

**PART 1 – Important issues raised by a current application for Enabling Development.**

**6.1** In relation to my representation 4058, I believe it is absolutely essential that something like the following should be included in **Policy EN1** as my daughter and I think it would make the legal soundness of the Local plan more robust and, hopefully, help ensure future legal compliance:-

**The Council will provide English Heritage with all relevant information and circumstances prior to referring an application to English Heritage for their formal advice.**

**AND**

**Any application submitted with a Viability Appraisal for Enabling Development will only be recommended for approval if it is in accordance with the English Heritage Guidance as detailed in *Enabling Development and the Conservation of Significant Places (2008)* or any subsequent guidance that may replace this.**

**6.2** The reason why I believe these changes are essential to safeguard the historic environment is demonstrated by the Council's very disturbing handling of a current application which has been submitted as a formal Enabling case - HS/FA/10/00207 and the associated applications HS/LB/10/00206 and HS/CA/10/00301 (see Site Allocation B31 – college of the Holy Child of Jesus in the Development Management Plan Consultation document, 3 February -27 April 2012). This major application seeks to build 135 new build dwellings on a site described in the Hastings Local Plan (2004) as '**the major element of the conservation area**' and about which Heloise Brown of the Victorian Society writes,

**The site as a whole is important due to the quality of the listed former Convent Buildings and their well-preserved state in their original setting.**

**6.3** I understand all such applications should follow the English Heritage Guidance. The convent application does not follow the Guidance in a number of important regards, but English Heritage have not had the opportunity to assess the application with regard to the English Heritage Guidance or to ensure that the financial data in support of the application is appropriately verified, because English Heritage has not been notified by HBC officers that a Viability Appraisal has been submitted.

**6.4** English Heritage should have been **notified** that the application had been submitted with a Viability Appraisal for Enabling Development in April 2010 when the application was referred to English Heritage for its formal advice, but it appears to be the case that the HBC officer or officers making the key decisions in this cases have so far decided not to do so. Alan Byrne of English Heritage is the officer who has consulted on this case on behalf of English Heritage South East Region since they were consulted in January 2009. He informed me by email on **16.01.13** that, although he ceased to have responsibility for planning casework in Hastings 01.11.12, that as far as he is aware English Heritage have not been formally notified by HBC or the applicants agent of any change in status of the application. It appears to be the case that throughout this lengthy consultation period English Heritage was not

formally notified with regard to this application being submitted as a formal Enabling Case.

**6.5** According to the English Heritage guidance document *Enabling development and the conservation of significant places (2008)*, it is essential that Hastings Borough Council exercise due diligence with regard to the convent application. Chapter 3, ‘The legal basis for requiring the justification necessary to determine planning applications.’ states:-

**3.5.1 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 analogous to that of individuals paying taxes to acquire the right to public goods and services – including the conservation of the 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.**

**6.6** However English Heritage’s formal advice on the convent application is **not** based on the Enabling Development application actually submitted, but instead on what appears to have been a ‘fictional application’ presented to Alan Byrne of English Heritage by the applicant’s agent, Martin Carpenter of Enplan, on an entirely different basis. In the absence of notification that the application has been submitted with a Viability Appraisal for Enabling Development, Alan Byrne of English Heritage has indicated that English Heritage can neither comment nor act with regard to the application as the formal Enabling Case it is. In effect, it appears English Heritage is being prevented from exercising its statutory role with regard to the application.

**6.7** Correspondence obtained through an Environmental Information Request to English Heritage (see Appendix to Matter 6: EH EI Request – Correspondence between Byrne of EH and King of HBC and EH EI Request – Correspondence between Byrne of EH and Carpenter of Enplan ) appears to indicate that:-

1) Both HBC and Enplan failed to inform Alan Byrne of English Heritage that the application was a formal Enabling Case that had been submitted with a Viability Appraisal for Enabling Development, prior to him providing English Heritage’s formal advice.

2) English Heritage can neither comment nor act with regard to the convent application as a formal Enabling Case, unless English Heritage is notified that the convent application has been submitted with a Viability Appraisal for Enabling Development.

Alan Byrne of English Heritage in an email to Graham King of Hastings Borough Council writes

**The formal application referral does not indicate or request that EH should consider the application as an Enabling Policy case.**

He indicates that unless English Heritage is notified that a Viability Appraisal for Enabling Development has been submitted with the application, they cannot comment on the application as an Enabling Policy case. He ends by suggesting that if the

application has been submitted as a formal Enabling Development case, the Council might notify English Heritage of this:-

**Perhaps you can let us know if the council is now treating this as a formal Enabling Case in the terms set out in the guidance document, if so it may be necessary to seek withdrawal of the current application and submission of a new application based on the procedures set out in the English Heritage guidance document. The prerogative is with your Council to decide if this is the appropriate approach to take.**

Alan Byrne of English Heritage in an email to Martin Carpenter of Enplan indicates that the proposals were not presented to him as an Enabling Case, but instead on an entirely different basis. In addition, Alan Byrne states that:

**When English Heritage was consulted on the application formally, we were not provided with the kind of financial data that would be necessary to support an enabling case; if this had been the case, I would have requested specialist development economics advice to inform our response. You (your client) would have been required to make all the data on which the viability case for enabling development was made available for scrutiny by an independent financial advisor appointed by us; the output of this assessment would become a formal part of the assessment documentation and available publically.**

**6.8** Although it appears Alan Byrne of English Heritage was not informed with regard to the application being a formal Enabling case, the applicant's agent Martin Carpenter of Enplan in a letter to the case officer, Sam Batchelor, on 12.03.12 states:- **Notwithstanding the variation from their own Enabling Development guidelines, English Heritage has supported the proposed development in that it delivers the restoration and future safeguarding of the heritage asset by means of Enabling Development.**

In the same letter, Martin Carpenter admits that the application is not in accordance with the English Heritage guidance as the site has not been marketed. This is correct as the convent and its grounds do not meet the criteria that are necessary for it to be exempted from marketing. However, Martin Carpenter neglects to mention a number of other important regards in which the application does not follow the English Heritage guidance.

**6.9** Also Heloise Brown of the Victorian Society informed me in an email on 03.08.11 that when she visited the convent, **'The agent I met said they weren't trying to justify the application as Enabling Development so we only assessed its merits against whether it was sensitive to the buildings'.**

**6.10** In spite of the fact Martin Carpenter of Enplan knows the convent application has been submitted as a formal Enabling case, he appears to have informed both English Heritage and the Victorian Society that this was not the case. Given that Martin Carpenter knows and admits that the application does not follow the English Heritage guidance, could this have been because he did not want either of these heritage organisations to have the opportunity to scrutinise this seriously flawed application with regard to the English Heritage guidance?

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**6.11** The stance taken by HBC officers in not notifying English Heritage of the fact the application has been submitted as a formal Enabling Case begs the question, ‘What is going on?’ Excerpts from a letter dated 20/07/11 from Tim Cookson of HBC to Amber Rudd MP demonstrate the incoherence of this stance (see COOKSON TO MP in the Appendix to Matter 6):-

Tim Cookson of HBC states in correspondence to Amber Rudd MP,

**I confirm the Council has from the outset, considered this as being an enabling development proposal, and at such a time as we do receive sufficient information we will make an assessment and judgement on that basis.**

And that HBC's preparedness to consider the proposals as Enabling Development **'was subject to the applicants following the guidance on enabling development and conservation of heritage assets as published by English Heritage.'**

Tim Cookson in the same letter expresses an inability to explain why English Heritage are not considering the proposals as an enabling development, even though this appears to be because neither the applicant's agent nor HBC officers had notified Alan Byrne of English Heritage of the fact that the application has been submitted as a formal Enabling development:-

**It is noted that English Heritage have written to Mrs Jarvis indicating they were not assessing the proposals as being an enabling development scheme. However we cannot answer for English Heritage and cannot explain why they are taking a differing stance to the Council.**

**6.12** Tim Cookson appears to have played a key role regarding this case. However since the restructuring of the Council in April 2012, I am unsure whether Tim Cookson is still making the key decisions regarding the convent application or whether another officer has assumed this role.

**6.13** There is so much more to say regarding this case, but due to shortage of time and space, I will just add a few further important things:-

**6.13.1** VERY IMPORTANT - I believe this case raises such serious issues that it should be thoroughly investigated by an independent person or body that has the requisite professional expertise My daughter, who had never looked at planning application prior to this one, has done her best with the help of others, but this case really needs professional examination.

**6.13.2** I hope the Inspector will visit the site and have a look inside the buildings including the late Victorian/early Edwardian Italianate East Wing which will be demolished if this application is realised. Heloise Brown of the Victorian Society wrote,

**This building has aesthetic value in its design and historical value as part of the development. It is well constructed and its demolition would represent a significant loss of significance and be a waste of built resources.**

Comments by Bill Shipley of Cluttons on case file HS/FA/10/00207 appear to indicate that this wing might be quite profitably converted. He writes in an email to the case officer,

**I think the conversion costs of C20 are put at £170 per sq ft (£4.25m). I believe that this is what was the East Wing and I do not think we have any details of this as it was always proposed to be demolished. Therefore it is difficult for us to comment on the conversion costs save that they are higher than the remaining**

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retained buildings which is surprising. I recall the East Wing is not listed, and assuming this is the case then our cost consultants might expect them to be lower. However if this is the case then profitability would be improved, but I doubt to the extent of transforming the scheme's overall viability. If you would like a more detailed comment on this we would need further information on the building with floor plans photo's and such like.

**6.13.3** I believe it is essential a 'realistic' independent estimate of the conservation deficit is produced based on a detailed 'independent' survey of the heritage assets which produces a thoroughly 'independent' assessment of the costs relating to their restoration and conversion. The Cluttons Reports commissioned by HBC appear to be primarily desktop studies based on the refurbishment costs used in the Savills Appraisals.

### PART II – Designation of the Convent Grounds.

**6.14** In addition to White Rock Gardens, **both** North and South of the grounds of the College of the Holy Child of Jesus should be designated as (Private) Open Space and **none** of this green space should be allocated to development, as this would not be legally sound. This relates to Representations 4056, 4057, 4058, 4059 and 4060 and also to policies FA2, FA4 and EN1. The reasons include:-

**6.14.1** As there is a current Enabling Development application regarding the former convent and its grounds, and there is a strong likelihood of others in the future, it should not be allocated as this would be likely to jeopardise an optimal outcome/use for these heritage assets and, therefore its potential for heritage-led regeneration, The English Heritage Guidance document *Enabling Development and the Conservation of Significant Places (2008)* states in Chapter 2:-

**2.2.2 Owners may propose, through the local development framework process, site-specific provision for enabling development in development plan documents on the grounds that it would help, or even be essential, to secure the future of a significant place. Such proposals should be resisted, since optimum uses, costs and values fluctuate over time. The case for enabling development can only be properly considered in the context of a specific application; and if a case is made, a binding and enforceable link to its heritage objective is a prerequisite to a grant of planning permission.**

**2.2.3 Moreover, site-specific provisions run the risk of becoming development in accordance with the statutory plan. By definition it would not be enabling development, and so could not be securely and enforceably linked to benefit to the place. Any link would depend on the goodwill of the owner; and owners, and their circumstances, can change in quite unforeseeable ways.**

**6.14.2** The whole of the convent grounds make a very important contribution to the townscape of this historic area.

**6.14.3** The Local Plan 2004 states in its description of the Magdalen Road Conservation Area that,

**To the east the Convent school and its grounds are the major elements of the conservation area.**

**6.14.4** Designation would make selling off the Northern part of the Convent grounds to a speculative purchaser much less lucrative proposition. In a sense, it might enable an Enabling Development if it was truly the Last Resort.

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**6.14.5** HBC failed to provide any compelling justification for its nondesignation in the Local Plan 2004. I think both North and South of the Convent Grounds had been designated prior to that plan.

**6.14.6** Sport England classify the North of the Convent Grounds as a playing field and currently object to this land being used for development.

### PART III – The historic environment and site allocation A20 in the Development Management Plan Consultation document, 3 February -27 April 2012

**6.15 Site allocation A20** - Taxi Office and BR Social Club in the Development Management Plan Consultation document, 3 February -27 April 2012, I believe this allocation in Central St Leonards is legally unsound and would be contrary to a number of strategic objectives (see Representation **4059**). Preserving the historic environment is extremely important to Central St Leonards which is the most deprived and densely populated ward in East Sussex, because of the potential for heritage-led regeneration and tourism. It was the most densely populated ward in 2001 with a density of 84.9 persons/hectare and this density has increased dramatically to 105.4 in 2011 (ESCC statistics).

**6.16** This allocation is contrary to **Policy FA2 k** and **Policy EN1** and should be excluded from FA4a where it is referred to as the Alpha Café, for reasons that include the following:-

1. This allocation (30 units on a 0.12ha site) implies a multi-storey block in this extremely densely populated area and this would be seriously detrimental to the historic environment. It would become the dominant focal point of many views and vistas in this predominantly Victorian landscape
2. It would be seriously detrimental to elegant Italianate station (William Tress 1851-1852) with its 1869 latticed footbridge (1869).
3. Neither the Taxi Office nor the Alpha Café, which house two thriving businesses and make useful social contribution to the area, should be demolished. The taxi office was the original coal office and is an integral part of the Victorian fabric of the station (Sussex Industrial Archaeological Society). The Alpha Café is a characterful building and **importantly is single storey building** which allows the historic environment to be shown to its best advantage.
4. On exiting the station a multi-storey block would not provide a fitting entrance to historic St Leonards with all its architectural gems and detrimental to the towns under- realised tourist potential and also to its general economic potential
5. The former BR Social Club Site would be an ideal space for Outdoot Table which would be of real benefit to this deprived area.