

**Application Number**

CN/2015/0081 &  
CN/2015/0100

**Site Address**

Oldway Mansion  
Torquay Road  
Paignton  
Devon  
TQ3 2TY

**Case Officer**

Mrs Ruth Robinson

**Ward**

Preston

## **UPDATE REPORT**

**Introduction**

This report updates the Development Management Committee on the progress made to secure a new development programme, that itself results in repair and refurbishment of the listed buildings on site through delivery of enabling development.

As previously advised, and as referred to in this report, there is an ongoing legal dispute between the Council - as landowner - and Akkeron. That is being dealt with separately from the Council's role as Local Planning Authority. The Council, as Local Planning Authority, must make a decision on this application on the planning merits of the proposal. However, until the legal issues between the Council and Akkeron are resolved, there is no prospect of work being undertaken by Akkeron on site. Consequently, Development Management Committee should not feel obliged to make a quick decision on this application in order to ensure repair / protective works to the listed buildings are undertaken in the near future.

**Background**

Detailed background information in relation to this matter can be found in the appended reports which were considered by DMC at its meetings of the 9th February and the 14th March 2015.

The approved mechanism for securing delivery of the restoration proposals for Oldway is contained in the Outline Development Programme (ODP) August 2012. In broad terms this established a time scale for delivery and identified that funding would be largely derived from selling the approved enabling development (101 new homes) within the grounds to third party developers.

This can no longer be complied with and approval is sought, through this discharge of condition application, for a revised ODP. The developer now intends to carry out the enabling development themselves rather than dispose of the sites 'upfront' and requires a longer time frame within which to carry out the restoration proposals. To mitigate for the delay in securing the future of these key listed buildings, a schedule of protective works is proposed. It is this Revised Development Programme that is for consideration.

### **Progress to date**

DMC considered, at its meetings in February and March this year, applications to discharge of a range of pre-commencement and other conditions in relation to the planning and listed building applications to change the use of Oldway Mansion, the Rotunda and Stables to provide a Hotel and Spa.

Of particular significance were conditions relating to phasing which link the implementation of the enabling development (the 101 dwellings) to the restoration works to the listed buildings and grounds and secure an enforceable structure/ timeframe for delivery of these restoration works.

These are Condition No's 3 and 4 related to P/2011/1020/PA and No 4 related to P/2011/1021/LB.

**Condition 3** requires the applicant to 'adhere to the timetable for restoration of the buildings as set out in the outline development programme (ODP dated 6th August 2012) unless otherwise agreed in writing with the LPA'.

**Condition 4** required (inter alia) the submission and approval of a detailed delivery programme (based on the ODP) for this phase of the scheme which identified key stages in the restoration of the buildings and grounds and provided a timetable for delivery of the whole project.

The condition was imposed to ensure that the scheme is delivered in its entirety, in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site.

The information to discharge these conditions was included in a revised Outline Development Programme (ODP) which sought to change the time frame and mechanism for delivery.

### **Key Concerns Regarding the Revised Outline Development Programme**

There were a number of concerns about the ability of the revised ODP to deliver the restoration of these key listed buildings and consequently officers at the

meeting of the 9th February recommended that the application submitted to discharge these conditions should be refused. In summary, concerns related to:

- a. The extended time frame for delivery.
- b. The change in the delivery strategy whereby the capital receipt anticipated from the disposal of the enabling plots would not be delivered upfront but on a more piecemeal basis creating a more tenuous link between the implementation of the enabling development and the restoration of the heritage asset.
- c. The reliability of the financial appraisal of the project included in the IVA (Independent Viability Assessment) which underpinned the decision to approve the initial applications (in 2011) given the increased restoration costs and erosion of the financial receipt following sale and development of the Fernham site. A critical issue from the LPA's perspective is whether this would lead to a need for additional enabling development to meet an increased restoration budget deficit.

A decision was consequently deferred on the matter to allow the IVA (Independent Viability Assessment), a key document which helped underpin the decision to approve the scheme, to be updated, to allow officers to explore matters such as the time frame for delivery and the means of achieving greater security over delivery of the restored listed buildings and grounds. In addition, Akkeron suggested more funding had become available for the project.

At the meeting of the 14th March it was explained that the review of the financial data had taken longer than anticipated but that it was hoped that a further two months would be sufficient to resolve these matters and to allow Historic England's Enabling Team to review the financial appraisals and mechanisms for securing delivery.

This report provides a further update following completion of the IVA.

### **Outcome of the IVA**

The IVA of the scheme has been undertaken by the same assessor as for the original approval. The assessor has, necessarily, worked closely with the Council and Akkeron.

In simple terms the IVA confirms that the scheme as originally devised, and as included in the Original Development Programme i.e. selling off enabling residential development in Zones A, C, and D to a third party developer, is no longer a viable proposition. Although the ODP secured an upfront capital receipt, which is an advantage in terms of getting works to the listed buildings carried out quickly and with some surety about delivery, the marginal viability coupled with the increased costs of refurbishment of the listed buildings mean that it is no longer fundable on normal commercial terms.

The assessor, who looked at a range of issues around delivery, confidence, timescales and access to funding streams, suggested three alternative options which could potentially deliver the scheme. These are:

**Option A:** This broadly follows the revised ODP submitted to discharge the relevant condition, but now includes increased upfront funding (£1.2m, as offered by Akkeron) to help mitigate concerns about the delay in restoring the listed buildings. This would allow a greater scale of protective works to be carried out than provided for in the initial discharge of conditions application.

This option involves the developer carrying out the development themselves rather than disposing to a third party and reinvesting the developer's profit into the refurbishment of the Mansion. This achieves in the region of an extra £3m pounds profit. It would however incur a significant delay in achieving the full restoration of the buildings as funding is reliant on construction, subsequent sales and the 'drip feeding' of profits into the development pot. This is likely to be a lengthy and uncertain process in terms of timescale.

The necessary link between implementation of the enabling development and delivery of the restoration proposals is eroded as the two cannot be carried out in tandem. Apart from initial works essential to arrest further decline of the listed buildings, the enabling development will need to be delivered in advance of the rest of the restoration proposals in order to fund that project.

The restoration of the Rotunda and Stables is reliant on achieving external funding on the back of a restored Mansion, which the assessor is reasonably confident is achievable.

**Option B:** This is similar to Option A but involves achieving external funding earlier in the process to reduce the delay in implementation of the enabling development and restoration of the mansion. It is likely that the repairs and refurbishment of the Rotunda and Stables would not be achieved until the end of the development. The assessor is again reasonably confident that this option would be achievable once the legal issues between the developer and the Council as landowner are resolved. It is clearly difficult to confirm funding options whilst the current legal situation prevails.

**Option C:** This looks afresh at the development strategy and identifies where the problems in funding and delivery occur. It concludes that the overall scheme would benefit from an alternative scenario for early delivery of residential development in Zone A, without the need to provide a replacement for the existing Indoor Bowling Club. This would help overcome the timing and financial implications on the scheme through the need to secure replacement of the existing Indoor Bowling Club, which is a requirement of the Development Agreement between the Council – as landowner - and Akkeron. Members

should note that the existing planning permission does not require (through planning conditions) delivery of a new indoor bowling club (or Orangery).

Under the terms of the Development Agreement, the 24 dwellings comprised within Zone A cannot be constructed until the Bowling Club is relocated. Under The new facility is to be constructed within the Hippodrome to the front of the Mansion. The costs of construction are high due to the sensitive and very public position the building would occupy and it has to be in place before the development in Zone A can proceed. This introduces significant delay and requires a large capital investment upfront which detracts from the speed and availability of funds to resolve the future of the at risk buildings.

There is provision in the Development Agreement for a payment to be made to the Council by the Developer in lieu of its replacement on site. Under the terms of the lease between the Council and the Bowling Club there is provision for the Council to give 6 months notice for development purposes subject to payment of a capital sum to compensate the Bowls Club for historic costs incurred on the original building.

The advantages of this revised scenario are significantly shorter timetables for restoration of the buildings and, if the site were disposed of to a third party, an earlier and additional injection of capital to fund more of the restoration works upfront. The assessor envisages that this might enable the works to the buildings to be complete within two years; but as importantly, it would allow far closer correlation between the implementation of the enabling development and restoration of the heritage asset, as more capital would be available early in the process to front fund the restoration proposals.

### **Need for S106 Agreement**

As part of all the proposed options, there is a need for a series of 'triggers' to tie packages of the enabling development to guaranteed stages in delivery of the restoration of the buildings and grounds. This would vary in detail depending on the option selected and delivery would be secured via a S106 agreement. Although greater clarity about interleaving between the implementation of the enabling development and restoration of the buildings and grounds has been requested from the applicants for some time, a draft document has only just been received and with insufficient time available to include an assessment of it in this report.

### **Preferred Way Forward**

Options A and B would, subject to securing external funding, deliver the restoration of the buildings and grounds. However both options will involve significant delay to the restoration of all the heritage assets. Whilst the additional external funding should be achievable, according to the IVA assessor, it cannot

be guaranteed. It also establishes a less straightforward correlation between implementation of the enabling development and the restoration of the heritage asset as the enabling development has to be built out to fund the restoration works. A staged relationship between the two elements can be achieved via the S106 agreement but there is an element of risk, particularly with the longer timescale envisaged under Option A.

Option C presents the most attractive proposition from a planning point of view; it would allow restoration works to begin more quickly and, if Zone A is sold on, could deliver a far more sizeable injection of capital upfront. A much closer correlation between the implementation of the enabling development and delivery of restored buildings and grounds is possible, subject to completion of a S106 Agreement.

Historic England are currently assessing the three options for delivery. The possible terms of a S106 agreement have not been subject to any scrutiny therefore a further period of time to identify a way forward is needed.

It is clear that the resolution of the future of Oldway is not purely dependent on a discharge of these conditions; but primarily requires a resolution of the legal differences between the Council as landowner and the Developer. Indeed, a resolution of the legal differences is necessary for any of the options to proceed. It is not possible to give a clear indication of the timescale that could be involved in resolving the legal differences. Furthermore, the way forward from a Planning perspective may to some extent be dictated by the way in which these legal issues are resolved.

Consequently, there is further time, before resolution of the legal issues, to discuss the options with Historic England and to fully resolve a watertight framework for delivery as part of a possible S106 agreement will not contribute to the delay in resolving the future of this site. Indeed, it is very important that Historic England provides formal advice in advance of a decision by the Local Planning Authority on this application.

### **Recommendation**

To defer a decision on the application until:

- a. There is further detail and refinement of Options A, B and C as outlined in this report;
- b. The views of the Historic England Enabling Team have been received, as its views are extremely important in informing the Council's decision;
- c. Appropriate heads of terms of a S106 agreement have been drawn up, for the preferred option, for consideration by DMC when making a decision on the application

## **APPENDIX 1**

### **Executive Summary from report to DMC on 9th March 2016**

*Applications to discharge of a range of pre-commencement and other conditions in relation to the planning and listed building applications to change the use of Oldway Mansion, the Rotunda and Stables to provide a Hotel and Spa were considered by DMC at its meeting of the 9th February.*

*Of particular significance were conditions relating to phasing which link the implementation of the enabling development (the 101 dwellings) to the restoration works to the listed buildings and grounds and secure an enforceable timeframe for delivery of these restoration works.*

*These are No's 3 and 4 related to P/2011/1020/PA and No 4 related to P/2011/1021/LB.*

*Condition 3 requires the applicant to 'adhere to the timetable for restoration of the buildings as set out in the outline development programme (ODP dated 6th August 2012) unless otherwise agreed in writing with the LPA'.*

*Condition 4 required (inter alia) the submission and approval of a detailed delivery programme (based on the ODP) for this phase of the scheme which identified key stages in the restoration of the buildings and grounds and provided a timetable for delivery of the whole project.*

*The condition was imposed to ensure that the scheme is delivered in its entirety, in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site.*

*The information to discharge these conditions was included in a revised Outline Development Programme (ODP) which sought to change the time frame and mechanism for delivery.*

*The executive summary of that report is appended which explains the key alterations to the ODP and its deficiencies.*

*In summary, concerns related to:*

- i) The extended time frame for delivery.*
- ii) The change in the delivery strategy whereby the capital receipt anticipated from the disposal of the enabling plots would not be delivered upfront but on a more piecemeal basis.*
- iii) The reliability of the financial appraisal of the project included in the IVA (Independent Viability Assessment) which underpinned the decision to*

*approve the applications given the increased restoration costs and erosion of the Fernham receipt. Whether this would lead to a need for additional enabling development to meet an increased conservation deficit is a critical issue from the LPA's perspective*

*Officers had recommended that the information submitted to discharge these conditions should be refused because it failed to ensure that the scheme would be delivered in its entirety in an appropriate manner and in a time frame that would secure the future of the listed buildings on the site and it would also fail to ensure that the Mansion, Rotunda, Stables and Banqueting Hall are restored in line with agreed details and their future secured as part of the hotel complex.*

*In addressing Members at the meeting of the DMC on 9th February 2016, the applicant raised a series of points that he wished to be taken on board. In summary these were:*

- i) That protective works would be carried out sooner than anticipated in the original ODP*
- ii) That the implementation of the enabling development themselves rather than through upfront disposal would deliver a greater profit that could be directly invested in the restoration of the listed buildings*
- iii) That only £3.5m would have been available in the form of a 'bond' due to the need to extract fees and the costs of relocating the bowling club from the anticipated £5m enabling pot.*
- iv) That greater monies have been committed to the project than anticipated in the original ODP.*

*The applicants also agreed to consider two key items which they had previously been reluctant to do.*

*These were the use of a joint account or replacement 'bond' to provide a similar level of security regarding the delivery of restoration works to that delivered via the 'upfront' capital receipt and to rerun the IVA to examine the financial robustness of the project and whether its delivery was feasible given the increase in costs and the erosion of the Fernham receipt.*

*On that basis, Members agreed to defer the decision for a period of one month to allow these two factors to be explored and whether any greater security about delivery of the restored buildings and grounds could be achieved.*

*Discussions were held with the applicant immediately following the DMC decision. Agreement has not been reached about the form that a replacement 'bond' could take although some progress was made.*

*It was agreed that the consultant who carried out the original IVA should be used to carry out the reappraisal. However, due to holiday arrangements it has not*

*been possible to carry this out in the time frame Members requested. A meeting has been set up for the 9th March to establish terms of reference and to take this forward. It will also enable the claims of increased investment to be properly analysed.*

*In view of this, Members are requested to allow a period of a further 2 months for this assessment to be carried out and for further discussion regarding the options around securing delivery of this project.*

**Recommendation**

*A further 2 months be allowed for a reappraisal of the IVA to be carried out and for further discussion regarding the options around securing delivery of this project.*

## **APPENDIX 2 ORIGINAL REPORT TO DMC ON 9TH FEBRUARY 2016**

### **Statutory Determination Period**

*These applications were submitted on the 18th August should have been determined by the 14th October. The delay is due to ongoing negotiations.*

### **Site Details**

*Oldway Mansion is a Grade II\* listed building formerly used as Council offices. The Rotunda and Stables are Grade II listed and in an extremely poor state of repair. All are currently vacant. They are set within a Grade II entry in the Register of Parks and Gardens. The site has the benefit of a series of related planning and listed building consents designed to achieve restoration of the buildings and grounds for hotel purposes.*

### **Detailed Proposals**

*These are applications to discharge various conditions in relation to the planning and listed building consents for the change of use of Oldway Mansion and the Rotunda from Council Offices to a Hotel with ancillary conference and spa facilities.*

*CN/2015/0081 relates to the discharge of conditions 3, 4, 8, 10, 11, 12, 13 and 14 pursuant to P/2011/1020/PA*

*CN/2015/0100 relates to the discharge of conditions 4 5 7 8 and 9 pursuant to P/2011/1021/LB.*

*Conditions 3 and 4 in relation to P/2011/1020 and condition 4 in relation to P/2011/1021 are of particular significance in terms of delivery of the project.*

*The remaining conditions are of a more technical nature and information sufficient to satisfy these has been submitted. These could be discharged under delegated powers as they do not go to the heart of the permission. The development could not however proceed unless all relevant pre commencement conditions are formally discharged.*

### **Summary Of Consultation Responses**

*Historic England has been consulted and a response is awaited.*

### **Summary Of Representations**

*None.*

### **Relevant Planning History**

*A scheme to deliver a Hotel and Spa in the Mansion, Rotunda and Stables funded by residential development within the grounds was approved by DMC in April 2012. The planning permissions were issued on the 24th August 2012.*

*Planning and Listed building applications to achieve this are:*

- P/2011/1020: Change of use of Oldway Mansion and Rotunda to hotel with ancillary conference and spa facilities. Approved: 24.08.12.*
- P/2011/1021: Listed building consent in relation to the above. Approved by Secretary of State: 10.10.12.*
- P/2012/1011: Change of use and restoration of Stables to hotel use: Approved 24.10.12*
- P/2012/1012: Listed building consent in relation to the above. Approved by Secretary of State: 11.12.12.*
- P/2011/0925: Development within the grounds of Oldway Mansion to provide 46 3 and 4 bed houses, new 4 rink bowling centre, reconfiguration of 6 tennis courts, new public car parking, restoration of historic gardens and landscape, construction of 55 sheltered units. Approved 12.09.12*

**Key Issues/Material Considerations**

*The key issue is whether the information submitted to discharge conditions 3 and 4 of permission P/2011/1020/PA and condition 4 of permission P/2011/1021/LB which relates to the submission of a revised outline delivery programme (ODP) for the project as a whole delivers adequate confidence about delivery of the restoration package for the Mansion, Rotunda and Stables.*

*These conditions were of significance in Members reaching a determination on the parent applications. They tied implementation of the scheme to the timetable and delivery strategy embodied in Development Agreement between the Council as landowner and the applicant.*

*For this reason it is considered appropriate that any changes to the ODP and the implications this has in relation to delivery are considered and determined by Development Management Committee.*

**Background:**

*In 2007 an informal brief was published to provide guidance about the options for securing investment in the site. This suggested hotel development in the key listed buildings with limited residential development within the Registered Park and Garden to fund restoration of the declining heritage asset.*

*Separate planning and listed building applications were submitted in August 2011 in relation to the change of use of the main buildings to a hotel complex and the inclusion of residential development in the wider grounds. The applications were agreed in principle by DMC in April 2012.*

*The residential development within the Registered Park and Garden comprised 'enabling development' and was only approved on the basis that it was necessary to secure the restoration of the Mansion, Rotunda, Stables and grounds.*

*The enabling development comprised the development of Fernham to provide 55 sheltered units, which is now complete, and within the grounds, the provision of 46 dwellings in the less sensitive parts of the Registered Park and Garden. These are Zones C/D adjacent to Oldway Road and Zones A on the site of the Indoor Bowling Club.*

*The scheme was required to meet the key tests in Historic England's document 'Enabling Development and the Conservation of Significant Places' (2008). This requires that:*

- The 'achievement of the heritage objective is securely and enforceably linked' to the enabling development so that delivery is guaranteed and the LPA is not left in a position where the enabling development is built out but the benefits it was approved to pay for are not secured. This can be done through a S106 agreement, use of a bond or through the use of conditions related to phasing agreements or triggers on occupation.*
- The enabling development also has to be shown to be the minimum needed to secure the restoration of the heritage asset. This requires a detailed financial assessment of the costs of restoration balanced against the value of the project to ensure that whilst it is indeed the minimum required to secure the heritage asset there is sufficient value to ensure that the project in its entirety can be delivered and the LPA won't be faced with demands for additional development to fund increased costs. This was confirmed through an Independent Viability Assessment (IVA) and Members were briefed accordingly.*

*When the decision was made to approve the development on the site, there was an Outline Development Programme (ODP) which was embedded in the Development Agreement between the Council as landowner and the applicant. This was considered to meet these key tests and to provide adequate security about delivery of the project.*

*In summary, it secured the timely restoration of the buildings against a defined timetable and crucially secured an upfront capital receipt of £5m from disposals of the residential plots to be placed in a jointly managed account. It was sufficient to cover about 2/3rds of the estimated costs of restoring all the listed buildings and about half of the cost of the overall project. This acted like a bond and provided security about delivery of the scheme. It meant that the construction of enabling development could not commence until the money to fund restoration was delivered to the joint account and that necessary restoration works to the*

*listed buildings could commence quickly.*

**1. The use of conditions to secure delivery of the wider project.**

*Historic England's guidance in relation to enabling development recommends that assets should be repaired before the enabling development commences or the funds necessary to do so deposited as a bond. In this case, the bond was to be secured via the Development Agreement.*

*Phasing conditions were therefore applied to all the permissions in relation to the site to tie them together and to ensure that the scheme was delivered in accordance with the approved site-wide ODP and that any changes to it would have to be agreed with the LPA in writing.*

*A pre commencement phasing condition applied to the residential development (P/2011/0925) was not discharged in advance of works commencing in respect of the sheltered flats on Fernham. It was not considered that enforcement action should be taken as commencement was broadly in line with the ODP. The funding derived from the sale of the site was secured and it did not appear that there was any demonstrable harm arising.*

*However, no further development on the site can proceed without this condition being discharged in view of the changes now proposed to the ODP. A condition was also imposed on all relevant consents to secure weatherproofing of the Stables within a defined time frame as this was the most at risk of the buildings. These weatherproofing works have not been commenced.*

*The applicants have not sought to challenge the conditions attached to the last planning permissions and listed building consent. The opportunity for challenge of those conditions has long since passed. It can be concluded that the applicants considered the conditions to be reasonable and acceptable.*

**2. Phasing Conditions in relation to the applications for change of use of the Mansion, Rotunda and Stables to hotel use.**

*The relevant 'phasing' conditions in relation to the applications for conversion of the Mansion, Rotunda and Stables to Hotel use are numbers 3 and 4 pursuant to P/2011/1020/PA and number 4 in relation to P/2011/1021/LB.*

*For information, the specific wording of the conditions and the reasons for imposing them is provided at Appendix A.*

*These applications involve a revised timetable and delivery strategy for implementation of the project and additional information to satisfy the Conservation Management Plan. This proposed approach changes significantly the anticipated guarantees around delivery.*

*Information to discharge these conditions was submitted days before the applications became time expired despite many requests to the applicants to address the matter, since it became apparent that timetables were not capable of being met.*

*Immediately following submission, works were carried out on site with the intention of preserving the permissions in relation to the future use of the Mansion, Rotunda and Stables in perpetuity.*

*If the pre commencement conditions are discharged, this could retrospectively legitimise the alleged start. This would need to be established via a Certificate Of Lawful Development.*

*If the LPA is unable to discharge the conditions, the applications to change the use of the Mansion to a hotel will become time expired, if the acceptability of these applications is not subsequently secured through a planning appeal.*

### **3. Why changes to the Phasing Conditions require careful consideration.**

*The phasing conditions are important as they tie restoration of the heritage asset to the ODP. It is necessary to critically assess whether the revised phasing strategy delivers similar guarantees about securing restoration.*

*Condition 3 required the applicant to 'adhere to the timetable for restoration of the buildings as set out in the outline development programme (6th August 2012) unless otherwise agreed in writing with the LPA'.*

*Condition 4 required (inter alia) a detailed delivery programme (based on the ODP) for this phase of the scheme which identified key stages in the restoration of the buildings and grounds and provided a timetable for delivery of the whole project.*

*This information is required, as explained in the reason accompanying the condition, to ensure that the scheme is delivered in its entirety, in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site.*

### **4. How does the Revised ODP compare to that referred to in the relevant conditions?**

*The revised ODP is of concern because it does not deliver the restoration of the Mansion, Rotunda, Stables and grounds in the time frame originally set out when permission was granted and there have been fundamental changes to the delivery strategy and financial position the decisions were predicated upon.*

*These matters have to be taken into account in dealing with conditions that seek approval for an alternative programme of works.*

*A. Changes to Timeframe*

*In terms of time frame, the 'approved' ODP indicated that leases would be drawn down on the residential enabling development in January 2013 so the sites could be disposed of to realise funds for the works to commence on the restoration of the listed buildings.*

*Contractors would be appointed in April 2013 to start work on the Mansion in July 2013 and the Rotunda in October 2013 with completion in October 2014. The position in relation to the Stables was complicated by the need for bat surveys but a condition was imposed to ensure that the hotel use could not commence in the Mansion and Rotunda until the restoration of the Stables (for purposes ancillary to the hotel) was substantially complete.*

*The revised ODP, leaving the future of the Stables unresolved, would be at variance with the requirements of this condition.*

*There has been a significant delay in the start of the works. The update to the Conditions Survey 2014 (submitted to satisfy in part the requirements of condition 4) shows that this has led to a substantial increase in the number of defects in all of the listed buildings. This has increased restoration costs by 26% and any further delay in urgent repairs will exacerbate this.*

*The revised ODP which originally accompanied this application, involved a significantly extended time frame for delivery and the implementation of 'priority works' to the Mansion only (the Rotunda and Stables were to be mothballed).*

*These 'priority works' comprise a detailed schedule of remedial works.*

*Further, these works were only to be completed when the 'enabling development' in Zones C/D and A within the gardens was constructed and available for sale. This introduced an unacceptable delay to necessary protective works being carried out and carried a risk that the houses could be built without any works carried out to secure the future of the listed buildings.*

*Following several months of discussions the revised ODP has been amended to secure the implementation of all the 'priority works' to the Mansion prior to the sales of the first tranche of enabling development in Zones C/D (providing 22 homes) along with undefined protective works to the Rotunda and a contract for weatherproofing the Stables.*

*Whilst this is an improvement on what was originally submitted, it is all that can be guaranteed through the revised ODP. This revision explains that the works to*

*convert the Mansion to a hotel will rely on the sales of residential dwellings comprised within zones C/D and A along with possibly quite substantial loans. The works to restore/convert the Rotunda and Stables will rely on mortgaging the hotel when complete. The Applicant is not able to provide guarantees regarding the availability of this additional funding. This provides considerably less certainty than before that the listed buildings and Registered Garden will be repaired and renovated and as such fails to meet both the Council's planning requirements and Historic England's enabling development requirements.*

*It should be noted that when the decision to approve the scheme was granted in 2012 a significant proportion of the 'priority works, were considered unnecessary, except in relation to the Stables. The listed buildings are now more 'at risk' than before and the 'priority works' are now all necessary, which is a key consideration.*

*Whilst the improvements negotiated to the revised ODP will ensure that the remedial works to the Mansion might at least begin more promptly, that has to be balanced against the increased uncertainties over delivery of the whole project.*

*B. Changes to Development Strategy.*

*Much of the concern regarding delivery stems from the proposed changes to the development strategy. The approved ODP involved the upfront disposal of the enabling development to third party developer which would have secured substantial capital receipts of around £5m to be held in a jointly managed bank account. This would have acted as a 'bond' to secure delivery. It meant that enabling development could not commence until the money was secured and it would have allowed works to proceed quickly on protective works and towards delivering a restored Mansion, Rotunda and Stables. Prompt delivery is an important factor in dealing with remedial works to listed buildings, especially buildings of the quality of Oldway Mansion.*

*Whilst additional funding would have been needed to complete the overall project, the Independent Viability Appraisal (IVA) indicated that a significant proportion of the costs of restoration of the listed buildings would have been covered by the size of this receipt and having this 'banked' makes raising additional funding if required a less risky proposition.*

*The approach to delivery embodied in the approved ODP was validated through the IVA.*

*The revised ODP effectively deletes the bond as the applicants have decided to develop the housing plots themselves rather than dispose of them 'upfront'. This results in a significant delay in achieving any capital receipt as the funding is reliant on individual sales of completed dwellings. The link that existed between the enabling development and the prompt implementation of restoration works to*

*the historic buildings is thus seriously weakened.*

### **C. Changes to the Financial Position.**

*The financial position in relation to the Oldway development is also relevant because condition 4 was imposed “To ensure the scheme is delivered in its entirety, in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site”.*

*If the proposed development programme does not contain sufficient safeguards to ensure that restoration works are delivered promptly, the LPA has no assurance that delays will not lead to further increases in costs which could lead to a failure to complete the renovation works or pressure for additional dwellings on the site.*

*The factors which informed the IVA in 2012 have, as a result of the matters described earlier in this report changed, these are rising costs, further deterioration in the buildings and the fact that approximately £1.3 million of the £2.1 million secured from the sale of Fernham has been spent on fees. The IVA, which thoroughly assessed all development costs indicated that only £1.2 million was needed to cover the fee requirements for the entire project.*

*Historic England only recommended support for the scheme on the basis that the IVA confirmed the level of enabling development was the minimum needed to achieve the stated goal of restoration and was based on realistic and achievable financial modelling. Whilst this was demonstrably the case in 2012, and substantially underpinned Members’ decision to support the scheme, confidence in its conclusions can no longer be assured given now many of the inputs to the assessment have changed.*

*In view of this, it is considered that the IVA should be re assessed to ensure that Historic England’s enabling development tests can still be met and particularly that no further development will be required to fund the increased scale and costs of restoration works. The applicants question the need for this and have not confirmed they will cover the cost of such work (as is necessary to meet the Council’s policy on viability assessment work).*

### **5. Other matters.**

*The timing of restoration of the grounds, as required by the phasing condition is not addressed other than being carried out in ‘pockets of relevance’ which is as described in the original applications.*

*The overall scheme for the conversion of Oldway to hotel use included a range of other requirements which formed part of the ODP such as replacement registry office, café, and tennis courts, restoration of the Grotto /historic gardens and new*

car parking. These matters are not addressed as part of this submission other than by reference to dates.

There are no particular planning reasons to insist on guarantees regarding delivery of the Registry office, tennis courts or café. However the issue of delivery around the historic garden and grotto is very much of concern.

## **6. Is there a way forward?**

It was made clear to the applicants that for a revised ODP to be acceptable there needed to be a greater interleaving between the implementation of the enabling development and the delivery of the restored Mansion, Rotunda and Stables for hotel use and that this needed to be related to defined enforceable triggers rather than on a phasing programme that relied largely on dates.

There is no means of enforcing compliance unless key outcomes are tied to restrictions on occupation, sales, letting of contracts or there is a bond available to the LPA to effectively mitigate any default.

The applicants have been advised what key outcomes are essential and how these can be tied to defined stages in the implementation of the enabling development. Whilst some suggestions have been taken on board, such as completion of specified protective works prior to any sales of the new housing, this still provides no surety over the delivery of the hotel or the future of the Rotunda or Stables beyond a series of anticipated dates and hoped for outcomes.

The applicants do not appear to understand the Council's reservations, as expressed by officers, about securing delivery against dates as the previous ODP was partly reliant on a time frame for implementation.

They find it difficult to understand why a more robust stance should be taken now. There are three reasons for the LPA's stance.

Firstly, and most importantly, the approved ODP secured a substantial upfront capital receipt, nearly half of the necessary funding for the entire project and a significant proportion of the restoration costs of the listed buildings as confirmed by an IVA. It provides confidence that the scheme will deliver. In the absence of this comfort, it is necessary to be more vigilant over delivery and to try and secure a similar outcome by alternative means.

Secondly, the implications of relying heavily on an unenforceable timetable are now apparent from the current position on the site. The Development Agreement (through which the Council as landlord could exercise control) cannot now, for various legal reasons, be relied on.

*Finally, the applicants have been advised that it would be useful to have a comparable understanding of the financial capacity of the scheme through a re run of the IVA given the changes in circumstances. The applicant is reluctant to engage in this.*

*However, discussions have now stalled and there is a need to reach a determination on the matter given the lapse in time since submission of the details and lack of progress in negotiations.*

## **7. Conclusion.**

*Officers have secured improvements to the revised ODP which will ensure that all the 'Priority Works' are carried out prior to the sales of the first tranche (22 houses) of enabling development.*

*However against this has to be balanced the fact that it is only these works that can be guaranteed and conversion works to deliver the hotel use are not secured. The future of the Rotunda and Stables is also uncertain. As it was the rescue of these particularly at-risk buildings that underpinned the original approval this is clearly a retrograde position to be in. The delivery of restoration of the gardens is similarly unresolved.*

*The applicants will argue that the original ODP did not fully guarantee these matters however the availability of a substantial bond up front provided a significant degree of comfort.*

*This contrasts sharply with the position should the revised ODP be accepted. If this was approved the speed and certainty of delivery would be reduced; the link between the enabling development and delivery of the restored historic buildings would be eroded and the more dubious viability and uncertainty regarding funding sources could expose the Council to a risk of pressure for more enabling development to prop up the project at a later date.*

*These concerns could be mitigated by the applicants agreeing to a greater degree of interleaving between the restoration of the heritage asset (buildings and grounds) and the implementation of the enabling development and exposing the revised financial components of the scheme to a re-run of the IVA.*

*This was pivotal in informing Members views in relation to the original approval and any changes to costs, values or the development strategy to be used should be subject to a similar level of scrutiny.*

*The options available to Members are to:*

- *Defer the decision on the matter and the applicant be asked to provide more comfort regarding delivery. It is however unlikely to produce a*

*change in the outcome.*

- *Refuse the application for reasons relating to uncertainty about delivery of the project. However due to the timing of these submissions the applications for planning permission and listed building consent would become time expired unless the matter was subsequently approved on appeal. This has ramifications for the project as a whole.*

## **8. Recommendation**

*Officers advise that the information submitted to discharge Conditions 3 and 4 pursuant to P/2011/1020 and condition 4 pursuant to P/2011/1021 in the form of a revised ODP should be refused because it fails to ensure that the scheme is delivered in its entirety in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site and it fails to ensure that the Mansion, Rotunda, Stables and Banqueting Hall are restored in line with agreed details and their future secured as part of the hotel complex in line with policies HE1 and SS10 of the Adopted Torbay Local Plan.*

### **Relevant Policies**

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