Some Fundamental Points in relation to Colliers' Report on The St Osyth Priory Estate Business Strategy

1. Colliers incorrectly report what was agreed at the Inquiry. What was agreed was documented within the planning permissions (16/00656/FUL & 16/00671/FUL), which were issued 18 November 2016. Both these planning permissions contained a condition with regard to the Heads of Terms for the s106 too. The Heads of Terms in relation to the Business Plan was simply the following requirement, "***the preparation of a business strategy for the Priory to demonstrate the delivery of the 'aim' described in para 1(a).***" Para 1(a) is the aim to deliver the buildings in schedule 1, the Council's priority list of buildings, within 10 years. This is not a guarantee but rather a business strategy that aims to deliver the list of buildings identified by the Council. There is ***no*** requirement to minimise the enabling development it could simply be a credible strategy that is deemed to be delivering the aim.

2. This translated into the s106 dated 14-3-18, being the document against which this Business Strategy is to be tested; although the above is the context. It is not Colliers' place to introduce new requirements or variations to the agreed planning permission or the s106 or to misrepresent the facts. This could lead the Council into a potential breach of contract.

3. The Business Strategy requirement will be satisfied by the following s106 definition:

   - ***"Business Strategy"*** *means 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. The overall strategy is therefore set by the s106 and has the aim to repair the buildings in the schedule, over 10 years; using the three funding sources of grant, commercial funding and enabling development. The agreement related to the granted Enabling Development, which pump primes the match funding to maximise the potential grant funding. If the Trust achieves grant funding, these combined monies will ultimately produce an income for the Trust via rent that can be recycled on the site and in theory gain further grant funding. This principle was agreed at the Inquiry, covered in the planning permission and the subsequent definition. It has also been agreed, pre and post Inquiry, that there is a limit to grant funding that can successfully be achieved over the 10 year period and that this is likely in the region of £5m.

5. The s106 has some other key definitions and clauses that are to be used to test the suitability and conformity of the Family's Business Plan to the s106. These definitions are: -

   - ***"Conservation Deficit"*** *The amount by which the cost of repair (and conversion to optimum beneficial use if appropriate) of The Priory Estate, being the designated heritage assets exceeds its market value on completion of repair and conversion, allowing for all appropriate development costs in accordance with the Restoration Scheme and relevant practice and guidance at the date of this agreement.*

   - ***"Enabling Development"*** *means 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 reuse, where feasible of those buildings listed in Schedule 1 part 3*

   - ***"Restoration Scheme"*** *those parts of the written scheme of works and specifications for the restoration of the Listed Buildings prepared by Carden & Godfrey and entitled Survey of Condition with Historical Notes and Repair Recommendations dated 2009 updated by site review of current condition May/June 2010 and as altered at the request of English Heritage to lessen the amount of work so as to better accord with good conservation practice and to reduce the Conservation Deficit together with the McBains Cooper Cost Plan dated March 2012 as amended by the BNP Paribas Report November 2014 and November 2016 as are set out in Appendix 1 and subject to available funding as set out in Schedule 1 clause 4.2 but not further or otherwise*

6. The main differences between the parties could be summarised as: the approach, the costs and the criticism from Colliers that the enabling development is yet to be defined so cannot be deliverable and that enabling development will negatively impact on communities. The criticisms about the structure and language have been set to one side as this is easily fixed and the headings/format were largely what Colliers had suggested in an earlier discussion.

7. The negative impact on communities would be determined by any planning consent and, in any event, is unlikely given the housing crisis and TDC's lack of a five-year land supply. 279 new units have already been approved on or adjacent to The Priory and they have, on balanced, been deemed to be beneficial in one of the more sensitive of locations in the District. It is therefore very probable that the additional enabling development required to make up the shortfall, as set out above, could credibly and viably be

achieved. This is even more likely if TDC embrace the creative solution that the Family has suggested with regard to affordable housing on Foots Farm, whether in whole or part.

8. The overall strategy was agreed at the November 2016 Inquiry and is considered to be viable and obviously therefore not flawed. This has flowed through into the s106. The issue is due to the limits on grant funding and commercial funding, and therefore the amount of enabling development that is required to viably solve the problem. The Family feel confident, given their track record, that they will successfully address this shortfall. Obviously if more grant funding was available, the amount of enabling development could be reduced. The s106 allows for revisions. There is no stated requirement of this Business Strategy to minimise the need for enabling development. It is making up the shortfall that is required to complete the aim. Colliers are therefore wrongly asserting their own views with regard to enabling development. They are failing to follow both the s106 and the HE 2008 enabling development guidance. This is causing further damaging delays. These assets are and have been since 2007 on the Historic England At Risk register.

9. The Family's Business Plan clearly identifies the three funding streams, the amounts raised via each source and the reasons that these assumptions have been made. Enabling Development is simply making up the shortfall and the Family has held in abeyance a sizeable sum to cater for an improvement in grant or commercial funding. It has also provided for significantly more grant funding than was thought possible at the time of the Inquiry.

10. It is relevant to note that the amounts and timings of grants and/or commercial loans are not significantly called into question. Colliers recognise that the HLF grant funding bid could fail and they concede that this would lead to a requirement for more Enabling Development.

11. Colliers have identified the possibility of the Council providing loans. This was a suggestion first raised by the Family but to date the Council have not taken this suggestion forward. If this was possible, it could enhance the deliverability of the plan and reduce some costs. Cath Bicknell has been emailed separately on this point. The Family and the Trust would willingly embrace more advantageous loans from the Council than those contained within the Business Plan. This can be easily justified by the Council, based on the potential positive economic impact the development, if successfully realised; would have on the entire district. The Council need to advise whether and on what terms, if any, they would lend; so the Business Plan can be adjusted accordingly.

12. The Business Plan does not yet take into account another idea that had been suggested by the Family; which would take benefit of the Gift Aid provisions available to the Trust to enhance the £1.2M monies the Trust receives by a further £300,000. This would need to be approved by HMRC but before that we need the Council to agree the proposal and supply a signatory for the escrow account as part of the s106 provisions. The Trust and Family will thereafter adjust the Business Plan to align with this; if accepted by both the Council and HMRC.

13. As was evidenced at the recent meeting on 14.1.19 and by the failed Round 1 HLF bid, that grant funding is far from certain but all parties believe it will be achievable. It is not guaranteed but it would wrong not to include it at this early stage.

14. The Commercial funding terms are also not guaranteed but what has been included is the best estimate. The Council could ensure the terms with their own involvement.

15. The quantum of enabling development that is required to close the funding gap feasibly and viably, has always been the major problem for the Council and their consultants. The optimum way to reduce the amount of enabling development is to do something rather than nothing; to back people with a proven record of creating successful place-changing developments that increase property values and therefore reduce the Conservation Deficit. When nothing happens costs escalate, as can be seen from the Business Plan and the relative inactivity with regard to funding since the Inquiry.

16. The approach that Colliers advocate is not to be found in the HE guidance. It is akin to the approach for historic entities[1] but in the HE guidance this requires that the end value of the property is ***not*** deducted as the historic entity is not to be sold. If Colliers faithfully followed this approach, based on the figures at the Inquiry; it would have added circa £12.7M to the Conservation Deficit.

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[1] An historic entity is an outstanding ensemble of historically associated buildings, often land (which may include archaeological remains) and normally contents, whose significance would be inevitably and materially harmed by break-up and sale

17. The Colliers report uses out of date and the incorrect construction costs and professional fees only; rather than all the appropriate costs. It produces a number which is not a Conservation Deficit as defined in the HE guidance or as required by the s106. See the definition of "Conservation Deficit" contained without the s106 and of particular note is the following, "***allowing for all appropriate development costs in accordance with the Restoration Scheme and relevant practice and guidance at the date of this agreement***". It is clear that in working out a Conservation Deficit the 2008 HE Enabling Development guidance should be used and all the development costs are to be included. Colliers have failed to do this.

18. The inclusion of Restoration Scheme within that definition also has a bearing on the Colliers report and its suitability. For the purposes of agreeing the Business Strategy/Plan we can see from the s106 definition that the specification is defined (Colliers suggest that this is reopened) and the cost base is also defined. The specification is the adjusted one provided by the Carden & Godfrey base and as for the numbers it is the BNP Paribas figures from the Inquiry, when they acted as a joint expert for all parties rather than the RNJ figures.

19. Colliers plan is based on RNJ numbers. These ***were not*** accepted by the Council's, Historic England's or the Family's jointly appointed expert at the inquiry. The Family's Business Plan has been based entirely on the jointly appointed expert's report, updated by third party indices and a mixture of figures produced by both Colliers and Savills so it represents the vision that has been agreed and is current.

20. The definition of Enabling Development makes it clear that this is the means by which any funding shortfall is made up – '*would facilitate any shortfall in funding to achieve the aim within 10 years of the full restoration and viable reuse'*. Colliers recognise there will be a need for enabling development[2], so it is the quantum that is the issue between the parties. We believe Colliers' approach is fundamentally flawed.

21. The other clauses of relevance to the discharging of the s106 process are those below:

- *4. ADDITIONAL RESTORATION - (BUSINESS PLAN)*
- *4.1. Subject to the grant of all necessary statutory and other consents and approvals and subject also to the availability of funding the Owner will separately aim to complete in conjunction with the BPT 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 this 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 to the request. In the event the Council does not agree to the Business Strategy they must provide reason/s for the refusal including an explanation of how it will fail to secure the future of the identified Listed Buildings and such other alternative 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.*
- *4.5. The Council or the Owner can annually on the date of this agreement seek the other to agree to the re-prioritise of the Restoration Scheme with regard the Target Listed Buildings in Schedule 1 Part 3. The party to whom the application is made has 20 working days to agree or otherwise. If, the*

[2] Section 2 "*although there is likely to be some conservation deficit*"

alteration alters the Business Strategy then this period will be extended to 3 months. Both parties acting reasonably need to agree to the proposed re-prioritisation and in the event of a dispute then within 21 days it is to be referred to an expert for determination otherwise in accordance with Clause 5 ante. The decision to alter, substitute and remove Trust Property will be determined by the Business Strategy and require the agreement of the Council such agreement not to be unreasonably withheld or delayed and subject also to provisions of clause 5 (Disputes) ante.

22. Clause 4.1and 4.4 make clear the critical role that funding has to the success of the project.

23. Clause 4.2 has been embraced wholeheartedly by the Owner (The Family), by providing the funding costs of the phase 1 HLF bid rather than the Trust and suggesting the Council loan and Gift Aid proposals. It is therefore disappointing that there is criticism of the Owner in this regard.

24. Clause 4.3 includes the requirement that the Business Strategy needs to be realistic and viable. It does not need to be a guaranteed outcome. The Owner has not sought to enforce the required 20 day response timeframe, which was missed, in order to work collaboratively with the Council. This is why the misguided response from Colliers is so disappointing.

25. Clause 4.4 is of critical relevance as it does not bind the Council to approve unacceptable enabling development, but it simply requires that it agrees the funding shortfall that exists to deliver the aim; in accordance with the other s106 provisions. The agreement already provides that enabling development is the means to address this funding shortfall.

26. Clause 4.4 also makes it clear that the Owner does not have to accept or the implement the Council's Business Strategy if, in their opinion, it does not or will not deliver market returns for the associated risks. The Owner simply has to produce a new Business Strategy. A deadlock is not, however, in the interests of any party.

27. There is a dispute resolution clause within the agreement to assist with disputes and deal with deadlock situations.

28. Colliers have been very critical of the Business Strategy the Owners have produced. Their own report is overly emotive, littered with inaccuracies and not based upon the s106 obligations[3]. We have chosen not to deal with these now but will do so if progress is not made in light of this brief note. Save we invite the Council to consider the following statement from the Colliers report and interrogate it to see if it is an accurate representation of the facts:

    - *HLF has refused the application. They say it would have been stronger if it included accommodation, had a viability appraisal produced by an RICS surveyor, and more clarity about governance and management. **Colliers made the same observations when the application was being prepared**.*

    What the HLF letter actually said was:

    - *They considered that the sustainability of the project would be closely allied to separately funded guest accommodation. Risks were identified around the absence in the Viability Appraisal of a final market value provided by a RICS qualified professional, omission in the proposed timetable for assessment of the second round application and no explicit provision for producing the required Development Appraisal for the second round bid. Some concerns about proposed leasing and governance arrangements were also raised.*

    The first point made by the HLF is an observation and it accurately reflects what the Family and their consultants have been telling from the outset if the proposal is to be really successful. Perversely Colliers has been advocating that accommodation was not essential. Even in this report they continue with this approach – "*Darcy House West and the Abbot's Lodging could form a successful functions business, **with or without visitor accommodation***."

[3] "A hypothetical model for the whole estate, built on many dubious assumptions, is no longer relevant, therefore. It has no value. It would be inappropriate to use it to consider applications for grants, enabling development or loans" - "Cost estimates are not trustworthy" – "The way it is structured and written makes it almost unintelligible" – "The plan is opaque" – "The quality of the application needs to be substantially improved compared to the first effort, including greater transparency and demonstration of genuine community support, for realistic chance of success."

Colliers did not mention in their critique of the draft HLF round 1 bid the need for a RICS valuation to accompany the HLF bid.

Colliers did not mention in their critique of the draft HLF round 1 bid the need for timetable to a round two bid. Whilst the bid did not explicitly contain this it was implicit in the detail [the cashflow and text]

Colliers did not mention in their critique of the draft HLF round 1 bid the need for an explicit requirement for a development appraisal for the second round bid.

Colliers have raised concerns in the past about governance arrangements and they were seemingly satisfied with the response as evidenced by the s106 and further exchanges over email and at meetings. Indeed, since then the Trust has received charitable status and I'm sure that both Ian and Sonia will vouch for the Trust's independence. Colliers only mentioned the City & Country role as an issue in their critique of the draft HLF round 1 bid. We addressed this point by speaking to the Heritage Lottery Fund case officer, who did not see it as a big issue but to avoid any criticism we effectively wrote City & Country out of the process on the following basis as reported back to Colliers:

> *"Therefore, to avoid any potential criticism it is not proposed that City & Country will have any formal involvement past the First- Round application, which they are doing pro bono, and that any further involvement by City & Country will only be as part of a competitive tender process. As such, there is no remuneration proposed for C&C within the bid. Obviously, Tim and Helen will bring their development experience as Trustees though, which will help ensure the project is a success and City & Country will be happy to tender for any additional work if required, albeit they will not be offended if the Trust chose to use another party."*

All parties, as far as we were concerned, were satisfied about the lease arrangements as the s106 provides for a 90 year lease and the critical terms associated with access etc.

We therefore feel that Colliers have misrepresented the facts but the Council can check for themselves and draw their own conclusions.

29. It would not be unreasonable to ask Colliers to apply the same rigour to their nascent Business Plan as they seem to seek to apply to the Family's one. Any business strategy over 10 years is going to be an aim which is what we are dealing with. The later years will be less substantial and certain compared to the initial years. Any 10-year Business Plan will be changed to address events as they happen and market changes; with the reality being different to the initial plan. This is recognised in the s106 as the clause reproduced above demonstrates. There is also provision for both parties to annually re-prioritise repairs and to alter the Business Plan when it proves to not work or be unviable. The s106 is a useful and sensible road map that the Council are contractually bound to follow.

30. Whilst it is noted that Paul Drury has reviewed the report (section 1), it is interesting that this is not a joint report. Is this because of the obvious flaws and misinterpretation of HE Enabling Development guidance? The Council will be aware of the huge sums paid to these particular consultants, who to varying degrees, advised the Council to refuse applications that were approved after only three days of evidence at the scheduled 12-day Inquiry. We had hoped lessons might have been learnt but this seems not to be the case. Public finances are being wasted on consultant fees, an increasing conservation deficit, delay in the use of the potential facilities and the heightened risks that result from these delays.

31. HE has advised the Family that the Priory is not a historic entity and that a holistic approach was required. The Family's approach faithfully follows both this advice/requirement and the details of the HE guidance. The numbers used follow the approach of the joint expert, as endorsed by the Council and HE at the 2016 Inquiry. The approach for working out the Conservation Deficit was debated by all sides and the expert reached their conclusion. This begs the question why is this being revisited; especially when this would breach the terms of the s106?

32. The project phasing in the Business Strategy aligns to what was discussed and agreed, when agreeing the uses.

33. The requirements that the report sets out in section 4.3 do not align with the Historic England guidance on enabling development.

Monday, 21 January 2019