

**Comments on HN6 version suggested by the Inspector**

I have three key problems with the Inspector’s suggested version of Policy **HN6**. In brief these are:

1. It doesn’t have a commitment on the part of the Council that if an enabling development application is submitted, the Council will formally notify English Heritage, or their successor, that a Viability Appraisal for Enabling Development has been submitted with an application. In the absence of such notification EH, or their successor, may be unable to comment on an enabling development application as the enabling case it is. The convent application HS/FA/10/00207 was submitted on 31.03.2010. However English Heritage has still not had the opportunity to assess the application with regard to its own enabling development criteria nor has it had the opportunity to verify the financial data submitted by the applicant, because the Council has not formally notified English Heritage that a Viability Appraisal for Enabling Development was submitted in support of this application.

2. The following vitally important criterion, that according to the English Heritage guidance document on page 5 should be met, is not included:

**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**

3. I think there should be a general policy on enabling development that does not refer to a specific site – see paragraphs from the English Heritage guidance document below.

In order to be in accordance with the national guidance on enabling development that underlies **NPPF paragraph 140** and to give these vitally important heritage assets the best chance with regard to securing a suitable long term future, I believe all references to Former Convent of Holy Child Jesus, Magdalen Road in **Section Two, Part iv) Historic and Natural Environment Policies** of the Revised Proposed DMP (Figure 1 and Paragraphs 4.20- 4.25 including **Policy HN6 - Former Convent of Holy Child Jesus, Magdalen Road** should be removed from **Section Two, Part iv)**. Instead, a general policy on Enabling Development that is in accordance with Enabling Development and the Conservation of Significant Places should be included in **Section Two Part iv) Historic and Natural Environment Policies**, some paragraphs about the **Former Convent of Holy Child Jesus, Magdalen Road** should be included in **Focus Area 7 - Our Vision for Central St Leonards and Bohemia** and the entire curtilage of Former Convent Holy Child of Jesus should be designated as **Private Open Space**. (Please refer to **Statement on Matter 4 – Rep 0338** with regard to ISSUE 4.2 and the whole of the **Appendix**, as well as to **Statement on Matter 4 – Rep2142 PART I and PART II**.)

I I suggest the something like the following policy should be included in **Section Two, Part iv) Historic and Natural Environment Policies**:

## **Policy – Enabling Development**

**If an enabling development application is submitted the Council will formally notify English Heritage, or any future body that assumes English Heritage’s current planning role, that the application has been submitted with a Viability Appraisal for enabling development.**

**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 purchase 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.**

**If it is decided that a scheme of enabling development meets all these criteria, planning permission will only be granted if:**

- a the impact of the development is precisely defined at the outset, normally through the granting of full, rather than outline, planning permission**
- b the achievement of the heritage objective is securely and enforceably linked to it, bearing in mind the guidance in ODPM Circular 05/05, Planning Obligations**
- c the place concerned is repaired to an agreed standard, or the funds to do so are made available, as early as possible in the course of the enabling development, ideally at the outset and certainly before completion or occupation**
- d the planning authority will closely monitors implementation, if necessary acting promptly to ensure that obligations are fulfilled.**

This suggested policy is in accordance with the English Heritage guidance. With the exception of the first paragraph, the wording is exactly as it is on page 5 of the English Heritage guidance document. I believe the first paragraph of my suggested policy is necessary in order to ensure the experts (English Heritage or their successor) have the opportunity to appropriately assess any enabling development application submitted. In the case of current enabling development application HS/FA/10/00207, English Heritage have not had the opportunity to comment on the application as the Enabling Case it is because the Council still have not formally notified English Heritage that this application has been submitted with a Viability Appraisal for Enabling Development! In addition, Enplan appear have presented this application to

both English Heritage and The Victorian Society not as the Enabling Case it is, but on an entirely different basis!

I believe that it is necessary to make these changes in order to make the Hastings Local Plan legally compliant and legally sound with regard to these issues because Enabling Development and the Conservation of Significant Places (English Heritage 2008) states:

## **2.2 Enabling development and the local development framework**

**2.2.1 Since enabling development is by definition contrary to policy, local development frameworks can do no more than set out the criteria against which such applications will be assessed. Local authorities should consider doing so by reference to English Heritage policy in their development plan documents, particularly if they are aware that enabling development is likely to be proposed as a means of securing the future of significant places. The inclusion of such a policy does not obviate the need to refer to the Secretary of State for Communities and Local Government, as a departure application, any proposed enabling development considered against its criteria, if the authority becomes minded to approve it. ‘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)**

**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.**

And also according to the English Heritage guidance document, it is essential that Hastings Borough Council exercise due diligence with regard to any enabling development application as it is a quasi-financial decision. 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.**

**II** The entire curtilage of the former Convent should be designated as Private Open Space – see **Statement on Matter 4 – Rep2142 PART I**

**III** Suggested paragraphs to be included in **Focus Area 7 - Our Vision for Central St Leonards and Bohemia:**

**To the East lies the former convent and its grounds - a vitally important collection of heritage assets including grade II and II\* buildings. The Victorian Society stated in 2011, ‘The site as a whole is important due to the quality of the former listed buildings and their well-preserved state in their original setting.’**

**A number of these heritage assets have deteriorated since the current owners purchased the site in 1977 and are now in need of repair. The Council wants to see the listed buildings, the Italianate East Wing, and other heritage assets conserved and a suitable long term future secured. Particularly regard must be paid to the respectful protection and enhancement of the Nun’s Cemetery.**

The reason the conservation of the East Wing should be specifically referred to in paragraphs regarding the convent relate to its significance in its own right and as part of the whole and, also, to the apparent viability of its retention.

The Victorian Society state that the East Wing is '**undoubtedly a heritage asset**' and also that: '**It is well constructed and its demolition would represent a significant loss of significance and be a waste of built resources.**'

The Victorian Society also states: **Externally, its southern elevation has great character and refers to the Italianate character of the listed convent buildings to which it is attached. Internally, despite its remodelling it has the same robust simplicity as the other buildings. The Committee felt that this building was undoubtedly a heritage asset.**

Also it appears it would be viable to retain the East Wing when considering proposals for this site. In an email on case file HS/FA/10/00207 sent to Sam Batchelor of HBC by Bill Shipley of Cluttons on 18.11.11, who although he was not asked by HBC to review the Viability Appraisal that considers the retention of the East Wing, comments

**‘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**

**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.'**

In fact the cost per sq ft used for the South Wing and North Wing are £103.05 and £109.15 resp.

If one uses an estimate of the costs relating to the East Wing of £110.00 per sq ft (perhaps a generous guesstimate in light of Bill Shipley's comments) rather than the £170 per sq ft, then it appears that £750,000 deficit in relation to the conversion of the East Wing is transformed into a £750,000 surplus.

This Savills Development Appraisal also includes a cost of £205,000 for Demolition, earlier appraisals have referred to this cost as Demolition of the East Wing, so it probably shouldn't be included in an Appraisal that considers the conversion not demolition of the East Wing. In this case any surplus relating to the conversion of the East Wing would be further increased.

As Enabling Development is meant to be the minimum amount of new build necessary, this alone raises very serious questions regarding the appropriateness of the demolition of the East Wing in the case of any enabling development or indeed other proposals regarding this site.

The Viability Appraisal that considers the retention of the East Wing and the Bill Shipley email, can be located via the Documents page of HS/FA/10/00207 in the documents listed under date 22.11.11 as SUMMARY NOTES OF MEETING.