to the land by that consent. Such proposals are normally only entertained when the funds cannot be generated in any other way. So unlike most planning decisions, the financial consequences of the granting of permission are not only relevant but fundamental to the decision-making process.

Success therefore depends crucially on the integrity and sustainability of the heritage asset not being materially compromised by the development, the ability of the scheme to deliver the promised result, and consensus that public gain outweighs public loss. Such a consensus is indeed vital to acceptability. It follows that, even were it physically possible to accommodate enabling development, it will not necessarily be acceptable to do so, even if there is no other apparent source of the subsidy necessary to secure the future of a particular historic asset.

These are not decisions to be taken lightly. They should follow the evaluation of all potential options as part of the assessment process. The enabling development may, for example, lie within a Green Belt, on which government policy is clear; indeed the principle is relevant to all decisions involving enabling development:

'Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.' (PPG2, para3.2)

In summary, enabling development is an established and useful planning tool by which a community may be able to secure the future of a heritage asset, and sometimes other benefits, provided it is satisfied that the balance of public advantage lies in doing so.

Guidance on adaptation of listed buildings to new uses is set out in PPG 15, paras 3.8-3.11. In order to minimise the conservation deficit, 'the aim should be to identify the optimum viable use that is compatible with the fabric, interior and setting of the historic building. This may not necessarily be the most profitable use if that would entail more destructive alterations than other viable uses.' (para 3.9)

Stopping the Rot (English Heritage, 1999) provides a practical, step by step guide to serving Urgent Works and Repairs Notices

Aware of the problems which planning authorities can face in using their statutory powers, English Heritage can offer grants to planning authorities to underwrite the irrecoverable costs of serving

- Urgent Works Notices in respect of buildings listed Grade I or II\*, and Grade II in conservation areas or anywhere in Greater London
- Repairs Notices in respect of any listed building.

Details and application forms are available from English Heritage.

## Reducing the need for enabling development

In many cases, the need for a major injection of funds to secure a sustainable future for a heritage asset has arisen because its condition has been allowed to deteriorate over a considerable period of time. Functional redundancy, leading to the need to find the optimum viable new use, is often blamed for this. But whilst it is an inevitable part of the life cycle of many historic assets, it is not inevitable that it should lead to rapid decay, and the vandalism which an obviously abandoned building attracts, so that enabling development is almost inevitably proposed as a 'solution'.

In far too many cases, if

- the owner had taken timely action to prevent or limit deterioration, or in default, the planning authority had used its statutory powers; and/or
- the planning authority had set out a site-specific policy or a planning brief when it was clear that the problem would arise

the conservation deficit, and hence the need for subsidy, would either not have arisen or would have been much smaller.

PPG15, Planning and the Historic Environment, emphasises that 'Regular maintenance and repair are the key to the preservation of historic buildings. Modest expenditure on repairs keeps a building weather tight and routine maintenance ... can prevent much more expensive work being necessary at a later date. Major problems are very often the result of neglect, and, if tackled earlier, can be prevented or reduced in scale. Regular inspection is invaluable.' (Para 7.1)

This advice holds good for all heritage assets and is fully in accordance with the application of the principles of sustainability. Maintenance should be timely, not deferred.

In Buildings at Risk – A New Strategy (April 1998), English Heritage has stressed the importance of local planning authorities monitoring the condition of their listed building stock and taking preventative action as soon as a heritage asset shows significant signs of neglect, not waiting until it is in extremis. It is vital to use persuasion, backed up by Urgent Works and, if appropriate, Amenity (S215) Notices, to stem neglect at an early stage, and prevent further deterioration whilst a long-term solution is found.

It should be self-evident that in areas of England where property values are relatively low, a conservation deficit arises much earlier in the spiral of decay, further emphasising the need for a rapid response to problems as they arise.

Market circumstances are also relevant. Historically, the UK property market has been strongly cyclical. When values are at their lowest, and risks heightened through lack of demand, the amount of enabling development necessary to achieve a particular objective will be much higher than in a more buoyant market.

Should the circumstances of, say, 1989-90 recur, it will be worth considering mothballing the asset – minimum works to make wind and weathertight, and secure, to prevent further deterioration – or ‘meantime uses’ – in anticipation of an acceptable scheme being viable as the market recovers.



Orchardleigh Estate  
Frome, Somerset

Orchardleigh House, listed grade II\*, was built in 1855 on a new site within an historic park of earlier origin, included on the English Heritage register at grade II\*. Since its sale in 1987 after a period of low maintenance, one golf course intended as part of a package of enabling development has been completed, and another begun, but the house remains unrepaired and unused. Further proposals will be the subject of a public inquiry in 2001.



# The practical guide to assessment

## 1 The planning framework: Roles and responsibilities

### 1.1 The role and responsibilities of the planning authority

As we set out in *Development in the historic environment* (1995), 'local authorities have a responsibility to conserve the cultural built heritage in their areas, through the use of their planning powers and appropriate management of the physical resource'. Such management demands, particularly:

- the availability of expert professional advice, generally from specialist conservation staff with appropriate expertise, and/or from external consultants
- a detailed local policy framework, based on statutory plans, for the management of historic monuments, buildings and areas, identifying opportunities as well as constraints.

### 1.2 Enabling development and the statutory development plan

1.2.1 The role of the statutory development plan is to establish appropriate land use planning policies for the area. Since by definition, 'enabling development' is development contrary to established planning policy, it is logical to set out the grounds for making exceptions as part of the plan-making and review process. The decision-maker will then be better equipped to consider, in the context of a specific planning application, whether and to what extent an exception may be necessary to secure the future of a heritage asset. The case for enabling development ultimately depends on demonstrating that the cost of repair (and where appropriate, conversion to optimum beneficial use), plus other valid development costs (considered in Section 5), is greater than the value on completion. Since optimum uses, costs and values fluctuate over time, the case can only be properly considered in the context of a specific application, whose assertions should normally be tested by first offering the property on the open market (see Section 4.6). If a case for enabling development is made, a legally binding and enforceable link to its heritage objective can only be achieved in the context of a grant of planning permission.

- 1.2.2 Normally, therefore, 'enabling development' is a concept relevant to statutory development plans only to the extent of setting out, in an 'exception policy', the criteria against which such applications will be considered. Local authorities should consider including such a policy, particularly if they are aware that enabling development is likely to be proposed as a means of securing the future of heritage assets. The criteria set out in the *Policy Statement* provide an appropriate starting point for framing of such policies, the key points being that the enabling development must preserve the asset and not materially harm its setting; that the proposals are capable of securing its long-term future; that the need stems from the nature of the asset rather than the circumstances of the owner; that the development is the minimum necessary to address that need; and that there is a clear balance of advantage to the community in allowing the development. Whilst there is a presumption in favour of the preservation of listed buildings and other designated heritage assets, it does not automatically over-ride all other considerations, not least those relating to environmental assets. Above all, enabling development must be securely and enforceably linked to the heritage objective.
- 1.2.3 The process of revision of statutory development plans can be protracted. Where the need for, or desirability of, an 'exceptions policy' becomes clear, but one cannot be incorporated into an adopted statutory development plan for some time, local planning authorities should consider producing and adopting Supplementary Planning Guidance, which can be incorporated into the statutory plan at the next opportunity.
- 1.2.4 Owners may propose, through the statutory development plan process, provision for development on the grounds that it would help, or even be essential, to secure the future of a heritage asset. For example, an historic estate may press the case for rural housing provision to be on their land rather than elsewhere, on the grounds that the value generated will help to secure the estate's future, or fund essential repairs. Where the estate is owned by a charitable trust whose primary objective is its preservation, or by an owner who has given undertakings relating to proper maintenance, repair and public access in return for exemption from capital taxation, the argument has some validity, and can reasonably be weighed in the balance with other material considerations. Otherwise, if such land is defined for a particular purpose, then development for that purpose would be in accordance with the plan. By definition it would not be enabling development, and so could not be securely and enforceably linked to benefit to the heritage asset. Any link would depend on the goodwill of the owner; and owners, and their circumstances, can change in quite unforeseeable ways.

'It is important that clear policies are formulated for cases where new development is proposed in order to provide income for the upkeep of historic buildings'. (PPG 15, para 2.8)

1.2.5 Similarly, the owners of a heritage asset which is at risk may seek recognition of the need for enabling development in a site-specific policy in the statutory development plan. In considering such proposals, it may on occasion be reasonable (on the basis of professional scrutiny of feasibility and viability studies) to accept that enabling development may be possible and necessary, subject to need and acceptability being fully demonstrated at the time of application (when costs and values may be very different), and the quantum of such development, if any, being limited to no more than is necessary to secure the long-term future of the heritage asset. If so, a site-specific policy should be backed up by an 'exceptions policy', as set out in 1.2.2. Caution is required, however, if hostages to fortune are to be avoided. It is vital not to make any 'enabling development' proposed in this way, development in accordance with the statutory development plan, or the potential for a legally enforceable link to the benefit to the heritage asset will be lost. That in turn may lead to an application for yet more development to achieve the heritage objective.

### 1.3 The importance of planning briefs

1.3.1 Many proposals for enabling development concern vulnerable assets whose future or sustainability has been a matter of concern for some time. Local authorities should identify these, and draw up planning briefs or supplementary planning guidance for each, so as to seize the initiative, and put the authority in proactive rather than reactive mode. The document, whilst making clear that a solution will not necessarily involve enabling development, should:

- include at least an outline assessment of the character and significance of the heritage asset(s), together with any studies already undertaken, for example conservation area character appraisals and other landscape assessments that place the asset in context
- summarise the physical and policy constraints, including their management and maintenance implications
- draw attention to any opportunities
- set out the aims and concerns of the authority and community.

1.3.2 Such a brief will provide the basis for preliminary discussion with potential new owners or developers, and should serve as a clear deterrent to acquisition on the basis of unjustified 'hope value'.

#### 1.4 The role and responsibilities of the developer

The statement of the responsibilities of developers (including private owners seeking planning permission) set out in *Development in the historic environment* (1995) is generally relevant to proposals for enabling development. They should:

- **most importantly** , hold pre-purchase discussions with the local planning authority, to avoid unrealistic expectations
- be fully aware, through commissioning the necessary expert advice and an adequate assessment of the asset, of its architectural, historical, and archaeological interest in its wider historic context as well as intrinsically, and thus the opportunities and constraints
- explore a range of alternative development strategies
- set a realistic timescale for the proposed development, especially for preparing and submitting applications
- seek early, pre-application consultation with all likely to have a significant interest
- provide the local planning authority with clear, detailed proposals, supported by relevant and adequate information on the likely impact of the application
- demonstrate that the guidance in government policy and the statutory plan has so far as possible been followed
- propose an appropriate mitigation strategy
- be prepared to enter into any related legal agreements, such as a section 106 agreement, necessary to tie the implementation of the proposals to securing the future of the asset.

#### 1.5 Professional advice

- 1.5.1 Many problems arise for both developers and local authorities when they do not have access to professional advisers with appropriate experience in dealing with the historic environment.
- 1.5.2 The process of understanding a site and systematically developing an appropriate scheme requires a range of professional skills. This does not mean that every project requires a battery of specialists, but it is essential to have the range and depth of skills and experience to understand the asset and its significance, and to develop options which respond sensitively to it within the framework of planning policies for the historic environment. As well as first

rate design skills, specific expertise in, for example, architectural history, archaeology and ecology may be needed. The local authority should be willing and able to provide advice to developers on the specialist skills necessary for a particular project, a brief for the information required, and a justification for their requirements.

### 1.6 The role of English Heritage

- 1.6.1 English Heritage wishes to encourage informal, pre-application consultation with its regional teams about any proposal for enabling development that concerns an asset about which it must be statutorily consulted at application stage – grade I and II\* listed buildings and registered landscapes, all scheduled ancient monuments, and major developments in conservation areas.
- 1.6.2 Where enabling development would affect an historic designed landscape not included on the English Heritage register of parks and gardens of special historic interest, the local planning authority should, at an early stage, seek advice from the English Heritage (central) Designed Landscapes Team as to whether the landscape may be of special historic interest in the national context, and thus qualify for inclusion. If so, it can be added at the outset, and its status and significance will then inform subsequent discussion and decisions; if not, its status is clarified, and English Heritage may be able, through the assessment process, to indicate the interest of the site in its local context.

### Norton Bavant

Beech, Alton, Hampshire

One of a small surviving group of corrugated iron and timber-frame colonial-style houses built for quick occupation just after the Boer War, apparently constructed for the daughter of the Bishop of Jerusalem. All the original joinery and details of this grade II listed building remain. In order to fund its proper repair, the local planning authority granted permission for the reinstatement in its grounds of a thatched cottage destroyed some 40 years ago, in order to fund its proper repair. The section 106 agreement requires a repair schedule to be agreed within 10 weeks of the decision; and repairs to be completed within 22 months of agreeing the schedule, prior to completion and occupation of new cottage. The agreement also secured public access at certain times upon request and a commitment to regular maintenance.



## 2 The legal basis for requiring the financial and other justification necessary to determine applications

### 2.1 Introduction

2.1.1 It is of the essence of proposals for enabling development that a scheme which would otherwise be unacceptable in planning terms is the only practicable means of generating the funds needed to secure the future of the heritage asset in question. It is entirely appropriate, therefore, to require applicants to provide evidence to the local planning authority in support of such a claim, particularly financial evidence.

2.1.2 Where the appearance of the enabling development is crucial to its acceptability, or it could have a significant impact on the special interest of the asset – as is often the case – outline planning permission with substantive matters reserved for later approval is not appropriate. The ‘illustrative material’ may be convincing, but it cannot be regarded as representing how the scheme would appear when built. If, for example, implementation involves onward sale, a new developer may bring forward standard house types, larger buildings or substitute materials, which will be difficult to resist if appearance was not clearly at the heart of the original decision. The professional team may change, leading to changes of siting, or the dilution of the quality or integrity of the design, despite these factors being crucial in making the development acceptable. Highways requirements with regard to access and sight lines may have a quite disproportionate effect on the integrity of the asset. It is essential that the decision is based on a full understanding of the impact on the asset and its setting.

### 2.2 Full applications for planning permission

2.2.1 Local planning authorities have general powers in Regulation 4 of the *Town and Country Planning (Applications) Regulations 1988* (SI1988/1812) to direct an applicant for full planning permission to:

- supply any further information, including plans and drawings, necessary to enable them to determine an application; and to
- provide one of their officers with any evidence in respect of the application as is reasonable for them to call for to verify any particulars of information given to them.

‘Planning permission should only be granted if ... the impact of the development is precisely defined at the outset, normally through the granting of full rather than outline planning permission’

- 2.2.2 This power of direction is wide ranging. It is conferred upon local planning authorities free of any particular procedural requirements, save that the direction must be in writing. Local planning authorities are urged, therefore, to issue such directions if any information that is needed to justify the proposal is not otherwise forthcoming. If such directions are not complied with, then in all probability the applicant will not have demonstrated that the detriment inherent in a scheme of enabling development is justified by the benefits. Accordingly, refusal of planning permission is likely to be appropriate.
- 2.2.3 The power of direction under Regulation 4 cannot be used to require plans and drawings to be provided in the case of applications for outline planning permission. This is because separate provisions apply in these circumstances, namely those in article 3(2) of the *Town and Country Planning (General Development Procedure) Order 1995* (SI1995/419). It provides that where the local planning authority is of the opinion that an outline application ought not to be considered separately from all or any of the reserved matters, then the applicant must, within one month, be notified that the local planning authority is unable to determine the application unless further details are submitted as specified.
- 2.2.4 As we have made clear in the *Policy Statement*, because of the sensitivity of enabling development proposals, applications in outline will not normally be appropriate. However, if an application is made in outline, the local authority should use the provisions in article 3(2) to ensure that the potential impact on the heritage asset is defined. The temptation to grant outline planning permission on the basis that a scheme of enabling development appears acceptable as a broad matter of principle should be avoided. Once outline planning permission has been given, resisting applications for approval of reserved matters may be difficult, as the principle of development has been established.

### 2.3 Associated applications for listed building consent or scheduled monument consent

- 2.3.1 Applications for planning permission for enabling development concerning listed buildings, including changes of use, should normally be accompanied by any necessary applications for listed building consent, so that the impact on their special interest will be clear (PPG 15, para 2.12). This will not only allow the effect of the development on the listed building to be given proper and full consideration, but also avoids any suggestion being made, however mistakenly, that the granting of listed building consent has been pre-empted by an earlier grant of planning permission.
- 2.3.2 Paragraph 3.4 of PPG 15 explains that it is for applicants for listed building consent to justify their proposals and show why the works in question are desirable or necessary. As part of this responsibility, applicants should provide the local planning authority with full information to enable them to assess the likely impact of proposals.

2.3.3 If the enabling development is in support of, or involves, work to or on a scheduled monument, application to the Department for Culture, Media and Sport for scheduled monument consent should be made in parallel with any planning application, and the application copied to the local planning authority in support of the planning application.

## 2.4 Environmental Impact Assessment (EIA)

2.4.1 Projects may require an EIA if they fall within a description listed in the *Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999/293)*. The *Regulations* provide a systematic procedure for assessing the environmental implications of development likely to have significant environmental effects. Projects listed in Schedule 1 to the *Regulations* must always be subject to an EIA; those within Schedule 2 require an EIA if they are likely to have significant effects on the environment by virtue of factors such as size, nature or location.

2.4.2 Most of the categories in Schedule 1 to the *Regulations* are heavy industrial developments, such as power stations and chemical installations, and so it is unlikely that proposals for enabling development will fall into them. Schedule 2 contains a wider range of developments which are more likely to be relevant to enabling development proposals, particularly

- Urban development projects (Paragraph 10 (b))
- Holiday villages and hotel complexes outside urban areas (Paragraph 12 (c))
- Golf courses (Paragraph 12 (f)).

For further information about the 1999 *Regulations*, see DETR Circular 2/99, *Environmental Impact Assessment*.

## 2.5 Transparency and accountability in decision-making

Enabling development is often seen as being an alternative to public funding; but arguably, it is more akin to a type of public funding. The idea of the community losing one asset to acquire a greater one is, after all, analogous to the that of individuals paying taxes to acquire the right to public goods and services – including the conservation of our historic environment. The essential difference is that the community pays in kind which is converted to cash, rather than cash itself. On this premise alone, enabling development should be subject to the same degree of financial scrutiny, transparency and accountability as cash grants from public funds, or indeed all financial and quasi-financial decisions made by public authorities. The exercise of due diligence is essential.

## 2.6 Financial information

- 2.6.1 Much of the information that the local planning authority requires for a scheme of enabling development is the same as for any development involving a listed building, its setting, or any other sensitive location in which design and materials are particularly important. The main difference is that **financial considerations are fundamental to the decision**, from which follows a need not only for the information to be supplied, but also for critical assessment by appropriately-qualified professionals. Thus the local planning authority should ensure that it has sufficient information to make an informed decision upon the application. If it fails to do so, its decision may be vulnerable to judicial review and less likely to be supported on appeal.
- 2.6.2 The information supplied should cover all financial aspects of the proposed enabling development, at a sufficient degree of detail to enable scrutiny and validation by the local authority and its professional advisers. This applies both to the definition of need – the condition of the asset and the means and cost of addressing its problems – and the definition of the scale of development necessary to meet that need. It must also be demonstrated that sufficient funds are not realistically available from any other source, particularly grant aid.
- 2.6.3 If it is decided to grant planning permission, the authority should require accountability, ideally involving an ‘open book’ approach between the parties, and certainly disclosure of the actual out-turn. A willingness to do so is always a powerful expression of good faith.

## 2.7 The cost of critical assessment

- 2.7.1 It is important that the financial justification submitted, and the assessment of the needs of the asset which underlies it, are subject to a proper critical assessment by an appropriate professional team. If a local planning authority does not have the full range of expertise in house, it will clearly be necessary to involve external consultants. The principle is exactly analogous to the common use of consultant engineers to check structural calculations submitted in support of applications for Building Regulation approval.
- 2.7.2 Critical assessment inevitably involves some expense. An applicant who believes that the figures support a case for enabling development may agree to meet or contribute to the cost. However, the refusal or inability of an applicant to contribute does not avoid the need for scrutiny, nor can it be taken to imply that their case is not well-founded. If a contribution is offered, it is of course essential that the appointment is made directly and solely by the local authority, uninfluenced in any way by the applicant.

## 2.8 Confidentiality

- 2.8.1 Applicants may well be reticent about providing financial information which is commercially sensitive, or claim that information that they would prefer not to provide is commercially sensitive. However, confidentiality cannot outweigh the need for proper financial information where the financial case is at the heart of the applicant's submission. It will normally be appropriate to treat such information supplied in pre-application discussions in confidence, especially where a heritage asset is being competitively marketed. There are provisions in Part VA of the Local Government Act 1972 which allow 'exempt information', including financial information of this kind, to be considered by local authority committees in private session. But once a planning application is made, such an approach effectively negates the ability of third parties to come to a view as to whether or not the benefits outweigh the disbenefits, which of itself may generate opposition.
- 2.8.2 Ultimately, the applicant must decide whether the possible success of the application justifies releasing financial information that would otherwise remain wholly confidential. But if applicants are unwilling to supply the very information that is the foundation of their case for over-riding normal planning policies, refusal becomes all but inevitable. If the case goes to appeal, all relevant information is, in any event, likely to become public. At an inquiry, particularly, the credibility of a case for enabling development will depend not only on making available the development appraisal, but on the developer or his advisors being willing to answer questions about it.

### Some relevant appeal decisions: necessity for adequate information

'The danger of sanctioning [enabling] development without robust valuation evidence is that, at one extreme, the degree of intrusive rural development might be excessive and, at the other, the extent of funding might prove inadequate. In the latter case, the local planning authority might find themselves in the invidious position of having to authorise further such development in conflict with their adopted policies merely to make good the deficit' (*Whatcroft Hall, 1995*)

'Moreover, although an agreement under Section 106 of the Planning Act has been concluded, the evidence which you have produced regarding conservation costs and enabling development value is inadequate. On the one hand, the cost of restoring a 70 metre run of collapsed wall is put at £67,387 plus additional, largely undisclosed, costs for the repair of the remainder of the roughly 265m perimeter. Not only did my site inspection suggest that 40% of the walling (ie 100m in length) might need rebuilding or repair, but there is no equivalent evidence regarding development value. The proportionality of enabling development and planning gain by conservation is impossible to establish, even if I were satisfied on the planning and listed building merits of the appeals, which I am not.' (*Bowden Cottage, 1995*)

'There is no evidence to support the appellant's contention that a golf course is the only form of development which would provide the necessary maintenance funds without having to seek a change of use for the house.' (*Draycott, 1999*)

### Wymondley House

Stevenage Road, Little Wymondley,  
Hertfordshire

This grade II\* listed country house was built in 1724, with later extensions, including a ballroom and conservatory of 1904. Planning permission was granted for 17 dwellings in the curtilage, in accordance with policy, but with the intention that the developer would fund the conservation deficit on the repair and conversion of the main house to flats. Consent for a further two detached houses, to cover a shortfall that had arisen because of a subsequent slump in the housing market, was refused. That decision was upheld on appeal in 1995, primarily because of the detrimental impact on the garden setting of the house. It was then sold to another developer, who carried out the conversion without any additional development.



#### Practical points

Local authorities should

- Wherever possible, seek full information at pre-application stage
- Use their powers to demand the information reasonably necessary to make a justifiable decision – a checklist is at **Appendix 1**
- If an outline application is submitted, consider whether it is appropriate to serve a statutory notice requiring full details, or details of design or siting, to determine the impact of proposed development – this must be done within a month
- Seek associated applications for listed building consent, so that they can be considered concurrently with the planning application
- Establish a policy in relation to seeking applicants' contributions to assessment costs
- Treat enabling development applications to as much scrutiny as any public financial transaction
- Make standing arrangements for obtaining ready access to specialist expertise

### 3 Understanding the heritage asset and mitigating impact

#### 3.1 The importance of understanding the heritage asset

- 3.1.1 The cases which have caused most concern in recent years have involved balancing the impact of a proposal on one aspect of the historic environment against another. As the historic environment is increasingly recognised as a complex whole, it is clear that there are rarely simple solutions. For example, it is not acceptable significantly to damage a designed landscape forming the setting of an historic building simply to finance the building's repair, or *vice versa*.
- 3.1.2 Some change is not only inevitable but can be positive, provided it displays a high quality of design in context. However, whilst skillful design will make the most of opportunities which exist, intrinsic design quality cannot overcome objections of principle in relation to siting and volume.
- 3.1.3 Understanding the impact of enabling development on the special interest and integrity of a heritage asset involves exactly the same approach to appraisal and judgement as any other development or indeed management proposal. The more clearly the archaeological, architectural, landscape or historic interest of an asset in its setting is understood at the outset, the easier it is systematically to develop a scheme which minimises detrimental impact by recognising both constraints and opportunities. Therefore, understanding the evolution and significance of a heritage asset, as a whole and in its parts, must be first stage in considering its future, and the result a key component of the eventual application. This process has recently been defined by English Heritage as Conservation-based Research and Analysis (CoBRA).
- 3.1.4 The overall significance of a site, whether historical or environmental, is usually (but not always) reflected in its designation and grade. But such broad divisions need to be refined in order to provide a basis for decisions about intervention and management, not only articulating the key values, but relating them to specific elements of the site.
- 3.1.5 If we are to pass on to future generations the historical and environmental capital that we have inherited, we need not only to be clear about how sites are significant, but also how that significance is vulnerable. Abandonment, decay, or demolition are obvious issues, but small scale erosion of character, divided ownership, and inappropriate uses can have a massive cumulative effect. The concept of vulnerability is essential to guide thinking about development potential, and underpin assessments of the impact of proposals.

'The enabling development will not materially detract from the archaeological, architectural, historic, landscape or biodiversity interest of the asset, or materially harm its setting'

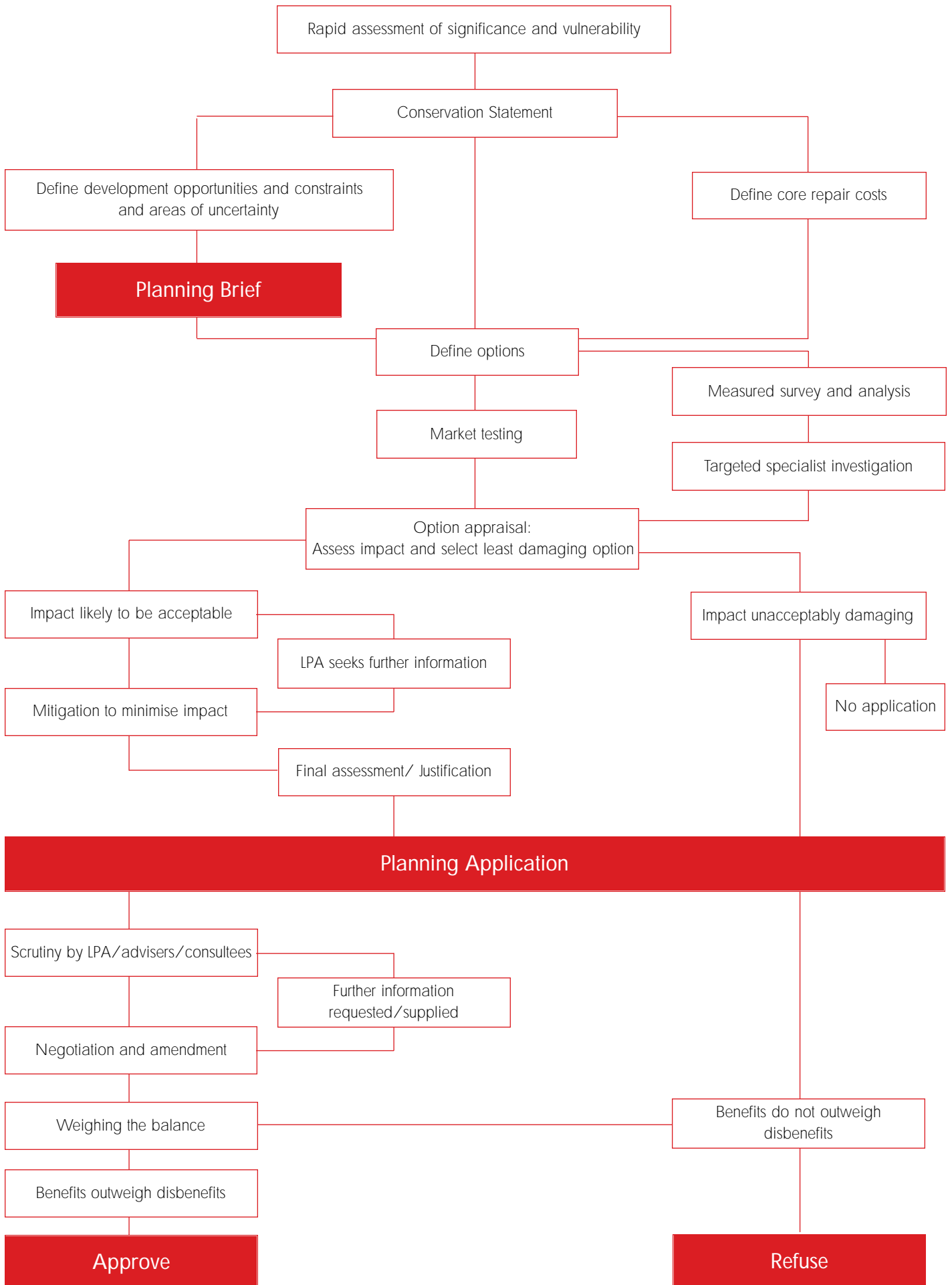
'Applicants for listed building consent must be able to justify their proposals... They should provide the local authority with full information, to enable them to assess the likely impact of their proposals on the special architectural or historic interest of the building and on its setting.' (PPG 15, para 3.4).

'...authorities should set out at the beginning of discussions exactly what information they will require to enable them to consider an application for listed building consent (Env Circular 01/01, App C)

- 3.1.6 It is also important to consider whether the asset has deteriorated so much that repair, particularly for reuse, would involve such substantial reconstruction that its authenticity would be lost. If so, much of the justification for enabling development to rescue it is removed; but the judgement must be made in the context of the heritage asset as a whole. For example, 90% rebuilding of an isolated historic structure would generally not be justifiable, but might well be if it formed a crucial part of a much larger composition, like a designed landscape.
- 3.1.7 The local authority should provide applicants with clear guidance on what information will be required at each stage in the evolution of a proposal. Asking for information late in the process simply because no-one thought to ask for it at the outset is very poor practice indeed. Since a financial shortfall is normally at the heart of an application for enabling development, it is particularly important that requests for this kind of information are both fully justifiable and timely. An incremental approach is usually desirable, providing sufficient information to enable a proposal to be developed, but avoiding detailed investigation of matters which subsequently turn out to be of little relevance to the proposals.
- 3.1.8 The flow chart opposite may be helpful. It assumes the ideal situation of pre-application engagement between planning authority and applicant; if the 'pre-application' stages have not been undertaken before an application is made, they must clearly be undertaken subsequently.

### 3.2 The first step: Rapid assessment

- 3.2.1 Rapid assessment provides an overview of the architectural, historical and archaeological interests of the site – how it originated, how it has changed through time, what survives today, and its current significance and vulnerability both as a whole and in its major elements. In enabling development proposals, it is effectively the first step, defining the asset whose future is to be secured, and the constraints and opportunities which it presents for enabling development, an essential precursor to any design studies.
- 3.2.2 A rapid assessment is normally based on site inspection and a scan of published and easily accessible archival sources. Unless fundamental to understanding significance, it does not seek to fill gaps in knowledge by detailed investigation of specific elements, but rather, identifies those gaps as areas for further investigation if design studies suggest them as potential areas of intervention. Its preparation requires appropriate skills in the fields of architectural history, archaeology, landscape history, etc, according to the nature of the site. It is important that the whole of any heritage asset affected is included in the appraisal, for example the entire historic landscape associated with a building, or the full extent of earthworks, buried or extant, surrounding a medieval secular or monastic site, not just those parts in the applicant's ownership.



- 3.2.3 This process is often carried out informally, but presenting the rapid assessment as a short illustrated document will often be desirable. For owners or developers, it can be an appropriate starting point for pre-application discussions with the local planning authority; for authorities themselves taking the initiative with vulnerable buildings, it will be the basis of a planning brief.
- 3.2.4 Guidelines for retaining the significance of a site should emerge from understanding the site, the assessment of its significance and clarity about how that significance is vulnerable (sometimes called a Conservation Statement). This train of argument is immensely helpful in ensuring that guidelines are relevant to a particular site. They must, of course, be compatible with the principles set out in statutory guidance, whether in government planning policy or in statutory local plans. But specific, site-based guidelines, applying the principles of such documents to the issues raised by the individual site, provide a clear framework from the outset.
- 3.2.5 Guidelines for retaining the significance of a site can address key issues such as:
- appropriate uses
  - philosophy of repair – priorities, techniques, materials
  - management needs – including co-ordination and the balancing of ecological, historical and social issues
  - guidelines for new work, including areas of flexibility, location, massing, materials, etc
  - traffic
  - disabled access
  - the provision of new services
  - reconciliation of conflicts.

Such guidelines can be general – offering broad principles for the site as a whole – but may also have to be specific to individual parts of the site. Appropriate uses for a large house may not be the same as appropriate uses for estate outbuildings, and new uses for any of the buildings could impact on the design of the historic garden or park. Residential use for part of an urban industrial complex may lead to pressure to discontinue more appropriate industrial uses in the remainder.

### 3.3 The second step: Detailed measured survey and analysis

- 3.3.1 Detailed and accurate survey drawings are an enormous benefit from the earliest stages of developing a proposal. The survey and analysis of historic buildings and landscapes are specialist skills which combine measured survey techniques with an understanding of their construction, alteration, development and use. Good analytical drawings can assist with the work of the site engineer, architect, surveyor or landscape architect, and will identify historic features of interest which may need to be conserved. They can be used as a baseline against which to demonstrate very clearly the impact of new work

on the special interest of the asset. If a full survey is not available at the outset, it is reasonable to expect at each stage only the level of detail and accuracy necessary to substantiate the decisions being made. For example, a rapid assessment might be based on sketches, but the final applications will need to be based on accurate, detailed, measured survey drawings.

- 3.3.2 There will also be a need, in most cases, to understand the evolution of the asset at a greater level of detail than was possible during rapid assessment, particularly if accurate survey drawings were not available at that initial stage. This normally involves 'reading' the fabric as the primary document for its own evolution, and correlating this with documentary sources to produce a clear view of the succession of events that have shaped it.

### 3.4 The follow-up: Targeted specialist investigation

- 3.4.1 Options appraisal and development of a preferred proposal to the point of application are likely to require more detailed investigation of areas of potential intervention, especially if they coincide with identified gaps in knowledge, so as to understand the impact of proposals on the significance of the asset. This investigation may include, for example, archaeological evaluation (both intrusive and non-intrusive) of below-ground deposits, building or landscape analysis and documentary research. But it is only appropriate for a local planning authority to ask an applicant to undertake such work if there is reasonable concern about the potential impact of proposals on the special interest of the asset.
- 3.4.2 A brief for the investigation should be agreed between the applicant and the local authority at the outset, setting out the work required, and the justification for it. An example of a written brief for further information in support of an application for consent is provided in **Appendix 2**.
- 3.4.3 Where it is clear that proposals are acceptable in principle, but aspects of their detailed design need to be informed by further prior investigation, for example of decorative finishes in an outstanding interior, especially where access will not reasonably be possible until work starts, it will be appropriate to include the requirement to undertake these in the legal agreement or planning conditions.

### 3.5 The final stage, if appropriate: Conservation and Management Plans

- 3.5.1 A Conservation Plan is a document which sets out the significance of a heritage asset and how that significance will be retained in any future use, alteration, management or development. The basic stages of preparation are:
- Understanding the Site
  - Assessing Significance
  - Defining issues/ vulnerability
  - Writing conservation policies

Current practice, including a model brief, is set out and examined in depth in *Conservation Plans in Action* (English Heritage, 1999). A Management Plan based on the policies of the Conservation Plan may be a separate document, or the final section of an integrated Conservation Management Plan.

- 3.5.2 Thus a Conservation Plan can guide options appraisal and feasibility studies or new design work, as well as long term management, at whatever level of detail is necessary to inform and underpin decisions. It can provide a basis against which to undertake an impact appraisal of specific options for an asset, and should be of long term benefit to the asset and its owner.
- 3.5.3 Conservation Plans may therefore be a useful or indeed crucial means of delivering long-term integrated management of heritage assets, for example as the basis of a Management Agreement (see *Developing guidelines for the management of listed buildings*), or a Management Plan for historic parks and gardens (on the preparation of which English Heritage is developing specific guidance) and other heritage assets. Thus the preparation and adoption of a Conservation Plan, and the development of a Management Plan setting out how its policies will be implemented, may be a reasonable condition of any grant of consent, provided, of course, that sufficient information is already available to allow the application to be determined. The preparation of a Conservation Plan for a complex site is normally a major undertaking, and the costs should be included in the development appraisal.
- 3.5.4 Occasionally, however, with large or complex sites with many aspects of significance (ecological, archaeological, social, collections, landscapes), it may be appropriate to require a Conservation Plan as the basis of determining the application. To be effective, it must be represent a consensus of informed opinion, which necessitates extensive consultation during drafting. This is in any event now accepted as good practice in the preparation of any Conservation Plan.

### 3.6 The idea of mitigation

- 3.6.1 Any development proposal will, almost by definition, have some impact on the historic environment. The issue is whether that impact is material, and if so, whether it is acceptable. Mitigation involves identifying action which will reduce the adverse impact of a proposal on the significance of a site, and feeding the result back into the design process, by
- identifying what further information may be needed to refine options or assess alternatives
  - seeking to avoid work with a negative impact on the significance of a site
  - improving the design in order reduce adverse impact
  - using more appropriate techniques or materials
  - as a last resort, recording in mitigation of loss.

Table 1 Assessing impact and mitigation strategies

Proposal	Fabric affected and significance	Potential impact	Mitigation strategy
Provision of sewer	Buried remains of medieval chapel of high archaeological significance	Pipe trenches causing major archaeological damage	Re-route sewer around chapel
New houses	Probably on site of walled orchard shown on C17 map	Damage to archaeological evidence for use of site in C17 and earlier	Evaluation, followed by excavation or watching brief if limited significance confirmed; redesign of scheme or foundations if of major significance
Conversion of pumping engine house to residential units	Interior, retaining elaborate architectural treatment of walls and open roof	Loss of scale and integrity of space; small areas of visible detail become meaningless	Seek commercial (B1) use for interior, utilising mezzanine floors, retaining some long views
Reconstruction of interior of house as open plan offices	Historic interiors of outstanding importance	Total destruction	Seek more sympathetic use
Removal of inappropriate modern building	Modern fabric of no significance	Enhancement of setting of historic asset	Compensation, by replacing value in appropriate form and location
Restoration of C18 Dining Room	Plasterwork and joinery of high quality	Loss of evidence for original paint scheme	Base redecoration on full architectural paint analysis, to inform retention of early decorative layers, as well as informing colours
New industrial units	Abuts registered historic park	Loss of vistas and erosion of overall setting, and damage to nearby veteran trees	Redesign of layout and mitigating restoration planting of park shelter belts
New garden	Site within registered garden	Destruction of historic design	Integration of new garden within historic layout

3.6.2 It can be helpful to look systematically at impacts and potential mitigation strategies at any stage in working up a scheme, as well as in finally putting forward an application for planning permission, when mitigation in respect of any unavoidable impacts will be crucial to the acceptability of a scheme. One way of doing this is in **Table 1**.

### 3.7 Heritage impact assessment

3.7.1 The basis for heritage impact assessment is a clear understanding of the impact of the proposal on the significance of the site. If significance, based on how the site has changed through time and what survives today, has been clearly understood at the outset, then both the applicant and the planning authority can grasp, and seek to minimise, the impact of proposals on that significance as options are explored and a scheme developed. Some proposals,

Table 2 Some options for summarising impact on significance

Impact on significance (types used here are examples only)						
Type of Significance	Archaeological	Historical/ associational/ use	Architectural	Landscape	Ecological	Overview
Relative Importance	medium	low	high	medium	medium	
Extension A [Option 1: using words to express degree]	none	very positive, [because....	very damaging [because....	damaging [because....	positive [because....	unacceptably damaging, despite positive aspects
Alterations A [Option 2: using symbols to express degree]	0	++	--	-	+	-
New Build A [Option 3: using degree, weighted for importance]	[wt 2/10] 0	[wt 1/10] +2	[wt 3/10] -6	[wt 2/10] -2	[wt 2/10] +2	-4
Summary Scheme A						

for example the removal of detrimental modern buildings or accretions, may enhance, or more correctly, reveal significance. Impact assessment should ideally be an iterative process from inception to the submission of a planning application which minimises detrimental impact (or the decision not to submit), although there will inevitably be occasions where it begins only when an application is made. But it should culminate in a clear statement of the unavoidable impact of the proposals, as required by PPG 15 and PPG 16, and a mitigation strategy.

3.7.2 It is often desirable to summarise in tabular form the impacts on the different aspects of significance of particular elements of schemes, or to compare options at summary level. Table 2 illustrates three different approaches to expressing the degree of impact at summary level. However, such a summary must always be supported by detailed assessment.

3.7.3 This process seems simple, even simplistic, but in fact requires great skill and judgement. Verbal assessments that summarise the results of thorough assessment are **essential**. Symbols can be used graphically to express these verbal summaries, but run the risk of over-simplification, because they take no

account of the relative importance of each aspect of significance. Weighting can be used to overcome this. Its validity depends on wide agreement on the relative importance of the various aspects of significance, but if so, it clearly allows the importance of each impact to be expressed in comparable form. It can, however, give a spurious illusion of precision: an option with a score of -4 may not necessarily be less damaging than one with a score of -5 or even -6. But if the underlying judgement is sound, all will be significantly less damaging than an option with a score of -10 or -12.

- 3.7.4 The concept of 'sustainability' is increasingly important in planning decisions. It demands 'development which meets the needs of present generation without compromising the ability of future generations to meet their own needs' (Brundtland Commission, quoted in *Conservation issues in local plans*, 1996, 4). Its relevance to the management of significance embodied in the historic environment is clear, particularly that irreplaceable heritage assets should not be compromised by short-term objectives. In a wider, environmental sense, it is particularly relevant to, for example, the consequences of residential development in isolated locations in the countryside.

Some relevant appeal decisions: impact on the heritage asset

'There would, however, be little point in permitting the appeal scheme if its visual impact would seriously undermine the architectural and historic value of Henbury House as a small country house standing in its own grounds.' (*Henbury House, 1995*)

'Your argument regarding conservation is that enabling development, in the form of a new dwelling on the site, would pay for the restoration of some or all of the derelict part of the perimeter wall... I am not persuaded by this argument because the development proposals essentially require the change in use and function of the former kitchen garden ground. The historic interest of the walls lies in their enclosure of a space given over to horticulture. The proposed development would fundamentally alter the use and character of the this walled space, and could not be held to secure its preservation in that sense' (*Bowden Cottage, 1995*)

'The prime duty to preserve this grade II\* listed building underpins the need for a subsidy from "enabling" development but I consider that should not be achieved by development which fails to respect and compliment its surroundings and that would be subject to concerns about noise.' (*Highland Court, 1998*)

'I consider that at present the Hall remains the centrepiece of its historic parkland setting. I am not convinced that that would remain the case with development of the scale that is currently proposed. In my view the new houses and the activity associated with them would markedly change the character of the grounds of Daresbury Hall and the way that they are perceived as the setting of a country house.' (*Daresbury 2001*)

'[Applicants] should provide the local planning authority with full information, to enable them to assess the likely impact of their proposals on the special architectural or historic interest of the building and on its setting' (PPG 15, para 3.4)

'Local planning authorities can expect developers to provide the results of ...assessments and evaluations as part of their application...' (PPG 16, para 22)



### Henbury House

Sturminster Marshall, Dorset

This small Georgian country house, listed grade II\*, was built around 1730. Planning permission was granted in 1986 for 39 holiday units, of which 35 were new-build within the grounds. The consent was an exception to Green Belt policy in order to support the repair of the house, which suffered from major subsidence damage and other structural problems. A reduced level of development, with no restriction as to occupancy, was allowed on appeal against the local planning authority's refusal in 1995, following the quashing of an earlier appeal decision by the High Court. A total of 29 new dwellings was eventually built. The listed building has been repaired and remains in use as a single dwelling.

### Practical points

Local authorities should

- consult the English Heritage Designed Landscapes Team if the proposal affects an unregistered designed landscape, to check whether it warrants inclusion in the English Heritage register of parks and gardens of special historic interest
- ensure that the information about the nature of the asset, its significance, and its vulnerability are adequate as a basis for each stage of decision-making, but not seek more information than is justified
- consider carefully what information and investigation is necessary, when it is needed and in what form, and agree a brief with the applicant to provide it
- ensure that the evolutionary process – options appraisal, impact assessment, preferred option selection, and refinement through mitigation, leading to the scheme for which consent is sought, is clearly set out in the information supporting a planning application

## 4 Identifying options

### 4.1 Assessing potential for use

4.1.1 A use for a heritage asset needs to fulfil two basic criteria:

- it must be compatible with the historic form, character and fabric of the asset; and
- it must fit the needs of a user, either generic (meeting an established or predictable market demand) or specific, to fit the financially supportable needs of a particular user (which for, eg, commemorative structures, may be the public at large).

4.1.2 Whilst option appraisal must be wide-ranging, it must also be realistic. Uses which would be so damaging to an asset that they would effectively destroy its interest, or those which perfectly fit the form of the building but for which no market is either present or likely, must be discarded at the initial stage. Imagination, and indeed considering the potential to create a market, are essential, but a degree of realism is necessary from the outset on the part of both owners / developers and planning authorities.

4.1.3 Option appraisal should also take into account the potential for grants, which may vary according to the different scenarios. The lack of availability of sufficient grant is one of the English Heritage criteria for allowing enabling development. If grants are available but are insufficient to cover the conservation deficit, they should be considered in combination with enabling development to secure the future of an asset. This approach was used at Stoneleigh Abbey, where the conservation deficit was met by a combination of English Heritage and Heritage Lottery Fund grants with enabling development. Enabling development should always be seen as a funding source of last resort.

4.1.4 Option appraisal may reveal a threshold beyond which further 'enabling development' would generate the need substantially to upgrade or provide roads, sewage and other services and even school provision, which itself could only be financed by yet further enabling development. In effect the capacity of the infrastructure is identified as a key constraint. It is desirable, if possible, to identify such constraints at the outset, through a planning brief.

4.1.5 It is also important to remember that the 'ideal' solution in conservation terms for a particular asset – not only repair, but full reversal of past detriment – may generate demand for a quantum of enabling development whose impact on other interests would be very significant. Whilst maximising the amount of enabling development will nearly always be in the interests of commercial developers, the public interest demands that the additional impact of enhancement options, beyond the minimum necessary to secure the future of the asset, is considered.

'Sufficient financial assistance is not available from any other source'

'Judging the best use is one of the most important and sensitive assessments that local authorities and other bodies involved in conservation have to make. It requires balancing the economic viability of possible uses against the effect of any changes they entail in the special architectural and historic interest of the building or area in question. In principle the aim should be to identify the optimum viable use that is compatible with the fabric, interior and setting of the historic building. This may not necessarily be the most profitable use if that would entail more destructive alterations than other viable uses'. (PPG 15, para 3.9)

The Architectural Heritage Fund publication *Funds for Historic Buildings in England and Wales: A Directory of Sources* provides a useful guide

‘The enabling development will secure the long term future of the heritage asset, and where applicable, its continued use for a sympathetic purpose’

- 4.1.6 Where conversion of an historic building to hotel use is proposed, there may be contention about the minimum number of hotel rooms (critical mass) necessary to generate a viable business operation. This varies considerably depending upon the type and grade of hotel. It may be that a budget hotel needs a large number of bedrooms, whilst a specialist ‘destination’ hotel demands a much smaller one. Judging the minimum number of rooms and long-term viability of the hotel is a specialist field: an appropriately qualified hotel/leisure consultancy firm needs to be appointed to give advice. The potential for minimising the impact of golf courses in historic landscapes, and their viability, are also matters that require ‘niche’ specialist advice.
- 4.1.7 In the case of buildings that, in good repair, would have a positive market value derived from their capacity for beneficial use, a subsidy to cover the amount by which repair and conversion costs (and sometimes the value of the existing use – see Section 5.6) exceed market value once repaired and in their most beneficial use will be a once and for all investment that should secure the long term future of the building concerned. But the future of a structure or landscape without beneficial use, or capable only of limited use, can only be considered secure if there is both a long-term source of funding for its maintenance (or the balance of it), and an entity, often a trust or public body, responsible for exercising that stewardship. It is therefore crucial to establish
- **who** will be responsible for long term management, how the exercise of that responsibility can be ensured, and how the public as well as the private interest in so doing will be safeguarded;
  - **how** it will be funded in the long term – either a capital endowment, rental income from part of the enabling development, or a practical and enforceable obligation on those who benefit (and their successors) directly to cover maintenance costs (as, for example, with communal gardens or an element of a larger estate).

**A solution which does not provide the means of meeting recurrent costs which cannot be generated by the heritage asset itself is no solution at all.**

- 4.1.8 Finally, it is vital to remember that in most cases there is only likely to be one opportunity for enabling development; once implemented, there is unlikely to be scope for more without compromising the asset itself, should the initial scheme fail to secure its future.

## 4.2 Who can unlock that potential?

- 4.2.1 Most buildings at risk capable of beneficial use are taken up by commercial developers or (in the case of houses) by private individuals; the latter, particularly, may see viability as much in terms of meeting personal needs or aspirations as in strictly financial terms. The key expertise of the commercial sector lies in judging the market and taking on the risks inherent in that judgement. This ability and expertise is, and will remain, crucial to securing the future of most historic buildings which have become functionally redundant in their most recent use. The mainstream commercial sector is not always best placed to see the potential through the veil of dereliction, and may over-estimate the risks inherent in the repair of the historic fabric. However, there is a growing number of niche developers who specialise in historic buildings, and are generally better able to see potential and realistically estimate costs and end values.
- 4.2.2 Building preservation trusts (BPTs), as property developers with charitable status and objectives, provide a vehicle for securing the future of some heritage assets which are not attractive in commercial terms; but the scale on which they operate is still relatively small. Nonetheless, interest from a building preservation trust can be catalytic in prompting owners to bring forward workable schemes to secure the future of heritage assets, or to sell them. Increasingly, partnerships between BPTs or public sector bodies and the commercial sector can be part of the solution to historic buildings at risk. In the context of enabling development, a trust may take on the repair and management (or onward sale) of an historic building or landscape, funded through enabling development undertaken by a developer. Another approach to public/private sector partnership and risk management is for a trust or heritage body to acquire an historic building, repair the structure and external envelope, and sell on the result to a developer to fit out and market. This indeed may be the only means of unlocking potential if the current appearance of the asset is so poor that major works are necessary to generate any private sector interest at all.
- 4.2.3 Such approaches can bring together the expertise and skills of both sectors, the commercial sector dealing with the market risks which it knows best, and the trust dealing with the risks inherent in the repair of the historic fabric which constitute its area of expertise. They can result in more realistic and cost-effective proposals than either party alone could put forward.

## 4.3 Avoid compounding the problem

- 4.3.1 Owners may dispose of land essential to the setting, amenity, functioning or even vehicular access to an historic building, in an attempt to separate potential assets from an actual or potential liability. Sometimes they may appear to do so, whilst through 'arms length' companies, retaining the ability to bring the entity back together if circumstances change.

The Architectural Heritage Fund and the Association of Preservation Trusts can put local authorities, developers and others in touch with appropriate building preservation trusts.

The issue of the effect of potential for break-up on allowable site value for enabling development calculations is considered at 5.6.6-7.

4.3.2 There is unfortunately no legal sanction available to planning authorities to stop such fragmentation of ownership. But wherever ownership of the curtilage of an heritage asset, or of an historic landscape, park or garden, has become divided, it is vital that local planning authorities take a firm line against granting consent for any development which could be considered detrimental not only to the asset or its setting, but also to its long term viability. Proper planning requires that regardless of divisions of ownership, development proposals affecting an historic building and its environs, or an historic landscape, should be considered in terms of their effect on the asset as a whole and not in isolation, whether or not they are put forward as 'enabling'. Otherwise there is a real danger of its long term fate being sealed by incremental erosion. For the avoidance of doubt, where fragmentation of ownership has emerged as a factor militating against securing the long term-future of a heritage asset, the intention to resist any development that could be detrimental could usefully be set out in a planning brief or site-specific policy in the statutory development plan.

4.3.3 Also relevant to listed buildings is the issue of curtilage. A pre-1948 building or structure subsidiary to the principal building will be subject to listed building control (and policy) if it lies in its curtilage, the extent of which may be judged by physical layout, ownership past and present, and function, past and present. Modern fragmentation of ownership does not take ancillary structures out of the curtilage of their parent building, nor remove them from control.

4.3.4 A sustainable future for any heritage asset will be prejudiced by development which deprives it of the amenities expected of a property of that type and size. A country house, for example, may need accommodation land, and reasonable privacy within it, and a town house a reasonable garden, to be attractive to purchasers at a price and for a purpose which will ensure long term investment. Without such amenities, conversion to smaller units or other uses tends to become inevitable. A textile mill deprived of adequate parking or loading space will be difficult to maintain in commercial use. The likely impact of enabling development on the future of the heritage asset must be considered.

#### 4.4 Fragmentation of assets

4.4.1 The integrity of many heritage assets depends on coherent, consistent and sustainable long-term management, based on a through understanding of their significance both as a whole and in their parts. Perhaps the most common problem created by enabling development proposals is the consequent fragmentation of ownership of the asset. Subdivision of a large house into separately owned residential units, or of an industrial site into either residential or business units, or the creation of individual residential units within an historic landscape, tend to result in fragmentation of management, and usually ownership, of the asset.

4.4.2 In these circumstances, it is essential to secure a legally-binding means of ensuring long-term co-ordinated management of those aspects of the site which are crucial to retaining its cultural heritage values. Such management should be based on a Conservation Plan, and include a dynamic process for review which involves not only those bound by the agreement, but also those with a statutory or other significant interest.

4.4.3 Key issues to be addressed include:

- separation of resources
- increased risk to minor structures (e.g. ornaments, industrial outbuildings)
- maintaining the designed unity of the asset
- management arrangements, including any necessary on-site facilities
- ensuring that contributions to the repair or maintenance of the heritage asset are achieved.

4.4.4 The service charge will be a factor of both annual maintenance costs and the number of units over which it is spread. It is, however, essential to bear in mind that onerous obligations giving rise to high service charges will depress the market value of units in the development, and so generate the need for more extensive development, or even undermine its attraction to the market. In strictly financial terms, a charge can be capitalised at roughly ten times the annual cost; but the psychological deterrent can be much greater, because however buyers' circumstances change, they must find the (inevitably indexed) cost. A charge in excess of about £3,000 pa for a residential unit is likely to have a significant effect on its marketability and capital value; in a low-value area, more than £500 pa could be detrimental. A balance must be achieved. It will often pay to minimise maintenance costs through initial capital investment, so long as this is in accordance with established conservation standards, and so does not involve detriment to the heritage asset.

#### 4.5 Historic entities

4.5.1 Some heritage assets form part of a larger historic entity – typically a combination of building, historically-associated contents and land – which if broken up through sale would result in the loss of much of the significance, the cultural value, of the entity. In these circumstances, retaining the whole in single ownership may legitimately be the objective of enabling development. Whilst this scenario is most commonly associated with country estates, it can also apply to, for example, historic industrial sites and religious buildings.

4.5.2 In such cases the objective of enabling development is, legitimately, to keep the entity together by ensuring that, taken as a whole, it is viable in the medium to long term. This requires that it break even in revenue terms, including being able not only to fund routine maintenance, but also to accumulate sufficient reserves to fund cyclical repair. The latter may come from accumulated annual surpluses, endowment income, or a combination of

'The proposal avoids detrimental fragmentation of management of the heritage asset'

the two; and calculations should take into account reasonable expectations of grant. The extent to which support is necessary or justifiable is essentially based not on the capital value of the entity, which can only be realised by its dissolution, but by the gap between revenue income and revenue costs.

- 4.5.3 Enabling development that boosts estate income on a long term basis is more likely to be feasible than enabling development to raise a capital sum to be invested as an endowment, because, given the need to re-invest most of the income to maintain the real value of the capital, a very large sum is needed to generate a very modest annual income in perpetuity. But the fundamental decision must be whether the value of the whole is so much greater than the sum of its parts that treatment on this basis is justified. And if the case is accepted, any capital or accumulated income generated should lie with a charitable trust fund, with reversion to similar charitable purposes if the entity is eventually broken up and sold, or with a statutory maintenance fund set up in accordance with the provisions of the Inheritance Tax Act 1984.

#### 4.6 Market testing

- 4.6.1 Save for the historic entities discussed above, before any enabling development should be considered, the applicant needs to demonstrate that real efforts have been made, without success, to continue the present use or to find compatible alternative uses for the asset. This should normally include the offer of the unrestricted freehold on the open market at a realistic price reflecting the condition of the asset, and, so far as ownership allows, with an appropriate curtilage. The offer of a lease only, or the imposition of restrictive covenants, would normally reduce the chances of finding a new use.
- 4.6.2 The marketing should be carried out by a suitable firm of chartered surveyors or estate agents who have a good knowledge both of the property and the local, national, or niche market as appropriate. Prior to marketing, solicitors should have ensured that the agents are aware of any restrictive covenants, rights of way, easements etc and the nature of the title available. Particulars should then be produced which are appropriate for the type of property and the planning situation; its list grade, whether it lies within a conservation area or the green belt, etc, should be clearly stated.
- 4.6.3 The property should then be properly and extensively marketed, including placing advertisements in all relevant journals, both locally and, if appropriate, nationally or via the Internet. The size of the advertisements and regularity of insertions in the journals are important, as well as the length and timing of the marketing campaign. Professional advice from the selling agent is essential. All enquiries and inspections should be recorded, and a proper audit trail kept, so that it can be demonstrated that every reasonable effort has been made to find a purchaser for the property.

- 4.6.4 There will of course be exceptions to this rule, particularly where the property has a history of unsuccessful marketing, or has been recently acquired for a price that reflects its condition (see Section 5.6). As always, judgement is required.

Some relevant appeal decisions: assessing potential for use

‘Although these figures indicate that in commercial terms the restoration of Mayles may be at the margins of viability, I do not consider that they are outside the range that would be acceptable to a private purchaser looking to provide a family home. The valuation of a property such as Mayles is clearly an imprecise art and I also note the view of local agents that it is a common phenomenon in the residential market to find purchasers who are prepared to spend more on their homes than is likely to be reflected in any increase in value. Mayles is an attractive property in a setting of acknowledged landscape quality and I have no reason to doubt that it could attract such purchasers.’ (*Mayles, 1997*)

‘In the absence of certainty that the proposed development is the only way by which the retention of the listed buildings can be secured, it must in my opinion be inappropriate to grant planning permission, even in outline form.’ (*Coggeshall Abbey, 1996*)

‘The Hall was available on the open market for much of the 1990s. What is less evident is how sensitive marketing was to the needs of the property. For example, it is not clear whether the earlier campaigns involved an asking price or guideline price that properly reflected the value of the listed building, the landscaped gardens and the work required on both. That price would, in any event, have been complicated by the commercial value (whatever it might have been) of the existing Coal Board offices, which could fairly readily have been reused. While the initial interest could be described as extensive, the fact is that no firm offer was made until that by the appellant. In the absence of more specific or documentary evidence, it is difficult to come to a view one way or another on the adequacy of the earlier marketing.

The result of the appellant’s marketing exercise in 1998 is enough to leave some doubt about the earlier efforts. The very definite interest by the Graphical Paper and Media Union (GPMU) foundered ostensibly on potential delays in the planning process and the costs of conversion and restoration. If those costs were thought too much of a burden, that must surely suggest that the GPMU’s offer of £1,300,000 was too high an opinion that seems to be supported by the appellant’s purchase of the site for £760,000 less than a year earlier..... Given that marketing by the appellant was otherwise very passive (no new particulars were prepared and no advertisement seems to have been placed until March 1999), it is hard to conclude that the market has been properly tested in accordance with the guidance in PPG15.’ (*Coleorton Hall, 1999*)

‘In the absence of certainty that the proposed development is the only way by which the retention of the listed buildings can be secured, it must in my opinion be inappropriate to grant planning permission, even in outline form.’ (*Coggeshall Abbey, 1996*)



### Mayles

Mayles Lane, Wickham, Hampshire

This grade II listed house grew incrementally from a pre-1700 core, with extensions about 1700, in the mid and late 19th century, and in 1924. A proposal to build a new detached house to assist in funding the restoration of the listed building was the subject of an appeal against non-determination in 1997. It was dismissed primarily because the works proposed went beyond what was reasonably necessary.

Photograph taken as part of English Heritage’s Images of England project



**Woolhanger Manor**  
Parracombe, Barnstaple, Devon

The Manor House is a modest but attractive (grade II listed) Exmoor country house, of at least early 19th century origin, to which the flamboyant Music Room pictured was added by Sir Henry Carew. A proposal to replace the house by a grander one, put forward on the basis that it would justify the cost of restoration of the Music Room, was rejected after a public inquiry in 1997.

'As the Manor House is currently occupied as a dwelling by an owner who is not committed to its sale, an unsuccessful attempt to keep it in its present use cannot be demonstrated. Extensive valuation evidence was presented to the effect that the property would be difficult to sell, even at a relatively low price. I accept that this may well be the case and that the property would not appeal to the average potential purchaser seeking well maintained, fully restored and modernised country houses in the £300,000 and over price range. Nevertheless, I am not persuaded that at £100,000 to £150,000, the property with its uniquely interesting Music Room, would not appeal to energetic and imaginative professional people prepared to personally supervise, organise or even carry out some of the necessary works.' (*Woolhanger, 1997*)



### Practical points

#### Local authorities should

- be flexible and realistic about uses, especially in planning briefs
- think about the long-term as well as short-term implications of proposals for the future maintenance and management of the heritage asset
- ensure that the marketing campaign is appropriate to the nature of the property and its likely market(s)
- try to avoid subsequent dispute about the adequacy of a marketing campaign by agreeing a marketing strategy in advance

## 5 Looking at the figures

### 5.1 Background

- 5.1.1 The essence of commercial property development is to endeavour to maximise the return on investment, to compensate for the risk and time taken in carrying out a development. The purchase price paid is an important factor in this. Development sites will often be the subject of intense competition between prospective buyers, all of whom are likely to have arrived at an offer figure aware of the competition and on the basis of likely returns. If, in the event, projected future returns need to be reduced, a distinct possibility in a falling property market, the viability of a scheme may be in doubt and it might not materialise.
- 5.1.2 Before acquiring a site, a developer will normally prepare a development appraisal, derived from information gathered from estate agents, surveyors, architects, engineers and others. The appraisal allows the developer to calculate a purchase price which will, if the appraisal proves to be accurate, provide the return on capital being sought. The appraisal process, however, is a matter of informed professional opinion. It is not an exact science, even if carried out with all due thoroughness, and in some cases developers pay a higher price for a property than the market justifies. The risk of doing so is clearly greater if, as sometimes happens, no detailed appraisal is carried out. Such miscalculations are often the trigger for enabling development proposals, but cannot justify them.

### 5.2 Financing development

- 5.2.1 In order to carry out a property development, the majority of developers require external funding from a bank or institution. Before agreeing to finance a property development, a bank will wish to see the developer's accounts and track record. They will be required to provide substantiated development appraisals, setting out clearly how they intend to carry out the development, the level and term of borrowing required, a schedule for repayment, for drawing down the loan and for making interest payments to the bank. Phasing of larger schemes is most important, for it determines the maximum exposure of, and total interest payable to, the bank.
- 5.2.2 A sudden rise in interest rates, which normally fluctuate in parallel with the Bank Rate, can jeopardise the viability of a development. There are various financial mechanisms available to protect developers from this risk (essentially similar to those available to home buyers); but since they are effectively insurance policies, there is a cost attached. Institutions and banks will normally lend between 60% and 80% of the land value and development costs, and expect developers to invest their own monies to make up the balance. Availability of funds depends very much upon the nature of the development and the market conditions at the time.

‘The problem arises from the inherent needs of the heritage asset, rather than the circumstances of the present owner or the purchase price paid’

### 5.3 Development appraisals

5.3.1 A development appraisal is a mathematical calculation used within the property industry for several purposes, including deciding the price to bid for a development site (i.e. the value of the property or land), assessing the profitability of a scheme, and in risk analysis. Development appraisals are nowadays invariably carried out on a computer – there are several proprietary software packages available. As with any financial calculation, the correctness of the information used determines the value of the result. Development appraisals by their very nature are prone to inaccuracy, because of the large number of variables, particularly building costs and projected end values. A typical layout for a development appraisal is shown at **Appendix 3** .

5.3.2 This section is not intended to instruct the reader on how to carry out a development appraisal, but rather how to comprehend those produced in support of enabling development schemes, by identifying and explaining the typical headings one would expect to find. This list is not definitive, as development situations vary considerably. There is no one universal layout; different developers and organisations have their own favourite structures.

5.3.3 The basic concept is simple. First, the market value of the completed development is calculated. From this is deducted the costs that would be incurred in carrying out that development, including a reasonable return to the developer, but excluding the acquisition cost. The remaining (or ‘residual’) sum can be attributed to the value of the land/building as it stands. The development will be viable if the land/building can be acquired for this sum or less. However, for complex, multi-phase schemes, generating an income stream rather than a lump sum on completion, a simple residual appraisal will not demonstrate the true return; considering cash-flow becomes crucial.

### 5.4 Conservation deficit

5.4.1 In financial terms, the case for enabling development normally rests on there being a conservation deficit. This is when the existing value (often taken as zero) plus the development cost exceeds the value of the heritage asset after development. Development costs obviously include not only repair, but also, if possible or appropriate, conversion to optimum viable use, and a developer’s profit appropriate to the circumstances. A development appraisal in such cases produces a negative residual value. If so, enabling development (provided it meets the other criteria in the *Policy Statement*) may be justified, but only sufficient to cover the conservation deficit, ie to bring the residual value up to zero. The principal exception to this rule is historic estates whose break-up and sale would result in significant loss of heritage value. Enabling development may be justified to ensure their long term viability in revenue terms, as explained in Section 4.5. Enabling development is not justified where the financial problems arise from the lack of resources of the owner, rather than the inherent need of the heritage asset.

Some relevant appeal decisions: need of the owner or the building

'Whilst I would not dispute your client's lack of funds, I am obliged to consider the proposed building plot as a permanent feature in the settlement which is likely to remain long after your client's personal circumstances have ceased to be material. My overall conclusion is that the proposed Interim Programme of Urgent Repairs to Pipewell Hall are not of a nature that would be sufficient to override the policies of the development plan.' (*Pipewell Hall, 1997*)



## 5.5 Calculating the market value of a completed scheme

- 5.5.1 The means of arriving at the market value of a completed scheme depends on the type of development. For a residential scheme, the capital values of the completed units are normally calculated using the comparison method. This involves comparing, where possible, the actual sale prices of similar properties in the vicinity to those in the proposed scheme, making adjustments, based on professional judgement and experience, for minor differences in location, quality, communications, nearby facilities, etc. A more accurate approach involves calculating a sales figure per square metre from the sale prices of properties of comparable type and location and applying that to the proposed units. Again, the professional judgement of the surveyor, based upon local knowledge of the residential property market, is needed to weigh the various factors involved.
- 5.5.2 In the case of a commercial development where the units will be let rather than sold, valuation is normally undertaken by the investment method, which involves capitalising the value of the income stream, using an appropriate yield. The more secure the income stream, as a result of the location and nature of the property and the financial standing of the tenant, the lower the yield. However, most types of leisure-related property, including hotels and golf courses, are normally valued on a profits basis, and require specialist valuation expertise.

## Sedgwick Park

Horsham, West Sussex

Enabling development was sought on this site in 1993 by Sedgwick Park Estates, arguing that 3 new houses were needed in the grade II registered park to finance repairs to the grade II listed house. After a public inquiry, planning permission was refused on the grounds that the development was unnecessary because, by demolition of the west wing, which was of limited interest, the house could be reduced to one that was economic to repair for single family occupation. It has since been sold to a single occupant.

## 5.6 Site value: Have they paid too much?

- 5.6.1 One of the most common problems when dealing with the question of enabling development is the purchase price paid for the property. It is most regrettable that a minority of developers believe that they can acquire a historic property, allow it to fall into disrepair and then try to pressurise the local authority into allowing development (often in the green belt) where otherwise development would not be allowed. This practice is totally unacceptable.
- 5.6.2 The acquisition cost for the purposes of enabling development calculations should be the fair open market value of the property in its existing condition and having regard to the advice of PPG 15. Given that the open market value of a property is theoretically the sum remaining once development costs have been subtracted from end value, the result for some heritage assets in very poor condition may be negligible or even negative. The actual purchase price paid by the developer must be disregarded if it is based on the hope or anticipation of consent for development contrary to established planning policy. However, for the sake of openness, the actual purchase price paid should be disclosed in any application for enabling development.
- 5.6.3 Planning authorities should be aware of the possibility that if a developer pays more for a site than is justified in the market, a proposal for enabling development may be put forward essentially as a way to recover their position. Although the advice in paragraph 3.17 of PPG 15 is not directed specifically at schemes of enabling development, it is of particular relevance to them.
- 5.6.4 The most straightforward case to consider is where the form or advanced decay of a listed building means that, as it stands, it is incapable of reasonably beneficial use, and it is associated only with a proportionate area of accommodation or agricultural land, subject to planning policies that normally prohibit additional development. In the context of Repairs Notice followed by CPO, compensation could well be £1, but a still-nominal purchase price of a few thousand pounds might be accepted as a valid development cost, to save the time and cost of the statutory procedures.
- 5.6.5 Where the property is in usable condition, site value should be the open market value as defined by the *RICS Appraisal and Valuation Manual* ('*The Red Book*'), which by definition must take account of the structural condition of the property and the planning constraints upon it. In the context of testing the need for enabling development, this figure should clearly allow for the 'hope value' of any potential for development or alternative uses in accordance with the development plan, but exclude any allowance for the possibility of consent being obtained for development in contravention of established planning and conservation policy. The *RICS Manual* uses the term 'hope value' to define legitimate expectations, adding that 'The Valuer must not make unrealistic assumptions' (*RICS Manual*, PS 4.2.6). Its common use to refer to unreasonable expectations can be a source of confusion.

'The Secretaries of State would not expect consent to demolition to be given simply because redevelopment is economically more attractive to the developer than repair and reuse of a historic building, or because the developer acquired the building at a price that reflected the potential for redevelopment rather than the condition and constraints of the existing historic building.' (PPG 15, para 3.17)

The Manual defines and discusses 'hope value' and alternative uses at PS 4.2.1-7.

- 5.6.6 The most problematic cases can be buildings with a viable, often low-key, use, from which the return does not justify proper repair, but which, **without the need for any planning permission** , gives them a modest market value for as long as they are usable with limited expenditure. This value should clearly be taken into account. If left to the point where they become completely derelict, the conservation deficit is likely to be significantly greater than whilst they remain in low-key use. Thus bringing repairs forward sooner rather than later may still reduce the need for enabling development, even though it means allowing their existing use value as a valid development cost.
- 5.6.7 Break-up value can be relevant if subsidiary buildings or extensive land could be sold off and used separately, again **without the need for any planning permission** , and in the case of listed buildings, could not reasonably be included in a CPO following a Repairs Notice on the main building. The intrinsic value of such subsidiary buildings cannot be disregarded. Either their value should be deducted from the purchase price to arrive at the real price paid for the heritage asset for which enabling development is sought; or, if they nonetheless form part of an overall development scheme, their initial value, the cost of repair and conversion, and their end value should be included in the overall development appraisal.
- 5.6.8 Such buildings may be lodges, cottages or stable blocks associated with institutions or country houses, whose impact on significance is either beneficial or neutral. However, some, like modern office blocks or laboratories, may be so detrimental to the setting of the asset that their removal would recover or reveal significance. If they have an intrinsic value through a viable use, and that use could continue without the need for any planning permission, removing them will generally and legitimately entail taking their existing value into account in determining the need or quantum of enabling development. Their intrinsic market value, less any increase in the value of retained buildings due to their removal, plus the cost of clearance, would be allowable costs in the development appraisal.
- 5.6.9 However, arguments for existing value must be consistent. It is not credible to argue that, for example, purpose-built offices in the grounds of a country house have a substantial value, and at the same time assert that they cannot be let because there is no demand for them in that location. It is users that give buildings monetary value. On this issue, the inspector's reasoning in the Coleorton Hall case, quoted below, may perhaps have over-simplified the position by not considering whether the unlettable office buildings in question could achieve a positive residual value through conversion or use for other, no more detrimental, purposes acceptable in policy terms (notwithstanding the desirability of removing them from the historic landscape). However, it clearly exposes the flaw in the appellant's argument.
- 5.6.10 Many historic buildings in rural locations have in the past become the focus of accretive development that is of no intrinsic merit, and frequently detracts from the setting of the historic building itself. Typical examples are country

## Enabling Development

'Where previously-developed land is available for housing in rural areas it should be subject to evaluation as in paragraphs 30 and 31 of PPG3' which includes an access consideration. The availability of previously-developed land is not, in itself, a sufficient reason for developing in such locations'. (PPG 13, para 41)



### Daresbury Hall Daresbury, Cheshire.

This 1759 grade II\* listed house in the Green Belt had for many years been used as a residential home and training centre. Consent for residential development in the grounds, to subsidise restoration of the hall, was refused following a public inquiry in 1997 on the grounds that it was excessive in relation to need and would both erode the Green Belt and harm the setting of the listed buildings. Further applications were refused in 2000, and the decisions upheld on appeal, for the same reasons, in 2001.

houses that have been used as institutions, and purpose-built institutions like hospitals with an historic nucleus. If they are in a Green Belt, PPG 2, Annex C, sets out the circumstances in which further development or redevelopment may be appropriate. Generally, so far as 'major developed sites' in the Green Belt are concerned, such as redundant hospitals, redevelopment may be in accordance with policy guidance where such sites are identified for redevelopment in the statutory development plan. If so, such redevelopment is generally subject to strict criteria. One is that development should not normally occupy a larger area of the site than the footprint of existing permanent buildings. Otherwise, redevelopment proposals must be considered primarily in relation to national sustainability policies, which particularly militate against isolated residential enclaves, remote from services, generating substantial travel needs and dependent on private motor vehicles for access (see especially PPG1, paras 4-6, 24; PPG3, paras 2, 30, 31; PPG13, paras 4, 41). There is certainly no presumption that the footprint of existing buildings of low value can be replaced by new residential buildings of high value, or that existing buildings of no intrinsic or contextual value in heritage or landscape terms may be converted to new uses, if those uses are incompatible with national policy concerning sustainability. Such proposals may, of course, be advanced as 'enabling development', but if so, the case must be considered on its merits as such, not skewed by a perceived 'right' to redevelop existing buildings.

Some relevant appeal decisions: purchase price, site value, holding costs

[This case concerns the viability of proposals for the restoration of a country house until recently used as an institution, with numerous modern buildings constructed in its environs] 'Taking the applicant's figures for restoration works to the Hall and listed curtilage buildings (with fees) as £1,200,000 for creating a single house; and the estimated value as £1,500,000; a positive residual value of £300,000 results. That is one value for the site. On that basis, and even allowing for some developer's profit if a private individual were not to be involved, the actual purchase price of £750,000, with other post purchase costs amounting to some £1,330,000 in total, does not need to be taken into account in deciding whether such a scheme is viable. Thus, there may be another way of preserving Daresbury Hall, other than relying on enabling development, had it been purchased for a much lesser figure; although I accept that that may not address all of the issues surrounding the site, notably the value and future of all of the buildings.

It follows, that even if some enabling development is found to be desirable and acceptable so as to secure a more robust scheme likely to be implemented, it is wrong for the scale of that new housing then to be dependent on an inflated purchase price and its associated oncosts arising from delay caused by the call in. With that in mind, the applicant's figures look very different. The cost of his scheme, without that £1,330,000 extra, is agreed at about £3,800,000. Assuming the applicant's high fee levels, but ignoring the purchase price, the total development cost would be £4,330,000. This compares with the applicant's sales estimates of between £5 million and £6,300,000 with the latter more in line with the expert evidence of the valuer for Lord Daresbury. There is scope within the balance to take into account reasonable

costs associated with purchase and profit, and thus also to conclude that if higher sales figures are achieved, it may not be necessary to build everything that the applicant wants yet preserve the listed buildings. *(Daresbury Hall, 1997)*

'Another way to look at it is whether site value should count in the calculations. In this particular case, I see no reason why it should. The surveyors on either side may agree that the offices have a relatively substantial value but that seems hypothetical to me. It is part of the appellant's case that there is no demand for any office use that could secure the preservation and enhancement of the Hall and its grounds. If that is correct, no value should be attributed to the existing offices so far as an enabling development calculation is concerned. This means that the present value of the site can be described quite simply as the difference between the value of the Hall and grounds restored to an effective use and the costs of the demolition, conversion and restoration works necessary to bring about that use. If the costs were to exceed the value of the restored property, then some form of enabling development would be justified.

I do not consider that incidental (or historic) costs should count in assessing the need for enabling development. Instead, I consider them part of the owner's responsibility in maintaining the property as an asset. It should be no part of a justification for enabling development that, without day to day maintenance, the building or grounds would deteriorate more quickly and therefore cost more to restore.

I do not think it appropriate to include the Top Lodge or gardener's cottages in the valuations for the proposed development. The dwellings already exist and represent a potential source of income irrespective of decisions on these appeals. In the end, my conclusion hinges on the need for enabling development. I have taken the estimates and valuations provided by both sides, but, rather than look at the appeal scheme as a whole, I have applied them to what I consider the essential elements – subdivision of the Hall, restoration of the landscape and redevelopment of the stables (the last because whether by restoration or redevelopment, there ought to be a building on the site of the original stables). The result of my calculations is that there may well be a need for some enabling development, but certainly not on the scale proposed. *(Coleorton Hall, 1999)*

'I take the view that it was for your client, when he bought the house, to be fully aware of the likely need for repairs to the building. Most of its faults could have been seen without a detailed survey, and his previous experience with historic buildings should have alerted him to the kinds of work that might be required and its likely cost. Even given your client's present financial circumstances, I am not convinced that the proposed development is necessary so as to ensure that the repairs are carried out.' *(Old House, 1995)*

'They also argue that, because the bungalow and houses could be sold off for residential purposes and, that if planning permission was required, the likelihood is that it would be granted, account of the value of these elements should be taken into consideration in a valuation exercise. Whilst separate disposal may be undesirable and unwise in relation to its impact on the future of the hall and grounds, it would appear to be an option open to the owners. I would consequently accept that financial appraisals of various development options should recognise the loss of these assets.' *(Daresbury, 2001)*



### Old House

Roydon Road, Eastend, Harlow, Essex.

Two detached houses to subsidise the repair of this grade II\* listed timber-framed house were proposed by its new purchaser, once the need for extensive repairs was realised. The local authority refused planning permission on the grounds that the problems with the house could reasonably have been foreseen, and because of the harm they would do to both the rural area and the setting of the building. The decision was upheld on appeal. Photograph taken as part of English Heritage's Images of England project

## 5.7 Other potentially valid development costs

### 5.7.1 Costs incidental to acquisition

All are valid only to the extent that they would be incurred on acquisition at open market value as discussed in Section 5.6.

**Stamp Duty** Stamp Duty is the current government tax on all land acquisitions, levied as a percentage of the purchase price, but in this context allowable only to the extent that they would be incurred on the site value as defined above.

**Site legal fees** These are the legal fees incurred in connection with the site purchase, and are often expressed as a percentage of the site cost.

**Agent's fees on site acquisition** In some cases, an agent will introduce a site to a developer and will therefore be entitled to a "finder's introductory fee". This fee is usually expressed as a percentage of the site cost (although it could be a lump sum) and normally varies between 0.5%-2% of the site acquisition costs.

**Holding costs** Holding costs, such as security, maintaining heating, or holding repairs, incurred between acquisition and commencing the development, are valid development costs. It will not be in the interests of the heritage asset that such matters be neglected. However, they are only valid for the period reasonably necessary to work up and submit an application which takes account of relevant planning and conservation policies. This will of course vary according to the scale and complexity of the project. Cumulative costs from a period of inactive ownership, incurred whilst pursuing proposals clearly unacceptable in policy terms, or when the asset could reasonably and practically have remained in or been put to beneficial use, are not valid development costs.

### 5.7.2 Design and construction costs

**Survey costs** Measured surveys of the site and buildings will be required if not already available, as, often, will condition surveys of both structures and landscapes. The costs vary depending on the size and complexity of the asset concerned.

**Research and analysis costs** These are costs involved in understanding the site and the potential impact of proposals upon it (including an EIA if required); any excavation or recording prior to or during the development required in mitigation of loss; and the preparation of a Conservation Plan as a basis of long-term integrated management under the terms of a section 106 agreement.

**Contamination costs** If there is a likelihood that contamination has occurred, investigation will be necessary; any response will be related to the uses proposed.

**Construction costs** The cost of repair and refurbishment of the heritage asset(s) should be set out separately from the cost of any new build, and should be supported by a quantified schedule of works. The appropriateness of works is considered in Section 5.12.

**Landscaping costs** As part of the development costs, landscaping and the restoration of important historic features may be required.

**Professional fees** Design and professional consultant figures are usually expressed either as a percentage of the total building cost (excluding contingency) or an amount. The rates are likely to be higher for work to the historic asset than for the new build element. Typical professional fees in relation to design and construction tend to be in the range:

project manager	0.5%
architect/ surveyor	8-16%
landscape architect	8-16% of landscape costs
quantity surveyor	2-6%
structural engineer	0.5-4%
M&E engineer	0.5-4% of M&E costs only
planning supervisor	0.5-2%

It should be noted that these are only an indication of the possible fee percentages and range of skills required. A great deal will depend upon the role of the professional, the level of investment complexity and size of scheme. Some professionals will work on an hourly basis, whilst others have a standard fee. Project management fees are not always incurred in historic building work as the role still tends to be undertaken by the architect or surveyor. Planning authorities and their advisers must check whether the fees quoted are reasonable in the particular circumstances of the case.

**Contingency** A contingency, expressed usually as a percentage of the design and construction costs, is normally included to allow for any unforeseen additional building costs that may be encountered once works have commenced. Contingency figures typically range between 2.5% and 10% according to the perceived risk of unforeseen problems. A higher percentage is likely to be applicable to works to the historic asset than to the new build elements.

### 5.7.3 Statutory and other charges

**Planning and building control fees** The statutory fees payable to the local authority.

**Funding and valuation fees** In order to carry out a development, it is normally expected that a developer will approach a bank or other lending institution to fund a percentage of the site acquisition and construction costs. In addition to the interest payable on the loan, banks generally charge an

arrangement fee and a valuation fee, both expressed as a percentage of the loan. Other fees attached to the funding may be financial capping costs (see 5.2.2), the funder's legal fees and any costs attached to a second charge, and the fees of their monitoring surveyor.

**Section 106 Agreement** The legal cost of drafting the agreement varies according to its complexity. It is customary for developers to meet the legal costs of the planning authority as well as their own. As well as legal costs, there may be implementation costs other than those directly connected with the heritage objective, for example contributions to the local authority's education and highway infrastructure costs.

#### 5.7.4 Interest charges

A developer will pay interest on monies borrowed, which vary from month to month depending upon the level of borrowing. In order to calculate accurately the total amount of possible interest payable on a site development, a cash flow exercise is usually required which will calculate the borrowing requirement, and thus the interest due, on a monthly basis. Allowance must be made for interest payable during any void period at the end of the construction period. The amount of interest payable may be affected by the phasing of the scheme and some larger residential schemes can, with careful phasing, become self-financing.

#### 5.7.5 Letting and sales costs

**Agents letting/sales fees** These are fees payable either to an agent to introduce tenants, which can vary between 10% and 13% of the first year's annual rental, or the agent's fees on sales, which again can vary between 1% and 2% of the sale price.

**Legal fees on lettings/sales** Again normally expressed as a percentage, but may vary considerably depending upon the size of the development and the amount of legal involvement needed.

**Promotion costs** Marketing costs are a legitimate cost, encompassing advertising costs, the cost of an appropriate brochure and in some cases a marketing suite/show flat/house. The cost of marketing a site depends upon the size and nature of the property.

#### 5.7.6 Deductions from costs

**Short-term income** Any income derived from the site during the period from acquisition to completion of construction, such as fees from car-parking or advertising hoardings.

**Grants** Any public subsidy, whether heritage-related or not, given in cash towards reducing the deficit on the project.

## 5.8 Developer's profit

- 5.8.1 It is naturally right and proper that a developer be allowed a fair and reasonable return on his investment, to reflect the risk involved in the development project. There are many different types of developer. The developer/builder will usually require a lesser profit than the pure entrepreneur, as the builder will usually generate a profit on the cost of carrying out the actual construction, whereas an entrepreneurial developer is purely the catalyst whose vision, management and development skills need to be rewarded. In the present competitive residential development market, development companies are accepting lower profits in the hope that the finished product will sell quickly. During a recession, however, risks are obviously greater and therefore a higher percentage return is required.
- 5.8.2 There are a number of ways of calculating profit. The simplistic 'return on cost' is an accepted guide used by a number of developers. As a very rough guide, in today's market, a pure entrepreneurial residential developer will look for an overall return on costs between 15%-20%, whilst a builder/developer may seek only a 10% return on the construction cost element, as a builder's profit should be included in those construction costs. It is important that a double profit is not allowed. Some developers look to a percentage of turnover, which can be as low as 5% on short term schemes; the norm is 7%-10% per annum. The true guide to assessing the profitability of a scheme in comparison with other forms of investment, which tends to be used by larger developers and institutions, is to consider the Internal Rate of Return (IRR). This percentage figure can be calculated on an annual basis using standard cash flow computer models.
- 5.8.3 Developer's profit is normally allowable on all valid development costs, including appropriate site costs (as defined above), since all involve financing costs and risk. The principal exception is cash subsidies from public sources, for example English Heritage or a regional development agency. These are deducted from total development costs before developer's profit is calculated. Whilst enabling development is itself a form of subsidy, it is normally included in development costs, because it must be funded and bears risk. If that risk is significantly lower than for the development of the historic asset itself (as is often the case), it may be subject to a lower profit margin, or a rate applied to the whole that balances the different levels of risk of the parts. Each scheme is different, and must be assessed on an individual basis, normally within the range indicated.
- 5.8.4 It will be clear that, so long as it does not involve inherently greater risk, a developer will normally wish to maximise the conservation deficit to be covered by enabling development, and thus the quantum of development, in order to maximise allowable profit, since it is directly related to the scale of the operation. As well as the obvious approach of not seeking to generate maximum value from the historic building which is normally the focus of the

proposal, it can be in the developer's interests to, for example, accommodate community expectations about facilities, access, restoration and so forth, and perhaps even to generate them through a community planning exercise. This can be especially true if house builders are involved as principals or development partners; they tend to be attracted to enabling development projects primarily because the new development will sustain their core business. The public interest will almost always lie in minimising the quantity of enabling development.

- 5.8.5 When judging what is a fair and reasonable return, it is necessary to take into account the location of the development, length of development, the target market, complexity of the scheme, possibility of unforeseen problems (although a contingency figure in the building costs should, if professionally estimated, take this risk into account), the stability of interest rates, etc. Local authorities should therefore seek professional advice (as part of their scrutiny of the development appraisal) regarding an appropriate level of profit. Allowing too great a profit could result in permission being granted for more units than is absolutely necessary, whilst if sufficient profit is not allowed, the development may fail.

Some relevant appeal decisions: developer's profit

'In my experience the subdivision of large country houses into apartments for sale is a risky business. In the market place those who undertake high risks expect the potential for high returns. Profit is a matter which should be taken into account in any calculation of economic viability. The need for substantial profit margins in any estimates of cost is amply demonstrated by the original tender of £550,000 for the works (based on the contractor's experience of such projects) having to be increased by some £301,515 (about 55%) once the actual condition of the building and the extent of the necessary works were known and priced.' (*Farringdon, 1998*)

### Mendip Hospital

Somerset

Enabling development supporting the conversion of this grade II listed, mid 19th century lunatic asylum by G G Scott and W B Moffatt takes the form of courtyards and terraces of houses to the rear of the main range, extending the strongly axial plan and incorporating the original chapel.



## 5.9 VAT

The impact of VAT upon the scheme should be taken into account and, so far as possible, minimised. Specialist advice may be needed in complex cases.

## 5.10 Due diligence

5.10.1 Carrying out a development appraisal is a skilled task, involving the input of a number of professional disciplines. By its very nature, the development appraisal can provide a wide range of end figures, depending upon the accuracy of its components. Consequently, when carrying out a due diligence exercise, local authorities should employ qualified and experienced professionals who are familiar with the development process and who can investigate and verify the figures being put forward.

5.10.2 In particular, the 'shortcut' method of using the comparable method of valuation for residential development should not be relied upon. This approach is to say that if residential plots sell for between 25% and 33% of completed capital value, then the conservation deficit divided by that plot value equals number of units required. This is not normally an accurate method of deciding the number of units to be allowed, although it may be used as a rough check.

## 5.11 The importance of sensitivity analysis

Once the development appraisal has been verified, and the basic figures agreed, a sensitivity analysis which varies the main figures, eg. construction costs, projected revenue and interest rates, is a useful exercise in order to take an overall view of the scheme. Is it robust, or unduly vulnerable to relatively minor changes in one variable? Local authorities should be careful not, in any way, to endorse the profitability of the scheme, for it is up to the developer/owner to provide the information to justify their proposal. It is the local authority's role to carry out a due diligence exercise in order to verify that the information being provided is a reasonable assessment of the proposed development and the supposed 'conservation deficit' as at the date of the application. It is important that the figures used in the development appraisal are as at today's date rather than projected, as this adds a further layer of possible inaccuracy.

## 5.12 Assessment of repair and conversion – reasonable works, reasonable costs?

5.12.1 It is vital to consider whether the works proposed conform to best conservation practice, not involving too much or too little work; and whether they are realistically costed.

5.12.2 Repair proposals should generally conform to English Heritage advice in *The Repair of historic buildings* (1991), avoiding the twin temptations to do too much – often in pursuit of an unrealistic goal of a long subsequent period free of maintenance – or to do too little, so that the 'solution' would be short-lived. This general advice must, however, be tempered by the nature of the building and the end-user. To make a building readily marketable, it may be necessary

to undertake major repairs, like re-covering the roofs, which could, with good routine maintenance, be deferred a little longer. It tends to be difficult, for example, to let a building to tenants on the basis that they must incur the cost and disruption of such major works within a few years of moving in; and the cost will probably be less if tackled alongside other major works. The same principles apply to buildings and structures which form part of an historic park or garden, which need to be put into sound repair at the outset if a management plan to secure their long term future is to be effective, and management charges reasonable (see Section 4.4.4).

- 5.12.3 Equally, it may be necessary to accept compromises if costs and the extent of enabling development are to be kept within acceptable limits; the perfect solution may have to be left to the next generation. For example, profiled metal sheeting rather than slate on the roof of a mill may be acceptable if the alternative is no mill; or the structure of a rock garden may be made sound, but its replanting simplified. The compromises to avoid above all are short term repairs to roofs, gutters and other crucial weathering elements of buildings, the inevitable failure of which will result in rapidly escalating deterioration. A package funded through enabling development must result in a heritage asset that should remain reasonably sound through normal routine maintenance, although on occasion it will leave scope for future enhancement. In historic landscapes, for example, the framework must be re-established and an appropriate management plan put in place, but restoration of its detailed elements may need to be selective if costs, and their implications, are to be acceptable.
- 5.12.4 Historic buildings, once repaired, must be saleable in the market. Multiple residential conversions, particularly, must achieve standards acceptable in performance terms to owners and occupiers, as well as building control officers; and sufficient to secure NHBC or other commercial warranty, or they will not be mortgagable with mainstream lenders.
- 5.12.5 Judging the appropriate approach to repair and conversion should normally be within the expertise of local authority conservation staff. Assessing estimates of the cost of major and complex works, however, is likely to require specialist support in the form of a quantity surveyor with specialist expertise in historic building or landscape works. A valuer is not a quantity surveyor; unless the costs are subjected to expert scrutiny by or on behalf of the planning authority, their valuer will normally have little choice but to accept the applicant's figures.

Some relevant appeal decisions: appropriateness of works

‘Some of the items you pointed out make me reluctant to accept that everything listed is necessary or even wholly desirable. The schedule appears not to have been prepared on the principle of minimum intervention; such an approach could significantly reduce the amount of work to be carried out and the amount of new material on the face of the building and in its fabric. The execution of all the works listed would no doubt put the building into an excellent state of repair, but it appears to me that the building is not in any significant danger, and that many of the works, though desired by the owners, are either not strictly necessary or necessary to the extent proposed. In my view, this seriously undermines the weight to be given to the benefit to the listed building arising from granting planning permission for the present proposal.’

*(Horspath, 1995)*

‘Understandably the costed schedule of required repairs prepared for the applicant was based on an assessment of both visible and potential but unseen problems. As a result, a number of major cost items were allowed for in the Schedule of Remedial Works which would not necessarily be high on the priorities of an owner occupier. For example, although there was very little visible evidence of rising damp, an allowance of some £48,000 had been made for inserting a dampproof course throughout the house and all its annexes, together with consequential removal and replacement of much of the existing plaster, joinery and services. This figure would also include dry rot treatment, work to strengthen the floor, replacement joinery and redecoration. Although there was only minimal evidence of actual structural movement, an additional £25,000 was allowed for the underpinning and part rebuilding of walls. The cost of replacement ceilings and cornices, none of which in my opinion required urgent replacement, was estimated at £10,000. The existing under floor ventilation was assumed to be inadequate, with £2,000 allocated for remedial work. It thus seems to me that the approach or the ‘acceptable’ standards adopted by the appellants’ professional advisers would not necessarily be those of a private owner occupier who would be more likely to address problems as they actually arose.’ *(Woolhangar Manor, 1997)*

‘The estimated cost [of repair], which totals about £761,000, has been verified by an independent advisor acting for the Council. The repair costs are also broadly consistent with costings submitted by English Heritage. While concerns have been expressed by some interested persons that defects have been exaggerated and costs overestimated, I heard no cogent arguments to support this view. In short, I take the view that the estimate of £761,000 represents a realistic basis for any financial assessment of the overall viability of the appeal scheme.’ *(Sedgwick Park, 1995)*

‘I conclude ...that the extent and method of the proposed restoration of Mayles go beyond the advice in Annexe C of PPG15 and that they could be undertaken more economically.’ *(Mayles, 1997)*

### 5.13 Commissioning development consultants

- 5.13.1 If a local authority does not have the professional valuation and development appraisal expertise 'in-house', it is important that the appropriate external professional advice is obtained from specialist consultants. The consultant should clearly state that they have no conflict of interest and that they are fully conversant with both the local market conditions and with the development process. A specimen letter of invitation to tender is at **Appendix 4** .
- 5.13.2 Failure to apply an appropriate level of scrutiny to evidence of cost and value means that on appeal, an inspector is likely to accept the appellant's figures.

Some relevant appeal decisions: the need for expert scrutiny

'I give no weight, however, to the Council's analysis of viability, based as it was on rough and ready figures and a notional scheme.' (*Daresbury Hall, 1997*)

'The appellant's figures of costs and receipts and the estimates on which they are based were not seriously challenged by the Council, although other means of overcoming the shortfall were suggested. I suggest that they provide a reasonable basis for determining this case.' (*Wymondley, 1995*)

#### Practical points

Local authorities should

- ensure that the case is based on the needs of the asset, not the owner
- appoint an experienced firm of independent advisers who are familiar with the development process, have knowledge of the relevant market(s), and are familiar with the policy guidance in PPG15 and that produced by English Heritage
- ensure that they are supported by specialist expertise in the assessment of repair and other construction costs: valuers are not quantity surveyors
- ensure that only an appropriate, normally nominal, site or acquisition value is included
- look carefully at the repair specification and other cost generators
- take a realistic view of profit levels, based on professional advice, and bearing in mind the degree of risk

## 6 Making the decision

### 6.1 Introduction

- 6.1.1 Section 3 addressed the assessment of impact on the heritage asset itself. This section is concerned with the wider context, and so becomes relevant only if the proposal is likely to be beneficial in heritage terms, and so has potential for approval. Weighing the benefit to the heritage asset (and any others offered) against the disbenefits necessary to secure its future is not a simple exercise, for neither can normally be reduced solely to monetary value in a balance sheet. And the policies established at national level, and in the statutory development plan, cannot be lightly overturned, particularly given the statutory duty (under section 54A of the Town and Country Planning Act 1990) to determine applications in accordance with it.
- 6.1.2 It is particularly important to consider the objectives of all planning policies that the proposed enabling development would contravene, and the local, strategic and long-term implications of those contraventions. The equation also needs to be considered from the standpoint of all the stakeholders involved. The problems are, of course, not confined to planning applications for enabling development, for weighing the balance is the very basis of planning decisions. This section therefore concentrates on some aspects of the process that are particularly relevant to enabling development.
- 6.1.3 Where applications offer benefits in addition to securing the future of the heritage asset, for example to biodiversity, or by generating rural employment or other community benefits, it is important that these are subjected a level of testing equivalent to that applied to the claims for the historic asset itself, involving the appropriate level of expertise. When considering whether additional public benefits can be achieved through an enabling development, for example public access, it is important to remember the effect these may have on cost and end values, and thus on the amount of enabling development that may be required to include them.

### 6.2 Non-historic values and significance

- 6.2.1 It is important to recognise that heritage assets often have additional, non-historic values or significance. These values, which may have developed as a consequence of the site's history, may indeed be more important than its historical values.

**Biodiversity value** is an attribute of most historic landscapes, and can include both natural vegetation and associated wildlife, as well as designed features such as avenues. Buildings may be used by bats, stonework colonised by important lichens, and parks will usually have veteran trees, but heritage assets can include a variety of valuable habitats (grassland, heathland, freshwater, coastal, etc) and associated species, including legally protected ones such as the great crested newt.

'It is demonstrated that the amount of enabling development is the minimum necessary to secure the future of the heritage asset, and that its form minimises disbenefits'

**Commemorative or associational values** may not be fully reflected in statutory designations. A war memorial in an abandoned churchyard may, for example, be of huge local significance but unlisted. The local community will want to continue to visit it and remember. The association of a significant individual with a house or office may illuminate their personality and taste, and can bring their biography to life; but many buildings with, for example, blue plaques in London, do not qualify for statutory listing.

**Recreational, social and amenity values** that arise when, for example, historic designed landscapes are open to the public, or have public rights of way heavily used for recreation, especially as a result of their becoming surrounded by urban development.

6.2.2 It is important to consider all these values, as management and planning decisions inevitably involve them. In some cases, these differing values may actually conflict with maintaining historic values, or with one another, but such conflict is not inevitable and can often be resolved by a holistic approach to management.

### 6.3 Biodiversity

6.3.1 Earlier sections have concentrated on assessing the heritage value of the asset in its setting. Equally relevant, other than possibly in wholly urban contexts is the assessment of the ecological and biodiversity value of the heritage asset in its context, and the site that would be affected by the enabling development. Securing the future of a heritage asset does not warrant detriment to an SSSI or protected species, nor *vice-versa*. Indeed, English Heritage has a duty under the Countryside and Rights of Way Act 2000 to take reasonable steps to further the conservation of the special interest of SSSIs.

6.3.2 Enabling development in support of cultural heritage assets should clearly seek to minimise detrimental impact on the natural heritage, and where possible – through integrated, long term management plans, for example – make a positive contribution to maintaining and enhancing biodiversity. Enabling development may on occasion warrant some detriment to non-statutory biodiversity interests, but normally only if works in mitigation result in no net loss, and preferably some enhancement. An integrated, holistic view should be taken of the management of all environmental assets and values.

**The advice of English Nature should be sought, and taken into account, where nationally important habitats and species are involved.**

### 6.4 Sustainability

6.4.1 There are many aspects of sustainability. It requires integration of the social, economic and environmental strands of sustainable development into strategies, policies and programmes at all levels<sup>2</sup>. Thus a sustainable planning

<sup>2</sup> English Nature, Position statement on sustainable development, April 1999

framework should provide for the nations's economic needs, whilst respecting environmental objectives; use already-developed areas in the most efficient way; conserve the cultural heritage and natural resources; and shape new development patterns in a way which minimises the need to travel (PPG1, para 5). This Guide is primarily concerned with one approach to sustaining and enhancing cultural heritage values in our landscape, urban and rural, by avoiding loss or detriment to important and irreplaceable heritage assets; but in applying its recommendations, it is essential to bear in mind the wider picture. In particular, all that is about cultural heritage assets applies equally and comparably to natural (biodiversity) resources.

- 6.4.2 Proposals for enabling development essentially involve departures from local, structure or national planning policies, for example controlling development in the Green Belt or in the open countryside. It is clearly necessary to consider the effects of these departures on the objectives that the policies were designed to achieve and the amenities which they were designed to protect. Particularly relevant is the need to make settlement and land use patterns more sustainable, for example by avoiding new development which is not readily accessible by public transport, particularly single use developments from which daily travel is inevitable.

## 6.5 The balance of advantage

- 6.5.1 Heritage assets are by their nature a finite and irreplaceable resource. Their preservation is therefore a high priority, and statutory designation imposes a presumption in favour of their preservation. However, this does not automatically justify doing so through enabling development if the disbenefits are demonstrably out of proportion to the heritage value of the asset. But it does suggest that the decision should be made in the light of a realistic (but not overly pessimistic) view of the consequences of referral for the heritage asset.
- 6.5.2 One approach to weighing the balance is *Community Impact Assessment* (Lichfield 1996), a form of cost-benefit analysis which can be applied to planning decisions. Table 3 indicates how, even in a simplified form, it can be used to compare the benefits and disbenefits of options for enabling development, or summarise the assessment of the least detrimental option, taking into account all the constituencies of interest. Clearly, those constituencies and their interests will differ from case. The list in Table 3 is intended to be indicative rather than definitive, and goes beyond strictly planning considerations.
- 6.5.3 As with impact assessment, weighing the impact in words is always important, but a graphic summary comparison may also be helpful. The simplest approach to this, especially in the early stages of assessment, is to score on the basis of positive, neutral, or negative impacts, entering '+', '0' or '-' in each column. A slightly more sophisticated approach involves using '+ +/—' or

'The value or benefit of the survival or enhancement of the heritage asset outweighs the long-term cost to the community (ie the disbenefits) of providing the enabling development'

Table 3: Summarising community impact

Constituency	Interest	Do nothing	Option 1	Option 2
Owner of heritage asset	Removing liability Securing long-term future of asset			
Adjoining owners	Impact on <ul style="list-style-type: none"> <li>amenity</li> <li>property values</li> </ul>			
Local community perceptions	Effect on, eg <ul style="list-style-type: none"> <li>cultural values of asset</li> <li>access to and use of asset</li> <li>community size, identity</li> <li>sustaining viability (eg numbers, affordable housing)</li> <li>traffic and safety</li> </ul>			
Local economy	Employment Viability of local services Tourism			
National economy	Economic flows			
Local planning authority	Effect on policies re, eg, <ul style="list-style-type: none"> <li>sustainability</li> <li>green belt</li> <li>housing</li> <li>employment</li> </ul>			
Local government	Council tax income Cost of services Long-term infrastructure costs			
English Heritage	Impact on heritage significance Grant requirement Long term support			
English Nature Countryside Agency etc	Impact on natural interests Grant requirement Long term support			
Posterity	Perceptions of relative long-term values			

'+++/'C' to indicate degrees of positive or negative impact. It is important to include the *status quo*, the do nothing (other than perhaps make safe, ie 'do minimum') option, as a baseline against which to measure the relative benefits and disbenefits of inter vention.

6.5.4 The result, however, may be best used and expressed in essentially visual terms, for a numerical analysis would only be valid if each factor was equally important to all the stakeholders. This problem can be overcome by weighting – applying a multiplier to different factors, based on their perceived importance. However, deciding on an appropriate weighting is itself problematic, for each constituency is likely to have a different view, based on the costs and benefits which it perceives would flow to it. Its main value is likely to be in exploring ‘what if’ scenarios – what is the effect of applying weightings as perceived by each of the main stakeholder groups? How similar, or different, are the final answers?

## 6.6 Community participation

6.6.1 Since the concept of enabling development involves public disbenefit being accepted in return for a potentially greater public benefit, consultation with the communities and constituencies of interest (or ‘stakeholders’) involved is particularly important. The degree of participation should be proportionate to the level of community interest in or ‘ownership’ of the asset. Where the impact on a definable community, for example a village or urban neighbourhood, would be considerable, consultation should reasonably extend beyond the statutory notification procedures, to encompass active participation. At the same time, it is important to be aware of the dangers of community manipulation, for example by a developer raising expectation or demand for additional public amenities and benefits, in order to increase the amount of enabling development, and thus his return from the project (see 5.8.4).

6.6.2 Participation can take many forms, but it should involve an attempt to understand local perceptions of the values attached to the heritage asset – which may well differ from the national, expert, assessment – and the relative importance of particular issues which enabling development may generate. The process is likely to be easier if there is a background of community involvement through village design statements or conservation area character appraisals and enhancement strategies. Participation should provide an opportunity for active involvement in decision making. Consensus is rare, because of the different, essentially individual, value sets each player brings to bear, but it is important to understand the range of opinion represented.

6.6.3 Many heritage assets acquire a strong degree of community ‘ownership’ through informal use – dog walking in the park, occasional public events held within the building such as annual fetes, or other uses which confer a degree of public access. This sense of ownership can be highly beneficial – local people may help informally with maintenance or fundraising; regular use of the grounds can reduce vandalism; voluntary groups may help with research or interpretation. New development which reduces the element of local access in order to generate the resources needed to secure the future of an asset may in the longer term be counterproductive, if the local community cease to feel a

degree of ownership or responsibility for the site. It is important to work with groups who value and care for historic sites, and to deal sensitively with them. Conservation involves respect for different cultural values, and a recognition of the nature and sensitivity of the values of others.

Some relevant appeal decisions: weighing the balance

'I consider that there are various prerequisites that must be fulfilled before enabling development could be considered acceptable at Council. There must be a clear financial justification for a finite development and confidence that the funds generated would achieve their intended objective; there must be no realistic possibility of finding an alternative use which avoided the need for enabling development; there must be a specific scheme that could be assessed against normal planning criteria to ensure that it did not have unacceptable consequences; and there must be a mechanism to ensure that the funds for any development were used for their intended purpose... on the basis of the material before me, there is not a clear financial justification for finite development and I cannot be confident that by allowing enabling development, the restoration of the Hall would be assured. Furthermore, the application does not contain a specific proposal where it can be demonstrated that the benefits would outweigh the harm and in the circumstances it would in my opinion be inappropriate to grant an outline permission on the basis of a site edged red. Had these criteria been met, it would also have been necessary to have a satisfactory mechanism to ensure profit from the development was applied to the restoration of the Hall.' (*Cound Hall, 1999*)

'I next need to consider whether enabling development in the form now proposed represents the only practicable scheme of securing the future preservation and sympathetic use of the building; and whether the benefits arising from your client's proposal would be sufficient to outweigh the harm that I have identified [to the countryside]. To be assured on these points, I need to be satisfied that the enabling package would achieve its stated objectives, and that the prospects of reducing or eliminating the need for enabling development have been thoroughly explored.' (*Sedgwick Park, 1995*)

'I consider that the comparatively limited visual harm to both the Green Belt and the setting of Henbury House is clearly outweighed by the potential of the scheme to provide for repairs and restoration of what is acknowledged to be an important grade II\* listed building. I believe that the future for the listed building may be bleak if those repairs are not carried out within the next few years.' (*Henbury House, 1995*)

'I consider that additional housing at Daresbury all would be contrary to the thrust of national guidance that seeks to ensure that development as far as possible minimises the need to travel by private car and is well related to services and facilities.' (*Daresbury, 2001*)



### Cound Hall

Cound, Shropshire

This grade I listed country house of 1704 has been empty for some 25 years. At an appeal against refusal of consent for enabling development in 1999, the inspector accepted the likelihood of financial justification for enabling development, but refused consent because there was insufficient evidence to establish the quantum of development necessary to secure the future of the house.

#### Practical points

Careful assessment of the impact of options or proposals on the wider community is particularly important where

- the community places a significant value on the asset, whether through faith, through commemoration, use, memory, identification or in other ways
- the site has a current community use
- there is a potential or active community involvement in caring for a site (e.g. through voluntary work on site)
- the proposals could impact on the wider local community through change of use, or change in traditional patterns of access, or in other ways

## 7 Securing the benefits

### 7.1 Introduction

Where a decision has been taken that proposals for enabling development are acceptable in principle, it is essential that the benefits of the proposal are properly secured. In short, legally enforceable arrangements must be put in place to ensure that the commercial element of the development cannot be carried out or used without the heritage benefits on which the scheme has been predicated materialising.

### 7.2 Definition of the nature of the development

In order effectively to secure the benefits of a scheme, the planning authority must be clear about what the scheme involves at a sufficient level of detail, so we reiterate our advice that it will usually be appropriate for applications for planning permission for enabling development to be made in detail rather than in outline. Outline submissions will generally not provide the local planning authority with sufficient information to carry out a proper assessment of the proposal, nor will they normally establish what is to be built with sufficient certainty.

### 7.3 Condition or obligation?

7.3.1 **Planning Condition** : A condition imposed upon the grant of planning permission. The principal powers are in sections 70, 72, 73, 73A and Schedule 5 of the Town and Country Planning Act 1990. Government advice on the use of conditions can be found in DoE Circular 11/95, *The Use of Conditions in Planning Permissions*, which includes a set of 79 model conditions and a list of types of conditions which are unacceptable.

7.3.2 As a matter of policy, conditions should only be imposed where they meet the six general criteria for the validity of conditions that have been laid down by the courts. These are that the condition should be:

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise
- reasonable in all other respects

Guidance on each of the criteria appears in the Circular.

7.3.3 **Planning Obligation** An obligation entered into by a person with an interest in land, either by way of agreement with the planning authority or unilaterally, that conforms to the requirements of section 106(1) of the Town and Country Planning Act 1990. Essentially a legally binding covenant that runs with an identified legal interest in land, thereby binding future owners of that interest.

7.3.4 Government advice on planning obligations is given in DoE Circular 1/97, *Planning Obligations*. It states that the Secretary of State's policy is that they should only be sought where they meet certain tests, namely that they are:

- necessary
- relevant to planning
- directly related to the proposed development
- fairly and reasonably related in scale and kind to the proposed development; and
- reasonable in all other respects.

7.3.5 DoE Circular 11/95, *The Use of Conditions in Planning Permissions*, advises that a condition should be imposed in preference to entering into a planning obligation, since the latter does not give the opportunity to have the restrictions varied or removed by means of an application or appeal if they are, or become, inappropriate. Planning obligations can only be varied by agreement for the first five years, after which application can be made to the local planning authority (with a right of appeal to the Secretary of State) to vary or discharge them on the basis that they no longer serve their purpose.

7.3.6 For schemes of enabling development, however, it is of paramount importance that the heritage objectives of the scheme are met. This will very often justify a planning obligation being put in place, not least because there is a limit to the extent to which detailed drafting can appropriately be accommodated within planning conditions. Measures may also be justified that go beyond the scope of valid planning conditions, such as requiring the payment of money, the deposit of a bond or the transfer of land. There is a strong public interest in ensuring that the detriment cannot be caused without a compensating benefit being put in place.

7.3.7 It would not be appropriate for a planning obligation to be preferred to a planning condition simply because the former cannot be the subject of an appeal to the Secretary of State within five years. This need not be a concern, of course, if the condition in question is properly drafted and protects the heritage asset adequately, along with such other measures as may be needed.

## 7.4 Planning obligations

7.4.1 There are numerous legal points to bear in mind in drafting planning obligations, and it is usually appropriate to obtain specialist legal advice. The key points to bear in mind, however, are that:

- only a person 'interested in land' in the area of the local planning authority concerned may enter into a planning obligation;
- obligations bind only the parties to them and their successors in title – they cannot be imposed on third parties.

'The achievement of the heritage objective is securely and enforceably linked to [the enabling development], bearing in mind the guidance in DOE Circular 01/97, Planning obligations'

- 7.4.2 An important characteristic and benefit of planning obligations is that they are enforceable not only against any person entering into the obligation, but also any person deriving title from that person, notwithstanding that ownership may subsequently become fragmented, for example as a result of a housing development. In short, they are capable of 'running with the land'. This is an important consideration because it is vital that the local planning authority's requirements are robust in the face of changing circumstances, particularly changes in ownership of part or all of the land in question. Title should always be checked at the outset.
- 7.4.3 Particular care should be taken that not only does the person entering into a planning obligation have an interest in the land concerned, but an interest sufficient and appropriate to deliver the objectives of the obligation. A leaseholder, for example, cannot enter into a planning obligation capable of binding a freeholder; so if the lease in question were to end, the freeholder could deal with the site free of the planning obligation. This would not be a satisfactory situation, but can be overcome if the superior interests are willing to be bound into the obligation. In summary, anyone with an interest in land who could act contrary to the objectives of the obligation must agree to be a party to it if it is to be effective.
- 7.4.4 Care should also be taken to ensure that any existing mortgagees are party to the planning obligation and so are clearly bound by it should they find themselves in possession of the land over which the mortgage has been taken. This could well happen in circumstances where the enabling development permitted has not been the commercial success that was hoped for.
- 7.4.5 Often, applications for planning permission for commercial development are made by developers upon the basis of a conditional contract or option to purchase the freehold. This is not, however, the same as dealing with the freeholder, so a covenant given by a developer in that capacity will not bind a future freeholder. The planning authority should insist that the freeholder is party to the agreement.
- 7.4.6 Section 106(1) of the 1990 Act provides that planning obligations may be entered into by a person interested in land:
- to restrict the development or use of the land in any specified way;
  - to require specified operations or activities to be carried out in, on, under or over the land;
  - to require the land to be used in any specified way; or
  - to require a sum or sums to be paid to the authority on a specified date or dates or periodically.

If a planning obligation does not fall within one of these four categories, then it may not be invalid as such, but it would not have the effect of running with the land.

- 7.4.7 It is crucial that the key planning obligations to secure the ‘heritage objective’ fall within the confines of Section 106(1), and
- are ‘attached’ to the appropriate land;
  - make plain when they must be performed; and
  - wholly or partly prevent the commercial element of the development from being carried out or used until they have been performed.
- 7.4.8 Adherence to these criteria should ensure that changes in circumstances do not frustrate the heritage objectives which have justified the scheme. For example, a typical scheme of enabling development may involve the building of houses in circumstances that would otherwise be unacceptable in order to secure beneficial repairs and long term maintenance to an historic property. It may be that the development site and the historic property are in different ownerships. Accordingly, an obligation to carry out work to the historic property cannot be imposed upon the owner of the development site, who has no legal interest in the land the subject of the obligation. The proper course, therefore, is to require the owner of the development site to enter into an obligation under section 106(1)(a) restricting the construction or use of the new houses until certain specified works to the historic works have been done. Corresponding obligations to allow the works to be done could be entered into by the owner of the historic property, as a party to the same agreement. Both parties must be bound to act jointly, and their obligations must run with the land.
- 7.4.9 The timing of the obligation is critical for enforcement purposes. The most effective mechanism is for the permissible progress upon or use of the commercial scheme to be related to the carrying out of works to the historic property or payment of funds for its benefit. It is not sufficient simply to require works to be done or payments made at certain stages of the commercial scheme. If the obligation is to be capable of effective enforcement it must allow for progress upon the commercial scheme or use of it to be prohibited until the agreed benefits have materialised. In the case of breach, an injunction can be sought if necessary.
- 7.4.10 Where, as for example with historic landscapes, long term adherence to a conservation or management plan is fundamental to the success of the scheme, the requirement to do so should be the subject of a planning obligation created through the section 106 agreement.

7.4.11 Schemes of enabling development are often inherently complex. This precludes having a standard approach to drafting the planning obligations that may be required. Indeed, in any one case there may be a variety of possible solutions. Nonetheless, a typical form of section 106 agreement is provided at **Appendix 5**, which illustrates certain drafting principles that may be of use in considering what may be required in a given case. In the example, the heritage benefits are secured not only by enforceable restrictions upon the progress of the commercial development, but also by a bond under which the planning authority can look to a surety, usually a bank or other financial institution, to meet its costs should the authority take remedial action in circumstances of default.

## 7.5 Planning conditions

7.5.1 Planning conditions, allied with (but not duplicating) planning obligations, can be used to ensure that the justification for a scheme at the application stage is brought to fruition. This is particularly so where it is important that the commercial element of a scheme is built to a certain standard and level of detail. Planning conditions should not be used to delay important decisions until later on – they are best used to ensure that details put forward at the application stage are adhered to. Accordingly it is often advisable to include a condition specifically requiring adherence to certain approved drawings unless the local planning authority permits otherwise.

7.5.2 It is quite pointless to have a condition that requires further investigation or information which should have been provided in support of the application, as once planning permission has been granted it can no longer influence the outcome. However, conditions can be used to secure mitigation strategies, particularly those involving archaeological excavation and analytical recording of elements of the heritage asset whose disturbance cannot be avoided.

7.5.3 It may also be particularly appropriate in enabling development cases to use planning conditions to withdraw permitted development rights, the exercise of which could be detrimental. Specific guidance on this is provided in paragraphs 86 – 88 of Circular 11/95. These explain that although there is a general presumption against restricting the use of permitted development rights, exceptional circumstances may justify conditions which do so, if necessary in order to secure a clear planning purpose. Model conditions 50 – 52 in the Circular provide appropriate wording.

7.5.4 Planning conditions may also be required to regulate the phasing of a development. This may be necessary in order to ensure that the developer does not simply omit an element of the development to the detriment of the heritage objectives that justify the scheme. It may also be appropriate to ensure that the development is carried out in a particular sequence. The circular provides a model phasing condition (No. 42).

PPG 16, paragraph 30, includes a model condition for archaeological work in mitigation of unavoidable damage.

7.5.5 The complexity of the arrangements necessary to regulate the future maintenance or management of a property might well call for a section 106 obligation to be in place in order that the necessary drafting can be accommodated. The possibility that provisions of similar effect can be contained within planning conditions ought, however, to be considered.

7.5.6 It may be that a development ought not to proceed or be brought into use until such time as works have been carried out on land that is not within the developer's ownership or control. Such works often involve improvements to the public highway that are required to ensure safe and efficient access to the site by vehicles. In these cases a so-called 'Grampian Condition' is needed, such conditions taking their name from the 1984 case of *Grampian Regional Council v. City of Aberdeen District Council*. Grampian conditions must be worded in a negative way so as to impose a restriction upon land which is within the developer's ownership or control – typically a restriction upon development being commenced or used – until such time as certain works have been satisfactorily completed. In the 1993 case of *British Railways Board v Secretary of State for the Environment and Hounslow LBC*, the House of Lords ruled that such conditions are not rendered unlawful on account of the fact that there is no reasonable prospect of their being fulfilled. This may be the case, for example, where the owner of the land upon which the works are to be carried out has made it plain that he has no intention of selling the land or granting the necessary rights over it. As a matter of policy, however, the Secretary of State has stated that conditions of this kind should only be imposed where there are at least reasonable prospects of the action in question being performed within the life of the permission.

## 7.6 Securing the investment

7.6.1 All development involves risk. Costs can rise, the market can fall, and even the most prudent and experienced developers can fail as a result. Ideally the heritage asset should be repaired before the enabling development commences, or the funds necessary to do so deposited with a trust, or a performance bond or guarantee obtained. However, these options can add to the developer's financing costs, and so increase the amount of enabling development required. With larger projects, an effective compromise can be phasing, so that once a defined block of work has been done or payment made, the first phase of enabling development may proceed, with subsequent development phases scheduled to follow the delivery of subsequent benefits. It is essential that the benefits are a step ahead of the detriment, not a step behind.

7.6.2 An agreement requiring phased repair of the heritage asset linked to stages in the realisation of the enabling development, rather than on its completion, mitigates the risks but can still result in financial difficulties. Such agreements should ensure that the phases of works to the heritage asset are undertaken in a logical sequence, beginning with repairs to the structure and external envelope, so that clear benefit is achieved even if the development is aborted.

'The heritage asset is repaired to an agreed standard, or the funds to do so made available, as early as possible in the course of the enabling development, ideally at the outset and certainly before completion or occupation'

The degree of risk needs to be carefully assessed in each case, but the objective of enabling development should always be secured as early as possible, and certainly not later than the use or occupation of the new development.

- 7.6.3 A section 106 agreement may provide for sums of money to be paid to the local planning authority to be used to finance repairs to an historic asset or fund its future maintenance. However, section 106 does not directly provide for sums of money to be paid to others. Thus a requirement that payments be made other than to the planning authority should be framed as an appropriate restriction on proceeding with some or all of the enabling development until the requisite payments have been made.
- 7.6.4 There should be clear arrangements for the use of money paid over in this way. A separate interest-bearing account, specific to the property, is normally appropriate. The payer may reasonably insist upon being provided with information as to how funds provided are spent and repayment provisions for funds that have not been applied.
- 7.6.5 An alternative approach, that may have a lesser effect on cash flow projections and financing issues, is to require the heritage benefits of a scheme to be protected by a bond in the planning authority's favour. Bonds are commonly used to guarantee obligations in infrastructure agreements and can be used to guarantee obligations for the benefit of heritage assets. An example of how such a bond might be drafted is included in **Appendix 5**. Their advantage is that the developer (or other party concerned), instead of having to produce funds before the scheme itself has generated any, effectively insures the heritage benefits by procuring a surety to whom the planning authority can turn to for payment in circumstances of default. Such a bond would, however, involve the surety being paid a fee for accepting potential liability, in the same way as any insurer will require an insurance premium.
- 7.6.6 It is usual for the surety only to accept liability to make payments up to a specified maximum sum, and for the bond to operate so as to reduce the surety's potential liability as particular stages in the project are completed. The arrangements will be a matter for negotiation in the context of the scheme in question, and usually the local authority will want to be satisfied that the surety is a reputable one before accepting the bond.
- 7.6.7 Performance bonds of this kind tend to follow a standard approach. The 'Bond Sum' represents the maximum amount recoverable from the surety under the bond. It is also fairly common for bonds to specify that action shall only be taken against the surety (sometimes known as a bondsman) by the local authority after it has taken such other action in default against the developer as is reasonable in the circumstances.

## 7.7 Securing long-term management

- 7.7.1 Enabling development will be of no effect if it does not secure the long term maintenance of the heritage asset, as well as its initial repair. The local authority will probably not want to become involved in the ongoing maintenance of an asset in which it has no legal interest. However, it should ensure that appropriate mechanisms for maintenance are put in place, both through the section 106 agreement and the structure of ownership and management, and that it can intervene if difficulties arise.
- 7.7.2 In the simplest case of, say, a small listed house, maintaining its value in the market is normally likely to provide sufficient incentive to future owners to keep it in repair. However, including an obligation to maintain in the section 106 agreement is nonetheless desirable, and if problems do arise, likely to be more effective than the 'long stop' of the use of statutory powers.
- 7.7.3 Commonly, the asset and the enabling development are part of the same historic entity, with common elements, for example development in the grounds of an historic house or institution. In such cases, where fragmentation of management of the historic asset could be detrimental to its significance, compliance with a management plan will normally be required under the section 106 agreement (see Section 4.4), together with provisions to ensure that there is a workable mechanism for carrying out and funding its provisions.
- 7.7.4 In such cases, the public interest in securing long term management coincides with the mutual interest of the various owners in protecting the amenity and value of their assets in the long term. Thus the normal arrangement is for individual units to be let on leases, with the freehold held by a management company of which the lessees are shareholders. Notwithstanding the problems of leasehold enfranchisement, such an arrangement remains preferable to fragmentation of the freehold, since positive covenants bind subsequent purchasers. Funding normally comes from service charges, but more complex mechanisms involving, for example, rental or other income, are possible.
- 7.7.5 Whatever solution is adopted, the owner of the asset should undertake appropriate long term maintenance responsibilities according to covenants in a section 106 agreement or other agreement, or possibly a third party will discharge this responsibility under the authority of contracts drawn up between the developer, the Council and the third party. Indeed a scheme may involve several interlocking agreements that may well be complex documents, in that they must identify with sufficient precision the works in issue and the means of raising funds (source, amount and timing) for the purpose. It will usually be advisable, therefore, to instruct a solicitor to undertake this work.

The example section 106 agreement at **Appendix 5** includes, in paragraph 1.1, a suggested definition of a management plan.

7.7.6 A further possibility is the establishment of a trust or other legal entity, the object of which is to care for the heritage asset in the short and long term. Trustees may be appointed by the local authority, heritage groups and others who have an interest in the long term management of the asset, as well as those having a more direct proprietorial interest. Such trusts may be set up to hold a heritage asset, particularly one with a limited market value, indefinitely, or take the form of a revolving fund building preservation trust, for which a model governing document exists. Generally, however, setting up such a body requires specialist legal advice.

Some relevant appeal decisions: securing the benefits

'Having carefully considered the draft terms of the undertaking which were available to me at the inquiry, I have formed the view that these provide insufficient assurance that the stated objectives would be realised. Once the Phase I works had been implemented, it seems to me that the requirement on Mr Style to complete the remaining works would be unenforceable. I can see nothing, in practical terms, to prevent him from disposing of the property at that stage, possibly at a profit, thus leaving the long term preservation of the estate in doubt. It seems to me that a more secure arrangement would be one that treated the subsidy as a grant toward the costs of the entire project, rather than Phase I only, thus requiring Mr Style to commit his own financial resources throughout the implementation of the scheme. An additional and prudent safeguard, it seems to me, would be to defer the occupation of the new houses until such time as the refurbishment project had been substantially completed. To my mind, the unilateral undertaking in the form suggested is seriously deficient, raising doubts as to whether the enabling development would achieve the desired purpose.' (*Sedgwick Park, 1995*)

' I do not see that I can accord as much weight to the argument for enabling development as I would have, had there been a complete package, firmly linking together the remaining conversion works with some development on the appeal site.' (*Chetwynd Park, 1993*)



'Whilst a draft Section 106 Agreement is contained within the appeal papers, there is no executed agreement or unilateral undertaking before me. In any event with the current wording I consider that there would be too many uncertainties in relation to matters such as how the monies were to be held and applied to the restoration of the Hall. A watertight agreement or undertaking ensuring that the proceeds of any enabling development were used solely for their intended purpose would be fundamental to any permission and that is currently not in place.' (*Cound Hall, 1999*)

## Practical points

Local authorities should ensure that

- all relevant parties and interests in land are bound into any section 106 agreement
- the benefit is delivered before the disbenefit is incurred, or a performance bond is obtained to guarantee delivery
- permitted development rights are withdrawn where their exercise could involve material harm to the heritage asset or its setting
- public benefits are sustained through appropriate obligations to maintain and manage the heritage asset in the long term.



### Danson House Stable Block

London Borough of Bexley  
before (left) and after (right) repair

The 'Coach and Saddle-Horse Stables' (listed grade II\*) were built between 1802 and 1804 with material reassembled from the original service wings attached the main house, the work of Robert Taylor between 1762 and 1766. By 1970, the stables were in very poor condition, but consent for demolition was refused following a public inquiry. Their repair and conversion by Bass Charrington to a pub restaurant, opened in 1997, made a significant contribution to funding the restoration of the main house by English Heritage.

'The planning authority closely monitors implementation, if necessary acting promptly to ensure a satisfactory outcome'

## 8 Monitoring and enforcement

### 8.1 Importance and basis

- 8.1.1 There have been many instances of schemes involving enabling development not delivering the promised benefits because implementation has not followed in accordance with the section 106 agreement which set out the rights and obligations of the parties. Such an agreement is a contract between the community, represented by the local authority, and the developer, to deliver a defined output, at a defined cost (paid in kind), to a defined standard, and at a defined time. In essence, it differs little from a contract to empty the dustbins, and should be subject to a similar degree of management and monitoring of deliverables in relation to both time and quality.
- 8.1.2 As soon as the contract is signed, it is essential to look forward. First, agree which officer of the local authority (or indeed external consultant) will be responsible for its practical monitoring. The appointed officer will need to set up regular meetings with the developer to review progress, both at and between milestones in the programme agreed in, or in consequence of, the contract. Phased schemes demand a formal arrangement for 'signing off' delivery of the benefits required before the next phase of development can begin. Monitoring will need to be focussed on the areas which represent the greatest risk, for example achieving a sufficient quality in historic building and landscape repair, or developing a marketing strategy that will deliver the end values on which the scheme is predicated.
- 8.1.3 Whilst a nominated officer with lead responsibility is essential, monitoring can be facilitated by corporate working within the planning authority, for example by involving building control staff who will be visiting the site in the course of their normal duties. Once an agreement is in place, the developer may well execute the works as quickly as is practicable, to limit financing charges and risk, and it is essential to keep up with the pace of work.
- 8.1.4 Requests to relax conditions imposed to secure the benefit of enabling development are frequently received. However, since experience suggests that conservation work deferred until the completion of development has a tendency not to happen, they should normally be firmly resisted.

### 8.2 Breaches of section 106 agreements and planning conditions

- 8.2.1 Action must be taken rapidly in response to any problems or breaches of obligations or conditions that may arise. Where a Section 106 agreement (or unilateral undertaking) is breached, various options are available to the local planning authority when considering enforcement action.
- 8.2.2 An **injunction** can be obtained. Indeed this will often be the appropriate remedy to pursue, as the local planning authority may well not have sustained any financial loss capable of compensation by payment of damages. There is

now specific authority for obtaining injunctions to enforce section 106 agreements in section 106(5) of the Town and Country Planning Act 1990.

- 8.2.3 Under section 106(6), where a requirement to carry out operations in a section 106 agreement (or unilateral undertaking) has been breached, the local planning authority may, upon notice, **enter upon the land** to itself carry out the works and recover its reasonable expenses for so doing from the those against whom the obligation is enforceable. Section 106(12) provides that regulations may provide for sums owed to the local planning authority in these circumstances to be charged upon the land, but as yet no such regulations have been made. The money is recoverable, however, as a civil debt in the usual way.
- 8.2.4 In addition to these two specific remedies mentioned in section 106 itself, the local planning authority can enforce planning agreements (or unilateral undertakings) **in contract**. By operation of section 106(3), the usual rules of privity (i.e. that a contract is only enforceable by and against the parties to it) are adjusted so as to allow the local planning authority to enforce not only against the party or parties that entered into the planning obligation in question, but anyone deriving title from them. Enforcing the agreement in this way may well be appropriate where, say, money due to the authority for a particular purpose has not been paid over.
- 8.2.5 Where there has been a breach of a planning condition, the local planning authority can serve a **breach of condition notice** under section 187A of the 1990 Act, requiring the steps specified in the notice to be taken. Such notices can be served upon the person who is carrying out the development to which the condition relates or any person having control of the land concerned. There is no right of appeal in the Act against such a notice, and a failure to comply is a criminal offence. Further, local planning authorities can take enforcement action by issuing an **enforcement notice** in the usual way under section 172 of the 1990 Act.

### 8.3 The importance of final evaluation and feedback

- 8.3.1 On completion of the development, both the authority and the developer – preferably jointly – should compare the outcome of the project to their respective expectations. Key aspects are clearly the quality of work achieved to the heritage asset, the actual rather than predicted impact of new work, and the actual financial outcome compared with the prediction on which the scheme was based.
- 8.3.2 The results of the evaluation, including any experience and lessons which it would be desirable to take into account in future policies and decisions, should be reported to the planning committee, and hence made available to the public. This respects the public, community interest in enabling development schemes, and fulfills the need for accountability and transparency inherent in the nature of enabling development agreements, although some financial details may need to be kept confidential between the parties.

## Enabling Development

### Stoneleigh Abbey

Warwickshire

Stoneleigh Abbey (listed grade I) is the grandest and most dramatic Georgian mansion in Warwickshire. Incorporating substantial fragments of a medieval Cistercian abbey, it was remodelled in the 17th century and substantially enlarged in 1714-26 by Francis Smith of Warwick. The park was laid out by Humphrey Repton after 1809. In 1960, the interior of Smith's west range was severely damaged by fire. The repairs were unsatisfactory, and Stoneleigh continued to deteriorate through the 1970s and 80s, despite efforts by the owning trustees to find a commercially viable future.

In 1994 the Trust was reformed and established a partnership with a specialist developer to convert the less significant accommodation to residential apartments, with the suite of state rooms open to the public. Despite repair grants of £1.35M apiece from English Heritage and the European Regional Development Fund, and £2.86M from the Heritage Lottery Fund, there remained a substantial shortfall, primarily the cost of repairs to outbuildings, the restoration of the historic park and the need for an endowment fund for future upkeep. The project had also to settle the debts of the previous trust. These costs were met by enabling development – the conversion of the former Home Farm and Kennels to residential accommodation; the conversion of the former stables to offices; and the erection of 16 large new houses discretely sited off the main drive. By early 2001, repairs to the principal listed buildings had been completed, although conversion and new build works were still in progress.

This project was a unique response to the particular circumstances and layout of Stoneleigh, and a recognition of the exceptional heritage entity of buildings, contents and park. The extent of enabling development was acceptable only because of the particular topography of the park, and because that area had already been seriously compromised by the National Agricultural Showground.



# Appendices

## **1 Checklist for applications for planning permission for enabling development**

The following information should normally accompany an application for planning permission for enabling development:

- Survey drawings and reports showing the existing form of the building and how it has developed through time
- Conservation Statement, defining all aspects of significance, vulnerability, and guidelines for retaining significance
- Options appraisal
- Evidence of market testing
- Proposals, defined in sufficient detail to understand impact on historic asset
- Impact assessment, including results of detailed targeted investigations to define impact
- Development appraisal for option proposed, substantiated by
  - justification for current value, if not nominal
  - justification for end values, based on comparable transactions
  - detailed costed schedules of works
  - justification for any other exceptional costs
  - sensitivity analysis
- Suggested heads of terms for section 106 agreement
- [if applicable] Parallel application for listed building consent

This is a framework for a brief which can be adapted to individual requirements. It can be used either to request information from an applicant prior to submitting an application, or in association with a planning condition. However, as the latter must be enforceable, more detail is likely to be required. In all cases, the quality of the response will depend upon the quality of the brief and the forethought given to the issues that the work must address.

## 2 Model framework brief for analysis or investigation

### Name/Address/Location of Site

### Purpose of the Work

#### Short explanation of reason for work

For example,

- to provide information in support of an application for planning consent/listed building consent which will be used to inform the design of new proposals
- to fulfil requirements of a condition attached to a planning consent/listed building consent

and a note of why work is justified. If the information is intended to inform new design, this should be made clear.

### Type of Work

Explain the type of work needed. This will need to be tailored towards the individual requirements of the site, and of the proposals. It might include:

- rapid assessment
- conservation statement
- measured survey drawings
- research or analysis targeted towards requirements of scheme
- archaeological evaluation
- impact assessment
- analysis or investigation during works
- recording in mitigation of loss

For each type of work, the local authority should explain what is expected as clearly as possible, otherwise the objectives are unlikely to be met.

### Reports, archiving and publication

Identify what information will be needed, in what format and for whom. A Rapid Assessment should simply require a short, illustrated report; a programme of work which accompanies a scheme may have more detailed requirements for submitting copies of reports to appropriate archives, such as the local Sites and Monuments Record (SMR).

### Timing

It is vital that information is available before decisions that should be informed by it are made. A Rapid Assessment should be available well before an application is submitted for consent, for example.

### Procurement

Explains how the work should be procured, including the skills needed to undertake the work, and guidance on the contents of project designs, which are appropriate for more complex pieces of work. However, a request for a project design does not obviate the need for a carefully framed brief.

### Monitoring

The local authority should explain any monitoring procedures.

### Supporting information

Any further information the local authority can provide will be useful, for example the planning background, standard requirements, existing information about the site or copies of previous reports.

### 3 Example of a typical development appraisal layout for a single phase development

#### Site costs

Open market value of property in existing condition  
 Costs incidental to acquisition:  
     Stamp Duty on acquisition at open market value  
     legal fees on acquisition at open market value  
     agent's fees on acquisition at open market value  
     reasonable holding costs

**Total site costs** £

#### Design and construction

Survey costs  
 Research and analysis costs  
 Contamination costs  
 Construction costs:  
     historic asset repair  
     historic asset conversion  
     new build  
 Landscaping costs  
 Professional fees:  
     project manager  
     architect/surveyor  
     landscape architect  
     quantity surveyor  
     structural engineer  
     M&E engineer  
     planning supervisor  
     other  
 Contingency on design and construction costs

**Total design and construction costs** £

#### Statutory and other charges

Planning fee  
 Building control fee  
 Funding and valuation fees:  
     funding fees  
     financial cap  
     bank valuation fee  
     bank's legal and monitoring fees  
     second charge costs  
 Payments required under Section 106 agreement  
 Legal costs of Section 106 agreement

**Total statutory and other charges** £

#### Interest (preferably calculated by way of cashflow) on

Site cost + fees  
 Construction + fees  
 Statutory and other charges  
 Voids

**Total interest costs** £

Section 5.6

Paragraph 5.7.2

Paragraph 5.7.3

Paragraph 5.7.4

Paragraph 5.7.5

Paragraph 5.7.6

Section 5.8

**Letting and sales costs**

Agents letting fees  
 Legals on letting  
 Agents sale fees  
 Legals on sales  
 Promotion costs

**Total letting and sales costs** £

**Deductions from costs:** (£)

Short-term income from site  
 Grants

**Developer's profit @ x% on nett costs (see note 3)** £

TOTAL COSTS £

COMPLETED OPEN MARKET VALUE OF SCHEME £

SURPLUS/ DEFICIT £

Notes:

- 1 In an enabling development scheme, the surplus/ deficit should be approximately zero.
- 2 VAT can be an important element. Most development appraisal packages include provision to include VAT calculations and can differentiate between recoverable, nonrecoverable and exempt items.
- 3 All costs except any cash grant or subsidy from public funds.

## 4 Model invitation to tender for valuation and development consultants

Dear

[NAME OF PROPERTY]

[Following our telephone conversation in connection with the above property] I would be most grateful if you would submit a fee proposal in accordance with the following brief.

### 1.0 Background

[Description of the subject property, ownership, details, tenure ie. freehold/leasehold, details of any tenancies, planning background, location plan, site plan, brief details of applicant's proposals.]

### 2.0 Description of brief

Having regard to PPG 15 and in particular the English Heritage publication Enabling development and the conservation of heritage assets we require professional advice as to the validity of the information supplied to us by [name of developer/agent].

The purpose of carrying out the exercise is to assess a number of key questions:

- Are the costings submitted realistic?
- Are the calculations of the amount of enabling development necessary to meet the conservation deficit realistic in terms of assumptions about building costs, end values, profit levels and so forth, bearing in mind the inherent risks in all development?
- Is the amount of enabling development proposed the minimum necessary to secure the future of the heritage asset?
- Has the applicant fully considered and investigated the possibility of alternative, possibly more profitable, uses and have these options been market tested?

Should your firm be appointed, all the relevant documentation will be provided to you.

### 3.0 Site Visit

Should you wish to visit the site/property, prior to making your fee submission, this is to be arranged with [name, address, telephone number].

### 4.0 Fee Proposal

Your fee proposal should contain the following information:

- 1 A clear statement confirming that your firm does not have any conflicts of interest;
- 2 The names and qualifications of the partners who would be carrying out the remit, and of any sub-consultants that you would engage to provide specialist input, together with a brief resumé of their relevant experience;
- 3 Examples of similar exercises carried out by your firm;
- 4 Your fee proposal for providing us with advice should include [where appropriate] the hourly rates to be charged by the senior partner and assistants.

### 5.0 Confidentiality

The above matter must be treated in the strictest confidence. In the event of your firm being appointed, no communication with the press, including the technical journals or other outside body, or disclosure or publication of any matter arising from the commission, whether by photograph or otherwise, may be made without prior consultations with and approval in writing from [name of appointing body].

### 6.0 Timetable

Your firm's submission should be accompanied by two copies and must arrive at the offices of [name of appointing body] no later than [date]. Upon receiving your submission, it is intended that an informal interview will take place on [date]. Thereafter, an appointment is likely to be made within seven working days and, subject to discussion, we would expect the report to be with [name of appointing body] within [number of working days].

I trust that the above is sufficient to enable you to put forward a fee proposal. However if you have any further questions, or if you wish to meet with me in order to discuss the brief further, please do not hesitate to contact me.

Yours sincerely

#### Notes:

- 1 It is recommended that fee submissions be sought from three or more appropriate firms, and the fee proposals analysed. It is English Heritage's normal practice to interview the firms prior to appointment. The purpose of the interview is to determine whether the firm has the necessary expertise and understanding both of the valuation issues and the planning background. In addition, in the event of the matter going to a public inquiry, it is important that the lead partner has the necessary experience of acting as an independent expert witness.
- 2 Because quantity surveying skills/knowledge is necessary in order to verify the building costs being submitted, it is important that the firm appointed has these skills (or can acquire them) either in-house or by using an external firm of quantity surveyors.

## 5 Example section 106 agreement for securing the objective of enabling development, incorporating a form of bond

The breadth of possibility is such that it is not possible to produce a standard planning agreement that can be of universal application to enabling developments. The following, however, is a relatively simple form of agreement under section 106 of the Town and Country Planning Act 1990 of a kind that might be drawn up in circumstances where housing development is proposed in the grounds of a listed building so as to provide funding for the repair of that building. It assumes that:

- substantial funding for the repair works will not be forthcoming until some money has been generated from the housing development, although some initial works of repair will be undertaken at the outset;
- the land is subject to a mortgage registered against the freehold interest;
- the prospective developer of the houses has entered into a contract to buy the freehold interest in that part of the estate to be developed for housing, the contract being conditional upon planning consent being obtained. The rest of the estate is to remain unsold.
- the obligations to repair are to be protected by the deposit of funds or by a bond.

The Developer will be concerned that the linked repair work to the listed building, which he will not own, is done, so that the agreement does not prevent the housing development being fully carried out. The Developer will want to ensure, therefore, that there are arrangements in place pursuant to which:

- the Owner is obliged to carry out the repair work; or
- the Developer has rights to do so; and
- there are restrictions upon the Owner selling the building on without similar arrangements applying.

The position would, of course, be simplified considerably if the developer were to acquire the whole estate; and in many cases this is what will happen, particularly if the listed building is to be incorporated into the development.

For cases where long term adherence to a Conservation or Management Plan is appropriate (see main text, para 7.4.10), a draft definition is included in the Interpretation section, together with an operative clause at 6.1.

The simple form of performance bond, at Annexe 4 to the agreement, allows the local planning authority to recover from the surety in default up to a maximum amount. The circumstances may well call for additional provisions, providing for matters such as the reduction of the Bond Sum in stages, provisions as to notification of the surety should a claim be in contemplation, and the steps that must first be taken against the party in default, to name but a few.

In drafting any section 106 agreement, the following fundamental issues should be kept in mind:

- what land and interests in that land are involved?
- which of those interests ought to be the subject of planning obligations?
- what happens if there is a disposal of an interest in the land in whole or in part?
- when should particular obligations, whether positively or negatively expressed, take effect?
- when should obligations be released?
- how would a breach of an obligation be enforced?
- does the obligation fall within s106 of the 1990 Act?

THIS AGREEMENT is made the [day] of [month] [year]

BETWEEN

- 1 ABC DISTRICT COUNCIL of [address] (the 'Council')
- 2 A B JONES of [address] (the 'Owner')
- 3 DEF DEVELOPMENT LIMITED whose registered office is at [address] (the 'Developer')
- 4 XYZ BANK LIMITED of [address] (the 'Mortgagee')

WHEREAS

- A The Owner is the proprietor of the freehold interest in the property known as [name and address] title to which is registered at HM Land Registry under title number [number]
- B The Developer has applied to the Council for planning permission to carry out a development consisting of 25 dwellings and associated works on the Development Site and listed building consent to undertake certain works of repair to the Building
- C The Developer has agreed to buy and the Owner has agreed to sell the freehold interest in the Development Site pursuant to a contract that is conditional upon, inter alia, a planning permission and listed building consent being obtained
- D On the [date] the Planning Committee of the Council resolved to grant planning permission and listed building consent pursuant to the said applications provided that an agreement is entered into under section 106 of the 1990 Act that provides for certain works of repair to be carried out to the Building in tandem with the housing development
- E The Building is included in the list compiled by the Secretary of State under Section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and is in a serious state of disrepair

NOW IT IS AGREED AS FOLLOWS:

## 1.0 Interpretation

- 1.1 In this Agreement unless the context otherwise requires:
  - 'Bank Account' means a bank account that conforms to the requirements of Schedule 1
  - 'Building' means the building known as [name] which is situated upon the Land and which is shown shaded in brown on the Plan.
  - 'Development Site' means the site the subject of the Planning Application which forms part of the Land and which is shown edged in blue on the Plan.
  - 'Housing Phase 1' means the part of the Development Site shaded in [colour] on the Plan.
  - 'Housing Phase 2' means the part of the Development Site shaded in [colour] on the Plan.
  - 'Housing Phase 3' means the part of the Development Site shaded in [colour] on the Plan.
  - 'Implement' means to carry out a material operation as defined in Section 56(4) of the 1990 Act, except for works of site clearance and preparation.
  - 'Land' means the property described in recital A of this Agreement that is shown edged in red on the Plan.
  - 'Listed Building Consent Application' means the application for listed building consent made to the Council on [date] the Council's reference for which is [ref].
  - 'Listed Building Consent' means listed building consent granted pursuant to the Listed Building Consent Application in the form of the draft consent at Annex 3.

- ['Management Plan' means a written document (with plans and illustrations as appropriate) agreed with Council (and which can thereafter be adjusted with the written agreement of the Council) the purpose of which is to establish a scheme for the long term future management and/or conservation of the Building including its grounds following completion of the Phase 1 Repairs the Phase 2 Repairs and the Phase 3 Repairs and which plan shall include inter alia
  - (a) detailed arrangements for the provision, banking, withdrawal and application of funds and for accounting for the same
  - (b) a schedule of items to be periodically maintained with maintenance intervals
  - (c) a schedule of works to be carried out and a timetable for such works
  - (d) arrangements for the verification by the Council of performance pursuant to the plan.]
- 'Occupied' does not include temporary occupation for the purposes of site security storage or as a show house.
- 'Owner' includes successors in title but not individual occupiers of the houses built on the Development Site pursuant to the Planning Permission.
- 'Phase 1 Repairs' means the works listed in Part I of Schedule 2
- 'Phase 2 Repairs' means the works listed in Part II of Schedule 2
- 'Phase 3 Repairs' means the works listed in Part III of Schedule 2
- 'Plan' means the plan at Annex 1.
- 'Planning Application' means the application for planning permission made to the Council on [date] the Council's reference for which is [ref].
- 'Planning Permission' means planning permission granted pursuant to the Planning Application in the form of the draft planning permission at Annexe 2.
- '1990 Act' means the Town and Country Planning Act 1990.
- 'Surety' means a surety under a bond entered into in accordance with clause 3.2.1

1.2 Where the context so requires:

1.2.1 the singular includes the plural; and

1.2.2 reference to recitals clauses schedules and annexures are references to the same in this Agreement.

1.3 Any approval to be given in by the Council under this Agreement shall be given in writing and shall not be unreasonably withheld or delayed.

## 2.0 Legal effect

2.1 This Agreement is a planning obligation for the purposes of section 106 of the 1990 Act and the Council is the local planning authority by which it is enforceable.

2.2 No person shall be bound by this Agreement in respect of any period during which he no longer has an interest in the Land or that part of the Land to which the obligation in question relates.

2.3 The Mortgagee enters into this Agreement in order to acknowledge its consent to its terms but for the avoidance of doubt this Agreement shall not be enforceable against the Mortgagee only on the basis that it is the proprietor of a charge over the Land or any part of the Land.

2.4 If the Planning Permission is revoked or modified by a statutory procedure without the consent of the [Owner/Developer] then this Agreement shall cease to have effect.

2.5 Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop the Land or any part of the Land in accordance with any planning permission granted after the date of the Planning Permission.

2.6 The [Owner/Developer] shall pay the Council's legal costs of [ £ ] in the preparation of this agreement.

2.7 The Council shall forthwith register this Agreement as a local land charge.

## 3.0 Restrictions upon residential development

3.1 The Owner hereby agrees not to implement or procure the implementation of the Planning Permission until the Phase 1 Repairs have been carried out to the Council's approval.

- 3.2 The Owner hereby agrees that:
- 3.2.1 No dwelling within Housing Phase 1 shall be occupied until either (at the Owner's election) the sum of [ £ ] has been deposited in a Bank Account or the Owner or the Developer has entered into and provided the Council with a copy of a bond with a reputable surety to guarantee the obligations in clause 4 of this Agreement that conforms substantially to the draft bond at Annex 4 and in which the Bond Sum is [ £ ].
- 3.2.2 No dwelling within Housing Phase 2 shall be occupied until the Phase 2 Repairs have been completed to the written satisfaction of the Council.
- 3.2.3 No dwelling within Housing Phase 3 shall be occupied until the Phase 3 Repairs have been completed to the written satisfaction of the Council.
- 3.3 If the Owner elects to deposit sums in a Bank Account under clause 3.2.1 then the said account shall operate in accordance with Schedule 1.

#### 4.0 Carrying out repairs

- 4.1 The Owner hereby agrees that it will within 14 days of the occupation of any dwelling within Housing Phase 1 commence the Phase 2 Repairs and will use reasonable endeavours to complete the same to the reasonable satisfaction of the Council within [weeks/months] of their commencement.
- 4.2 The Owner hereby agrees that it will within 14 days of the occupation of Housing Phase 2 commence the Phase 3 Repairs and will use reasonable endeavours to complete the same to the satisfaction of the Council within [weeks/months] of their commencement.
- 4.3 For the avoidance of doubt should the repair works necessitate the obtaining of any planning permission listed building consent or other statutory permission approval or consent then it shall be for the Owner or the Developer to obtain the same and nothing in this Agreement shall operate to require the Council to grant any such permission approval or consent or so as to fetter the Council's statutory discretion in any way.
- 4.4 Without prejudice to the Council's statutory rights in section 106(6) of the 1990 Act and to any other means at its disposal to enforce this agreement at law any servant agent or employee of the Council (duly given written authority to do so by the Council's Chief Planning Officer) may enter upon the Land and may also enter the Building with or without such vehicles plant machinery equipment or workmen as may be reasonably required at any reasonable time upon not less than 7 days notice in order to carry out such works and/or inspections as may in the Council's opinion be appropriate to remedy any breach of this Agreement
- 4.5 The Owner shall forthwith upon written request pay to the Council any costs and expenses (including legal and administrative costs and expenses) incurred by the Council in the exercise of its rights under clause 4.4 to the extent that such costs and expenses have not been recovered by the Council from the Bank Account.

#### 5.0 Notification

- 5.1 The Owner shall notify the Council in writing of the anticipated dates of the following events:
- the Implementation of the Planning Permission;
  - practical completion of the first of the dwellings to be built within Housing Phase 1;
  - practical completion of the first of the dwellings to be built within Housing Phase 2;
  - practical completion of the first of the dwellings to be built within Housing Phase 3;
  - commencement of the Phase 1 Repairs and the estimated duration of those works;
  - commencement of the Phase 2 Repairs and the estimated duration of those works;
  - commencement of the Phase 3 Repairs and the estimated duration of those works;
- The notices required by clause 5.1 shall be given between 7 and 21 days before the event to which it refers and any change in an anticipated date since notice was given under clause 5.1 shall be similarly notified to the Council.

#### [6.0 Management Plan

- 6.1 Before Implementing the Planning Permission the Owner shall have agreed in writing with the Council the terms of a Management Plan the terms of which shall thereafter be strictly adhered to.]

IN WITNESS of which these parties have sealed this Agreement as a Deed on the date first written above.

## Schedule 1: Operation of Bank Account

- 1 The Account shall be held at a reputable clearing bank.
- 2 The Account shall be in the name of [the Council].
- 3 The Account shall be an interest bearing account and interest earned therefrom shall be added to the Account.
- 4 [The Council] shall release sums from the Account to [the Owner] as follows:
  - i) [ £ ] upon the satisfactory completion of the Phase 2 Repairs
  - ii) the balance upon the satisfactory completion of the Phase 3 Repairs.
- 5 In the circumstances of a breach of the obligations in clause 4 of the Agreement, the Council shall be entitled to recover from the Account any sums due to the Council under clause 4.5 of the Agreement.
- 6 The Council shall be entitled to recover from the Account any expenses it has reasonably incurred in administering the Account.
- 7 The Council will promptly comply with any reasonable requests made by or on behalf of the Owner as to the current standing of the Account.

## Schedule 2: Repairs

### Annexe 1: Plan

### Annexe 2: Draft planning permission

### Annexe 3: Draft listed building consent

### Annexe 4: Form of bond

BY THIS BOND [Owner/Developer] whose registered office is at [address] and [name of entity acting as surety] ('the Surety') whose registered office is at [address] are bound to [name of local planning authority] ('the Council') to the extent of the Bond Sum as defined herein

Sealed with our seals this [day] of [month] [year]

WHEREAS by an agreement dated [day] of [month] [year], and made between [insert names of parties of the agreement in question] the [Owner/Developer] entered into obligations with the Council to execute and perform certain works therein mentioned in the manner and by the time therein specified and subject to such terms provisions and stipulations as are mentioned in the said agreement

NOW THE CONDITION of the above-written bond is such that if the [Owner/Developer] [or its successors or assigns] shall well and truly perform fulfil and keep all of the covenants clauses provisos terms and stipulations in the agreement according to the true purport intent and meaning thereof or if upon failure by the [Owner/Developer] so to do the Surety shall satisfy and discharge the same or fully reimburse the Council in carrying out works required by the said agreement up to the amount of the Bond Sum which for the purposes of this bond is [ £ ] then the above-written bond shall be void but otherwise it shall be and remain in full force and effect and the giving by the Council of any extension of time for the performing of the agreement or anything therein mentioned or contained and on the part of the [Owner/Developer] to be performed or fulfilled or any other forgiveness or forbearance on the part of the Council to the [Owner/Developer] or its successors or assigns shall not in any way release the Surety from the Surety's liability under the above-written bond

THE COMMON SEAL etc

## References

### Legislation

*Ancient Monuments and Archaeological Areas Act 1979*  
*Planning (Listed Buildings and Conservation Areas) Act 1990*  
*Town and Country Planning Act 1990*  
*Town and Country Planning (Applications) Regulations 1988* (SI1988/1812)  
*Town and Country Planning (General Development Procedure) Order 1995* (SI1995/419)  
*Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999* (SI 1999 no 293)

### Government guidance

#### Environment circulars

11/95: *The Use of Conditions in Planning Permissions*  
 01/97: *Planning Obligations*  
 02/99: *Environmental Impact Assessment*  
 01/01: *Planning and the historic environment- Notification and Directions by the Secretary of State*

#### Planning Policy Guidance Notes

PPG 1: *General policy and principles, 1997*  
 PPG 2: *Green belts, 1995*  
 PPG 3: *Housing, 2000*  
 PPG 13: *Transport, 2001*  
 PPG 15: *Planning and the Historic Environment, 1994*  
 PPG 16: *Archaeology and Planning, 1990*

#### Other government guidance

Department of the Environment, *Preparation of environmental statements for planning projects that require environmental assessment: A good practice guide, 1995*  
 Department for Culture, Media and Sport, *The disposal of historic buildings, 1999*

### Planning decisions quoted in the text

**Bowden Cottage 1995** T/APP/C1625/A/95/248390/P7 & E/95/811393/P7: Land opposite Bowden Cottage, Bondend, Upton St Leonards, Gloucestershire. Appeals against refusal by Stroud District Council dismissed

**Chetwynd Park 1993** T/APP/P3230/A/92/212334/P7: Chetwynd Park, Puleston Road, Newport, Shropshire. Appeal against non-determination by Wrekin District Council dismissed

**Coggeshall Abbey 1996** T/APP/Z1510/A/95/252758/P7: Coggeshall Abbey, Coggeshall, Essex. Appeal against refusal by Braintree District Council dismissed

**Coleorton Hall 1999** APP/G2435/E/99/1020920 & 1020867: Coleorton Hall, Coleorton, Leicestershire. Appeal against non-determination by North West Leicestershire District Council dismissed

**Cound Hall 1999** T/APP/B3220/A/98/1014296/P7: Cound Hall, Cound, Shropshire. Appeal against refusal by Shrewsbury and Atcham Borough Council dismissed.  
*Photo p67*

**Daresbury Hall 1997** PNW/5147/219/3 & 5149/270/22: Daresbury Hall, Daresbury, Cheshire. Refusals following call-in by the Secretary of State. *Photo p50*

**Daresbury Hall 2001** APP/D0650/A, E/00/1039485-6 & 104395-6: Daresbury Hall, Daresbury, Cheshire. Appeals against refusal by Halton Borough Council dismissed

**Draycott 1999** APP/N1025/A/97/280029: Draycott House Farm, Hopewell Road, Draycott, Derbyshire. Appeal against refusal by Erewash Borough Council dismissed

**Farringdon 1998** T/APP/U1105/A/98/295290/P2: Farringdon House, Farringdon, Exeter, Devon. Appeal against refusal by East Devon district Council partly allowed and partly dismissed

**Henbury House 1995** T/APP/U1240/A/88/112039/P7: Henbury House, Sturminster Marshall, Dorset. Appeal against refusal by East Dorset District Council allowed.

*Photo p36*

**Highland Court 1998** T/APP/J2210/A/98/297439: Land at Highland Court, Bridge Hill, Bridge, Canterbury. Appeal against non-determination by Canterbury City Council dismissed

**Horspath 1995** T/APP/Q3115/A/95/251433/P3: Land at 36 Church Road, Horspath, Oxfordshire. Appeal against refusal by South Oxfordshire District Council dismissed

**Mayles 1997** T/APP/L1765/E/97/813240, 277217, 813241 & 277218 /P9: Mayles, Mayles Lane, Wickham, Hampshire. Appeals against non-determination by Winchester City Council dismissed save for one for restoration of the listed house. *Photo p43*

**Old House 1995** T/APP/N1540/A/94/241107/P7: Old House, Roydon Road, Eastend, Harlow, Essex. Appeal against refusal by Harlow District Council dismissed. *Photo p51*

**Pipewell Hall 1997** T/APP/L2820/A/96/262463/P7: Pipewell Hall, Oakley Road, Pipewell, Kettering, Northants. Appeal against refusal by Kettering Borough Council dismissed

**Sedgwick Park 1995** T/APP/Z3835/A/94/240082/P7: Sedgwick Park, Nuthurst, Horsham, Surrey. Appeal against refusal by Horsham District Council dismissed.

*Photo p47*

**Whatcroft Hall 1995** APP/L0635/E/95/811358 & 247795: Walled Garden, Whatcroft Hall, Whatcroft, Northwich, Cheshire. Appeals against refusal by Vale Royal Borough Council dismissed

**Woolhanger 1997** SW/P/5178/270/93: Woolhanger Manor, Parracombe, Barnstaple, Devon. Refusal of listed building consent for demolition following call-in by the Secretary of State. *Photo p44*

**Wymondley 1995** T/APP/X1925/A/94/239458/P5: Wymondley House, Little Wymondley, Hertfordshire. Appeal against refusal by North Hertfordshire District Council dismissed. *Photo p26*

## English Heritage guidance

*Buildings at Risk: A new strategy*, 1998

*Conservation area practice*, 1995

*Developing guidelines for the management of listed buildings*, 1996

*Development in the historic environment*, 1995

*Informed conservation*, 2001

*Landscape advice notes*, especially 3, *Conservation of Bats*; 11, *Bat roosts in historic properties*, 7, *Conservation of wall flora*

*Sustaining the historic environment: New perspectives on the future – a discussion document*, 1997

*Stopping the rot: A step by step guide to serving Urgent Works and Repairs Notices*, 1999

## Other guidance

Architectural Heritage Fund

*How to rescue a Ruin*, 1997

Association of Local Government Archaeological Officers

*Analysis and recording for the control of works to historic buildings*, 1997

Countryside Commission, English Heritage, English Nature

*Conservation issues in local plans*, 1996

English Nature

*European Protected Species Guidance Note*, 2000

*Position statement on sustainable development*, 1999

- Heritage Lottery Fund  
*Conservation plans for historic places*, 1999
- Inland Revenue  
*Capital Taxation and the National Heritage*, 1986  
*Capital Taxes – Relief for Heritage Assets*, 1999
- Institute of Field Archaeologists  
*Standard and guidance for the archaeological investigation and recording of standing buildings or structures*, 1996
- Royal Commission on the Historical Monuments of England  
*Recording historic buildings: a descriptive specification*, 1996
- Royal Institution of Chartered Surveyors  
*Appraisal and Valuation Manual*

### Further reading

- Askwith, C *Rescued or Ruined: Dealing with Enabling Development* (Georgian Group, etc, 1999)
- Brereton, C *The Repair of Historic Buildings: advice on principles and methods* (English Heritage, 1991)
- Clark, K *Conservation Plans in Action* (English Heritage, 1999)
- Kerr, J S *The Conservation Plan* (Sydney: National Trust of NSW)
- Lichfield, N *Community impact evaluation* (UCL Press, 1996)
- Mynors, C 'Enabling Development', *Context* 62 (1999), pp22-2
- Scottish Civic Trust *Buildings at Risk Bulletin*: March 1999, pp110-13
- Wood, C *Environmental Impact Assessment: A comparative review* (Longman, 1995)

## Glossary

- Conservation plan** : Document which sets out the significance of a site and how that significance will be retained in any future use, alteration, repair, management or development. It is based on the conservation planning process
- Conservation statement** : Outline version of a conservation plan, using the conservation planning process. It is usually (but not always) prepared in-house, and based on existing knowledge. A conservation statement will often identify gaps in knowledge and what needs to be done next
- Conservation planning process** : The thinking behind a conservation plan or statement, which involves understanding the place, assessing significance, defining how that significance is vulnerable and creating policies or guidelines for retaining that significance in future
- Conservation deficit** : The amount by which the cost of repair (and conversion to optimum beneficial use if appropriate) of a heritage asset exceeds its market value on completion of repair and conversion, allowing for all appropriate development costs, but assuming a nil or nominal land value
- Conservation management plan**: A conservation plan which also sets out a specific set of actions or proposals for the management of the site
- Conservation-Based Research and Analysis (CoBRA)** : The research, analysis, survey and investigation necessary to understand the significance of a building and its landscape, and thus inform decisions about repair, alteration, use and management
- Enabling development** : Development that would be unacceptable in planning terms but for the fact that it would bring benefits, in this context to a heritage asset, sufficient to justify it being carried out

- Heritage asset:** Any component of our historic environment, including scheduled monuments and other archaeological remains, historic buildings both statutorily listed or of more local significance, conservation areas, registered parks and gardens, and registered battlefields
- Heritage impact assessment:** The process of establishing the impact of a specific proposal on the special interest of a historic site, and identifying ways of mitigating any adverse impacts
- Hope value:** In this publication, value attached to land arising from the hope of obtaining planning permission for development in excess of what would be permitted through the normal and reasonable application of local and national planning policy; for wider use of the term see para 5.6.5
- Illustrative material:** Information, usually consisting of plans and other drawings, the purpose of which is to show how a development or elements of development might appear when completed, but which is not intended to form part of a planning approval
- Landscape interest:** The cultural and biodiversity values embodied in or attached to an area
- Mitigation :** Action taken to reduce potential damage to an historic site. This may include avoiding damage, design solutions, options appraisal or seeking further information. Recording in mitigation of damage should always be a last resort
- Outline planning permission :** Permission for development granted subject to a condition requiring the subsequent approval of one or more reserved matters
- Permitted development rights:** Development for which planning permission is deemed to be granted by virtue of the Town and Country Planning (General Permitted Development) Order 1995
- Phasing:** The process of organising evidence for change through time into a series of intellectually coherent temporal units or phases. Phasing involves tying the relative sequence for a site to any absolute dates through the idea of the *terminus ante quem* and the *terminus post quem*
- Planning gain:** Public or infrastructure benefits provided by a developer as a condition of a grant of planning permission
- PPG:** Planning Policy Guidance
- Rapid assessment:** An initial understanding of a building and its landscape, based on collating existing written and graphic information, and a site visit, to establish the nature, extent and quality of historic fabric
- Reserved matters:** In relation to an outline planning permission, or an application for such permission, any of the following matters in respect of which the details have not been given in the application, namely siting, design, external appearance, means of access, and the landscaping of the site
- Yield:** The annual return on property, through net rental income, expressed as a percentage of the capital value of the property. The greater the risk that the income stream is not secure, the higher the yield expected by investors

## Royal Holloway Sanatorium Virginia Water, Surrey

The grade I former sanatorium, and its grade II\* chapel, were designed in a spirited amalgam of gothic and Elizabethan by W H Crossland for Benjamin Holloway and built in 1873-85. The sanatorium is particularly important because of the highly decorated interior with a fine staircase, and hammer-beamed Great and Dining Halls, the latter much damaged while the buildings were vacant, but now reused as a swimming pool.

In 1980, the buildings were sold by the NHS for development, and passed through three hands and two public inquiries before proposals foundered in the recession at the end of the 1980s. In the face of increasing dereliction and vandalism, development on the cricket pitch in front of the main block and the demolition of the Medical Superintendent's House were (controversially) allowed in the early 1990s, to facilitate a rapid start on the project by Octagon Developments plc.



### Photographs:

- © Crown: Wymondley House, Woolhanger, Cound Hall
- © Clive Mercer Associates: Sedgwick Park
- © D. Easton LRPS: Mayles
- © E. Allen: Old House
- © East Hampshire District Council: Norton Bavant
- © English Heritage Photo Library: Henbury House, Daresbury Hall, St. Alban's Church, Danson House, Royal Holloway Sanatorium, Stoneleigh Abbey
- © Mendip District Council: Orchardleigh Estate
- © Philip Waite: Mendip Hospital, Orchardleigh Estate aerial

Please note that the information within this publication is based on our current knowledge. While every effort has been made to ensure the accuracy of the advice given, English Heritage does not accept liability for loss or damage arising from the information supplied. This publication is a guide. It has no statutory authority, and is not to be used as a substitute for professional advice.

Produced by English Heritage, 23 Savile Row, London W1S 2ET, Telephone 0870 333 1181  
[www.english-heritage.org.uk](http://www.english-heritage.org.uk)  
Product code XH 20173 June 2001