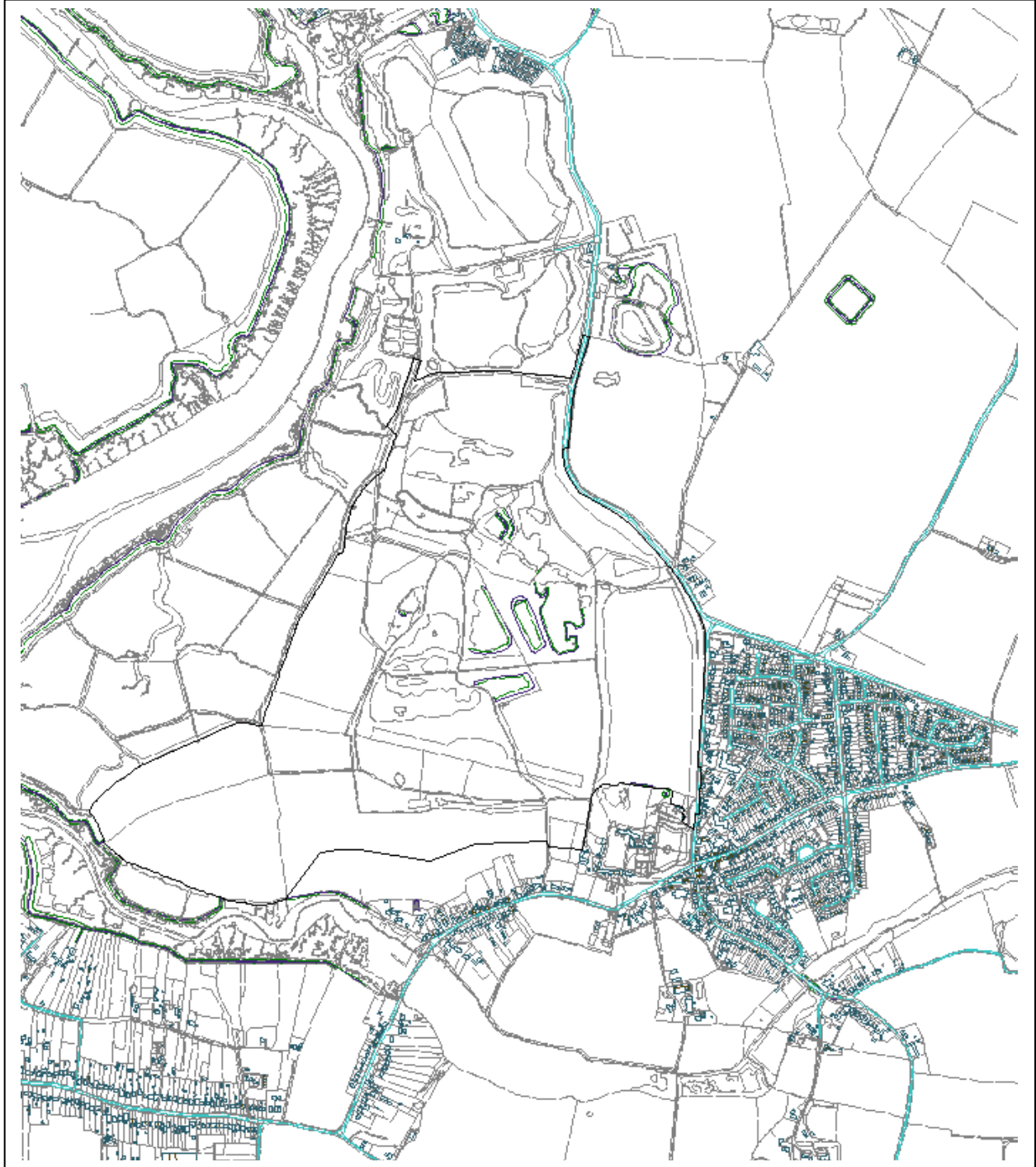


PLANNING COMMITTEE

12TH MARCH 2019

REPORT OF THE HEAD OF PLANNING

A.2 BUSINESS STRATEGY – ST OSYTH PRIORY, ST OSYTH, CLACTON ON SEA, CO16 8NZ



DO NOT SCALE

Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

Application: 16/00671/FUL &
16/00656/FUL

Town / Parish: St Osyth

Owner: St Osyth Priory Estate Limited

Address: St Osyth Priory, The Bury, St Osyth, Clacton on Sea, Essex CO16 8NZ

Development: Submission of business strategy in accordance with paragraph 4.3 of Part 1 to Schedule 1 of the S106 agreement dated 14th March 2018

1. Executive Summary

- 1.1 The purpose of this report is to determine whether the Council approves the draft Business Strategy for restoration of buildings at St Osyth Priory. The report recommends that the Business Strategy is not accepted and gives reasons for refusal and sets out as an alternative what would be required for a Business Strategy to be acceptable.
- 1.2 The report sets out the key provisions of the S106 agreement relating to this decision, summarises the submitted business strategy and assesses its content. It concludes that no evidence has been produced that the Business Strategy in conjunction with the Building Preservation Trust, being the St. Osyth Priory and Parish Trust and does not show that there is a realistic prospect of meeting the underlying purpose of the requirement for a business strategy.
- 1.3 As required by the S106 agreement, the report sets out what alternative approach would be appropriate. It explains that the strategy should be a pragmatic bespoke plan that removes all references to estate-wide conservation deficits and focusses on grants, loans or enabling development directed as addressing the needs of the individual Additional Listed Buildings or groups of those buildings on a case by case basis.
- 1.4 Tim Sargeant, City & Country confirmed via email on 16th February 2019, that the Business Strategy has been prepared on behalf of the Owners by City & Country, who have worked with the Owners and the Trust to develop their individual business strategies that have been combined into the Business Strategy document. It is asserted that the document submitted to the Council is:
 - The formal Business Strategy, upon which approval is sought in accordance with Section 4.3; and
 - has been prepared in conjunction with the Trust,

The document was originally submitted to the Council as a final draft.

- 1.5 In the absence of evidence that the strategy has been prepared in conjunction with the Trust and on behalf of the current owners of the Priory, officers have confirmed that it is not accepted that the submitted document is a qualifying business strategy. It follows that the Council does not accept that the dispute resolution clause can be triggered.
- 1.6 Officers agreed to report the submitted Business Strategy to the Planning Committee including reasons for the decision recommended, which are as set out in this report.

Recommendation:

That the submitted Business Strategy is not approved because:

1. The Council is not satisfied that the Business Strategy has been prepared in conjunction with the Trust as required by the Agreement and therefore is not a qualifying Business Strategy.
2. Without prejudice to 1, the Business Strategy contains neither realistic nor viable proposals to secure the restoration of the Additional Listed Buildings (specified in the Section 106 Agreement) within the relevant 10 year period and therefore has not shown it can deliver on its essential aim under the Agreement;
3. This is because it is reliant upon enabling development proposals of unidentified scale and location justified by reference to a claimed Conservation Deficit of a minimum of £26M which is only partly related to the restoration of the Part 3 Buildings. Further, the scale of enabling development and / or public subsidy inherent in this approach appears out of proportion to the public benefits secured and would be unlikely ever to be sanctioned. It is therefore an approach which is neither realistic nor viable in practice.
4. As has been consistently maintained by the Council in meetings throughout 2018, the approach of this submitted Business Plan should be discarded in favour of a pragmatic, bespoke Business Plan which excises all references to estate-wide Conservation Deficits and focuses on grants, loans or enabling development directed at addressing the needs of the individual Part 3 Buildings or groups of those buildings on a case by case basis.

The Council's proposed alternative strategy:

Further proposals for enabling development for restoration of Part 3 Buildings in line with the Business Strategy must contain detail of the specific heritage asset(s) that would benefit and the proposed development site. This must include a viability appraisal for the heritage asset(s) concerned that has:

- An up to date condition survey for the heritage asset(s).
- An assessment of options for the Part 3 Buildings, in the context of the agreed strategy for the estate (appended to the Colliers Report at Appx.1), including options for spatial layout. Options should include a minimum cost option to make the asset(s) safe over the medium term. The assessment of options should involve, as a minimum, a business planner, conservation architect and quantity surveyor.
- Drawings for the preferred option.
- Costs of the options, verified by the quantity surveyor, and including professional fees, project management and enabling and infrastructure works.
- An estimate of income that will be generated, both from the asset itself and from other incremental income to the site resulting from it.
- An estimate of the true conservation deficit in respect of the relevant Part 3 Building(s), if the heritage asset(s) has income generating potential. This should not include a current market value because assets that have a conservation deficit should not have market value. Any development profit should reflect genuine financial risk taken in restoring the heritage assets concerned. Financial risk is related to the amount of equity contributed and/or security provided for loans.

2. Purpose

- 2.1 The purpose of this report is to determine whether the Council accepts and approves the draft Business Strategy for restoration of buildings at St Osyth Priory in accordance with the Section 106 Agreement. If the Council accepts the Business Plan as a qualifying Business Strategy but does not agree the business strategy it should give reasons for refusal and set out as an alternative what would be required for a Business Strategy to be acceptable.

3. Background and Relevant Planning History

- 3.1 Planning permission has been granted for various developments at St Osyth Priory as a catalyst for the restoration of the Priory buildings.

- 3.2 The main planning permissions for enabling development at St Osyth Priory are:

11/00333/OUT Wellwick: Erection of 190 dwellings on 16.3 hectares of land; new junction and access roads; driveways; parking; footpaths; landscaping and all ancillary works; use of land as an archery range; construction of access drive and layout of parking area including siting of storage container for archery equipment. The proposals also include for a new footway to be built along a section of Colchester Road, south of the Wellwick.

Approved 18.03.2016

16/00656/FUL West Field: Demolition of existing property at 7 Mill Street and the creation of 72 no. two, three and four bedroom houses, plus associated roads, car parking, garages and landscaping.

Approved 18.11.2016

16/00671/FUL Parkland: Erection of 17 dwellings for use as residential and holiday accommodation (C3 use); restoration of park landscape; bunding; re-grading of 9 hectares of land; construction and alterations to access driveway; landscaping and all ancillary works.

Approved 18.11.2016

- 3.3 Earlier planning applications for enabling development had been made, refused planning permission and dismissed at appeal, but the appeal decision was subsequently quashed. Fresh applications, 16/00656/FUL and 16/00671/FUL detailed above were submitted and granted planning permission part way through a public inquiry considering appeals against non-determination of the applications.

- 3.4 Prior to commencement of the public inquiry, the Planning Committee considered the planning applications on 18th October 2016 and resolved that:

(A) the Planning Committee endorses the view that the applications in their current form, based on the applicant's current approach and the latest information that has been provided, would have been REFUSED because the harm to the setting and significance of St. Osyth Priory, the registered parkland and the wider Conservation Area are not outweighed by the benefits of either proposal.

(B) the Planning Committee also endorses the view that approval of planning permission would have been agreed, in line with the advice of the Council's heritage and business planning advisors, if the applicants committed to enter into a Section 106 legal agreement to secure the following:

- 1) The preparation and subsequent approval by the Council of a medium-term (10-year) business strategy for the Priory, which should include a role for a charitable trust and appropriate public access;

2) Completion of the repair and reuse of all of the principal buildings and structures within the Priory complex, in line with an agreed survey of condition and order of priority, in addition to the works already secured under the Section 106 agreement related to the Wellwick development, within 10 years namely:

- i) Darcy House;
- ii) The Gatehouse (completion of works);
- iii) Abbot's Tower, chapel and 'Rivers wall';
- iv) Brewhouse;
- v) West Barn;
- vi) Tithe barn, cart shed and dairy;
- vii) Rose garden walls; and
- viii) Northern section of wall (with gate and windows) on the west side of the Bury.

3) A regular review mechanism within the Section 106 agreement to allow flexibility to take into account changes in economic conditions, other potential sources of funding and other relevant changes in circumstances.

- 3.5 Part way through the public inquiry the parties agreed Heads of Terms for a legal agreement in line with the Planning Committee's resolution.
- 3.6 Planning permission was granted subject to various conditions including one requiring completion of a legal agreement. The Section 106 legal agreement ("the Agreement") was agreed between the parties and completed on 14th March 2018 and is attached to this Report at Appendix 1
- 3.7 Planning permissions have also been granted for the conversion, repair and alteration of various buildings in the precinct. The full planning history for St Osyth Priory is attached at Appendix 2.
- 3.8 On the 29th January 2019, the Council's external solicitors received an email from the Sargeant's solicitors which expressly confirmed that the Westfield and Parkland development sites have now been transferred by a Transfer dated the 22nd January 2019 to St Osyth Priory Estate Limited and that the company have assumed the responsibility to perform the planning obligations in the Agreement relating to these developments. Consequently, any future discussions, correspondence and proceedings will be with the new Owners, St Osyth Priory Estate Limited.

4. Assessment

Buildings to be restored

- 4.1 The essence of the Heads of Terms was that the approval had to sit within the context of a realistic and viable business plan for the restoration of the principally important (not all) the Priory buildings. It was never anticipated that the approved development could fund all of the necessary restoration, but it was important that the funds it delivered were employed in a way which maximised the prospect of the key restoration occurring within a relevant 10 year period. In terms of future funding, the intention was that there be a hierarchy of grant funding, commercial loans and finally enabling development.
- 4.2 The most important buildings with which the Business Strategy is to be concerned (are the Additional Listed Buildings as defined by the Agreement and detailed in Schedule 1 Part 3 of the Agreement and are as follows:
 - Darcy House (where not provided for by already consented enabling development)

- The Gate House (completion of works save where not provided for by already consented enabling works)
- Abbots Tower, Chapel and “Rivers Wall”
- Brewhouse
- West Barn
- Tithe Barn, Cart Shed and Diary
- Rose Garden Walls
- Northern section of wall (with gate and windows on the west side of the Bury)

4.3 These Additional Listed Buildings are known as the Part 3 Buildings.

Relevant terms of the Agreement (for the purposes of this Report)

4.4 The starting point for the Council’s response to the Business Strategy must be in accordance with the terms of the Agreement.

4.5 Paragraph 4 of Part 1 to Schedule 1 of the Agreement contains the provisions for Additional Restoration (Business Plan) and states:

“4.1 Subject to the grant of all necessary statutory and other consents and approvals and subject to the availability of funding the Owner will separately aim to complete in conjunction with the BPT [Building Preservation Trust] the restoration of the buildings on Schedule 1 Part 3 within 10 years of Commencement.

4.2 The Owner will (in conjunction with the BPT) seek to generate income to facilitate such works in the following order of priority namely:

- (i) Grant funding*
- (ii) Commercial Borrowing on the Trust Property*
- (iii) Additional Enabling Development*

So as to facilitate the completion of the said Restoration of the Buildings in 4.1 above.

4.3 The Owner will in conjunction with the Trust prepare a Combined Business Strategy that realistically and viably seeks to achieve the restoration of the Listed Buildings at Part 3 of the Schedule. The Business Strategy will be submitted to the Council for approval. Failure by the Council to respond within 20 working days will represent an approval of the request. In the event that the Council does not agree the Business Strategy they must provide reasons for the refusal including an explanation of how it will fail to secure the future of the identified Listed Buildings and such other alternatives that they would find acceptable. If there is a dispute this will be referred within 21 calendar days for determination in accordance with clause 5.

4.4 Once the Business Strategy is agreed the Owner and Trust will subject to market forces and availability of suitable funding proceed using reasonable endeavours to deliver the Business Strategy. Similarly without fettering the Council’s powers unlawfully the Council will be bound to act where relevant and appropriate in accordance with the agreed Business strategy. For the avoidance of doubt the Owner will not be required to proceed if the Business Strategy does not or will not deliver market returns of profit based upon the risks associated with the Business Strategy. If the Business Strategy is unviable, then the Owner will prepare a new Business Strategy and seek approval with the Council as set out above. The process will be an iterative process over the 10 years.”

4.6 For the purposes of these paragraphs, “Business Strategy” is defined in Clause 1.1 of the Agreement as meaning:

“a business plan that will leverage available grant and commercial funding in conjunction with Enabling Development in accordance with clause 4.2 that will seek to deliver within 10 years of the date of Commencement the restoration of the Listed Buildings”

- 4.7 The reference to “*clause 4.2*” is, in fact, a reference to paragraph 4.2 of Part 1 of Schedule 1 and, therefore, indicates that an element of further enabling development was anticipated to be required to restore the most important listed buildings at the Priory.

“Enabling Development” is also defined in clause 1.1 of the Agreement as follows:

“...such applications for further development that would facilitate any shortfall in funding to achieve the aim within 10 years of the full restoration and viable re-use where feasible of those buildings listed in Schedule 1 Part 3.”

- 4.8 The Building Preservation Trust is the Trust referred to in Schedule 1 Part 4 of the Agreement, with paragraph 2 stating:

“A company has been incorporated under Company Registration number [CRN 09367206] for the purpose of operation of the Trust and more specifically so as to enable the historic assets contained within the Trust Property and other Property from time to time within the Priory Precinct to be repaired by the Tenant so as to further reduce the Conservation Deficit for the Priory complex as a whole and to facilitate the aims identified within the Heads of Terms.”

- 4.9 Appendix 3 of the Agreement includes the Articles of Association of St. Osyth Priory and Parish Trust.

- 4.10 As to dispute resolution, clause 5.2 provides that:

“Any such dispute disagreement question or difference shall be referred to the decision of a single expert qualified to deal with the subject matter of the dispute disagreement question or difference who shall either be jointly nominated by the parties in dispute within a period of 10 working days of reference under Clause 5.1 above or failing agreement on such nomination the expert (who must also be prepared to abide by the terms of reference in Clause 5.3 below by: (i) the President for the time being of the Royal Institution of Chartered Surveyors (or in his absence the Vice President or anyone appointed by the President) and any question of value shall be decided by a Chartered Surveyor of at least 10 years’ experience who is independent of the parties in dispute or (ii) where the dispute relates to the construction of this Agreement or matters of a legal nature the Chairman for the time being of the Bar (or in his absence the Vice President or anyone appointed by the Chairman) and shall be a Queen’s Counsel or junior of at least 10 years call”.

Summary of Business Strategy

- 4.11 The submitted Business Strategy is attached at Appendix 3.
- 4.12 The Strategy includes a description of a vision for business use on the site comprising a functions and accommodation offering; a visitor attraction and holiday cottages. The aim being to bring back into long term viable use the heritage assets at the Priory whilst seeking to maximise public access and addressing the conservation deficit.
- 4.13 The Business Strategy says that on an estate-wide basis there remains a conservation deficit of between £26.5M and £32.4M depending on the availability of grant funding. The Business Strategy contains a phasing schedule which sets out the restoration works identifying those which are already secured, those being progressed by the trust through applications for grant funding and those items for which funding is not secure. There are

four phases of restoration work, 1a and b and 2a and b, with the majority of the Part 3 Additional Buildings which, under the Agreement should be the focus of the Business Strategy, contained within phase 2a. Schedule 1 Part 2 of the Agreement lists those buildings and structures that are to be the subject of the Business Strategy and these appear as Phase 2a buildings in the Strategy submitted. Restoration of buildings and structures in Phase 1a is largely funded by already consented enabling development. Restoration works proposed in section 2b go beyond those priority buildings identified in the Agreement.

Analysis of the submitted Business Strategy

- 4.14 Paragraph 4.3 of Schedule 1 Part 1 of the Agreement requires that the Business Strategy should be a Combined Business Strategy and be developed in conjunction with the Trust. Although Tim Sargeant has stated that this is the case, no information has been provided from the Trust to support this assertion. The front page of the submitted Business Strategy confirms that it has been prepared by City and Country on behalf of the Sargeant family and refers to Key Stakeholders at 2.2 including the Trust, as a registered charity which is an independent entity from the family. In the absence of any evidence from the charity that the submitted Business Strategy has been prepared in conjunction with the Trust, the Council can reasonably conclude that the document received is not a business plan for the purposes of the Agreement.
- 4.15 Even had the Business Strategy been submitted in conjunction with the Trust, it does not show that there is a realistic prospect of meeting the underlying purpose of the requirement for a business strategy. The reasons are outlined below and detailed more fully in the Colliers' advice, set out below. Colliers International provide expert real estate advice and David Geddes of Colliers, who specialises in destinations consulting, has provided advice to the Council in relation to the St Osyth Priory proposals, including at planning inquiries. He produced this report in consultation with Paul Drury of Drury McPherson, an architectural historian, surveyor and archaeologist who has also advised the Council in relation to the Priory previously, including representing the Council at public inquiries.
- 4.16 The principal focus of the Business Strategy should be on how it actually proposes that the Part 3 Buildings are to be restored within the 10 year period, this being its purpose set out in the Agreement.
- 4.17 The Council, with its heritage and business expert advisors, met the owners of the Priory in a series of meetings. A note of the strategy agreed through these meetings can be found at Appendix 1 of the Colliers advice note, attached at Appendix 4 of this report.
- 4.18 The strategy was to use the proceeds from agreed enabling development, grants and commercial funding to restore the heritage assets in a manner that makes the Priory into a successful business operation.
- 4.19 The two main elements of the business would be functions and accommodation, akin to a hotel with the core business being weddings. The second element would be visitor-attraction oriented; a combination of heritage attraction and country park.
- 4.20 The strategy discussed, was to use the proceeds from agreed enabling development, any grants that can be secured, especially from the Heritage Lottery Fund, and commercial funding to restore the heritage assets in a manner that makes the Priory into a successful business operation. Surpluses generated from this business, plus any further grants, commercial funding and proceeds from enabling development would be used to continue restoration work until all the heritage assets are secured for the long term.

- 4.21 The Business Strategy submitted by the owners takes a different approach which focusses on an estate-wide conservation deficit and places significant reliance on additional and by implication, very substantial enabling development elsewhere within the District.
- 4.22 On the assumption that the Trust secures grant funding for the restoration of a number of the Part 3 Buildings, the submitted Business Strategy estimates that the conservation deficit attributable to the remainder stands at £15,140,140 (paragraph 4.43). In order to address this deficit the submitted Business Strategy relies on enabling development. Paragraph 4.4 states:
- “The Family is already in control of several suitable enabling development sites and also in the process of securing further sites within the district, to assist with restoring the heritage assets and bridging the gap. TDC will be able to consider each of these proposals on their individual merit, but given the applicants’ experience of dealing with sites of this type it is considered they are likely to be more certain than grant funding and that this route coupled with the Trust and business approach advocated above is the only viable option”.*
- 4.23 However, other than references to a site at Foots Farm, Clacton (paras. 1.14 and 4.24) which, the Business Strategy asserts could deliver funding towards restoration of just £1.76M, no other sites are specifically identified nor does the Business Strategy itself identify what level of funding other sites could deliver towards the claimed Conservation Deficit. All that the Sargeant Family appear to have provided is a table, attached at Appendix 5 showing plot values in Mistley, Manningtree, Lawford, Great Bentley, Thorpe Le Soken and Clacton on Sea and identifying a range of dwelling numbers between 312 and 3682, which would be required to address the estate-wide Conservation Deficit of £26.5M depending on the mechanism used to deliver the funding.
- 4.24 Without any detail as to sites, their constraints and development costs or the Council’s likely reaction to them, the Business Strategy does not demonstrate that it is either a realistic or viable means to secure the funding for the restoration of the Part 3 buildings within the 10 year period. Indeed, the scale of the Conservation Deficit relied upon and the absence of any certain proposals to bridge that claimed gap indicates that it, as drafted, it is both unrealistic and unviable.
- 4.25 The Colliers report makes the point that using an estate-wide Conservation Deficit, rather than focussing on the restoration costs of the individual Part 3 Buildings and what is required to fund those, is the principal reason why the Business Plan is inadequate. The focus should be on restoration of the relevant Part 3 buildings and not on any ambitions City and Country may have for development elsewhere within the District which may be difficult to relate in any meaningful way to a global conservation deficit calculated in the way which the Sargeant family argue for.

The owners’ response to the Collier’s report:

- 4.26 The owners are critical of the Colliers’ view of the draft business strategy, see Appendix 6. They suggest that Colliers are inaccurate in a number of respects and identify the main differences between them and the Council as the approach, the costs and in respect of the enabling development proposed, whether it is deliverable and will have a negative impact on communities.
- 4.27 The owners say that the strategy does comply with the strategy agreed at the 2016 inquiry and contained in the Agreement. They also suggest that the approach promoted by Colliers is not found in Historic England advice and conclude that it is fundamentally flawed. This argument is noted but it is not properly directed at the requirement of the Agreement which is the Part 3 buildings which are the proper focus of the Agreement and must be concentrated on immediately if their restoration within the 10 year timescale is to be

realistically achievable. The submitted Business Strategy provides no basis upon which the Council could conclude that this is realistic or viable on the owners' current approach.

What is required

- 4.28 The Business Strategy should be a pragmatic bespoke plan that removes all references to estate-wide conservation deficits and focusses on grants, loans or enabling development directed at addressing the needs of the individual Part 3 Buildings or groups of those buildings on a case by case basis.
- 4.29 Further proposals for enabling development for restoration of Part 3 Buildings in line with the Business Strategy must contain detail of the specific heritage asset(s) that would benefit and the proposed development site. This must include a viability appraisal for the heritage asset(s) concerned that has:
- An up to date condition survey for the heritage asset(s).
 - An assessment of options for the Part 3 Buildings, in the context of the agreed strategy for the estate (appended to the Colliers Report at Appx.1), including options for spatial layout. Options should include a minimum cost option to make the asset(s) safe over the medium term. The assessment of options should involve, as a minimum, a business planner, conservation architect and quantity surveyor.
 - Drawings for the preferred option.
 - Costs of the options, verified by the quantity surveyor, and including professional fees, project management and enabling and infrastructure works.
 - An estimate of income that will be generated, both from the asset itself and from other incremental income to the site resulting from it.
 - An estimate of the true conservation deficit in respect of the relevant Part 3 Building(s), if the heritage asset(s) has income generating potential. This should not include a current market value because assets that have a conservation deficit should not have market value. Any development profit should reflect genuine financial risk taken in restoring the heritage assets concerned. Financial risk is related to the amount of equity contributed and/or security provided for loans.

Finance and Risk

- 4.30 The Agreement provides for resolution of disputes between the Council and the Owners. At clause 5.2 it says:

“Any such dispute disagreement question or difference shall be referred to the decision of a single expert qualified to deal with the subject matter of the dispute disagreement question or difference who shall either be jointly nominated by the parties in dispute within a period of 10 working days of reference under Clause 5.1 above or failing agreement on such nomination the expert (who must also be prepared to abide by the terms of reference in Clause 5.3 below by: (i) the President for the time being of the Royal Institution of Chartered Surveyors (or in his absence the Vice President or anyone appointed by the President) and any question of value shall be decided by a Chartered Surveyor of at least 10 years' experience who is independent of the parties in dispute or (ii) where the dispute relates to the construction of this Agreement or matters of a legal nature the Chairman for the time being of the Bar (or in his absence the Vice President or anyone appointed by the Chairman) and shall be a Queen's Counsel or junior of at least 10 years call”.

4.31 Refusal of the Council to agree a Business Strategy properly submitted in accordance with Paragraph 4 of Part 1 to Schedule 1 of the Agreement, would result in a dispute that would be dealt with according to the prescribed process.

APPENDICES

APPENDIX 1	S.106 AGREEMENT
APPENDIX 2	St Osyth Priory Planning History
APPENDIX 3	Submitted Business Strategy
APPENDIX 4	Colliers Advice Note for Planning Committee
APPENDIX 5	Potential enabling development sites
APPENDIX 6	Owners' response to Colliers report on Business Strategy

BACKGROUND PAPERS

Colliers report on Business Strategy

APPENDIX 1

S106 Agreement

APPENDIX 2

St Osyth Priory Planning history

APPENDIX 3

Submitted Business Strategy

APPENDIX 4

Colliers Advice Note for Planning Committee

APPENDIX 5

Potential enabling development sites

APPENDIX 6

Owners' response to Colliers report