

Enabling development – the last resort

David Tomback explains new guidance from English Heritage 'Enabling Development and the Conservation of Significant Places'.



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Enabling development was first established as a legitimate planning tool when in 1988, the Court of Appeal upheld the validity of the granting of consent for office development, contrary to the development plan, to provide funds to improve the Royal Opera House (Westminster City Council ex parte Monahan).

Enabling development is development that secures the future of a significant place but contrary to established planning policy. It is however a last resort and by its very nature, an inefficient method of raising funds. English Heritage first produced an Enabling Development Policy in 1999 and a combined policy and guidance was produced in 2001 as a response to the unacceptable practice by some developers of

using historic places in poor repair as an excuse to circumnavigate the planning system.

The latest updated guidance (September 2008) links into, and is particularly relevant to, Conservation Principles as understanding significance is the bedrock from which all decisions flow. The purpose of the Policy and Guidance is to ensure rigorous scrutiny by local planning authorities and sets out the rules for applicants. From the very beginning, the Policy has been accepted by the Planning Inspectorate as providing the basis for considering enabling development – Planning Inspector's report concerning Coleorton Hall, Leicestershire, October 1999".

The first enabling development guidance included a great deal of information about assessing potential for change which is now included in Informed Conservation Guidelines. The important inter-relationship between Conservation Principles and enabling development is that Principles puts enabling development guidance into a wider picture and is indeed a model for how particular types of applications relating to change should be assessed. Both documents are intended to amplify and reinforce, and should be used in conjunction with the well-established criteria set out in PPG15.

The criteria that are set out in the Policy and that need to be met before enabling development should be considered are stringent, they are:

"Enabling development that would secure the future of a significant place, but contravene other planning policy objectives, should be unacceptable unless:

- a) it will not materially harm the heritage values of the place or its setting
- b) it avoids detrimental fragmentation of management of the place
- c) it will secure the long-term future of the place and, where applicable, its continued use for a sympathetic purpose
- d) it is necessary to resolve problems arising from the inherent needs of the place, rather than the circumstances of the present owner, or the purchaser price paid
- e) sufficient subsidy is not available from any other source
- f) it is demonstrated that the amount of enabling development is the minimum necessary to secure the future of the place, and that its form minimises harm to other public interests
- g) the public benefit of securing the future of the significant place through such enabling development decisively outweighs the disbenefits of breaching other public policies."

Enabling developments are, by their very nature, complex and often

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controversial and the onus is on the applicant to provide all relevant information to the local planning authority. The most common cases I deal with are often large country houses or redundant mental hospitals some of which have been neglected for many years, often vandalised and where the cost of repairs may outweigh the market value once repaired i.e. there is a conservation deficit.

The only "solution" can then be

seen as the local authority relaxing the planning rules by permitting otherwise unacceptable development, perhaps in the form of residential units within the grounds of the main property for example in a walled garden or on adjacent land. If permitted, the benefit to the community is that the main heritage asset is repaired and brought back into long-term beneficial use.

Financial considerations are therefore not just relevant but fundamental as enabling development is a form of public subsidy. Nevertheless, if the first criteria is not met namely that the proposals will not materially harm the heritage values of the place or its setting, then the application can go no further. It is important to note that the word 'material' is used in the Policy and does not equate change, with harm. Consequently when an applicant is making the case for enabling development, understanding the nature and significance of the asset from the outset as an entity and also in its parts, is essential. Conservation Principles provides a clear, over-arching, philosophical framework on what conservation means and should allow decision makers to make balanced and justifiable decisions about change in the historic environment by defining and understanding who values a place and why they do so. This leads to a clear statement of its significance and, with it, the ability to understand the impact of the proposed change.

With the exception of historic entities and traditional buildings in the countryside, before enabling development is even considered, the applicant needs to demonstrate that real efforts have been made, without success, to continue the present use or find compatible alternative uses for the place. The phrase "real efforts" comes from PPG15 para 3.19ii and one could substitute the

word "genuine". What constitutes making real efforts is the subject of another article! However, this normally involves the offering of the unrestricted freehold, or long leasehold on the market at a realistic price reflecting the condition of the place and, so far as ownership allows, an appropriate curtilage.

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The final criterion states that the public benefit of securing the future of the significant place through such enabling development decisively outweighs the disbenefits and is perhaps the hardest aspect for the decision maker. In some cases whilst the financial need may be demonstrated, the resulting harm to the significance of the place could range from minimal to unacceptable and it is the 'grey area' where to allow no change could result in the entire loss of the significant place which is when crunch decisions have to be made.

Once it has been decided that an enabling development scheme meets all the criteria, there are still four further tests in that the impact of the development must be precisely defined from the outset; the benefits must be secured, normally by way of a Section 106 Agreement; the place concerned is repaired to an agreed standard as early as possible and finally the planning authority closely monitors implementation to ensure that obligations are fulfilled.

Assessing an enabling development application is not straightforward

and a number of professional disciplines are required to contribute to the decision making process. The fact that the updated Enabling Development and the Conservation of Significant Places Policy and Guidance mirrors in design the layout and terminology within Conservation Principles is no accident as the two are interlinked and used together provide a sound base and hopefully useful guidance for those decision makers involved in managing our historic environment.

In today's difficult financial climate there is increased pressure on developers and owners as property values fall and funding becomes hard to secure. This often results in a demand for a greater quantity of enabling development e.g. more houses in walled gardens or in the Green Belt.

I also fear that some Developers or owners may seek to downgrade specification or delay repairs which can lead to further decay and increased costs and thereby increasing the financial desire for more enabling development. To compile the difficulties faced by decision makers, as a development appraisal is a snapshot in time, assessing the accuracy of appraisals to assess the minimum amount on enabling development needed to equate to the conservation deficit in the current market, is a challenge for all concerned.

I cannot emphasise strongly enough, that it is vital for local authorities to ensure that a solid Section 106 Agreement is in place to secure the benefit and particularly in the current market, local authorities may well wish to insist upon Performance Bonds to guarantee that funds to complete the restoration are available should the developer/owner fail to perform.

Another common problem can be that too much was paid originally for

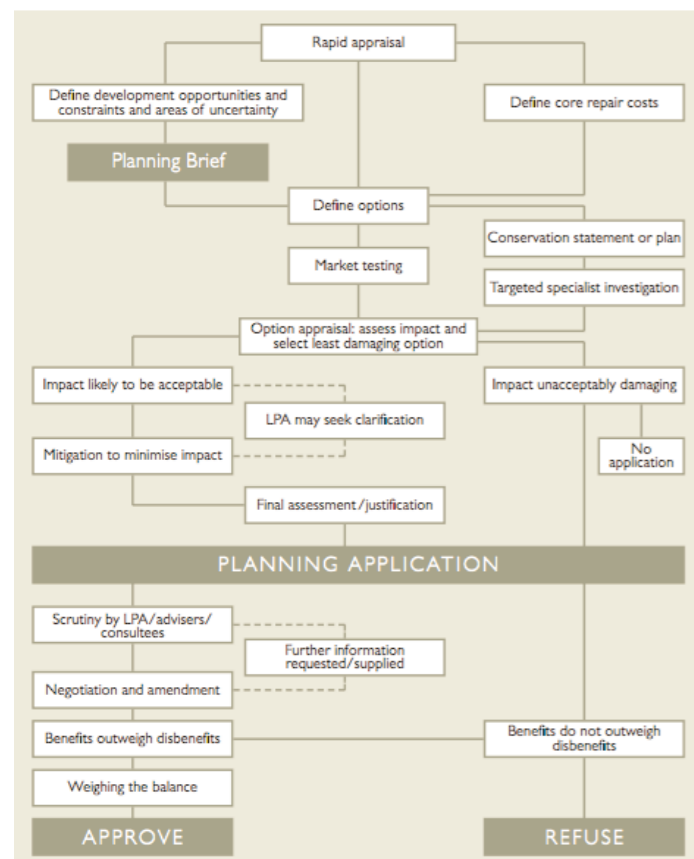
the property. This can result in the owner seeking to redress to what they perceive is an unacceptable return, with enabling development. The guidance is clear in that just because an owner paid a certain sum for a property, that may not necessarily be the right price to be used in the computations of the amount of enabling development especially if the condition and constraints upon the building were not originally taken into account.

Over the years I have seen many interesting enabling development cases and the arguments put forward for enabling development have ranged from there being a fire, the property not being properly insured and therefore a request for enabling development, through to developers having completed the permitted scheme seeking additional development as their profit was not what they had originally predicted, i.e a "second bite of the cherry". All these circumstances are covered in the guidance.

In the current financial climate there are additional pressures on developers and I anticipate more enabling development cases having to be dealt with by local authorities and English Heritage. The key for all parties is to understand the rules from the outset i.e. read the Policy and Guidance and obtain good professional advice from practitioners well versed in the process. Finally, pre-application consultation can save a great deal of time, effort and cost. Since enabling development is irreversible it has to be seen as a last resort.

The "Enabling Development and the Conservation of Significant Places" Policy and Guidance is available on www.english-heritage.org.uk/enablingdevelopment and www.helm.org.uk/enablingdevelopment

An 'ideal' flowchart for handling an enabling development proposal – from the EH guidance.



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