

Section 11

Enabling Development

11. ENABLING DEVELOPMENT



ARM Architects; Overall proposals for Kilmahew Estate
(Planning Application Drawings 576-301A Dated Aug 2003)



ARM Architects; Indicative Housing Layout
(Planning Application Drawing 576-301 Dated Aug 2003)

The above illustrations are taken from the current planning application to show the nature of the enabling Development proposed by Classical House. Note that the application scheme proposes formation of house plots and associated infrastructure only, and excludes design and construction of the houses themselves.

- 11.1 The predicament of St Peter's Seminary in its deteriorating state has naturally led to consideration of Enabling Development as a potential generator of funding to assist in the consolidation and/or rehabilitation of the property. This section of the report considers the implications of this possibility.
- 11.2 The problem which enabling development typically seeks to address is that the cost of maintenance, major repair or conversion of a building is greater than its resulting value to its owner, or in the property market. This means that a subsidy to cover the difference – the 'conservation deficit' – is necessary to secure its future. The concept of enabling development is that development which would otherwise be contrary to established planning policy may be permissible if it can be demonstrated that the benefits it would bring to securing the future of a heritage asset at risk outweigh the harm that would be caused by the development itself. The likelihood of some harm resulting is intrinsic. The issue to consider is whether the benefit (and principally the financial benefit) is sufficiently substantial and secure to compensate for it.
- 11.3 Development that brings heritage assets into optimum beneficial use which is in accordance with policy as defined in the relevant statutory development plan is not 'enabling development' in the technical meaning of the term. (The term 'enabling development' was confirmed in England as a legitimate planning tool in 1988 in a Court of Appeal judgment upholding a planning consent which authorized office development as a means of generating otherwise unobtainable funds for the improvement of the Royal Opera House.)
- 11.4 The circumstances, form and scale of enabling development can vary widely, and it should be noted that it need not even be located at the site of the heritage asset to be benefited, but can take place on a remote site in the same ownership.
- 11.5 Enabling development's defining characteristics are that it is contrary to national, regional or local planning policy and that the gain that would accrue from contravening such policies would subsidize a public benefit that could not otherwise be achieved. For this reason financial issues are central to its consideration. Criteria for the application and acceptability of enabling development are clearly defined in conservation policy and guidance, and these are briefly summarized below. (Refer: '[Enabling Development and the Conservation of Heritage Assets](#)'. [English Heritage, 2001, p.14](#))

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- The enabling development will not materially harm the heritage values of the place or its setting, and also meets all of the following criteria
- It avoids detrimental fragmentation of management of the place
- It will secure the long term future of the place, and where applicable, its continued use for a sympathetic purpose
- It will meet the costs of resolving problems arising from the inherent needs of the place, rather than the circumstances of the present owner, or the purchase price paid
- Sufficient financial assistance is not available from any other source
- It is demonstrated that the amount of enabling development is the minimum necessary to secure the future of the place
- Its form minimizes harm to other public interests, particularly conflict with other planning policies
- The public benefit of such enabling development decisively outweighs the disbenefits of breaching other public policies

11.6

It may be inferred from the above criteria that the default presumption is against enabling development. However, if it is decided that a scheme of enabling development meets all the above criteria, the guidance goes on to specify that planning permission should only be granted if -

- The impact of the development is precisely defined at the outset – normally requiring the granting of full rather than outline planning permission
- The achievement of the heritage objective is securely and enforceably linked to it
- The heritage asset is repaired to an agreed standard, or the funds to do so are made available as early as possible in the course of the enabling development, ideally at the outset and certainly before completion or occupation
- The planning authority closely monitors implementation to ensure the obligations are fulfilled.

11.7

The current Planning Application scheme for enabling development
The current listed building application in respect of works to the seminary buildings and other elements of the estate submitted by The Archdiocese of Glasgow and Classical House Ltd is linked to a planning application which includes proposals for enabling development in the form of the provision of infrastructure to serve a series of 28 individual house plots for

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subsequent development by an independent housebuilder. The scheme includes construction of a new site entry road from Carman Road and new access roads to serve the various plots, which would be located within the former walled garden and orchard, on the old tennis court and, further north, onto a currently open area of hillside that formed part of the East Park of Kilmahew House, these areas forming what has been identified on historic maps as The Triangle of Milndovan. (See Appendices 12.1 Site History, and 12.2 Archaeological Assessment Report.) It should be noted that the proposal includes only the formation and marketing of the house plots and associated infrastructure, and excludes design and construction of the houses themselves. It is proposed that this would be undertaken by a private housebuilder, to whom accordingly the proceeds of the property disposals would also accrue.

- 11.8 The application also includes for the separation and private disposal of the two original gatehouse plots, with the Kilmahew estate entrances being amended accordingly; the west entry being re-located slightly north of its existing position to skirt the gatehouse garden, the south entry being reformatted as a site road branching off the new vehicular entrance on Carmen Road, as noted above. (See illustrations of proposals by ARM Architects, drgs 576-301/301A).
- 11.9 Our brief includes the requirement (refer Appendix 12.8, Q9) to compare the amount of funds raised by this scheme of enabling development with 'the costs of consolidation established by this exercise' – (ie. the Stabilized Structure Option) - to identify any shortfall, and these figures, which have been updated to reflect current costs and scope of work, are reported elsewhere in this study. (See Section 10 – Review of CRGP Cost Plan). According to policy guidance it would therefore be necessary for a determination to be made as to whether the net funds yielded from this proposal are sufficient to pass the financial test indicated above – ie. "meeting the costs of resolving problems arising from the inherent needs of the place, etc." The figures reported in Section 10.8 confirm that this is not the case.
- 11.10 Decision makers will likewise need to determine whether the proposed scheme meets the series of test posed by the criteria.
- 11.11 1. Will the enabling development materially harm the heritage values of the place or its setting ? The proposed enabling development would occupy the promontory above the confluence of Kilmahew

and Wallacetown burns, within the former walled garden, on the tennis court and across part of the East Park. It is understood that the planning and conservation authorities have agreed that these are the most suitable areas on the estate if enabling development is to be considered at all. At the same time, as the above locations have all been identified in the Assessment of Significance (Chapter 3) and Archeological Assessment Report (Appendix 12.2) as having heritage values, whether in terms of archeological interest, evidence of their former use (in the case of the walled garden the remaining glasshouses – which would be removed - and evidence of the possible previous existence of a medieval settlement, in the case of East Park, an undisturbed arable field) or as part of a significant landscape view, it will be necessary to estimate the 'material harm' to these values. Insofar as these areas represent supporting elements of the former Kilmahew House, aspects to consider would also include the extent of impact on the integrity and understanding of the estate as a whole, notwithstanding the loss in 1995 of the original house itself. (Refer : Historic Scotland - Memorandum of Guidance 1998, section 8, et.al.) In terms of visual impact it would be necessary to assess the effect of development on the promontory, and how effectively development inside the walled garden would be contained by the enclosure itself. The visual impact of development in the East Park would need to be assessed in the light of its potential concealment by existing or new planting.

- 11.12 Issues relating to loss of habitat and biodiversity (parts of the site being registered as a Site of Importance for Nature Conservation) would also have to be taken into account, though commentary in the application landscape proposals refers to measures to address this. The introduction of a new estate access arrangements (noted above) would need to be evaluated in relation to impact on the significance of the original estate entrances being marked and 'guarded' by its two lodges.
- 11.13 The form and architectural character of the development itself - other than what may be interpreted from the series of building footprints on the proposed layout plan - is difficult to evaluate given the exclusion of detailed architectural design from the application. It would however be relevant to assess whether the form and character of proposed dwellings are specifically tailored to the circumstances of their respective settings, which themselves have a variety of differing landscape characteristics.

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- 11.14 The overall test to be met is whether the benefits claimed for the development would outweigh any material harm. The evaluation would entail consideration of the extent of compensating financial benefit in relation to the totality of the harm. This is reported in the cost section of this study, (Section 10), but see also below, 9.
- 11.15 2. Will the enabling development also meet all of the following criteria ? These are considered individually in turn, as follows.
- 11.16 3. Will it avoid detrimental fragmentation of management of the place ? The development would segregate and privatize three sections of the Kilmahew Estate from the estate as a whole (ie. the area of the new housing together - which in turn would presumably become further subdivided into its constituent plots – together with the plots of the south and west lodges). It is also suggested that the country park is transferred to separate ownership from that of the seminary complex itself, (respectively to the Cardross Trust and the St Peter's Building Preservation Trust, Supporting Planning Statement, para 7.9, p.47). Whether this fragmentation would be detrimental (or conversely beneficial) to 'management of the place' would need to be established through detailed assessment of the capacity of the prospective owners to undertake their respective responsibilities and confirmation of the detailed operational arrangements. One aspect of this fragmentation which requires specific clarification is how the introduction of the new housing would provide a 'stabilising and security presence' as is claimed, (Supporting Planning Statement, para 8.5, p.49) when it is to be effectively contained within its own discrete enclave.
- 11.17 4. Will it secure the long term future of the place, and where applicable, its continued use for a sympathetic purpose ? The contention of the Supporting Planning Statement (June 2004) that the 'limited amount of enabling development is considered to be sufficient to facilitate not only the stabilization of St Peter's College but also the rehabilitation of Kilmahew Estate as a Country Park' (Appendix 4 3.04) would need to be tested by the comparison of cost estimates for the stabilization works with funds potentially raised by the enabling development, as reported elsewhere in this study. The position on this is as already stated, but it is noted here that policy would not justify the use of enabling

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development yields for the rehabilitation of the Country Park only, with no benefit to the listed buildings.

- 11.18 5. Will it meet the costs of resolving problems arising from the inherent needs of the place, rather than the circumstances of the present owner, or the purchase price paid ? This test can be considered by reference to the Cost Summary, Section 10. An attendant concern described in the Policy Statement (p.8) highlights cases where the enabling development 'delivered the harm but not the benefit, leaving matters worse than before'. This indicates it would be necessary to establish whether sufficient funding to make up for any shortfall from the development is absolutely secure before any commitment is made on the development itself.
- 11.19 6. Is sufficient financial assistance is not available from any other source ? At the time of undertaking this study it is not known whether sufficient financial assistance is available from any other source or combination of sources. The Archdiocese has advised of various endeavors over the years to attract interest in the buildings including the potential for funding from Historic Scotland. Its inclusion in the Scottish Civic Trust Buildings at Risk Register as a means of indicating the need for funds is noted elsewhere in this report. Part of the purpose of this study is indeed to re-stimulate interest in St Peter's Seminary and its current predicament, and encourage systematic enquiry to establish whether financial assistance may be available from any other sources. The recent inclusion of St Peter's Seminary on the World Monument Fund Watch List 2008 is surely a new catalyst in this context, which needs to be furthered explored.
- 11.20 7. Has it been demonstrated that the amount of enabling development is the minimum necessary to secure the future of the place ? This test is intended to limit the extent of enabling development to that which is just sufficient to secure the heritage asset and thus prevent excessive development for its own sake. As the amount of enabling development that is being proposed is insufficient to secure the future of the place it is clear that the minimum criterion is not applicable.
- 11.21 8. Its form minimizes harm to other public interests, particularly conflict with other planning policies. To deal with this test it would

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first be necessary to identify the 'other public interests' that might be harmed, and then consider the extent of any such harm. In this case an aspect to be evaluated would be the segregation of an area of approximately 4 hectares, which would otherwise remain a part of the country park, no longer contributing to the public amenity. The extent to which the proposed development impacted on areas of the estate that did remain open to the public would also need to be determined through evaluation of the design in its context. Issues to be examined would include questions of intervisibility of the new housing development with its historic context and its impact on any significant views, including those to and from the listed buildings, the efficacy and compatibility of new planting, retention of historic pathways including, for example, the route over the northern side of the East Park linking Kilmahew with Wallacetown Glen, etc. These matters and various suggestions for mitigation are discussed in some detail in the Supporting Planning Statement, Appendix 4. It would be for the local planning authority to evaluate the proposal in the light of any other relevant planning policies.

- 11.22 9. The public benefit of such enabling development decisively outweighs the disbenefits of breaching other public policies
The extent of dereliction of St Peter's has made the subsidy test especially severe in achieving sufficient funding to deliver 'the public benefit' of repair and restoration of the heritage asset. If the anticipated yield could be shown to completely or very substantially meet the repair costs then it might be argued that the public benefit of the enabling development decisively outweighed the disbenefits. The question as to whether a lesser yield would still constitute a justification for enabling development could only be answered by weighing the costed benefit against the perceived harm.
- 11.23 If it is decided that a proposed scheme of enabling development meets all the above criteria, the guidance goes on to specify that planning permission should only be granted if -
- 11.24 The impact of the development is precisely defined at the outset – normally requiring the granting of full rather than outline planning permission.
As noted above, the current application proposals relate only to the provision of enabling infrastructure and formation of 28 building

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plots and exclude detailed design of the intended dwelling houses themselves, responsibility for which it is understood would be left to an (as yet unnamed) private housebuilder. (Ref. Supporting Planning Statement, para 4.4) The congruity of the proposal with its setting is the subject of correspondence between the planning authority and the applicant's agent - (ref. Argyll & Bute letter, dated 6th September 2006) It is therefore not clear from current available information as to how the quality of the proposed enabling development is to be effectively secured as part of agreeing the predisposing principle of the proposed enabling development as would be necessary in order to meet this test.

- 11.25 The achievement of the heritage objective is securely and enforceably linked to it
The Supporting Planning Statement makes reference to the establishment of a Section 75 Agreement in relation to the proposed enabling works. Various considerations would need to be checked and safeguarded including that the agreement is sufficient, enforceable, and binding upon all the relevant parties. In the latter connection a typical consideration in such circumstances is that the obligation to deliver the heritage benefit 'runs with the land' to ensure that delivery of this benefit is not lost through transfer/s of ownership that may be part of the enabling development process.
- 11.26 The heritage asset is repaired to an agreed standard, or the funds to do so are made available as early as possible in the course of the enabling development, ideally at the outset and certainly before completion or occupation
An 'agreed standard' of repairs to the heritage asset has yet to be established. It may be noted that these requirements should also be secured through legal agreement to ensure delivery of the heritage benefits prior to progress or appropriate phasing of the commercial development and also to ensure that the required outcome will be guaranteed through a surety in circumstances of default.
- 11.27 The planning authority closely monitors implementation to ensure the obligations are fulfilled.
It is assumed that in the event of a scheme for enabling development being approved the local planning authority will mobilize sufficient resources to satisfy itself that all the stated obligations and requisite works are carried out to an approved standard.

11.28

Important Note

Whilst the above commentary regarding enabling development is specifically related to the proposed scheme submitted with the current planning application, it should be noted that the concept of enabling development is generic in nature and that the various tests examined above would need to be applied to other potential schemes not yet formulated or specifically covered by this report.. Aspects to be considered would include other opportunities for potential enabling development both on site and in other potential location/s (if any) within the Archdiocese's ownership. Any such schemes would of course need to be considered in relation to their potential impact on the heritage asset having full regard to the various heritage values identified. It could also be noted here that consideration of such development should also ideally include types that might complement a scheme for re-use of the seminary complex, providing for functions that might be difficult to assimilate within the listed buildings themselves.

In other words Enabling Development, if appropriately and imaginatively conceived, may offer positive benefits to the conservation of the historic asset.