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Our ref: **W:** P01573678

26 March 2024

Dear Mr Gillyon

**T&CP (Development Management Procedure) (England) Order 2015  
& Planning (Listed Buildings & Conservation Areas) Regulations 1990**

**TITHE BARN AND LAND, STATION ROAD, OWSTON FERRY, DN9 1AW  
Application No. PA/2024/215**

Thank you for your letter of 5 March 2024 regarding the above application for planning permission.

Historic England provides advice when our engagement can add most value. In this case we are not offering advice. This should not be interpreted as comment on the merits of the application.

We suggest that you seek the views of your specialist conservation and archaeological advisers. You may also find it helpful to refer to our published advice at <https://historicengland.org.uk/advice/find/>

It is not necessary to consult us on this application again, unless there are material changes to the proposals. However, if you would like advice from us, please contact us to explain your request.

Yours sincerely

Tim Allen

**Tim Allen**  
Team Leader (Development Advice)





Historic England

# Enabling Development and Heritage Assets

Historic Environment Good Practice Advice in Planning Note 4





# Summary

This document sets out advice on enabling development, against the background of the National Planning Policy Framework (NPPF) and the related guidance given in the Planning Practice Guide (PPG).

Enabling development is development that would not be in compliance with local and/or national planning policies, and not normally be given planning permission, except for the fact that it would secure the future conservation of a heritage asset. Whilst only applicable in certain circumstances, enabling development can be a useful tool. The advice in this document is intended to help all those involved in enabling development proposals (local authorities, planning and other consultants, owners, applicants and other interested parties) to work through the possible options in relation to the asset in question, and to understand whether they are acceptable. Through analysis of the process, the likely alternatives to and the potential impacts of enabling development, it sets out a model against which to consider proposals.

It replaces *Enabling Development and the Conservation of Significant Places* (English Heritage, 2008).

It is one of four related Good Practice Advice (GPA) Notes, along with *GPA1: The Historic Environment in Local Plans*, *GPA2: Managing Significance in Decision Taking in the Historic Environment*, and *GPA3: The Setting of Heritage Assets*.

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<https://historicengland.org.uk/advice/planning/planning-system/>



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# 1

# Introduction

- 1** The purpose of this Historic England Good Practice Advice note is to provide information to assist local authorities, planning and other consultants, owners, applicants and other interested parties in implementing historic environment policy in the [National Planning Policy Framework \(NPPF\)](#) and the related guidance given in the [Planning Practice Guidance \(PPG\)](#) in relation to enabling development. This good practice advice acknowledges the primacy of relevant legislation and the NPPF and PPG. While it supports the implementation of national policy it does not constitute a statement of Government policy itself, nor does it seek to prescribe a single methodology or particular data sources.
- 2** In order to gain a full understanding of the relevant issues, this document should be read in conjunction with the relevant legislation, case law, national planning policy and guidance (the NPPF and PPG), as well as Good Practice Advice notes 1 ([The Historic Environment in Local Plans](#)), 2 ([Managing Significance in Decision-Taking in the Historic Environment](#)) and 3 ([The Setting of Heritage Assets](#)).
- 3** The advice in this document, in accordance with the NPPF, emphasises that the information required in support of applications for planning permission and listed building consent should be no more than is necessary to reach an informed decision.
- 4** Early discussion with the relevant local planning authority can be critical to successful schemes (as well as engagement with other consultees as appropriate, including Historic England). Enabling development can be a useful tool, although it is only applicable in certain circumstances: determining at an early stage whether there are any in-principle reasons a proposal might not be acceptable will avoid fruitless investment.

# 2

## Core principles

“Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.”

Paragraph 202 of the National Planning Policy Framework

### What is enabling development in the context of the historic environment?

**5** As defined in paragraph 202 of the NPPF, enabling development is development that would not be in compliance with local and/or national planning policies, and not normally be given planning permission, except for the fact that it would secure the future conservation of a heritage asset. However, paragraph 202 of the NPPF recognises that conflict with planning policies may be justified if the development proposed would secure the future conservation of the asset(s) and the wider benefits outweigh the disbenefits of not adhering to those policies. In such cases, enabling development is an entirely legitimate planning tool. Paragraph 79b of the NPPF also indicates that enabling development may be an acceptable exception to the restriction on isolated homes in the countryside. However, such circumstances may only transpire once all the relevant tests in the NPPF, including paragraph 202, have been addressed. 'Enabling development' has a specific meaning within the NPPF, and neither the term nor the policy applies to other circumstances in which funding may be directed towards the conservation of heritage assets, such as cross-subsidy.

**6** While paragraph 202 is clear that enabling development may be acceptable in certain circumstances, both applicants and decision-makers in such proposals will wish to bear in mind the holistic approach to the historic environment within the NPPF. Heritage assets are an irreplaceable resource, to be conserved in a manner appropriate to their significance. When considering the impact of proposals on the significance of a designated heritage asset, great weight should be given to the asset's conservation, and any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Proposals involving substantial harm to a designated heritage asset should be

refused, unless it can be demonstrated that the harm is necessary to achieve substantial public benefits that outweigh that harm, or a range of tests apply, including consideration of issues such as use and funding.

7 The advice in this document is intended to help all those involved in enabling development proposals to work through the number of possible options in relation to the asset in question and to understand whether they are acceptable. Through analysis of the process, the likely alternatives to and the potential impacts of enabling development, it sets out a model against which to consider proposals.

## Enabling Development and Alternatives

8 A typical example of enabling development may be a proposal for houses near a listed building that would not normally be given planning permission (for example because it would be in breach of countryside policies), but where the listed building's long-term future can only be secured by using the uplift in value of the land resulting from that development. Some enabling development might result in an adverse impact on the asset even though if possible it should be sited so as to avoid doing so. Well-designed enabling development will minimise potential adverse effects.

9 The case for enabling development rests on there being a conservation deficit. Simply put, this is the amount by which the cost of repair (and conversion to optimum viable use if appropriate) of a heritage asset exceeds its market value on completion of repair or conversion, allowing for appropriate development costs.

### Conservation deficit

The amount by which the cost of repair (and conversion to optimum viable use<sup>1</sup> if appropriate) of a heritage asset exceeds its market value on completion of repair and conversion, allowing for all appropriate development costs.

10 Enabling development is a planning mechanism which permits departure from planning policies in appropriate cases (see NPPF paragraph 202), and so enables conservation of a relevant heritage asset in cases where otherwise the future of the asset would not be secured. It is not in the public interest to pursue enabling development if there are alternative means of delivering the same outcome for the heritage asset, such as other sources of public or private investment. It is an inherently

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<sup>1</sup> PPG, Paragraph: 015 Reference ID: 18a-015-20190723.

inefficient way of raising money for the conservation of heritage assets, because it is likely that only a small percentage of the value of the new development is put towards the repairs and maintenance – the other percentage going on the costs of the enabling development.

**11** Both LPAs and applicants may wish to consider a range of other approaches to the future conservation of heritage assets before contemplating whether enabling development proposals are appropriate and required. These might include early consideration of proposals to avoid the acceleration of conservation deficits – for example, preventative measures, grant-funding for repairs and reuse, transfer of ownership to a building preservation trust or similar charity, sympathetic development proposals or the possibility of using enforcement or compulsory purchase powers. Historic England advice on preventative measures can be found in [Stopping the Rot: A Guide to Enforcement Action to Save Historic Buildings](#).

**12** Under the enabling development mechanism, decision-makers will usually require market testing to explore the possibility of different owners or different uses providing an alternative to enabling development, thereby reducing the scale of enabling development needed (see paragraphs 34-36). GPA 2 offers further advice on this subject. Decision-makers will also usually require evidence as to whether public or charitable grant-funding or ownership could displace or at least reduce the need for enabling development.

**13** The harm done by enabling development contrary to other planning policies is likely to be permanent and irreversible. After consideration of all reasonable alternative means to secure the future of the asset, enabling development is therefore likely to be a last resort.

**14** The sums of money generated through enabling development are provided to directly solve the conservation needs of the place, not to solve the financial needs of the present owner, to support/finance a business or to compensate for the purchase price paid for the site. The amount of enabling development that can be justified will be the minimum amount necessary in order to address the conservation deficit and to secure the long-term future of the assets.

### **When might enabling development be justifiable?**

**15** The defining characteristic of enabling development is that it would secure the future conservation of a heritage asset if other reasonable efforts have failed, and the balance articulated in NPPF paragraph 202 is met, i.e. the future conservation of the asset is secured and the disbenefits of departing from conflicting planning policies are outweighed by the benefits.

**16** In practice this means a decision-maker being satisfied that a scheme of enabling development would securely provide for the future of the heritage asset.

**17** The enabling development proposals may be only part of the solution to the asset's continued conservation, but the solution as a whole will need to be identified and shown to be deliverable and complete. If the solution offered by the scheme (whether in tandem with other sources of funding or not) is not complete, or is not part of an agreed phased approach, then it cannot be said that enabling development will secure the future conservation of the asset. While NPPF paragraph 202 sets out the core decision to be made around enabling development proposals, it is important to remember that the NPPF in its totality needs to be considered as part of the process. Where development proposals are likely to adversely affect any heritage assets, this requires that the significance of those assets is properly understood and any harm proposed has a clear and convincing justification.

**18** Repairing existing defects is an obvious part of securing the future conservation of the asset. Providing for the asset's maintenance thereafter and for the foreseeable future is a different but equally important concern, which may be achieved through finding the optimum viable and therefore sustainable use of the asset. As noted in the PPG, putting heritage assets to a viable use is likely to lead to the investment in their maintenance necessary for their long-term conservation<sup>2</sup>. However, some assets may not have an economically viable use. In such scenarios, another means of ensuring long-term maintenance needs to be found. For example, the asset could be passed to a charitable trust capable of maintaining it, or of maintaining a secure and predictable income from the development.

### **What if the enabling development causes harm to the heritage asset itself?**

**19** Ideally enabling development would not harm the heritage asset it is intended to conserve. In some circumstances it may be necessary to accept some harm if there are no reasonable alternative means of delivering or designing the scheme with less or no harm. As stated in paragraph 202 of the NPPF, local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies. Clearly there could be a tipping point at which the harm to the heritage asset's significance is so great as to make the exercise of securing its future self-defeating. It might then be better to accept the risk of further decay or loss until circumstances change.

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<sup>2</sup> PPG, Paragraph: 015 Reference ID: 18a-015-20190723.

## When is enabling development an option?

**20** Even when it is clear that enabling development is the only way to secure the future conservation of the heritage asset, a decision-maker will still need to assess whether the heritage and any other public benefits it would secure would outweigh the disbenefits of departing from planning policy (NPPF, paragraph 202). Considerations in that assessment will include the importance and significance of the heritage asset(s), the nature of the planning policies that would be breached, the severity of the breach or breaches, whether the asset(s) have been subject to deliberate neglect and giving great weight to the asset's conservation (see NPPF paragraphs 184 to 202).

**21** A decision-maker can only properly decide if the development is justified if they can assess the full scale of the enabling development needed to deliver the necessary benefits to secure the future of the heritage asset. Where an enabling development project forms only part of a scheme to fully fund the restoration, repair and maintenance for the foreseeable future, the applicant should provide information relating to the complete scheme and how that will be secured through the development. If the comprehensive scheme proposed is not sufficient to deliver all the required funding, then the applicant will not be able to show that the objective of paragraph 202 is met, because the future conservation of the asset is not secured.

**22** In certain circumstances there may be a collection of connected heritage assets at risk, such as you might find on a historic country estate. Securing the conservation future of all of them may require an enabling development scheme of such a size that it cannot be justified given the impact. In such exceptional cases, it may be appropriate to consider if a scheme with less impact might secure the conservation of a core of the more important heritage assets, thereby striking the right balance between harm and benefit. Such an approach will require careful justification. The other heritage assets will then be left at risk of further decay and loss until a change in circumstances. A conservation management plan is likely to provide the information and assessment of significance that will help guide the decision.

**23** An approach that may be helpful in identifying a successful way forward in such circumstances is as follows:

- a** Identify and prioritise the range of assets that the proposals could conceivably conserve; and
- b** Consider the alternative methods of achieving the same aims and, using the evidence provided by the conservation management plan, weigh up whether enabling development provides the most realistic and appropriate way forward.

**24** So the scale, location and design of the enabling development need to strike a balance. The scheme will be a complete solution (or part of a complete solution) for those heritage assets whose future it is intended to secure. It will minimise its environmental impact and not seek to provide more funds than are necessary for conservation. It may be delivered by one phase of development or in certain cases through a planned phased and secured approach.

### How are the benefits of enabling development secured?

**25** If the local planning authority decides that a scheme of enabling development is justified in principle, it will need to ensure that long-term conservation of the heritage asset is secured (see also paragraphs 72-77), thereby avoiding the need to revisit consents with a view to approving further development. This may involve the following, in a manner that is proportionate to the proposed enabling development and its likely impact:

- a** Precise definition of the scheme and thereby control of its impact, normally through the consideration of a full planning application;
- b** Using conditions and planning obligations as appropriate to ensure the repair and maintenance of the asset can be secured and enforced. This will usually necessitate setting a standard for the conservation works, and making the funds to do so available as early as possible in the course of the scheme. This would ideally be at the outset and almost certainly before completion or occupation of the enabling development. Planning obligations should only be used where it is not possible to ensure the repair and maintenance of the asset via planning conditions.
- c** The planning authority closely monitoring implementation and enforcing where necessary.
- d** In some cases, depending on circumstances, a performance bond may offer a method of providing funds to complete the repairs to the heritage asset should the developer fail to do so. This may have a cost implication that itself would increase the need for enabling development but in some cases this avenue may be prudent in order to guarantee the works being undertaken and completed.

# 3

## Assessing whether enabling development might be appropriate

**26** Making the case for enabling development can involve a considerable investment as there are inevitably a number of detailed information requirements. **It is good practice for the applicant to consider whether a realistic scheme might work in principle and understand what is possible, before moving on to develop the proposal in greater detail.** This will help establish whether there is a reasonable chance of success that will justify commissioning further detailed advice, costings and market analysis.

**27** We recommend undertaking a number of preliminary tasks to achieve this, before moving on to working up a detailed scheme design. Engaging the local planning authority at each stage and other consultees as appropriate, including Historic England, would be sensible even at this early stage. Pre-application discussions with the local planning authority may help reduce the chances of wasted expenditure on specialist advice. These preliminary tasks may include the following, depending on the circumstances:

- a** A preliminary assessment as to whether the future of the heritage asset may be secured by alternative uses, through sale to another owner, other ownership arrangements, eg a charitable trust, or through funds available from other sources. This will involve an initial assessment of the level of the conservation deficit.
- b** It is often sensible to begin market testing early on in the process as the applicant will need to demonstrate that the asset was genuinely available for sale on the open market (see paragraphs 49 and 50 of Historic England’s [Good Practice Advice in Planning note 2: Managing Significance in Decision-Taking in the Historic Environment](#)).
- c** If, after this, enabling development appears to be genuinely necessary, a desk-based viability assessment can identify the need for further detailed evaluation to improve confidence in pursuing a successful enabling development scheme.

# 4

## Making the case for enabling development

**28** If the preliminary assessment indicates that enabling development may be justified, the following seven steps are one approach to providing a full case that meets the requirements of paragraph 202. The extent and detail of the work entailed in each step needs to be proportionate and appropriate to the specific circumstances of the heritage asset and the proposed scheme. Ultimately if a decision-maker is to agree to an exception to planning policy, the evidence will need to be clear and convincing.

**29** This list forms the framework for subsequent sections of this document. Some of these actions can be pursued simultaneously and they do not need to be followed in a rigid sequence.

- 1:** Carry out a **condition survey** of the heritage asset or assets in need of conservation repairs. This assessment usually informs a conservation statement or **conservation management plan** which establishes the importance of the asset as a whole and the part played by subsidiary elements. It will identify a desired reasonable level of conservation that will sustain the asset in the long term;
- 2:** Undertake an options analysis comprising an **assessment of alternative solutions** by which the asset's future might be secured.
- 3:** Carry out an **assessment of the cost** of repairs and how future maintenance liabilities might be met. Different scenarios may need to be costed;
- 4:** Make an **assessment of the market value** of the heritage asset in current and repaired condition. The conservation deficit may then be calculated;
- 5:** Draw up a **detailed scheme design for the preferred option**;
- 6:** Produce a **development appraisal** that demonstrates the financial contribution the development will make to the conservation of the heritage asset;
- 7:** Create a **delivery plan** that demonstrates how the heritage benefits will be secured in a timely manner.

These steps are described in detail below.

## 1: Conservation needs/works assessment

**30** A condition survey is needed in order to understand the current and future conservation needs of the heritage asset. This – along with appropriate consideration of significance – will inform the decision, the formulation of any proposals, any permission granted and the means by which the conservation may be best secured.<sup>3</sup> The survey can be done as part of a conservation statement or succinct conservation management plan.

**31** Together, these documents will assist in establishing the heritage significance of the asset as a whole, the part played by subsidiary elements and will identify a desired reasonable level of conservation repairs and maintenance that will sustain the asset in the long term.

## 2: Alternative solutions

**32** In order to establish if enabling development can be justified and therefore unavoidable, the owner or developer will need to fully explore a range of possible options. This may include public or charitable ownership, grant funding, alternative uses or ownership and enforcement remedies. It is important that a wide range of realistic possibilities is considered, not just the original or most recent uses although the original use may still be the most appropriate one.

**33** The applicant will need to set out the evidence of attempts that have been made to find alternative uses or owners through appropriate marketing and the efforts made to find alternative sources of funding, for example from charitable foundations.

### Market testing

**34** Market testing may be required to explore the possibility of different owners and/or different uses providing an alternative means of securing the heritage asset's future conservation. Whilst market experts can provide an insight into the likelihood of an alternative owner being found, which may be useful at an initial feasibility stage only proper and appropriate marketing can prove whether there is or is not a real purchaser who would be prepared to acquire the asset and secure its future conservation without requiring enabling development or at least a scheme with a less adverse impact. This does take time and effort, but given the potentially significant and permanent adverse impacts of enabling development, the local planning authority may take the view it is worth being patient and painstaking in efforts to reduce or avoid enabling development altogether.

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<sup>3</sup> PPG, Paragraph: 015 Reference ID: 18a-008-20190723.

Good Practice Advice on appropriate marketing is given in Historic England [Good Practice Advice in Planning note 2: Managing Significance in Decision-taking in the Historic Environment](#), paragraphs 49 and 50.

**35** Market testing may not aid the decision-maker where a heritage asset is clearly without beneficial use or capable only of very limited beneficial use. Market testing could also prove harmful to an on-going business operation, which may itself be an important part of the asset's future viability.

**36** In some circumstances a private sale could have a significant adverse impact on the public value of a historic place. For example, a country house, the gardens and any park, and its historically associated contents may form a historic entity that could inevitably be harmed by a private sale, as at the very least, those contents would be removed. There are tax exemptions that sometimes apply in such scenarios in order to help keep the elements together. The local planning authority may, in such cases, decide that it is preferable to discount the option of a private sale and therefore not require market testing (or limit market testing to potential occupiers and users). In Historic England's view, this is only likely to occur when the following criteria are met (so far as they are applicable):

- a** the historic entity is of outstanding importance in the national context;
- b** the contents or other artefacts (including archives) are historically associated with the building or landscape, such that the significance of the whole is greater than the sum of its parts;
- c** there is a credible mechanism to minimise the possibility of the ensemble subsequently being broken up and the value of the enabling development realised as a private gain;
- d** there is public access proportionate to the subsidy provided, secured by the section 106 agreement;
- e** the estate, once subsidised, is likely to be sustainable in revenue terms;
- f** private owners contribute to the ongoing maintenance costs of their own houses, in proportion to the amenity they enjoy; and
- g** the value of any estate assets that could be realised without harm to the estate's significance or long-term sustainability is taken into account in calculating the enabling development required.

### Fragmentation

**37** Isolating parts of an historic entity is not acceptable as a device to justify enabling development proposals relating to the non-viable parts. The whole market value of the estate will need to be taken into account. Where fragmentation of ownership occurs as a result of enabling

development, a legally-binding agreement is likely to be necessary to ensure the long-term future management of the whole asset is properly co-ordinated so that its significance is not eroded over time. It is good practice to make a conservation management plan part of the agreement and include a regular review of that plan.

**38** A sustainable future for any heritage asset could well be prejudiced by enabling development that deprives the asset of the amenities expected of a property of that type and size, such as appropriate amenity land around a country house, a reasonable garden for a town house or adequate parking or loading space for a building in commercial use.

### **3: Repair and maintenance costs assessment**

**39** A schedule of repair costs must start from a sound understanding of the condition of the asset and a clear and justifiable standard of conservation repair and maintenance. An expert report will be needed on the scale and cost of the repairs and, where relevant, the cost of future maintenance.

**40** Small changes in the cost of the repairs or the future maintenance needs can have a significant effect on the amount of enabling development required. The assessment therefore needs to be realistic and deliverable.

#### **Level of work to the heritage asset**

**41** Sometimes a heritage asset will have deteriorated so much that its full repair would involve substantial and possibly speculative reconstruction that may even harm the significance of what remains. The effect of the repairs on the asset's significance will need to be understood using the usual NPPF criteria (Chapter 16), before making a balanced judgment about the merits of enabling development.

**42** In striking the right balance, the NPPF requires consideration of the benefits and disbenefits of the enabling development, rather than a long list of 'ideal-world' repairs and enhancements. Understanding where the significance of the heritage asset lies and what would contribute to its long-term viable use and maintenance will help in finding the right balance. Work such as restoration and enhancement (as opposed to conservation repair) is best limited to work that adds to the future financial viability of the asset.

**43** It is important to consider the impact of other planning policy requirements where relevant, such as affordable housing, or the Community Infrastructure Levy. These may increase the amount of enabling development required. The decision-maker will wish to consider carefully the potential impact of all relevant planning policies and how these can be minimised.

## Historic gardens and landscape settings

**44** Some gardens and landscapes are heritage assets in their own rights whose future may be secured by enabling development. They may also be crucial to accessing and enjoying a historic building or structure and therefore their conservation is necessary to sustain the future use and conservation of the site.

**45** If conservation and restoration of a landscape is on balance desirable, thought needs to be given to the means and sustainability of the works. Unlike buildings or structures, historic parks and gardens can often be restored after a longer interval of neglect. This may influence the approach to the calculation of the conservation deficit and how it is met. To ensure that further restoration to such landscapes may take place incrementally and, perhaps, not be damaged by subsequent changes by division of ownership or intrusive uses, it may be appropriate to establish a long-term conservation management plan.

## 4: Market value assessment

**46** It is important to ensure that financial assessments underpinning the proposals are accurate and robust. This will help avoid any suggestion that appraisals might be revisited and the level of enabling development subsequently increased as a result. In order to understand how much money the enabling development will be required to raise an applicant will need to assess the market value of the asset in its current state and when completed. If the current value plus the cost of the reasonably required repairs and (if appropriate) conversion to optimum viable use exceeds the value when completed, then there is a conservation deficit. Where this is the case, the existing market value of the property will usually be nominal. The conservation deficit will be the amount the enabling development needs to raise. However, for the reasons given above, in certain exceptional circumstances the conservation deficit will not include the full repair of all the asset(s) – see paragraph 17.

**47** For a residential scheme, the capital values of the completed units are normally calculated using the comparison method. This approach involves an analysis of a sales figure per square metre overall using comparable properties, and applying professional judgement in order to reach what is a reasonable current day end market value. Commercial development valuations are usually undertaken by the investment method based on capitalising the value of the income stream. A professional opinion with local experience will generally be required.

**48** In assessing viability, reasonable, justified holding costs are an allowable item, particularly where they relate to the protection of the asset. However, they can only be for a reasonable period of time. The following considerations are also likely to be discounted as they also unnecessarily increase or exacerbate the need for enabling development:

- a** an owner's inability to fund a commercially viable scheme;
- b** a wish to fund an unprofitable business;
- c** an owner's insurance being inadequate to meet the cost of repair and reinstatement following a normally insurable loss; and
- d** an unrealistic purchase price or valuation that did not reflect the condition of the property or planning restrictions.

### **Site Value: has too much been paid?**

**49** Enabling development is tested against the needs of the place, not the owner. It is not in the public interest to permit enabling development simply on the basis of too high a purchase price having been paid for the heritage asset.<sup>4</sup> It is important, for this reason, that the purchase price is disclosed. The price may have been based on the hope or anticipation of consent for enabling development, rather than on any realistic valuation of the property in its current condition. Allowing this hope value to form part of the assessment encourages speculative acquisitions and increases the scale of enabling development required beyond the needs of the heritage asset itself. The additional profit simply goes to the selling landowner.

**50** The fact that an owner may have other financial resources does not undermine the case for enabling development. Nevertheless, decision-makers may wish to be aware of the ownership structures of the assets and their surroundings to ensure they have not been artificially separated from their context for the purposes of the enabling development proposal.

**51** It may be preferable to site the enabling development away from the heritage assets in order to avoid or minimise harm to it or its setting.<sup>5</sup> Although the enabling development does not necessarily need to be confined to the asset itself, located immediately adjacent or within the same curtilage, it may need to be reasonably nearby, and within the same ownership, for practical and planning reasons.

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<sup>4</sup>PPG, Paragraph: 015 Reference ID: 10-002-20190509.

<sup>5</sup>As determined In *Northumberland County Council-v-Secretary of State for the Environment* (1989) JPL 700, 702

## Market fluctuations

**52** The development market and subsequent values may fluctuate significantly. When property values are at their lowest, and the risks of new development heightened through lack of demand, the amount of enabling development necessary to achieve a particular objective may be much higher than in a more buoyant market. In a period of low or falling values, it may be worth considering ‘mothballing’ the heritage asset in anticipation of an acceptable scheme being viable as the market recovers (see Historic England’s advice on [Vacant Historic Buildings: Guidelines on Managing Risks](#)). Even assets in serious disrepair may only be declining slowly, although consideration will need to be given to the risk incurred in waiting for markets to recover against further erosion of significance and potential increase to the conservation deficit. This risk may be mitigated by relatively cost efficient stabilisation measures for which grant aid may be available.

## 5: A scheme design

**53** The heritage asset is likely to be sensitive to change given its significance and therefore employing suitably experienced professionals is important. The conservation statement or management plan will inform both the conservation work and the new development and they may well be best handled as separate but linked design projects.

## 6: Development appraisals

**54** In order to calculate the amount of enabling development that might be needed, it is good practice for two development appraisals to be carried out one after another.<sup>6</sup> They will be produced by the applicant and it is advisable these be audited by an independent firm of chartered surveyors. The first appraisal is to establish whether there is a conservation deficit and if so, how much. The second is to demonstrate the minimum amount of enabling development needed to meet the identified deficit. It is also good practice for accompanying sensitivity analysis to be produced to assist in the decision-making process. For complex, multi-phase schemes generating an income stream rather than a lump sum upon completion, a simple development appraisal will not demonstrate the true return and considering cash flow becomes crucial in understanding the outturn.

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<sup>6</sup> Further information on carrying out appraisals is given in the [Viability](#) section of the government’s Planning Practice Guidance; reference may also usefully be made to the relevant RICS advice.

**55** Preparing a robust development appraisal for enabling development can be a complex exercise. It is good practice to employ professional services, including quantity surveyors with experience of heritage assets and registered chartered surveyors under the RICS Valuer Registration Scheme, to assess the value of the heritage asset in its current state (current market value), gross development value (value on completion) and prepare the detailed cash flows. Once the applicant has submitted their financial appraisals, it is good practice for the applicant to agree to pay for the local planning authority to appoint an independent firm of chartered surveyors using an agreed brief to audit the figures in order to gain a shared confidence in the numbers. In accordance with RICS Valuation Information Paper 12, Valuation of Development Land, the chartered surveyor will normally run a cross-check for the normal development appraisal against development land sales.

**56** Development appraisals are a snapshot in time, have a limited shelf life and are prone to inaccuracy as they depend upon the numerous inputs and assumptions. It is therefore good practice to use present day end values and costs and not project these into the future as this can only lead to less confidence in the figures that are generated.

**57** For a development appraisal to demonstrate that the amount of development proposed is the minimum needed to meet the conservation deficit is likely to contain:

- a** A detailed floor area schedule (using RICS measurement code of practice) corresponding to the proposed floor plans;
- b** A justification (eg 'Red Book' valuation report) for current market value
- c** A justification for end values, based on comparable transactions;
- d** Detailed costed schedules of works;
- e** A justification for all other costs;
- f** A sensitivity analysis.

### **Calculating the market value of a completed scheme**

**58** The completed scheme valuation is best assessed in accordance with the latest edition of the RICS Professional Standards (the "Red Book"), by a valuer with the relevant experience of the type of property and knowledge of the particular location and qualified for the purpose of the valuation. Specialist properties require specialist professional valuation advice, such as hotels where the question is often quantifying the minimum number of rooms required to make the scheme viable.

## Tax

**59** The impact of VAT or other taxes upon the scheme will need to be taken into account and, so far as possible, minimised so as to keep the enabling development impact to a minimum. Specialist advice may be needed in complex cases. If the particular circumstances of the developer create a higher than expected tax impact, that may need to be taken into account in the overall balance of the decision. Another owner's circumstances may reduce the need for enabling development whilst still securing the conservation of the heritage asset.

## Allowance for risk and profit

**60** An appropriate margin of profit for the prospective developer is allowed for in the calculation of the enabling development. A rigid approach to assessing profit levels is to be avoided.<sup>7</sup> What is reasonable depends on various factors including the current market for properties of a similar type. As the amount of enabling development will be fixed by the permission and will need to provide for the conservation needs of the heritage asset, the developer's profit is at risk if the returns on the scheme are below expectation, but may be exceeded if they are better.

**61** It is good practice for local planning authorities to seek [professional advice](#) (as part of their scrutiny of the development appraisal and based on evidence and the funding market) on what constitutes a fair and reasonable level of developer's profit in the particular circumstances. Allowing too great a profit could result in permission being granted for more units than is necessary whilst, if sufficient profit is not allowed for, the development may fail.

**62** In some land disposals, overage agreements are included in the sale contract whereby the vendor receives an additional sum of money if certain sales prices are exceeded. Sometimes this mechanism can distort the purchase price originally shown as the vendor may sell at a lower price in the hope of an element of future profits. Consequently if an overage or similar agreement is in place, this should be disclosed to the local planning authority.

**63** Where the developer will be the owner/occupier, as the owner derives a return from the occupation and use of the property, instead of a developer's profit, a reasonable "management fee" may be allowable as a contribution towards their risk and expenses incurred. Given issues around finance and risk, owners may want to enter into sale agreements or partnerships with developers. Where this is the case, all terms should be revealed to the relevant LPA (or its adviser) and all planning conditions and agreements complied with.

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<sup>7</sup> Further information on return to developers is given in the [Viability](#) section of the government's Planning Practice Guidance.

## Income versus an endowment fund

**64** Sometimes, long-term financial needs can be satisfied by increasing rental or commercial income from the property or through establishing an endowment fund. Increasing rental or commercial income to contribute to ongoing conservation costs is usually more financially efficient and therefore requires less enabling development.

## Target market and service charges

**65** Decision-makers will need to consider if the scheme is optimising its financial contribution by, for example, targeting the right sales market and minimising the infrastructure and on-going service costs that may depress the end values.

## Assessing the financial justification overall

**66** Where an applicant agrees to meet or contribute to the cost of auditing the financial justification, that cost can become part of the overall development costs. If a contribution is offered by the applicant, it is of course essential that the appointment of auditors is made directly by the local authority, uninfluenced in any way by the applicant.

## 7: A delivery plan

**67** Where a decision has been taken that proposals for enabling development are acceptable in principle, to conform to the policy the benefits need to be properly secured via an enforceable legal arrangement. In most cases, it is preferable that these benefits are secured as early as possible within the time period of implementation of the development, prior to completion or occupation. Occasionally, the conservation works approved to the asset will be dependent on funds only available at a late stage of the enabling development. In these cases the justification of delayed payment(s) and works will need to be set out at an early stage and the agreed arrangement secured in advance. Where a phased approach to the enabling development is planned, agreed and enforceable trigger points should be identified.

**68** In order to avoid enabling development being carried out without the heritage benefits (including long-term maintenance arrangements) being achieved, the decision-maker should put in place a legally enforceable mechanism under which the relevant funding and works will be carried out. These may include phasing, using a trust, escrow account, S106 agreement, performance or payment bonds or step-in rights in the case of insolvency. Some of these options can add to the developer's financing costs and increase the amount of enabling development required, so the objectives and risks need to be considered carefully.

**69** Risk of non-completion of the conservation works can be mitigated more easily in the case of larger projects by phasing so that once a defined block of conservation work has been done or payment made, the first phase of enabling development may proceed. There may be a logical sequence, beginning with repairs to the structure and external envelope, with subsequent development phases scheduled to follow the delivery of subsequent benefits. In this way a clear benefit is achieved even if the development is aborted, while it may be easier to market and sell the development if the heritage asset is seen to be being refurbished.

**70** Where subdivision is necessary – for example of a large house into separately-owned residential units, or the creation of individual residential units within a historic landscape – it is good practice to secure a legally binding means of ensuring long-term co-ordinated but proportionate management of those aspects of the heritage asset that are crucial to sustaining its significance, ideally based on a conservation management plan and with a mechanism for review involving those with a statutory interest in the building.

**71** Issues to be addressed may include:

- a** Separation of resources
- b** Increased risk to minor structures (for example, garden ornaments and statues or industrial outbuildings)
- c** Maintaining the designed unity of the heritage asset
- d** Management arrangements, including any necessary on-site facilities
- e** Ensuring that contributions to the repair or maintenance of the heritage asset are achieved.

### **Securing long-term management**

**72** The purpose of enabling development is not just to repair the heritage asset, but also to secure its future, as far as reasonably possible. Once repaired, proper and regular maintenance should ensure no further enabling development will be required.

**73** In most cases, listed buildings are small enough for their upkeep to be in the direct interest of the owner. An obligation to maintain in the section 106 agreement is nonetheless desirable, and if problems do arise, is likely to be more effective than the use of statutory powers (such as an urgent work routine).

**74** However, assets of a larger nature may need other approaches. In cases where fragmentation of management of the heritage asset could be detrimental to its significance, it is good practice to require compliance

with a management plan under the section 106 agreement, together with provisions to ensure that there is a workable mechanism for carrying out and funding its provisions for maintaining the building and (if applicable) its landscape setting.

**75** 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. A common approach would be to lease individual units and put the freehold into a management company of which the lessees are shareholders. Positive covenants then bind subsequent purchasers.

**76** An alternative approach is for a third party, such as a conservation trust, rather than the owner of the heritage asset, to discharge the responsibility for long-term maintenance by a secure agreement between the developer, the LPA and the trust or other third party. A scheme may involve several interlocking agreements requiring complex documentation that identifies the works at 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.

**77** The conservation trust may be a specific-purpose trust, company 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 heritage 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. Setting up such a body generally requires specialist legal advice.

### Planning conditions

**78** In addition to the normal subjects of planning conditions, (such as controlling the details of a scheme or withdrawing certain permitted development rights), conditions can regulate the phasing of a development, either:

- a** Where it is necessary 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; or
- b** To ensure that the development is carried out in a particular sequence.<sup>8</sup>

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<sup>8</sup>The Use of Planning Conditions, Annex A of Circular 11/95 provides a model phasing condition (No. 42).

**79** 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, (for instance, improvements to the public highway for safe and efficient access by vehicles). In these cases a so-called 'Grampian Condition' is needed, so as to impose a restriction upon land that 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.<sup>9</sup>

### **Monitoring and enforcement**

**80** To secure the benefits of enabling development by monitoring and enforcing the conditions or obligations, it is good practice to:

- a** Appoint a monitor, either within the local authority or an external consultant, as soon as the Section 106 Agreement is signed.
- b** Require a formal arrangement in phased schemes for 'signing off' delivery of the benefits required before the next phase of development can begin.
- c** Monitor areas which represent the greatest risk, for example achieving a sufficient quality in historic building repair.
- d** Resist requests to defer work to the heritage asset which benefits from the enabling development, for example through the use of a stoppage notice where planning conditions requiring completion of the enabling development have not been complied with.

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<sup>9</sup> PPG, Paragraph: 009 Reference ID: 21a-009-20140306.

# 5

## Making the decision

### The balance of advantage

**81** To meet the policy in NPPF paragraph 202, an enabling development proposal can only be considered for approval if it provides benefits that outweigh the disbenefits, and where the decision-maker is confident that the scheme would secure the conservation of the heritage asset(s) – this involves assessing the position now and considering the asset’s future. Whether the complete solution deals with the conservation of the totality of the heritage asset(s), or with a core group (as in paragraph 17 above), it is good practice to take the decision in the light of a realistic view of the consequences of refusal. Equally, a proven conservation deficit may not automatically lead to a grant of consent, where the disbenefits of failing to comply with other planning policies are considered to outweigh the benefits of conserving the asset.

# 6

## Glossary

**Conservation:** the process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance.

**Conservation deficit:** the amount by which the cost of repair (and conversion to optimum viable use if appropriate) of a heritage asset exceeds its market value on completion of repair and conversion, allowing for all appropriate development costs.

**Heritage asset:** a building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. Heritage assets are either designated heritage assets or non-designated heritage assets. Designated heritage assets are World Heritage Sites, Scheduled Monuments, Listed Buildings, Protected Wreck Sites, Registered Parks and Gardens, Registered Battlefields, or Conservation Areas, designated under the relevant legislation. Non-designated heritage assets are identified by plan-making bodies as having a degree of heritage significance meriting consideration in planning decisions but which do not meet the criteria for designated heritage assets.

**Historic entity:** an historic entity is an outstanding ensemble of historically associated buildings, often land (which may include archaeological remains) and normally contents, whose significance would be inevitably and materially harmed by break-up and sale.

**Optimum viable use:** if there is only one viable use, that use is the optimum viable use. If there is a range of alternative economically viable uses, the optimum viable use is the one likely to cause the least harm to the significance of the asset, not just through necessary initial changes, but also as a result of subsequent wear and tear and likely future changes.

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