

Conwy Local Development Plan 2007 – 2022



SUPPLEMENTARY PLANNING GUIDANCE

LDP25: Enabling Development

Adopted March 2015

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Statement of Consultation

This Supplementary Planning Guidance document was issued for a period of six weeks public consultation between 15 December 2014 and 23 January 2015

It was adopted by Cabinet on 10 March 2015

Copies of the representations received, together with the Council's response are available to view on-line at <http://conwy.jdi-consult.net/ldp/>

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1. Definition – The concept of Enabling Development

- 1.1 The term ‘Enabling Development’ can be defined as development that is capable of delivering significant heritage benefits, but is contrary to national and local planning policy. Enabling Development is not a statutory term, but is a legitimate planning tool by which a community may be able to secure the long-term future of a place of heritage significance. It is an established principle that such development may be appropriate if the public benefit of rescuing and enhancing an important historic asset outweighs the harm caused to other material interests. The problem which Enabling Development seeks to address is when the cost of maintenance, major repair or conservation to deliver the optimum viable use of a building is greater than its resulting value to the owner or on the open market. The resulting ‘conservation deficit’ could then be resolved by application of the Enabling Development policy.
- 1.2 It is important to consider that Enabling Development must not be used as a means of simply bypassing planning rules. It will be for the applicant to justify to the Council that the development in question will be in proportion to the public benefit it offers.
- 1.3 It is the purpose of this SPG to provide further guidance on LDP Policy CTH/4 – Enabling Development, to assist applicants when formulating their proposals and decision makers when they come to assess such applications. It is necessary at this stage to stress the importance of pre-application discussions with relevant Council officers prior to the submission of any application which falls within the scope of LDP Policy CTH/4. This document provides advice on those matters that should be discussed at the pre-application stage which should assist in the formulation of planning applications and the decision making process.

2. National guidance

- 2.1 There is little in the way of national guidance on the subject of Enabling Development. For example, it is not covered within Planning Policy Wales or Welsh Office circular, however ‘Conservation Principles for the Sustainable Management of the Historic Environment in Wales’ (Cadw, March 2011) includes a section on Enabling Development (sections 49 – 52). The policy within this document is similar to that which appears within the Conwy LDP. Cadw endorses the guidance produced by English Heritage – ‘Enabling Development and the Conservation of Significant Places’ (September 2008), hence this guidance has been used to inform the content of this SPG.

3. Local Development Plan Policy

- 3.1 The Conwy Local Development Plan (adopted in October 2013) includes a specific policy on Enabling Development. This is shown over the page, with further explanation on the detail of the policy at section 5 of this SPG. The guidance in this SPG is appropriate to Enabling Development of any scale, but should be applied in proportion to the scale and complexity of the project.

Policy CTH/4 – ENABLING DEVELOPMENT

1. Enabling development which seeks to secure the preservation and/or appropriate alternative use of a listed building, or a building which makes a significant positive contribution to the character of a conservation area, historic landscape or parks and gardens of special historic interest will only be permitted where the following criteria are all met:
 - a. It will not materially harm the heritage values of the historic asset or its setting and;
 - b. It avoids detrimental fragmentation of management of the historic asset; and
 - c. It will secure the long-term future of the historic asset and, where applicable, its continued use for a sympathetic purpose and;
 - d. It is necessary to resolve problems arising from the circumstances of the present owner, or the purchase price paid and;
 - e. Sufficient subsidy is not available from any other source and;
 - f. It is demonstrated that the amount of enabling development is the minimum necessary to secure the future of the historic asset, and that its form minimizes harm to other public interests and;
 - g. The public benefit of securing the future of the historic asset through such enabling development decisively outweighs the disbenefits of breaching other public policies.

2. If it is decided by the Council that a scheme of enabling development meets all the criteria set out above, planning permission should then 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 the enabling development;
 - c. The place concerned is repaired to an agreed standard, or the funds to do so made available, as early as possible in the course of the enabling development, ideally at the outset and certainly before completion or occupation and;
 - d. The Council closely monitors implementation, if necessary acting promptly to ensure that obligations are fulfilled.

4. Planning Application Process

4.1 General

Proposals for Enabling Development will normally present to the Local Planning Authority (LPA) in the form of a pre-application discussion. In preparation for a pre-application discussion, an understanding should be gained of the design and significance of the building and its setting, in question. Important considerations at this stage are:

- What are its main attributes/ special character- is there a listing or BSLI description which outlines this?
- What is the current condition of the building? Is it on the “At Risk” Register?
- Are there any European, national and/or local planning designations which could affect/constrain future proposals for development?
- Are there any grants currently available to assist with restoring the building?
- Are there any other potential developments which may be suitable at that location as a means to enable development?
- Potential for involving Cadw /Design Commission in terms of seeking advice at this stage.

4.2 Development Briefs

The Council may look to pre-emptive action and produce development briefs for particular vulnerable sites whose future has been a matter for concern. If taken through the appropriate consultation and council committee routes, such development briefs may become Supplementary Planning Guidance (SPG) documents. Development Briefs in this context may include the following:

- Outline assessment of the character and significance of the place
- Summary of physical and policy constraints
- Identification of potential opportunities
- Aims and concerns of the Council and the community
- Identification of possible planning obligations that may be applicable, or where these may be waived
- A list of information that would be necessary to support a planning application.

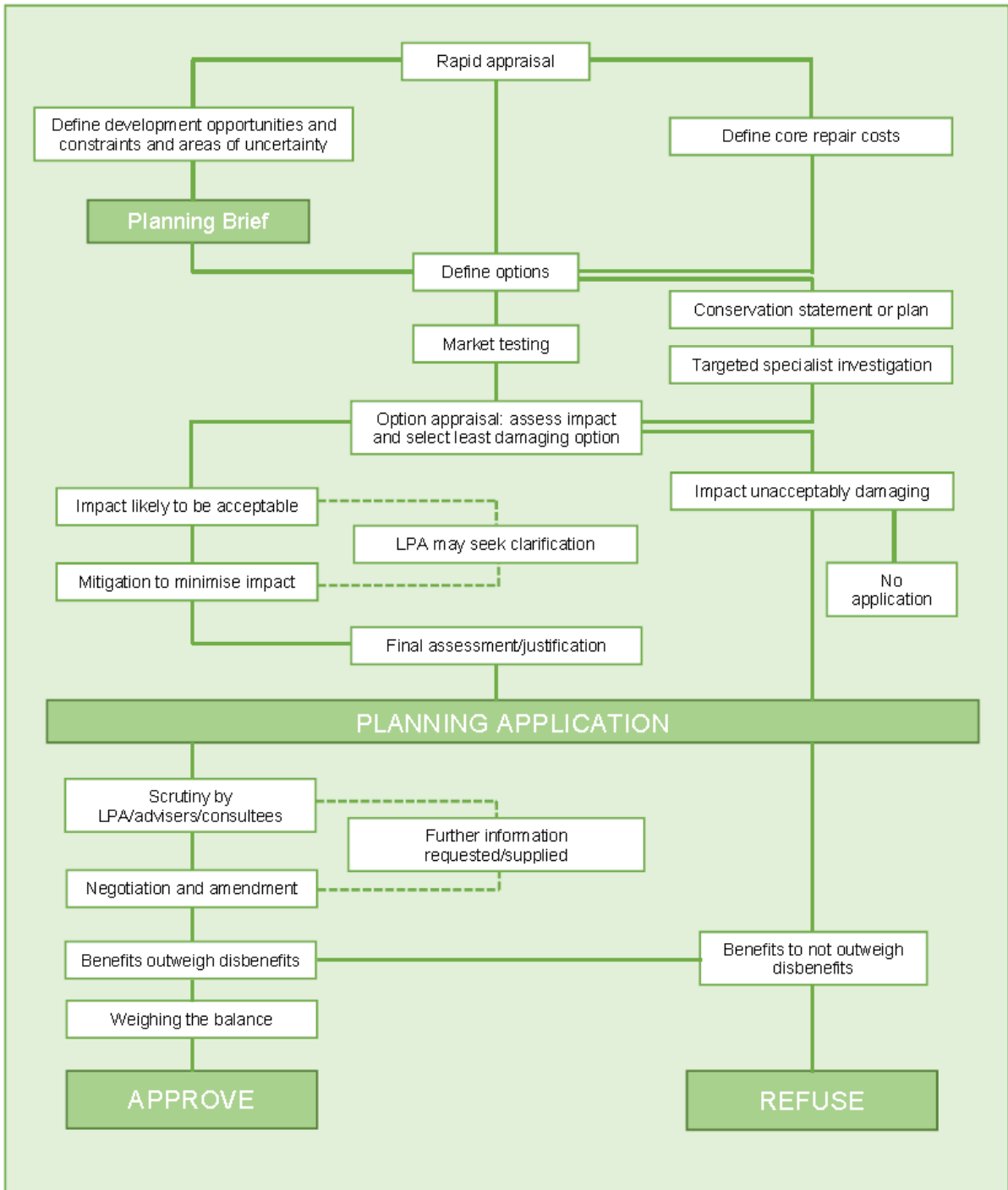
4.3 Market Testing

Before any enabling development is considered, the applicant should demonstrate that real efforts have been made without success, to continue the present use or to find alternative compatible uses. This should include unrestricted freehold, or long (125 years or more) leasehold at a reasonable price. Active marketing should be carried out by surveyors or estate agents for a minimum of six months. Additional guidance on market testing can be found within section 4.7 of the document titled “Enabling Development and the Conservation of Significant Places” (English Heritage) as endorsed by Cadw.

4.4 Planning Application Stage

Outline applications do not always supply the level of information that is necessary to make an informed decision about whether the principle of enabling development is acceptable, as much will depend on the specifics of the scheme. However, this is a matter which can be discussed between the applicant and the LPA at the pre-application

stage. The flow chart below demonstrates how much pre-application work will be necessary to assist the decision making process.



Source: Enabling Development and the Conservation of Significant Places (English Heritage)

5. Guidance on applying policy CTH/4- Enabling Development.

5.1. The following section expands on the first set of criteria (1a-1g) within policy CTH/4, explaining what is meant by each of the criteria.

1a “It will not materially harm the heritage values of the historic asset or its setting”

Change in the historic environment is not only inevitable but can be positive, provided it involves a high quality of design in context. However, whilst skilful design will make the most of opportunities that exist, intrinsic design quality cannot overcome objections of principle in relation to siting and volume. When assessing the character and condition of an asset it is helpful to consider Cadw's four component values for heritage assets:

➤ **Evidential Value**

Elements on a historic asset that can provide evidence about past human activity such as its physical remains or historic fabric, these could be visible or below ground level remains. Documentary sources and pictorial evidence should also be referenced.

➤ **Historical Value**

Historic assets can sometimes be associated with a notable family or person, event or movement. These events may be less tangible than its evidential value, but will often connect past people and events with the future.

➤ **Aesthetic Value**

This is the way in which people obtain sensory and intellectual stimulation from an historic asset. The form of an asset can change over time, and it is important to note that sometimes earlier pictorial records and written descriptions will be more prevalent in people's minds than what survives today. Opportunities should be sought to regain aspects of the asset that may have become screened or temporarily obscured over time. The understanding of aesthetic value is more subjective than evidential or historic value. Efforts should be made to seek the views of people with a knowledge and appreciation of the heritage asset on what they consider to be the significant aesthetic values.

➤ **Communal Value**

Communal value is the way that a group of individuals relate to an asset in a collective way due to experience and or memory. These assets can be commemorative or symbolic, and people might draw part of their identity from memories of the asset and have emotional links to it.

All of these components should be assessed and taken into account when determining whether the proposal will harm the asset. Use of photomontage and the assessment of viewpoints from and outside of the site will be encouraged.

1b "It avoids detrimental fragmentation of management of the historic asset".

The development would not directly or indirectly cause the management of the historic asset to become fragmented to the detriment of that asset. The key issues to be addressed include:

- Separation of resources (e.g. the effect of multiple future owners)
- Increased risk to minor structures (e.g. garden ornaments, statues and outbuildings)
- Maintaining the designed unity of the place

- Maintaining arrangements, including any necessary on-site facilities
- Ensuring that contributions to the repair or maintenance of the historic asset are achieved.

1c “It will secure the long-term future of the historic asset and, where applicable, it’s continued use for a sympathetic purpose” and

1d “It is necessary to resolve problems arising from the inherent needs of the historic asset, rather than the circumstances of the present owner, or the purchase price paid”

- Long term can be defined as 10 years or longer.
- Account need to be taken of the current condition of the asset – is it under immediate threat? Is it on the Buildings at Risk Register?
- Is enabling development the only way forward, or are there other options?
- Does the proposed Enabling development achieve *significant benefit* to the heritage asset?
- Does it involve a business plan?
- Does it involve repairs to the building?

The following actions are considered necessary:

- Conduct site visit
- Consult listing description / Register of historic landscapes, parks and gardens for guidance
- Consult with Cadw /NRW
- Seek further specialist advice if necessary.

1e “Sufficient subsidy is not available from any other source.”

- Has this been explored fully? Funds for Historic Buildings (FFHB) website provides a comprehensive list and guidance on what type of funding streams could potentially be available. These may include the Heritage and Big Lottery Fund, Cadw, and Welsh Government initiatives.

1f “It is demonstrated that the amount of enabling development is the minimum necessary to secure the future of the historic asset, and that its form minimises harm to other public interests.”

- The applicant will need to provide costings which identify the ‘conservation deficit’. The conservation deficit is obtained by the following formula:

**Market value of the historic building at the outset, and
Repair costs (including fees), and cost of conversion to the optimum
beneficial use (including fees), and Financing and other costs.**

Less

Market value of the historic asset on completion

= Conservation Deficit.

The 'conservation deficit' is the minimum necessary to secure the future of the historic asset. The example from English Heritage below shows this formula in practice and demonstrates how inefficient enabling development is when compared with grant funding:

Conservation deficit met by cash subsidy		£
Market value of historic building at the outset		10,000
Repair costs (inc fees)		150,000
Conversion to optimum beneficial use (inc fees)		100,000
Financing and other costs		10,000
TOTAL COST		270,000
Market value of place on completion		170,000
Conservation deficit (difference)		100,000
Grant to owner		100,000
BALANCE		0
Conservation deficit met by enabling development		
Acquisition costs		10,000
Repair costs (inc fees)		150,000
Conversion to optimum beneficial use (inc fees)		100,000
Build costs enabling development (inc fees)		175,000
Sales, legal costs etc		15,000
Financing costs		20,000
Developer's profit		70,500
TOTAL COST		540,500
Less Market value of historic building on completion		170,000
Market value of enabling development (ditto)		370,500
BALANCE		0

The proposal will also need to demonstrate that the type of enabling development proposed minimises harm to other public interests (that is, other than the heritage asset itself). For example, if an enabling development proposal is made within the grounds of an historic asset that also forms part of a green wedge, then attempt should be made to minimise the effect not only on the heritage asset, but also on the green wedge.

1g "The public benefit of securing the future of the historic asset through such enabling development decisively outweighs the disbenefits of breaching other public policies."

Sustaining heritage assets is a high priority, however this does not automatically justify doing so through enabling development if the disbenefits are out of proportion to the heritage and other values of that asset. It is suggested that a decision should be made in the light of a realistic view of the consequences of refusal, particularly where the place is rapidly deteriorating and there is no other likely source of subsidy or grant. Careful assessment of the impact of enabling development options on the wider community are particularly important where:

- The community places a significant value on the heritage asset, whether this is through faith, commemoration, use, memory, identification or in other ways
- The place is used currently by the community
- There is potential or active community involvement in caring for the asset
- The proposals could impact on the local community through change of use or change in patterns of access, or in other ways.

Hence decisions to approve or refuse enabling development proposals are not to be taken lightly. They should follow an evaluation of all potential options as part of the assessment process.

5.2 The following section looks at the application of the criteria within part 2 (a-d) of policy CTH/4. If a scheme of enabling development meets all the criteria set out in part 1 of the policy, then criteria within part 2 should be applied. This covers the following:

Secure and Enforceable links

Part 2b of the policy states that the achievement of the heritage objective (for example, the repair and re-use of a historic building) is securely and enforceably linked to the enabling development. Legally enforceable arrangements must be put in place to ensure that the commercial element of the scheme cannot be carried out/used without the heritage benefits occurring. Some elements of the decision will be secured by planning conditions and others will be via a Section 106 (S.106) legal agreement. In general, because of the importance of meeting the heritage objectives and potential for matters beyond the scope of planning conditions, a S.106 agreement will be the most appropriate method, especially where issues such as payment of money / transfer of land are apparent.

It is important that the key planning obligations to secure the heritage objectives are as follows:

- 'Attached' to the appropriate land
- State when they are to be performed
- Wholly or partly prevent the commercial element of the development from being carried out or used until the heritage objectives are met.

Phasing

Part 2c refers to repairs being executed to an agreed standard, or the funds to do so made available, as early as possible in the course of the enabling development, ideally at the outset, but certainly before completion or occupation. It may be possible to accept staged payments, in particular for larger schemes but only where it is felt this will not

compromise the delivery of the heritage assets. In such cases a defined block of work can be carried out or payment made (for the benefit of the heritage asset) and then an agreed first phase of the commercial development could follow. The phasing of benefits is a matter for negotiation when drafting the S.106 agreement, however it is essential that the benefits to the heritage asset are a step ahead of the commercial element, rather than the other way round.

Monitoring

Part 2d covers monitoring and implementation. The Monitoring of S.106 agreements will be carried out on a quarterly basis by the S.106 Monitoring Group in conjunction with officers from Strategic Planning Policy and Enforcement.

6. Further information

6.1 For further information on this SPG, please contact:

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