

7. LISTED BUILDING CONSENT APPLICATION: REPAIR AND ALTERATIONS TO CASTLETON HALL. DEMOLITION OF 1970S BUNGALOW, VICTORIAN GAMES ROOM AND 1970'S DINING ROOM EXTENSION TO REAR OF PROPERTY. CONSTRUCTION OF NEW DOUBLE AND SINGLE GARAGE AND NEW SUN ROOM. SEPARATE CASTLETON HALL INTO TWO DOMESTIC PROPERTIES. INTERNAL ALTERATIONS TO REMOVE ALTERATIONS CARRIED OUT TO CONVERT THE BUILDING TO A YOUTH HOSTEL AND WORKS TO REINSTATE THE ORIGINAL BUILDING AESTHETIC AND BETTER SERVE THE BUILDING FOR DOMESTIC PURPOSES AT CASTLETON HALL, CASTLE STREET, CASTLETON (NP/HPK/0613/0544 30/7/13 414977/382923/JRS)

APPLICANT: Mrs Sarah Marsh

NOTE: The reports for this application and the associated application for planning permission were withdrawn from the Planning Committee agenda in January 2014. The following report has many common elements to the preceding report on the planning application

Site and Surroundings

Castleton Hall is a large 18th century Grade II Listed Building situated within the centre of Castleton village. Formerly a Youth Hostel Association hostel, the Hall was sold by the YHA to the applicant in 2012 with planning and listed building consent for conversion to a single dwelling.

The Hall faces onto Castle Street at its junction with the Market Place and the minor lane known as The Stones. The main building has two storeys, with single and two storey additions at the rear. The principal elevation of the Hall faces east to Castle Street and is set back behind a paved courtyard bounded by low stone boundary walls, topped with metal railings. The courtyard is dominated by a large copper beech tree growing in the front which tends to obscure the main façade and which forms a key feature in the street scene in its own right. The whole of the site and adjoining properties lie within the Castleton Conservation Area.

The principal, east facing, elevation has a Baroque façade with bold classical details which connects to a simple, vernacular detailed two storey wing which reflects its former use as a tithe barn and which returns down the north side of the courtyard to a gable end fronting directly onto Castle Street. There is a recessed 'set back' in the corner of the main front which provides a visual 'break' separating the formal detailing of the baroque façade from the simpler local vernacular detailing of the northern, former tithe barn wing.

At the rear of the main building there are single and two storey projections, including a 1½ storey and single storey range of lower outbuildings which back onto the north side of The Stones. To the rear of the Hall there is a walled garden within which there is a single storey outbuilding (the Victorian games room) and the partial remains of the 1970's Warden's bungalow that has recently been substantially demolished. In close proximity to the south west corner of the site is a separate dwelling, 'The Coach House', a Grade II listed building, which was formerly part of the Hall complex but has now been separated from the Hall grounds by a tall stone boundary wall.

To the north of the main Hall there is a shared vehicular access and driveway off Castle Street running between Castleton Hall and the adjacent property, The Old Vicarage. The Old Vicarage owns the access and driveway, along with the remaining corner of the partially demolished bungalow which projects out from the grounds of the Hall onto the driveway. The Old Vicarage is not a listed building.

The Hall was listed Grade II in 1951 and the Coach House to the west was Grade II listed in its own right in 1984. Owned by the YHA from 1943 to 2012, the Hall has been subject to a number of alterations and extensions to adapt it to the particular needs of the YHA, often at the expense

of some damage and loss of historic fabric and setting of the principal listed buildings, particularly to the rear of the Hall.

The Hall is now in private ownership, having been purchased by the applicant from the YHA following their relocation to Losehill Hall. Prior to this, the Hall, together with other buildings in its former curtilage, The Coach House and The Old Vicarage were all owned and operated by the YHA, with their car park situated in the walled garden to the rear of The Old Vicarage.

Prior to the sale, the YHA sought and obtained consent in 2011 for the change of use of Castleton Hall, the Coach House and The Old Vicarage to three separate open-market dwellings. The consent for the Hall was conditioned to secure appropriate restoration and enhancement of Castleton Hall, both externally and internally, along with the removal of unsympathetic later additions at the rear, most notably the removal of the Warden's bungalow, the Victorian games room and associated link corridor, the 1970's flat roofed dining room extension and associated fire escape.

All three properties have now been purchased and are in separate ownership. The Coach House is now in use as a single dwelling and was given a separate access off The Stones and its own residential curtilage divided off from the rear garden of the Hall with a new 2m high drystone wall. The Old Vicarage is also now in use as a single dwelling and was sold with the main drive from Castle Street, over which the Hall was granted a right of access.

Since taking ownership of the Hall the applicants have stripped out all the later internal stud partitions and en-suite bathrooms inserted by the YHA and have also demolished that part of the 1970's bungalow within their ownership, leaving the remaining section in the neighbour's ownership in-situ.

Proposal

This application seeks Listed Building Consent for the physical works involved in the proposed conversion of the Hall, with alterations and extension, into two dwellings.

The larger unit, 'The Hall dwelling'; would comprise the section behind the baroque facade and the majority of the rear walled garden. A new double garage and parking spaces for four cars is proposed in the garden, accessed through a new entrance in the wall at the end of the private shared driveway between the Hall and the Old Vicarage. The accommodation proposed for the Hall dwelling also comprises a one bed annexe with its own kitchen, lounge and bathroom in the lower rear wing which backs onto The Stones. Finally, a detached greenhouse is proposed in the NW corner of the walled garden for the Hall.

The second smaller unit, the 'Tithe Barn' dwelling, would comprise the northern wing of the existing Castleton Hall building and would have a smaller portion of the rear curtilage walled off with to create a separate domestic curtilage. As submitted, the application proposed to erect a single garage and provide parking spaces for three cars within the Tithe Barn garden which would have been accessed by its own separate entrance in the wall off the shared main driveway. The plans have been amended since submission and now omit the garage and parking spaces from within the Tithe Barn garden, along with the separate new vehicular access. The revised layout relocates the Tithe Barn parking (three spaces) into a separate courtyard arrangement sited to the rear (west) and north of the new walled garden. This would be accessed through the proposed new gated entrance at the end of the shared private driveway which would now serve both dwellings.

The new entrance gateway would, via a sliding gate, first give access to the parking area (three spaces) for the Tithe Barn with the driveway then passing through a second sliding gate to access the Hall dwelling's curtilage, where a parking area for four cars (three plus one) would be

provided alongside a proposed double garage close to the boundary wall with the Old Vicarage. The westernmost one of two trees in close proximity to the proposed garage would be removed to make way for one the parking spaces. It is being removed following consultation with the Authority's Tree Officer as the tree is diseased and will not recover.

The physical alterations to facilitate the conversion include:

- The demolition of the detached 1970's former YHA Warden's bungalow, the detached Victorian games room, the single storey flat roofed dining room extension and the metal fire escape structures at the rear associated with the former hostel use
- Remodelling of the infill at the rear between the Hall and the outbuildings to form a sun room
- Remodelling of the rear lean-to and part of the link corridor to form the utility room for the Hall dwelling
- Stonework repairs to repair and restore the principal Baroque façade, and other fabric repairs externally
- Stonework repairs to the east boundary wall and replacement railings and gate to an 18th century design
- New opening and gate in east boundary wall/railings with pathway to east elevation external door to provide front entrance and door for the Tithe Barn,
- Re-rendering of the rear façade in lime render.
- Reinstatement of sash windows
- Reinstatement of cast iron rainwater goods.
- Replacement of paved area to the rear with gravel driveways, paved courtyards and lawns
- Removal of most of the first floor infill above entrance lobby to create double height entrance hall, including repair of main staircase.
- Removal of modern stud partitions and former hostel bathrooms
- Insertion of new stud partitions to suit requirements for the internal layout for two dwellings.
- Reinstatement of internal panelled doors,
- Addition of two additional window openings and one door together with conversion of former openings/window openings into doors.
- Infilling of three internal openings to separate off the Hall from the Tithe Barn dwelling internally.

Finally, it should be noted that the main site entrance, flank walling and access drive from Castle Street are in the ownership of the adjoining property, The Old Vicarage. The proposal shown on some of the plans to remove the entrance gate piers during the conversion works and reinstate afterwards, although within the application site area, falls on land outside the applicant's ownership or control.

The application is supported by a Heritage Statement, a Design and Access Statement and an Ecological Statement. Since submission, the applicant's case has been amplified by further heritage, valuation and viability information, all of which is available in full on the Authority's web site. The Authority has also commissioned additional assessment on viability (by Derbyshire County Council) and the viability of a single dwelling scheme (by Smith and Roper Architects), both of which are on the Authority's web site

RECOMMENDATION:

That the application be APPROVED subject to a section 106 legal agreement to secure the phasing of the works and to ensure sympathetic long term management of the two dwellings and conditions covering the following (summary of conditions only):

1. The development hereby approved relates to the change of use of Castleton Hall and the retained Annex building to a single dwelling and the section of Castleton Hall referred to as the Tithe Barn to a single dwelling.
2. The development approved to be carried out in strict accordance with a timetable/programme of works which shall be submitted to and approved by the Authority.
3. Ecology: Submit and agree detailed mitigation and monitoring strategy. All subsequent works shall then be carried out in accordance with any required scheme of mitigation.
4. The demolition works shall be carried out in accordance with agreed timetable/programme of works prior to the occupation of the dwelling hereby approved.
5. Samples of the replacement natural stonework, natural gritstone window door surrounds, natural lintels and sills, render treatments, railings, stonework cleaning, cast iron rainwater goods shall be submitted to and agreed in writing by the Authority prior to carrying out the works requiring the samples. The scheme shall then be carried out in accordance with the agreed samples.
6. Detailed conditions relating to doors and windows, including details of the existing openings to be blocked up. Prior to the installation of any door/window frames or external timberwork, a scheme for the external finish of the timberwork to be submitted to and approved by the Authority. Once approved, development to be carried out in accordance with approved details.
7. Prior to the installation of the window and door frames plans/details of the window/door reveals shall be submitted to and agreed in writing by the Authority. The scheme shall then be carried out in accordance with the agreed details.
8. Existing rooflights in the south elevation of the Annex shall be removed and the roof made good with natural blue slate, to match the existing roof, in accordance with submitted plans. New rooflights shall be fitted flush with the roofslope.
9. External face of the plinth walls of the detached greenhouse shall be clad with natural limestone.
10. Detailed design conditions regarding external pipework, rainwater goods, external meter boxes.
11. External walls of the new garage buildings hereby approved shall be clad with natural limestone, sample panel to be approved.
12. Roof of the new garage buildings shall be clad with natural blue slate, sample to be approved
13. Detailed design conditions regarding garage doors and openings.
14. All new boundary walling shall be erected in accordance with submitted plans and shall be constructed in natural limestone and capped with half-round natural limestone coping stones to match the existing boundary walling. Reduce width

of opening from the Hall garden to Tithe Barn Garden.

15. Carry out submitted landscaping and surfacing scheme, subject to additional hedging to car parking area in garden of the Hall.

Key Issues

1. What is the optimum viable use for the building consistent with its significance and value as a listed building?
2. Financial appraisal and conservation deficit.
3. The principle of the proposed conversion into two dwellings.
4. The harm caused by the proposed subdivision and physical works upon the significance of the Hall and its setting.

History

Early history

1721 – The earliest record of the Hall appears to come from a plan dated 1721 which shows a building on the same site but having a very different east façade to the one existing today. The plan shows a building of two storeys with an attic behind two gabled dormers and two distinct paths to two entrances. It also appears that there were a number of separate cottages down the southern boundary of the site abutting The Stones whose boundaries extended well into the present grounds of Castleton Hall. It would therefore appear, from this plan and a surviving deed of exchange, that the main building comprised of two dwellings and was acquired with the northern wing, labelled then as a tithe barn, along with the cottages and land at the rear by a wealthy individual who converted the premises into a single dwelling unified by the construction of the current baroque façade sometime between 1721 and 1725. The north wing remained different in style to the main house due to its original agricultural use with the recessed junction between the two elements providing further evidence that there was a deliberate intention at the time the façade was upgraded to maintain a distinction between the two elements of the building.

Recent Planning History

1943 – The site was acquired by the YHA and converted to a youth hostel.

1961 – Consent granted for internal alterations to outbuildings and erection of a covered walkway.

1969 – Consent granted for the erection of a flat-roofed utility room extension.

1973 – Consent granted for erection of a detached warden's bungalow, dining room extension and internal alterations to outbuildings (including the Coach House) to provide additional youth hostel facilities.

1985 – Outline consent granted for demolition of outbuildings and warden's bungalow and erection of dormitory block (not implemented).

1990 – Renewal of outline consent for demolition of outbuildings and warden's bungalow and erection of dormitory block (not implemented).

1993 – Planning and listed building consent granted for minor alterations and extensions

including provision of external fire escape stairs.

1993 – Planning and listed building consent granted for new rooflights.

2005 – Listed building consent granted for the replacement of rooflights in the Coach House with conservation rooflights.

2008 – Planning and listed building consents granted for the demolition of the existing games room in the rear courtyard and the erection of a new dining room and kitchen extension.

2010 – Planning and listed building consent applications submitted for variations to the conditions attached to the 2008 approvals to accommodate subsequent changes to the originally approved scheme. These applications were subsequently withdrawn following the decision of the YHA to re-locate.

2011 – Planning and listed building consent applications granted for the change of use of Castleton Hall, The Coach House and The Old Vicarage to three separate open-market dwellings. Consent was granted subject to several conditions being attached to ensure restoration of Castleton Hall, both externally and internally, and the removal of unsympathetic later additions.

2012 – The applicant bought the property. She was given pre-application advice by officers, on a “without prejudice” basis that the subdivision of the Hall into two dwellings may be acceptable in principle.

2013 – Planning permission and listed building consent granted for conversion of the Hall to two dwellings. These decisions were subsequently quashed by the High Court following Judicial Review proceedings brought by the adjacent owner of The Old Vicarage, who is referred to in this report as the principal objector. The grounds for the challenge were:

1. Failure to notify English Heritage and other amenity groups.
2. Failure to publicise/consult lawfully on the application
3. Failure to have regard to section 66 of the Listed Building Act 1990
4. Failure to have regard to section 72 of the Listed Building Act 1990
5. Failure to have regard to section 16(2) of the Listed Building Act 1990 and relevant national and local policy
6. Failure to have regard to regulations 9(5) and 7(1) of the Habitats Regulations 2012
7. Failure to have regard to impact on residential amenity
8. Failure to have regard to highway safety

The consent order from the court required both applications to be re-determined by the Authority. The applications were scheduled to be included on the January 2014 Planning Committee agenda for re-determination by the Committee but were withdrawn by applicant on 22 December 2013 in view of the revised applications, which are the subject of these reports.

2014 – Application for discharge of conditions on planning and listed building applications for change of use to a single dwelling, as approved in 2011. Approved in part.

Consultation Responses

These are summarised below, with the originals available to view in full on the Authority’s website and a longer summary in appendix 1. These are largely the same as those listed for the planning application as many of the responses related to both applications

Highway Authority: No highway objections to the proposals

Borough Council: No response.

Parish Council: Support this application and welcome Castleton Hall to be converted into two residential dwellings and not used for holiday accommodation.

English Heritage (now Historic England, from 1 April 2015): There have been six English Heritage responses in total. Following the meeting with EH on 31 January 2014, they produced a “consolidated” response. This version is attached in the appendix to this report. In response to the latest consultation on the independent architect’s report they advise as follows (letter dated 25 March 2015):

“Our advice is given in line with the Principal Act, the NPPF, the Planning Practice Guide, and the PPS5 Historic Environment Planning Practice Guide, which remains in force. We remain supportive of the principle of securing a sustainable use for this building and we believe that a residential use is consistent with the long term conservation of the listed building. It has already been accepted that the optimum viable use for the Hall is as single dwelling house and it remains our view that the determination of this application should focus on whether there is a ‘clear and convincing’ justification to accept the harm caused by the proposed separation, in light of the public benefits associated with the scheme - in this case the benefits of revealing and enhancing significance through full restoration of the building and its fine architectural details”

Amenity Bodies - No responses.

PDNPA Historic Buildings Architect

Principle of conversion to two dwellings is acceptable in listed building terms. The judgement on the conservation deficit is left to the Planning Officer. Design proposals are generally fine and overall amount to a substantial enhancement of the listed building. The decision to base the design of the front elevation railing and gates on the historical arrangement shown in the early photograph is particularly welcomed. Therefore supports the application with some caveats, as set out in detail in the appendix. The applicant’s response to these recommendations is covered in the report below.

Natural England

No objections to submitted scheme. Recommend conditions and footnotes covering the following in any consent

PDNPA Ecologist

No objections subject to conditions and footnotes for clarification and to adopt working methodology and appropriate mitigation/enhancement

Representations

These are summarised below, with the originals available to view in full on the Authority’s website and a longer summary in appendix 1.

Letters of Objection

There have been three letters of objection, including one substantial objection from the owner of the adjacent property, The Old Vicarage. In addition to this, the solicitor acting for the owner of the Old Vicarage has written several emails raising questions and objections.

The representation made on behalf of the owner of The Old Vicarage is substantial and detailed. It

is supported by a detailed Heritage Statement and a Development Viability Assessment and has been updated and amplified in response to the amended plans and information submitted by the applicant. Since the submission of this objection there has been a continuing dialogue with the objector and his representatives. Please refer to the appendix for the detailed summary of the objections submitted.

Letters of support

There have been 33 letters of support. These are summarised in the appendix.

Planning Policies and Legislation

Legislation

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires the Authority to determine planning applications in accordance with the development plan, unless material considerations indicate otherwise.

Section 70 (2) of the Town and Country Planning Act 1990 provides that where an application is made to the Council for planning permission, the Authority shall have regard to the provisions of the development plan and any other material considerations.

Section 16 (2) of the Planning (Listed Building and Conservation Areas) Act 1990 provides that in considering whether to grant listed building consent the local planning authority 'shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'.

Section 66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 states the local planning authority 'shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses' in the exercise of the Council's planning functions and in considering whether or not to grant planning permission for development that affects a listed building or its setting. It is important to note that section 66 does not allow a local planning authority to treat this duty as a mere material consideration; it is a statutory duty to which special regard must be had and considerable importance and weight should be given to the desirability of preserving a listed building or its setting when balancing a proposal against other material considerations.

Section 72 of the Listed Building Act 1990 contains a requirement for the Authority to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Again, this is a matter of considerable importance and weight.

Development Plan Policy

The Authority's Core Strategy was adopted in 2011 and provides, along with saved policies in the 2001 Local Plan, the starting point for considering the development. The following policies are relevant to this application and are set out in more detail in appendix 2:

Core Strategy: GSP1, GSP2, GSP3, DS1, HC1, L1, L3

Local Plan: LC4, LC5, LC6, LC8, LC17, LC18

National Planning Policy Framework

The National Planning Policy Framework (NPPF or “the Framework”) was published in March 2012 and replaced a significant proportion of central government planning policy with immediate effect. The Government’s intention is that the document should be considered to be a material consideration and carry particular weight where a development plan is absent, silent or relevant policies are out of date. In the National Park the development plan comprises the Authority’s Core Strategy 2011 and saved policies in the Peak District National Park Local Plan 2001. Policies in the Development Plan provide a clear starting point consistent with the National Park’s statutory purposes for the determination of this application. The Authority has considered the relationship between the Core Strategy and the Framework and resolved that they are consistent. This application does not raise matters that suggest otherwise.

As a material consideration in planning decisions, the Framework recognises the special status of National Parks and the responsibility of National Park Authorities, as set out in the National Parks and Access to the Countryside Act 1949 (as amended). In line with the requirements of primary legislation, paragraph 14 of the Framework recognises that in applying the general presumption in favour of sustainable development, specific policies in the Framework indicate that development should be restricted, for example policies relating to National Park.

One of the core planning principles outlined in paragraph 17 of the Framework requires that heritage assets should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations. In the case of the application proposal there are two heritage assets, the listed building and the Castleton Conservation Area, that must be conserved.

Paragraph 128 of the Framework states that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage asset affected, including any contribution made by their setting. The level of detail should be proportionate to the asset’s importance and no more than is sufficient to understand the potential impact of the proposal on their significance.

Paragraph 131 identifies three objectives that should be taken into account in determining planning applications (relating to heritage assets):

- The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- The positive contribution that conservation of heritage assets can make to sustainable communities, including their economic vitality; and
- The desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 132 states that when considering impact of proposed development on the significance of a heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. It points out that significance can be harmed or lost through alteration or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to a grade II building should be exceptional. Paragraph 132 sets out that local planning authorities should refuse consent where there is substantial harm to a building’s significance unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh the harm.

Paragraph 134 advises that *“Where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use”*. However, the courts have confirmed that where ‘less than substantial harm’ results, this does not mean that there is a ‘less than substantial objection’ to the grant of planning permission.

Paragraph 140 advises that *“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”*.

Prior to the publication of the Framework, Planning Policy Statement 5: Planning for the Historic Environment set out government policy on conservation of the historic environment. Whilst the PPS has been replaced by the Framework, the accompanying PPS5 Practice Guide has been retained and still sets out useful guidance on the assessment of the significance of a heritage asset. English Heritage (now known as Historic England, from 1 April) have been developing Good Practice Advice to supersede the PPS5 Practice Guide. A Consultation Draft was published on 11 July 2014: *“Historic Environment Good Practice Advice In Planning”*.

In this draft guidance English Heritage recommends the following broad approach to assessment, undertaken as a series of steps that apply proportionately to complex or more straightforward cases:

- Step 1: identify which heritage assets and their settings are affected;
- Step 2: assess whether, how and to what degree these settings make a contribution to the significance of the heritage asset(s);
- Step 3: assess the effects of the proposed development, whether beneficial or harmful, on that significance;
- Step 4: explore the way to maximise enhancement and avoid or minimise harm;
- Step 5: make and document the decision and monitor outcomes.

In paragraph 77 the current Practice Guide advises that: *“Finding the optimum viable use for an asset may require the local planning authority to apply other development control policies flexibly and imaginatively to achieve long-term conservation”*. Paragraph 78 of the Guide advises that local planning authorities should take into account the likely longevity of any public benefits claimed for a proposed scheme: *“Speculative, ill-conceived or short term protection will not compare so favourably when considering an irreversible harm to the significance of heritage assets”*.

Paragraph 79 of the Guide sets out a number of potential heritage benefits that would weigh in favour of the proposed scheme:

- It sustains or enhances the significance of a heritage asset and the contribution of its setting
- It reduces or removes risks to a heritage asset
- It secures the optimum viable use of a heritage asset in support of its long term conservation
- It makes a positive contribution to economic vitality and sustainable communities
- It is an appropriate design for its context and makes a positive contribution to the appearance, character, quality and local distinctiveness of the historic environment
- It better reveals the significance of a heritage asset and therefore enhances the enjoyment of it and the sense of place.

Paragraph 88 states that proposals for the development of a heritage asset will ideally be for its optimum viable use. Paragraph 89 states in respect of optimum viable use that: *“It is important that any use is viable, not just for the owner but also for the future conservation of the asset. Viable uses will fund future maintenance. It is obviously desirable to avoid successive harmful changes carried out in the interests of successive speculative and failed uses. If there are a range of alternative ways in which an asset could viably be used, the optimum use is the one that causes 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. The optimum viable use is not necessarily the most profitable one. It might be the original use, but that may no longer be economically viable or even the most compatible with the long-term conservation of the asset.”*

Finally, paragraph 90 states: *“Harmful development may sometimes be justified in the interests of realising the optimum viable use of an asset, notwithstanding the loss of significance caused, provided that the harm is minimised”.*

English Heritage has published advice and guidance on *Enabling Development and the Conservation of Significant Places*. The applicant initially assumed that the development would be considered as “enabling development” and therefore referred to this document, but at the meeting on 31 January 2014 (and in correspondence), EH officers advised that they do not consider that the proposed sub-division falls within the definition of “enabling development”. However, some of the advice in the document, notably on how to assess whether there is a conservation deficit, is useful and has been used by the applicant in her viability appraisal. The following section of the guidance is also useful:

“4.4.1 Most buildings at risk capable of beneficial use are taken up by commercial developers or (in the case of houses) by private individuals. The latter, particularly, may see viability as much in terms of meeting personal needs or aspirations for their residence as in strictly financial terms, and take a longer-term view of the difference between cost and market value. Most historic houses whose setting has survived and which are not in serious disrepair can be expected to find a market as houses, even if they have been recently in another use. In such cases, single domestic use will generally be the ‘optimum viable use’ in terms of PPG 15.”

Officer Assessment

As noted above, the following section is largely the same as the assessment for the associated planning application, but omitting those issues which are not listed building considerations. The following issues have been reviewed since the deferral of the applications from the Planning Committee in January 2014. Following the deferral officers had met with English Heritage officers, together with the applicant and representatives of the owner of the Old Vicarage, who is the principal objector. Officers then commissioned Derbyshire County Council to undertake an independent assessment of the applicant’s financial viability assessment, together with the objector’s consultant’s critique of this. Based on this report and the applicant’s confirmation of her agreement to a number of additional amendments and restrictions, officers produced a draft report recommending approval of the applications, which, on Counsel’s advice, they shared with the applicant and the principal objector (June 2014). Following the responses to this draft report, officers concluded that it was necessary to have a more thorough assessment of the viability of a single dwelling scheme which would deliver the key conservation benefits identified by the Authority. Consequently, following a tendering exercise, Smith and Roper Architects of Bakewell were appointed to carry out this assessment. Their report was finished in March 2015 and sent to the applicant, the principal objector and English Heritage. They were asked to respond by 27 March; at the time of writing this report the comments of the principal objector have not been received but any response received will be reported at the meeting, together with a supplementary report if necessary.

Key Issue 1 - What is the optimum viable use for the building consistent with its significance and value as a listed building?

There is historical evidence which shows/suggests that the premises forming Castleton Hall were not originally built as a single dwelling. However, the evidence shows that the Hall was turned into a single dwelling around the early C18th by the amalgamation of what appeared to be two semi-detached houses on the Castle Street frontage and some smaller cottages at the rear off The Stones, along with their associated curtilages. The tithe barn attached to the north and its associated land was also incorporated as additional accommodation. Around that time the additional embellishment of the fine baroque façade was added to increase the presence and prominence of the new Hall. For the following 220 years or so the property was in use as a single dwelling until the YHA converted it to a hostel in 1943. That use continued up to around 2011, when they vacated the premises and marketed the site after gaining planning permission and listed building consent for conversion back to a single dwelling.

The historical evidence available to the Authority demonstrates that the Hall as seen today was created and has been in use for the majority of its existence as a single dwelling. The explanatory text accompanying Local Plan policy LC6 reflects national planning advice relating to listed buildings in stating that the best use for an historic building is very often that for which it was designed. Indeed, use as a single dwelling is recognised by the listing which describes Castleton Hall as “House, now Youth Hostel”. English Heritage advice also clearly recognises the importance of use as a single dwelling and notes that whilst it may have consisted of more than one dwelling in the past, this evolution only adds to the significance of the building.

In this case the Hall still survives largely in the form created in the C18th century as a single dwelling, is under one ownership, and currently has the benefit from extant planning and listed building consents for its conversion from a hostel use back to a single dwelling. In granting those consents the Authority recognised the historical use had primarily been as a single high status house and that significant benefit would arise from its restoration and the enhancement, especially from the removal of the later unsympathetic alterations and additions incorporated into the building and its curtilage during use as a hostel.

On the basis of the above evidence, the optimum use compatible with its conservation as a designated heritage asset and listed building is considered to be as a single house. This is consistent with the advice which has been given by English Heritage in its responses to the applications and in their meeting with officers on 31 January 2014.

English Heritage officers have made it clear that, in their view, the subdivision of Castleton Hall to a use other than its optimum use as single dwelling would, in itself, involve a degree of harm to the listed building’s significance and special interest that would require special justification. This is also required because the Authority has a duty under Section 66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 to have “*special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses*” in considering whether or not to grant planning permission for development that affects a listed building or its setting. This is a significant consideration which must be given due weight.

Key Issue 2 - Financial appraisal and conservation deficit

The subdivision of the Hall into two separate dwellings brings with it some harm to the listed building which has been identified by English Heritage as “less than substantial”. This is nevertheless harm that would warrant refusal of the application unless there are special circumstances that would justify a different decision in order to conserve and enhance the listed building and its setting. The applicant argues that the approved single dwelling scheme is not viable and subdivision to two dwellings is essential for viability purposes and to achieve the conservation and enhancement benefits she has proposed.

An important question in determining whether the subdivision is required to achieve conservation and enhancement of the listed building is whether there is a ‘conservation deficit’. In simple terms, if there is significant shortfall between the cost of restoration and the end value of the property, there would be a deficit that would make the restoration works unviable and unlikely to materialise unless this shortfall is met through funding (e.g. grants) or through a philanthropic developer who is prepared to accept this loss. The applicant has based her assessment on the approach set out in the English Heritage document “*Enabling Development and the Conservation of Significant Places*”, which provides a template for producing the calculation of a conservation deficit. Whilst EH officers have now confirmed that they do not consider the subdivision to fall within the definition of “enabling development”, at the meeting in January they did accept that the calculation of a conservation deficit is essential to the justification for the proposal and that the approach recommended in the guidance is an appropriate way of doing this.

The English Heritage letter which sets out their “consolidated” advice makes it clear that they do not believe this is a case where Enabling Development arguments are applicable. That letter makes it clear that: “*By definition, Enabling Development is development which is contrary to policy and is not to benefit the owner or their financial circumstances but springs from the inherent needs of the heritage asset. An essential part of an Enabling Development argument is to demonstrate that a conservation deficit exists and that the scheme presented is the only viable option. This would follow full and open marketing at a price reflecting the building’s condition to identify if there are alternative, less harmful uses - in this case, retained as a single dwelling*”.

The objector’s representatives consider that if it cannot be considered to be enabling development, then it cannot be justified, whereas officers consider that the EH advice is that enabling development is a more significant departure from policy than the subdivision of a building into two dwellings. Notwithstanding this, at the meeting on 31 January 2014 EH officers acknowledged that the approach of establishing whether there is a conservation deficit is appropriate in this case, given that the optimum use of this building is as a single dwelling and some harm has been identified.

The objector’s solicitor consider that the basis of the instruction to DCC was flawed because it asked for Mrs Marsh’s viability work to be tested against the English Heritage guidance for Enabling Development and as a result the report is completely irrelevant to the determination of these applications. Consequently they have advised that if the Authority places any weight on that report and change the recommendation from refuse to approve this will be clear grounds for a second Judicial Review because Authority will have taken an irrelevant consideration into account. In response to this, it is important to explain that officers met with DCC before they carried out their work and explained that English Heritage do not consider this to be “enabling development” and that the brief was to consider whether the assessment carried out by the applicant was a sound basis for establishing a conservation deficit.

English Heritage advice is that the supporting development appraisal must be adjusted to include only those repairs and works that are essential to conserve the listed building and achieve its conservation, ideally in the optimum use. The existence of the approved single dwelling scheme, which would return the Hall to its optimum use consistent with its history and significance as a listed heritage asset, is a material consideration in this regard, especially given that scheme proposed and was conditioned to secure most of the conservation and enhancement works in this current scheme, without the associated harm from subdivision. The applicant understands that this is the Authority's starting point, but considers that her proposal provides a level of detail which was absent in the previous application, the main purpose of which was to gain permission so that the YHA could sell the buildings, so it did not fully assess viability or whether there would be a conservation deficit (and the application was, in any case, for the optimum use). In order to keep that scheme "live", she has now discharged the conditions on the planning permission and listed building consents which were granted in 2011, but she maintains her position that this scheme is not viable.

The applicant has amplified the submitted information regarding the financial viability of the project and, in essence, argues that the single dwelling scheme is not financially viable as it contains a significant deficit between the cost of the works (including purchase costs) and the resulting sales values. The applicant considers that the single dwelling scheme is not viable and will not achieve the conservation benefits that she and her advisors consider to be appropriate and desirable. She points out that there is a clear relationship between the need to restore the building to a certain level to make it habitable and to achieve the values which would justify carrying out the conservation and restoration works identified by the Authority's Conservation Officer.

Consequently, the applicant's case is that in order to achieve appropriate repair, restoration and enhancement of the building, the financial impetus of the two dwelling scheme is required. The applicant considers this to be the most appropriate development, being close to the optimum use, and is essential because two smaller, but nonetheless relatively large, houses would be more saleable and the best way to secure a sustainable long term viable and beneficial use for the building. The advice from the applicant's marketing agents is that as a single house the Hall would be of a size and type unsuited for this village centre location and with only a modest associated curtilage would have a reduced value to reflect these factors. In respect of the submitted scheme, they advise that two 5 bed houses would be more marketable and would in fact have a higher combined value than that of the single larger dwelling. The applicant has provided prospective valuations from five local estate agents to support her case, with these providing a range of potential valuations. The chief objector has provided one valuation from another local estate agent, with this producing a significantly higher valuation for a single dwelling than any of the applicant's valuations.

Looking in more detail at the evidence submitted, it shows that the applicant and her husband bought Castleton Hall with planning and listed building consent for conversion to a single dwelling, which is considered by EH to be its optimum use. There is evidence of strong interest by another party, the principal objector and neighbour, who was unsuccessful in buying the property. This interest continues, with the objector's written offer to purchase the Hall from the applicant. Authority Officers and EH officers consider that both matters a material planning considerations in this case. This is confirmed by the advice now received from Derbyshire County Council (DCC).

English Heritage officers (at the meeting on 31 January 2014) and the DCC have advised that it is appropriate to accept that the value of the property is established by what competing parties are prepared to pay for it. In this case it is understood that both the applicant and the objector were prepared to pay £250,000 for the property and that the objector has since offered a further £50,000 (to cover her post-purchase costs to date) to purchase from the applicant. DCC advice is therefore that this can be accepted as establishing a value for the property. The EH letter of 23 April 2014 does not offer direct advice on the value of the property, but advises that *"An essential part of an Enabling Development argument is to demonstrate that a conservation deficit exists and that the*

scheme presented is the only viable option. This would follow full and open marketing at a price reflecting the building's condition to identify if there are alternative, less harmful uses - in this case, retained as a single dwelling". However, EH state that they do not consider this scheme to be "enabling development", so the advice given at the meeting on 31 January is considered to be applicable.

The applicant's financial viability assessment shows a development deficit of over £370,000 for a single dwelling conversion and just over £87,000 for a two dwelling scheme. Assuming these figures are correct, they show that although the applicant paid £250,000 for the property, it effectively had a substantial negative value at the point of sale as a single dwelling project (and even as a conversion to two dwellings). The view of the objector is that the current application seeks to make the case to allow enabling development (sub-division into two units) to 'balance the books' or to support the viability of the applicant's intention from the outset to split the Hall, something for which there was no permission, and not a genuine conservation deficit. The alternative view, expressed by the applicant, is that the viability assessment she has carried out demonstrates that there is a significant conservation deficit which is evident on both schemes. She makes the point that in the case of the single dwelling there would be a deficit even if the purchase price of £250,000 is taken out of the equation and that the high valuation obtained by the objector is a single valuation which is significantly greater than those she has received from five estate agents.

In determining what works should be taken into account in seeking to determine whether a conservation deficit exists, it is a material consideration that the owner has a legal obligation to maintain the listed building. In this case the Hall is not on the Authority's 'at risk' register and has the benefit of an extant consent for conversion to its optimum use as a single dwelling at the time of its sale. The property is clearly in need of restoration and there is obviously a significant cost in converting the Hall from its former hostel use. There is, however, a clear difference between what the Authority can legally require a property owner to do and what an owner may be prepared to do by way of restoration.

Whilst the proposal subdivision is not considered to be enabling development by English Heritage, the principles which should be used to establish a conservation deficit are similar to those set out in the EH guidance. In its responses English Heritage has advised that it is not convinced that it can be demonstrated that a conservation deficit exists. This is required to support the argument that subdivision into two dwellings is the optimum viable use for Castleton Hall, a consideration identified in paragraphs 131 and 134 of the NPPF. In its consolidated response in April 2014 EH declines to comment on the costs which should, or should not, be included in this assessment: *"As we do not consider this to be an Enabling Development scenario, we do not believe it is appropriate for us to scrutinise each report in detail or to comment on which costs would be included in a development appraisal.*

The letter sets out a summary position on this, as follows:

"We remain of the view the proposed subdivision of Castleton Hall will result in a degree of harm to significance, which is considered less than substantial. We accept the physical works are minor and improvements to mitigate the harm have been submitted. We do not believe the guidance for Enabling Development is strictly relevant here and we do not consider a conservation deficit has been proven. Whilst financial justifications may form part of this background information for this proposal, we consider any justification should focus on the benefits of full restoration of the grade II listed Hall within the conservation area. Accordingly, we believe you have sufficient information upon which to determine these applications".

The latest EH response, dated 25 March 2015, quoted above, reinforces this advice. It is therefore important to clearly identify how this proposal provides public benefits in respect of the heritage assets (the listed building, its setting, and the Conservation Area). English Heritage has referred to

these as being “*the benefits of revealing and enhancing significance*”. In this case these are considered to be: the removal of the warden’s bungalow, the demolition of the flat roofed dining room and Victorian games room, together with repairs to the east-facing baroque façade and the wider repairs and restoration of features and fabric throughout the building. All of these works fall within this definition and are needed to achieve essential conservation of the Hall and achieve the value of its optimum use. However, these demolitions, the essential repairs and other works were all conditioned to be achieved as part of the consented single dwelling scheme (also understood to have been in part a condition of the sale stipulated by the YHA itself), so it is reasonable to expect purchasers to have factored those costs into their purchase offer.

Given the strongly divergent views expressed by the applicant and the objector and his advisors, the Authority’s officers commissioned an independent assessment by Derbyshire County Council, which offers a financial viability service from suitably qualified officers. The report, received on 21 March 2014, advises that the majority of the costs submitted by the applicant are allowable, although they do recommend that some of the figures be validated by the Authority. The report states that it uses the cost headings in the EH guidance on enabling development as a basis for the assessment. The key points are as follows. It responds to criticisms raised by the objector’s surveyor in his reports on viability, that there is no basis for distinguishing between a developer as opposed to a private owner. On the purchase price, it concludes that, given the interest of another party who has offered £300,000 (understood to reflect the £250,000 purchase cost plus £50,000 other costs), the purchase price of £250,00 is not “too high” as alleged by the objector’s surveyor. The DDC officers were not asked to comment on the detailed costs of restoration as these figures have not been directly challenged. The DCC report does refer to a number of other costs, which total over £131,000, which need validation by the Authority, but which are not questioned in principle. They also point out that the applicant has not included any profit element, which would have been allowable in a development appraisal and which would add to the deficit.

The applicant has been asked to provide the additional information requested in the DCC report, and she has responded with more figures, on which further advice from DCC is awaited. However, officers consider that the DCC report is seeking validation of the figures, rather than questioning their inclusion in principle. Given that the total of the figures requiring validation is £131,000 out of a total deficit of £370,000, this does not make any significant difference to the overall conclusion that there would be a significant conservation deficit with a single dwelling scheme and a lesser one for a two dwelling scheme. The key conclusions from the DCC report are that, when establishing whether there is a conservation deficit, there is no justification for treating a scheme by a private developer differently from commercial scheme, as suggested by the objector’s advisor. The other key conclusion is that the purchase price of £250,000 can be considered as the appropriate valuation of the building as purchased in 2012. This confirms the view expressed by the EH officers at the meeting in January 2014.

The principal objector’s solicitor has responded to this by stating the EH do *not* consider the subdivision to be enabling development so the approach taken by the applicant, and apparently endorsed by DCC, is flawed. They also consider that any public benefit which is weighed against the harm must be a benefit which a single dwelling scheme cannot deliver, otherwise it should not be used to justify the proposal. They add that the Authority must understand the difference between A single dwelling scheme and THE single dwelling scheme. They consider that any criticism of the current single dwelling scheme which the Authority may have could never justify preferring this “suboptimal” proposal because the Authority is obliged to consider the benefits which any single dwelling scheme could deliver. It is their view that the applicant has not discharged the burden upon them to prove that a single dwelling scheme is not deliverable in light of the clear evidence of competitive market demand for a single dwelling at the time of purchase in late 2012 and by the principal objector’s subsequent offer to deliver Castleton Hall as a single dwelling.

In the initial report to the January 2014 Planning Committee officers advised that it was difficult to establish what exactly are essential repairs and conversion costs and what are restoration costs

which are not necessary now and which could potentially be deferred to a later date or reflect the personal preferences of the owner. The applicant did, however, separate out those costs which are purely the result of the proposal to subdivide the building or to provide elements which are not essential to the restoration (e.g. garaging). Nevertheless, the applicant's development appraisal shows a substantial deficit, which the applicant states is unlikely to be substantially reduced by cutting out works without affecting final value and thus not appreciably addressing the deficit. The applicant's figures show that for a single dwelling scheme there is a deficit of £370,448 based on a completed value of £850,000 (an average of their commissioned valuations that ranged from between £750,000 and £900,000) and total costs of £1,220,448, taking into account their purchase price of £250,000. For the submitted two dwelling scheme they show a £78,168 deficit. This is a figure which the applicant is clearly prepared to accept as a loss, on "book value" at least. The principal objector has, as is stated above, made an offer to the applicant of £300,000, but considers (based on the valuation they commissioned) that the value of a single dwelling is significantly greater than the applicant's valuation figures, so he considers this to be acceptable, particularly given his stated intention for this to be a private dwelling. It should be noted that the principal objector's surveyor has not disputed that there is likely to be a shortfall between the cost of the restoration scheme and the end value.

The applicant acknowledges that some costs could be delayed by deferring some repairs, but she states that this would affect the final value and, as her figures are already based on essential repairs rather than desirable works, they cannot be substantially reduced. In terms of funding the development, she has explained that a bank/lender is more likely to fund a scheme which has a smaller deficit and that, with rising property prices and the uncertain nature of the costs (which include a significant contingency element), the scheme may not be as marginal as the figures suggest, so a lender may consider the proposed scheme for two dwellings to be sufficiently viable to back it.

It is possible that the actual deficit in the single dwelling scheme could be reduced by deferring certain works of restoration which are desirable, but not essential; any works which are not necessary, such as the garaging can be discounted from the assessment of a conservation deficit. However, even when this is taken into account the applicant's figures show that there is a very substantial deficit on the single dwelling scheme. Whilst this may have the benefit of planning permission and listed building consent, this does not mean that it will necessarily be carried out. The then applicants, the YHA, were not asked to carry out a full viability assessment when they submitted the applications in 2011 as they were proposing the optimum single dwelling use. On the other hand, there is a view expressed by the principal objector that he would be prepared to carry out a single dwelling scheme, having offered to pay up to £300,000 for the property. Despite offers to do so, the principal objector has not provided the Authority with an assessment of how he would deliver a single dwelling scheme.

Members need to consider how much weight they can give to this proposal by the objector, given that the applicant's viability assessment appears to establish that there would be a conservation deficit and that this would result in a single dwelling scheme which the Authority's Cultural Heritage officers have confirmed is highly desirable and consistent with the Authority's responsibilities under the relevant legislation and guidance. The EH letter of 23 April concludes that "*We recommend these applications should be determined in line with the NPPF, including paragraphs 131, 132 and 134. Your authority will need to be convinced that the public benefit of the proposal outweighs any degree of harm to significance*". The EH letter therefore makes it clear that this assessment is one which the Authority can make, using its own heritage advice.

Given the importance of this, the Authority's officers have followed Counsel's advice and sought an independent assessment of the viability of a single dwelling scheme. This has been carried out by Smith and Roper Architects of Bakewell, who were appointed in December 2014. Their report was produced in March 2015 and was made available to the interested parties on 6 March (who were also provided with a copy of the brief in December 2014). The assessment and conclusion is set

out in the attached appendix. The brief was to provide an assessment of the viability of a single dwelling scheme, based on the 2011 approval, but omitting any non-essential works such as a new garage, but delivering the key conservation benefits such as restoration of the façade and windows. The assessment has provided an estimate of the project development costs from a suitably qualified surveyor and a valuation report from a local valuer.

In summary, the surveyor has calculated the total development cost for conversion to a single dwelling to be in the order of £1,331,994. The potential sale value of the completed property as estimated by valuers is in the order of £800,000 - £900,000. This demonstrates a shortfall of £430,000 - £530,000 between the development cost and potential sale value as a single dwelling. When considering conversion to a single dwelling with ancillary commercial use in the Tithe Barn section of the building, assuming a similar development cost, and with a potential sale value of between £1,000,000 and £1,100,000, there is still a shortfall in the order of £230,000 - £330,000 between the development cost and potential sale value. The valuer concluded that the large size of the single dwelling would have a “downward” effect on demand. He advised that some commercial use of the “Tithe Barn” section of the building could increase its value by up to £200,000. There are a number of items included within the approved drawings which are not necessarily essential conservation benefits, totalling £55,449. If these are omitted they would, however, have only a minor impact in reducing the shortfall between the development costs and valuation. As requested, the consultants have also explored the possibility of a phased project. The assessment concludes:

“Whilst conversion to a single dwelling with ancillary commercial use may offer the optimum viable use, retaining the building in single ownership, there remains a significant shortfall between the development cost and potential sale value. Neither conversion to a single dwelling nor to a single dwelling with ancillary commercial use offers an immediate return on the development cost. Consequently the retention of the building in single ownership would be dependent upon any owner committing to a long term investment or being a philanthropist committed to the conversion and restoration of the Hall whatever the cost. Although such owners do exist, it would be unreasonable to insist upon or expect such a person to take on the responsibility of Castleton Hall. My overall conclusion therefore has to be that the conversion of Castleton Hall to either a single dwelling or single dwelling with ancillary commercial use in single ownership is regrettably not financially viable”.

The full report is available on the Authority’s web site.

Conclusion:

The applicant’s figures demonstrated that there is likely to be a substantial conservation deficit in the optimum scheme for a single dwelling and there is likely to be one, albeit smaller, in the proposed scheme for two dwellings. This has now been confirmed by the independent assessment carried out by the architects commissioned by the Authority. The applicant has not sought to demonstrate what level of development would result in a viable scheme, but, based on her figures, this is most unlikely to be an acceptable scheme in terms of its impact on the listed building and its setting as it would be a more intensive scheme than the current proposal for two dwellings and the optimum use as a single dwelling. The assessment by Smith and Roper focussed on the viability of the single dwelling scheme which is, in principle, seen as the optimum use by English Heritage (now Historic England).

Consequently, it is now the Authority’s responsibility to assess whether the desirability of sustaining and enhancing the significance of the heritage asset (Castleton Hall and its setting) and putting it to a use consistent with its conservation, whilst revealing and enhancing its significance can be considered a public benefit. In coming to this judgement, the Authority must assess the merits of this conservation and enhancement against the degree of harm which has been identified by English Heritage. English Heritage have made it clear to Authority officers that this is judgment which the Authority should make, using its own professional cultural heritage advice. The counter

claim by the principal objector that he can deliver a single dwelling scheme which will provide the conservation benefits the Authority has been identified is a material consideration, notwithstanding the fact that he is not the owner of the property and the current owner has declined his offer to purchase. However, he has not produced figures to support his claims, despite offers to do so. He was provided with the brief which was sent to historic building architects in December 2014 and which resulted in Smith and Roper being instructed by the Authority. He and his advisors have therefore been in a position to produce an assessment if they intended to do so. Any response received before the Committee meeting will be assessed and reported to Committee as appropriate.

Key issue 3 - The principle of the proposed conversion of the Hall into two dwellings

Core Strategy policy DS1 allows in named settlements such as Castleton for the principle of conversion or change of use of traditional buildings for housing. The key Core Strategy housing policy is HC1. This makes it clear that provision will not be made for housing solely to meet open market demand, but that exceptionally housing can be allowed where, amongst other things, it is required to achieve conservation and enhancement of say a valued vernacular or listed building or within a designated settlement like Castleton (HC1C).

The supporting justification argument in this case is clear that the proposed new dwellings are for the open market. Consequently the only route to accord with adopted housing policy would need to be under HC1(C). This states that new housing can be accepted where, in accordance with core policies GSP1, the conversion is “*required in order to achieve conservation and/or enhancement of valued vernacular or listed buildings*” as allowed in policy HC1(C)(I), or “*conservation or enhancement in settlements listed in core policy DS1*”, as allowed in policy HC1(C)(II). The applicant’s case relies mainly on the former route.

A further consideration in respect of policy HC1(C) is that it states for schemes such as this, which propose more than one dwelling unit, that they must also address eligible local need and be affordable with occupation restricted to local people in perpetuity, unless (HC1CIII) it is not financially viable. It is clear that in this case the proposed subdivision would create two dwellings that would be substantially in excess of the maximum size guidelines for affordable dwellings and would not be affordable.

However, policy HC1 must not be applied in isolation and other policies in the Development Plan, together with the relevant legislation and guidance (notably the NPPF), provide protection for listed buildings from harmful development and seek their long term sustainable conservation and enhancement through being maintained in their optimum viable use. In particular, LC6 reflects this advice in stating that development affecting a listed building and its setting should clearly demonstrate: (i) How these will be preserved and where possible enhanced; and (ii) why the proposed works are desirable and necessary. It goes on to set out the very detailed information requirements and advises what is or is not likely to be permitted.

Whilst the Hall could physically be further subdivided to create more dwellings of an affordable size and type, a more intensive conversion to multiple units would bring significant harm the special character and internal layout of the listed building as a result of the need for new partitions, new staircases and a host of other internal alterations. Externally, there would also be a need for larger parking and turning areas as well as pressure for further plot division to create private amenity spaces for the additional units. Such a scheme would clearly move further away from the optimum use and bring substantial harm to the special qualities of the building and thus fail to achieve the ‘significant enhancement’ (GSP2) that is required as a basis for policy compliance in the first place. Consequently, it would be wholly inappropriate on listed building conservation grounds, as well as the adverse impact upon the conservation area, to further subdivide the Hall into more dwellings to meet eligible needs for affordable housing or otherwise, even if it were financially viable to do so.

In this case the Hall is an important Grade II listed building prominently situated within the heart of Castleton village (a DS1 settlement) and the Conservation Area. The key question in respect of policy HC1(C) is whether the new houses are 'required in order to achieve conservation and/or enhancement' of the Hall itself or 'conservation or enhancement' of the village.

The 2011 permissions for the change of use and conversion of the former YHA hostel to a single dwelling met this test and were approved because the development achieved the conservation and enhancement of the listed building by returning the building to its optimum use as a single dwelling. This was the use for which the Hall, in its current form, was originally designed and the consent for change of use to a single dwelling brought with it significant enhancement in the form of the removal of all the later unsympathetic alterations and extensions, both internally and externally, including the public benefits to the conservation area and street scene from the restoration of the baroque façade and repairs to the frontage walls and railings.

The current application scheme now proposes the subdivision of the Hall into two dwellings. As discussed above, this is not the optimum use for the conservation of the listed building and would bring with it the "less than substantial" harm identified by English Heritage. The key question is therefore whether there are any exceptional circumstances that would justify the subdivision and a change from the optimum use in order to achieve conservation and enhancement of the building, bearing in mind that the recent approvals for conversion into one dwelling were considered in 2011 to satisfy listed building legislation and achieve the aims of policies HC1(C) and LC6.

The applicant's assessment shows that the projected value as a single house would not cover the considerable development and restoration costs by a substantial margin, whereas the submitted scheme comes closer but could still have a sizeable deficit. The applicant considers that whilst her viability assessment shows that that conversion to two dwellings is not strictly viable, the shortfall is more reasonable for a private developer to accept if they see the restoration of the house as a longer term project (and certainly more viable than a single dwelling scheme). She therefore considers that the subdivision is required to achieve the conservation and enhancement of the building and the site, and by doing so, secure a long term beneficial and sustainable use for the listed building.

Clearly, if the proposed development conserves or enhances the listed building there would normally be no need to consider whether the works are 'required' in terms of viability under HC1. However, if there is any harm to the building or its setting, then special circumstances are required to justify making an exception, for example, development that is deemed essential to achieve a beneficial and sustainable use for the building and secure the overall conservation and enhancement of a listed building (paragraph 140 of the NPPF). Development in these circumstances (where "less than substantial" harm is involved) will only be acceptable if there are clear and convincing public benefits arising from the development to justify the harm caused and assumes that maximum possible mitigation steps have been taken/incorporated to minimise the harm to its lowest possible level. This is considered in the next section.

Key Issue 4 - The harm caused by the proposed subdivision and physical works upon the significance of the Hall and its setting.

The proposed subdivision has been the subject of detailed discussions between the Authority's officers and the applicant. She was given pre-application advice that the principle of subdivision may be acceptable, but this was clearly given without prejudice to the determination of any subsequent applications. She has employed a local specialist historic buildings architect to advise her on the scheme. The Authority's officers acknowledge that many of the alterations that are being proposed will remove inappropriate extensions and alterations that have taken place during the time that the Hall was in the ownership of the YHA. The demolitions, although largely screened from public views, are the most obvious external changes and will represent considerable enhancement to the setting of the rear of Castleton Hall, where the majority of the unfortunate later

additions and alterations are being removed. These demolitions will also have a beneficial effect on the setting of the nearby listed Coach House.

Internally, most of the YHA installed internal stud partitions have already been removed to reveal the original features and proportions of the various rooms. However, it should be noted that all the enhancements were either proposed or conditioned in the approved 2011 single dwelling conversion so there is nothing significantly new in this scheme in terms of further enhancement, if the 2011 scheme was considered to be viable and deliverable.

Internal works of alteration:

In terms of the physical internal subdivision of the Hall into two dwellings, this requires minimal alterations and is achieved by the blocking up of three door openings on the ground and first floors. Whilst these allow for a simple subdivision separating the former tithe barn from the main Hall, which would remain behind the baroque façade, there no precise details have been submitted to show whether these openings are original or not or exactly how this is to be detailed. In one case it would appear appropriate to retain a doorway fixed shut with a wall behind, whereas in the other two openings it would be appropriate to close the opening up with matching walling. The Authority's Historic Buildings Architect considers that subdivision at this point would minimise the impact on the internal fabric and character of the listed building and would be easily reversible in the event that the building subsequently reverted to a single dwelling. Details of the precise detailing of the blocking up of these three doors can be conditioned as part of any approval.

The other main internal change concerns the main stairway where presently the former open stairway has been mostly infilled at first floor level by the YHA to create an extra room. The applicant proposes that this infill will be largely removed, with part retained to give a balconied corridor across the space to gain access to a first floor window. This, together with the restoration of the staircase, is considered to be acceptable as it will enhance the listed building. Other changes include the insertion of new stud partitions to suit the new room layouts and the need for new bathrooms in a more sensitive manner than the previous YHA partitioning, along with a number of smaller works of repair and restoration as set out on the detailed drawings and specifications. Taken together, these works are considered to be acceptable.

External works:

Whilst subdivision may be relatively simple to achieve internally, externally the subdivision of the Hall requires more significant subdivision of the walled garden at the rear and the use of a larger part of it for additional car parking. There are also changes to the boundary walling for the creation of a new vehicular access and parking arrangements to accommodate the proposed subdivision. From a public perspective, the main changes will be the repairs to the baroque façade of the east facing Castle Street elevation and to the courtyard in front of the building, where there will be significant enhancement of the street scene.

External works to front (Castle Street):

The main work to the front would be the restoration of the baroque façade, which currently is in very poor condition, largely as a result of works to repair it having stopped after the initial removal of render and perished stonework. The existing boundary to the courtyard fronting Castle Street is a combination of a low stone wall with iron railings above. The amended scheme proposes that the boundary walling would be repaired and that the existing railings and gate be replaced with a more appropriate 18th century design matching the style shown in historic photographic evidence of the frontage. The improvement to the railing and gate design is welcomed as appropriate enhancement to the frontage.

To facilitate access from Castle Street to the Tithe Barn dwelling, a second pedestrian gate in the boundary wall/railings is also proposed to be inserted beside the Tithe Barn gable end. The new pedestrian gate would be constructed to reflect the main gate and the style of the new railings. Although it would not be a significant feature in the overall frontage and the matching detail would

provide a continuity of design, the introduction of the second entrance into the frontage wall would result in a slight loss of existing character and enclosure of the frontage boundary, but this is not sufficient to justify a refusal on this ground alone.

The existing trees would remain with some crown lifting; these make an important contribution to this part of the conservation area. The paved courtyard would be re-laid with additional raised grassed/planted beds and the paving layout adjusted to informally denote the differing ownerships in the frontage, instead of the hedge as originally proposed to divide the front yard. Apart from the new gateway, there would be no other formal boundary to indicate the proposed subdivision of the property at the front.

Overall, the frontage would be conserved and enhanced by the proposals, particularly the significant repairs/restoration to the baroque façade and the more appropriate railings and gate. It is considered that the enhancement of the new railings would offset the slight harm to the setting arising from the new pedestrian gateway and result in overall net public benefit to the listed building, its setting, the street scene and the Conservation Area. It should be noted, however, that the restoration of the baroque façade was a condition of the previous single dwelling scheme, so the only change between the two schemes is the new railings of a more appropriate 18th century design.

One potential concern with the two dwelling scheme is that the differing maintenance regimes by the separate owners could, over time, result in changes to the appearance of the two sections of the Hall that would further highlight differing ownerships, despite planning and listed building constraints which could control any significant changes. In response to this, the applicant has offered to enter into a section 106 legal agreement or accept other restrictions to ensure a single maintenance programme. These are often used to ensure coordinated maintenance of multi-occupancy properties or leasehold properties. If Members are minded to approve this application, it should be subject to a legal agreement to secure this.

The solicitor acting for the principal objector has stated that they do not accept that the changes to the building and the site are realistically reversible. In reality once the separate planning units are in separate ownership they will never be reunited. They consider that the Authority cannot control ownership and that assurances from the applicant are of no relevance. They therefore consider that the Authority will have to rely on conditions and that it is a risk that conditions will not be effective to control management and appearance of the two separate properties.

External Works to Rear:

The removal of the detached outbuildings and later YHA additions at the rear, as set out in the application details, followed by restoration of the walled garden using lawns, planted beds and paved areas would significantly enhance the rear garden and, more importantly, the setting of the Hall and the Conservation Area.

Whilst these works would open up the rear setting of the Hall and the garden, the proposal undermines that enhancement potential to some extent by subdividing the garden to create a separate residential curtilage for the Tithe Barn. This would be achieved by retaining some walling from the previous layout, together with the erection of a new section of matching 1.7m high walling. This would reduce the openness of the garden and detract from the setting of the garden and the Hall to some extent, but it should be noted that this rear area was approved as a parking area in the single dwelling scheme, with a new double garage built in approximately the same location as the Victorian games room. This earlier approval was, on reflection, not ideal, but it is a material consideration in determining the current application.

Parking and garaging:

Amended plans now show that off-street parking facilities for each dwelling would be provided in the north-east corner of the Hall garden, accessed via a single new vehicular entrance through the

wall at the end of the shared private driveway with The Old Vicarage. The new opening would be provided with stone gateposts and fitted with a timber sliding gate. There are no details of the new gates, but the principle of such gates is acceptable. The new access is also considered to be acceptable, being of a design sympathetic to the character and setting of the listed building. It will require the complete removal of the remaining section of the partially demolished bungalow, as there is insufficient space available between the remaining bungalow and the end wall to accommodate the proposed access width and gate piers. This is currently a matter in dispute between the applicant and neighbour. Highway issues are dealt with below.

The amended layout of the Tithe Barn dwelling's garden and parking facilities provides some improvement over the original submitted layout in that it now omits the single garage, the new vehicular access off the shared driveway into the Tithe Barn garden (which reverts to a pedestrian gate), and move all of the parking out of the proposed garden. The Authority's Conservation Officer considers this to be acceptable, subject to conditions covering some of the details.

Tithe Barn Parking:

The amended layout shows three parking spaces would be provided in a parking courtyard immediately inside the new gateway off the shared main drive with The Old Vicarage. The spaces would be provided either side of the new driveway, two of which would be sited immediately behind and to the west of the Tithe Barn garden wall and bounded from the rest of the garden to the Hall dwelling by a new beech hedge. A wide double-gated entrance through the tall garden boundary wall would lead from these spaces into the Tithe Barn garden. This would, however, be an inappropriately wide opening in the garden wall which the Conservation Officer considers would detract from the containment and setting of the garden and should have been reduced to pedestrian width. As drawn, it would potentially facilitate additional parking within the garden at a later date which would further detract from the listed building and be unacceptable. In the event of an approval, this should be reduced to a single pedestrian gate; the applicant has confirmed her willingness to accept a condition to achieve this.

Hall Dwelling Parking:

A separate parking area for four cars and a detached double garage would be sited immediately west of that provided for the Tithe Barn and separated from it by a further sliding gate running between the gable of the proposed garage and the across to the corner of the beech hedge proposed to surround the Tithe Barn parking area and separate it from the rest of the Hall garden. The proposed double garage would be situated adjacent the northern garden boundary wall with The Old Vicarage, which is about 2.5m high. The garage would be constructed in natural materials to match the Hall and, subject to minor detailed conditions including the provision of stone lintels over the doors, it would be of an acceptable simple design. It would be sited between two trees that would be in close proximity to, and affected by, the walls of the garage. The Authority's Tree Officer has advised the applicant that there are no objections to their removal, but the applicant wishes to retain the better of the two, a Yew, which would fall within the proposed Tithe Barn's parking court. The western one is proposed for removal in the amended plans to make way for one of the parking spaces for the Hall dwelling.

The relocation of the double garage and parking from the immediate rear of the Hall (as approved in the single dwelling scheme) would be an improvement to the rear setting of the Hall over the scheme approved for the single dwelling. The siting of the garage against the north wall would not have a harmful impact upon the setting of the Hall and the garden.

However, as a result of the new Tithe Barn walled garden, both the Tithe Barn parking and that proposed for the Hall are pushed back further into the site and extend over part of the remaining garden area. The parking spaces for the Hall are also shown in the amended layout without any form of boundary separating them and the garaging from the remainder of the formal walled garden. The Authority's Historic Building Architect considers that some form of partitioning off from the rest of the garden would have been more appropriate e.g. by hedging in the same way as proposed the

Tithe Barn parking spaces. The applicant has confirmed her willingness to accept a condition requiring this.

It must be acknowledged that the new garden walling and parking areas would be intrusive features within the garden and upon the setting of the Hall and to some extent they may detract from the character and appearance of the listed building, and to a lesser extent the setting of the Coach House and the Conservation Area, even though the impact on the Conservation Area would be limited by the existing high walls and buildings. However, *any* use of the Hall is likely to require some parking within the curtilage (unless it is on the adjacent streets) and if a viable, beneficial use is to be accepted for the building, then this is likely to involve some changes to the setting of the building. Some degree of change can be acceptable and is not necessarily harmful to the heritage assets. Whilst the approved single dwelling scheme was not ideal in proposing a garage and parking area at the rear of the Hall, the amended layout for this two dwelling scheme is considered to be less harmful to the setting of the listed building as the garage is now in more sympathetic location adjacent to the boundary wall. The omission of the single garage for the Tithe Barn dwelling is a significant improvement from the submitted application and removes a reason for refusal of the application. The additional boundary walls to create a separate curtilage for the Tithe Barn dwelling would result in some subdivision of the rear garden, but when assessed against the beneficial works which the application proposes, on balance, the scheme is considered to be acceptable.

Alterations to outbuilding ‘wing’:

The outbuildings projecting off the rear of the Hall, running down the side of The Stones on the southern boundary, are proposed to be converted into a sun room and an ancillary flat for the Hall dwelling. The proposed sun room is to be created by remodelling the pitched roof link building between the Hall and the two storey ‘annex’ on the southern boundary. This building was originally proposed to be removed in the approved single dwelling scheme, along with the flat roofed dining room extension and an external fire escape. It is now proposed to remove the flat-roofed dining room extension and fire escape, but to retain the remainder of the pitched roof building. The retained building follows the traditional form of the Annex building and its retention will maintain the existing character and form of the building when viewed from The Stones. It will also prevent overlooking into the rear courtyard of the Hall from adjacent properties. The retention of this section of the link building and its remodelling to form a Sun Room with patent glazed roof window is considered to be sympathetic to the character and setting of the Hall and is acceptable. Provided the use of the annexe remains ancillary to the use of the Hall dwelling, there are no objections to this ancillary accommodation.

Currently there are eight rooflights in the annex roof, three of which are on the southern roofslope overlooking The Stones. The plans propose removal of all of the south facing roof lights and replacement of those in the north by four conservation roof lights along with four more fixed together and sited over the sun room giving the appearance of a bespoke patent glazed continuous panel. Since submission the applicant has clarified the size of the proposed new rooflights in the annexe, as currently they are shown as different sizes on separate plans. Subject to the use of the smaller size, as confirmed by the applicant, there are no objections to this element, which would enhance the appearance of the building and the wider conservation area.

Alterations to lean-to store beside the rear central projecting wing on the Hall:

The application also seeks consent to retain the shallow lean-to roof over the former kitchen store and part of the former link corridor to create a utility room. The existing rooflights would be removed. This room would sit between the two storey hipped roof rear wing projection and the retained section of walling to form the southern boundary of the Tithe Barn dwelling’s curtilage. The single dwelling scheme proposed the complete removal of this shallow roofed lean-to extension and all of the link corridor as part of the overall package to enhance the rear elevation. Its retention in this scheme is therefore not ideal given its later fabric and poor form, but due to its modest size and location it has only a modest impact on the rear elevation. The plans showing the

gable elevation also show the full doorway height cannot be achieved within the space available and the roof would cut across the outer corner of the door and frame which would need to be partially trimmed. This gable end would, however, be recessed from the adjacent two storey projection and being in a corner formed by the new boundary walling to the Tithe Barn garden the lean-to would not be overly prominent. Whilst complete removal would still have been preferred, its remodelling will bring some enhancement over the existing and would therefore conserve the Hall. It is therefore considered to be acceptable.

Changes to fenestration:

As with the previously approved single dwelling scheme, this scheme proposes considerable enhancement to Castleton Hall, with the majority of the unfortunate later additions and alterations, both externally and internally, being removed and restored to their original appearance and proportions. The scheme also involves the replacement of later doors with a more appropriate style and window frames with more appropriate sash frames as well as the reconfiguration of openings to match their original form. In many cases the reconfigured openings are to be provided with full natural surrounds or natural gritstone lintels and sill, where appropriate. All the new frames being installed on the rear the frames will be double glazed and all the sash frames to the front will be single glazed.

In respect of new openings, one new window opening and a new door opening are proposed. An additional ground floor window is proposed in the north elevation of the Tithe House. This window overlooks the shared access drive and is centred beneath an existing stone arched head. The window opening is positioned opposite the corner of the gable wall of The Old Vicarage and the tall boundary wall which runs along the northern side of the joint access drive. Given that there is evidence of an opening in this position, the additional window opening is considered to be acceptable in terms of its impact on the listed building and is appropriately detailed. The window faces the joint access drive and does not overlook any windows in The Old Vicarage or its front garden which is screened by the garden boundary wall. The proposed additional window is therefore considered to be acceptable and would not impact upon the residential amenities of the adjacent property.

The proposed new door opening is situated within the west elevation of the central rear wing building. The applicant has confirmed her acceptance of a request by the Authority's Historic Building Architect to reduce the width of this door and to match the fenestration of other rear doors and has stated that she would be willing to submit amended plans covering these and any other details. This can be dealt with by condition if the application is considered to be acceptable

A further door opening on the north elevation of the Tithe Barn dwelling, opening onto the shared access, would be altered to serve what would be the side entrance hall to the Tithe Barn dwelling. Plans show it would be opened up fully to its original proportion and fitted with fully glazed double doors. The fully glazed detailing is not ideal in design terms for this particular style and positioning of opening and should be changed to a more appropriate solid style. However, given its location it would be sited sufficiently far enough back from the Old Vicarage and with the intervening walling and orientation it is considered that it would not give rise to issues of amenity concern sufficient to warrant further change or omission.

Three new conservation rooflights were originally proposed in the south facing roof of the Tithe Barn, to give additional light and ventilation to the master bedroom and en-suite. These rooms are presently served by existing sash windows which are positioned just above the internal floor level. The submitted plans also showed the enlargement of the existing rooflights on the north side of this roof. There were objections to the principle of new rooflights on the prominent front roofslope and, in addition, those shown on the plans are considered to be unacceptably large and dominant upon the roofslope of this main elevation overlooking the courtyard and formal façade and would detract from the roofscape. It was therefore recommended by the Authority's Conservation Officer that these should be omitted. The existing ones on the north are equally prominent in the street scene

and should also be retained as existing size to avoid dominating and detracting from the roof. This is further reinforced by the recommendations from the Ecologists that no work should be done above the roofline without further survey. The applicant has confirmed that the proposed new rooflights are omitted from the proposal and that the others on the north will be retained as existing. Consequently, given there will be no changes to these roofs, there is no need for further bat survey.

Greenhouse:

The application proposes the addition of a greenhouse to the north western corner of the Hall garden. This is bounded on its northern and western sides by the existing tall, 2.4m high boundary wall and within close proximity of a mature tree. It is a relatively small structure (4.0m x 2.6m) with a plinth wall and glazed upper walls and roof, with a projecting gabled door entrance. It is of an appropriately modest scale and of suitable design; that there are no objections to this aspect of the proposals, subject to the plinth wall being constructed in natural limestone rather than brickwork.

Impact upon the setting of the separately listed Grade II Coach House to the rear:

In addition to having to pay special regard to the desirability of preserving the setting of the Hall, the Authority must also consider the setting of the adjacent Coach House. The Coach House is a separately listed Grade II listed building lying to south of the Hall's walled garden and separated from it by a tall dividing wall constructed when the Coach House was separated from the property and sold by the YHA, although there was already a high wall close to the rear of the Coach House. The setting of the Coach House has already been compromised to some extent by the new boundary wall and its separation from the Hall. This amended scheme proposes further subdivision of the walled garden with a larger parking and turning space encroaching further out over the garden. Whilst this was a recommended reason for refusal in the January report, officers have reassessed this and do not consider this to be of sufficient concern to justify refusal on these grounds, particularly given the layout of the parking and garaging for the single dwelling scheme and the fact that the new walls and altered layout to the rear of the Hall does not impinge on the setting of the Coach House to a significant degree.

Conclusion

Officers acknowledge that the alterations that are being proposed to the Hall will remove inappropriate extensions and alterations that have taken place during the time that the Hall was in the ownership of the YHA and would be significant enhancements to the building and its setting. The demolitions, although largely screened from public views, are the most obvious external changes and will represent considerable enhancement to the setting of the rear of Castleton Hall, where the majority of the unfortunate later additions and alterations are being removed. These demolitions will also have the effect of enhancing the setting of the adjacent listed Coach House and the Conservation Area. With regard to those individual elements of the scheme where officers have concluded that there may be some limited harm or where the scheme does not propose the optimal enhancement, officers consider that when taken together these do not cause sufficient harm to justify refusal of the application. Moreover, when weighed against the benefits which the restoration of the Hall offers, these limited impacts are considered to be acceptable.

As with the previously approved single dwelling scheme, the detailed scheme for the Hall itself proposes considerable enhancement to the listed building. The majority of the unfortunate later additions and alterations, both to the external fenestration and internally, will be removed and restored to their original appearance and proportions. The replacement of later doors and window frames with more appropriate sash frames and the reconfiguration of openings to match their original form, in many cases provided with full natural surrounds or natural gritstone lintels and sill where appropriate, is welcomed. The repairs to the baroque facade and railings to the front is also welcomed repair which will enhance the building. Although most of the enhancements were proposed or conditioned by the 2011 single dwelling conversion, the applicant has demonstrated that this scheme is not viable and would result in a significant conservation deficit. This has now

been supported by the independent assessment carried out by Smith and Roper Architects on behalf of the Authority. The weight to be given to the principal objector's claim that he could achieve the enhancements in a single dwelling scheme which would either be viable or in which he would accept any deficit is a matter which the Committee needs to consider very carefully.

In conclusion, this amended scheme is acceptable (subject to appropriate conditions) in respect of the proposed demolitions and fenestration changes, as the works would enhance and restore the original form, character and appearance of the Hall in compliance with the relevant Adopted Core Strategy and Local Plan policies and with government guidance, notably in the National Planning Policy Framework. English Heritage has advised that the scheme would cause some harm through subdivision, even though that harm is considered to be "less than substantial". In accordance with paragraph 134 of the Framework (NPPF) English Heritage therefore advises the Authority that *"Where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use"*. English Heritage advises that this balancing exercise is a judgement for the Authority to make. The Authority's Conservation Officer considers that as amended and subject to the conditions referred to above, the scheme would, on balance, deliver greater benefit to the listed building and its setting than the harm which would be caused, notably by the external works in the rear garden.

Conclusion

In comparison with a single dwelling scheme, which English Heritage consider to be the optimum use, the current application for subdivision involves harm to the listed building, which, overall, English Heritage and Authority officers consider is "less than substantial". Nonetheless, any harm created by a development which is for more than the optimum use raises an issue of principle in terms of the duty placed on planning authorities by sections 16 and 66 of the Planning (Listed Building and Conservation Areas) Act 1990 which require that the Authority *'shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'* (section 16(1)) and *'shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'* (section 66 (2)), and with paragraph 134 of the Framework. As noted above, section 66 does not allow a local planning authority to treat this duty as a mere material consideration; it is a statutory duty to which special regard must be had.

The issue of principle comes from its subdivision from the optimum use as a single dwelling and from the associated physical changes, particularly to the setting of the rear elevation and the setting of the garden from the creation of the separate garden and parking facilities. These changes also affect the Conservation Area and to the setting and amenity of the adjacent listed Coach House, albeit to a lesser extent.

The view which has been taken by English Heritage is that only essential works of repair and maintenance should be taken into account in determining whether there is a conservation deficit which could otherwise justify an approval of a scheme which is not the optimum use. At the meeting on 31 January 2014 and in the consolidated response dated 23 April 2014 English Heritage have clarified a number of points, including their view that whilst the subdivision does not fall into the definition of "enabling development", the template for assessing a conservation deficit is essentially the same as for enabling developments. On this basis, the Authority commissioned Derbyshire County Council to review the applicant's assessment and the objector's surveyor's assessment of this. Whilst recommending validation of some figures, the DCC report confirms that the approach taken by the applicant is valid and demonstrates that there is a conservation deficit. The figures requiring validation do not fundamentally affect this conclusion. Following further consideration of these issues, the Authority's officers instructed historic building architects to carry out a viability assessment for a single dwelling scheme which could deliver the key conservation benefits identified by the Authority's Conservation Officer. This assessment concludes that a single

dwelling scheme would not be viable.

If Members are minded to approve the current applications, they should do so only on the basis of the advice in paragraphs 134 and 140 of the National Planning Policy Framework, which state that *“Where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use”* and that *“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”*. Significant weight must be given to the Authority’s statutory duties under sections 16, 66 and 72 of Planning (Listed Building and Conservation Areas) Act 1990 to have special regard to the listed building and the conservation area, referred to above.

English Heritage officers have made it clear that this assessment is matter for the Authority. The Authority’s Conservation Officer considers that the proposal will provide sufficient benefit through restoration and enhancement to outweigh, on balance, the harm identified by English Heritage. The conservation deficit which has been demonstrated shows that these benefits are unlikely to be realised through a scheme to restore the building to a single dwelling. This view is clearly disputed by the principal objector, who considers that he could refurbish the house as a single dwelling and that this would be the optimum and viable scheme. However, officers consider that the applicant has provided sufficient evidence that her proposal is the optimum and most viable scheme which would be acceptable in terms of its impact on the listed building and its setting and is one which is likely to provide a sustainable use for the building in the future. The principal objector has not produced alternative figures to demonstrate that he can deliver a viable single dwelling scheme which achieves the key conservation benefits.

In these circumstances the officer recommendation is of approval, subject to a section 106 legal agreement to secure the benefits being proposed and to ensure sympathetic long term management of the two dwellings, and to appropriate planning conditions.

Human Rights

Any human rights issues have been considered and addressed in the preparation of this report.

List of Background Papers (not previously published)

Nil

For appendices, please refer to appendices 1- 4 in the preceding planning application report