



Inverclyde
council
**LOCAL
DEVELOPMENT
PLAN**

**ADOPTED PLAN
2019**



**SUPPLEMENTARY GUIDANCE
ON ENABLING DEVELOPMENT**

ADOPTED FEBRUARY 2020

LOCAL DEVELOPMENT PLAN PROPOSED PLAN 2018 – DRAFT SUPPLEMENTARY GUIDANCE ON ENABLING DEVELOPMENT

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1.0 Introduction

1.1 This Supplementary Guidance is part of a suite of supplementary guidance documents supporting the Inverclyde Local Development Plan. Supplementary guidance provides detailed information on specific policies in the Inverclyde Local Development Plan, thereby enabling the Plan to focus on the spatial strategy, main policies and development proposals. Supplementary guidance has a statutory basis and should be read in conjunction with the Plan.

1.2 This guidance supplements Policy HE3 'Enabling Development' in the Local Development Plan by setting out the criteria for achieving compliance with the policy and identifying supporting processes.

1.3 The guidance is aimed at:

- Developers/professionals considering new projects;
- Communities and interest groups considering the benefits/disbenefits of an enabling development proposal; and
- The Regeneration and Planning Service and Inverclyde Council Councillors, who will assess and determine planning applications for enabling development

1.4 The guidance is structured as follows:

- Section 2.0 provides background information, including a definition of enabling development and its relevance in Inverclyde. It also sets out the national and local planning policy context, explains why supplementary guidance is required and outlines the scope of the guidance.
- Section 3.0 sets out the assessment criteria which will be used to determine whether enabling proposals comply with Policy HE3.
- Section 4.0 outlines a number of processes which will support the assessment and determination of enabling proposals and, where applicable, their implementation.

1.5 This Supplementary Guidance is supported by Annex 1: 'Checklist of information to be submitted with an Enabling Development application'.

2.0 Background

What is Enabling Development?

2.1 Enabling development is an established planning tool. In the context of Scottish Planning Policy (2014), enabling development seeks to subsidise the cost of restoring a listed building and securing its long term future. The need for a subsidy arises when this cost is greater than the buildings resulting value to its owner, also known as the 'conservation deficit'. The concept of enabling development is that development, which would otherwise be contrary to established planning policy and not permissible, may be acceptable if it can be demonstrated that the public benefits of the proposal, e.g. restoring and securing the long term future of a listed building at risk of being lost, would outweigh any negative impacts.

2.2 Enabling development was confirmed as a legitimate planning tool in 1988, when the Court of Appeal, in R v. Westminster City Council ex parte Monahan, upheld the validity of a planning permission authorising office development, even though contrary to the development plan, on the basis that it would provide the funds to improve the Royal Opera House, Covent Garden, which was unobtainable by other means.

2.3 While enabling development can vary in type, it is most often associated with new build residential development to support the restoration and re-use (residential) of a historic building.

Why is Enabling Development important in Inverclyde?

2.4 Enabling development has already been shown to be a relevant and important planning tool for restoring historic buildings in Inverclyde.

Prior to the adoption of the Inverclyde Local Development Plan, planning approval was granted (under the 2005 Local Plan) and work completed on a number of enabling proposals, including the redevelopment of the former Bridge of Weir Hospital at Quarriers village.



Redevelopment of the Former Bridge of Weir Hospital

- 2.5** In addition, a number of listed buildings in Inverclyde are identified on the ‘Buildings at Risk Register’, which highlights ‘at risk’ properties of architectural or historic merit throughout Scotland. Subject to compliance with Policy HE3 and the wider Local Development Plan, some of these buildings could be restored and brought back into use through enabling development.

Policy Context

- 2.6** Enabling development is supported by Scottish Planning Policy (2014), which states that:

“Enabling development may be acceptable where it can be clearly shown to be the only means of preventing the loss of the asset (listed building) and securing its long-term future. Any development should be the minimum necessary to achieve these aims. The

resultant development should be designed and sited carefully to preserve or enhance the character and setting of the historic asset”.

- 2.7** In accordance with Scottish Planning Policy, the Local Development Plan supports enabling development through Policy HE3 - Enabling Development:

Policy HE3 ‘Enabling Development’

Proposals for enabling development to support the restoration of listed buildings will be considered favourably where it can be clearly shown to be the only means preventing the loss of the listed building and securing its long term future. Any enabling development is required to be the minimum necessary to achieve this aim. The resultant development is required to be designed and sited carefully to preserve or enhance the character and setting of the historic asset. Further detail will be set out in the Council’s Supplementary Guidance on Enabling Development which will form part of the assessment of any proposals.

Why was Supplementary Guidance Required?

- 2.8** While Policy HE3 provides the principle for enabling development proposals to be brought forward in Inverclyde, the additional scope provided by this Supplementary Guidance allows the process and criteria for assessing proposals to be transparent and clearly align with national planning policy and best practice.

Scope of the Guidance

- 2.9** While this Supplementary Guidance applies solely to enabling development, it is not intended to cover all the issues which may be associated with this type of application. For example, issues relating to the protection of the Green Belt, the design and sustainability of new build development and impact on the character and setting of listed buildings will be dealt with through Policy HC3 ‘Housing Development in the Green Belt and Countryside’, the ‘Planning Application Advice Notes’ Supplementary Guidance, and Policy HE2 ‘Listed Buildings’. In addition, any potential environmental impacts will be identified and addressed through the policies set out in the Our

Natural and Open Spaces section of the Local Development Plan, i.e. Policies GN1-7.

2.10 In light of the above, this Supplementary Guidance only addresses those issues which relate specifically to enabling development proposals and are not covered elsewhere in the LDP Local Development Plan. This guidance should therefore be read and applied in conjunction with other relevant Local Development Plan policies.

2.11 The nature of enabling development means that proposals may not comply with all relevant Local Development Plan policies. Where there is conflict between policies, the final decision will be based on whether the public benefits associated with complying with planning policy decisively outweigh any disbenefits associated with non-compliance. For example, there may be situations where the public benefit of restoring a listed building does not decisively outweigh adverse impacts on the setting of the building and/or the surrounding landscape. The balance of benefits and disbenefits will be determined on a case by case basis, taking into account the merits of each proposal and consultation comments from stakeholders.

3.0 Assessment Criteria

What buildings will qualify for Enabling Development?

3.1 Policy HE3 requires that enabling development proposals should prevent the loss of the listed building. While the assessment of when a listed building is in danger of being lost is subjective, the 'Buildings at Risk Register' provides an independent, robust and transparent approach to the determination of a buildings condition.

The 'Buildings at Risk Register'

The register highlights properties of architectural or historic merit throughout Scotland, which are considered to be at risk or under threat. It is maintained by Historic Environment Scotland.

A Building at Risk is usually a listed building, or an unlisted building within a conservation area, that meets one or several of the following criteria:

- Vacant with no identified new use

- Suffering from neglect and/or poor maintenance
- Suffering from structural problems
- Fire damaged
- Unsecured and open to the elements
- Threatened with demolition

It should be noted that the above list is not exhaustive and other criteria may sometimes be considered when assessing a building for inclusion in the Register.

Anyone can suggest that a building should be added to the Register as long as it meets one of the criteria listed above.

3.1 To comply with this policy requirement, enabling proposals should relate to a listed building(s) identified on the 'Buildings at Risk Register' at the time of application or demonstrate that other justifiable circumstances exist.

3.2 Listed buildings which have previously been granted planning approval for enabling development, and where work has been completed, will not be supported for further enabling development. Incremental enabling development would not only be contrary to the key objective of 'securing the long term future of the listed building', but would also distort the assessment of public benefit/disbenefit, as the full impact of enabling development could not be known in advance.

Securing the long term future of the Listed Building

3.3 Policy HE3 requires that enabling development proposals secure the long term future of the listed building(s) to which they relate. To comply with this policy requirement, proposals should demonstrate that they will secure the restoration, appropriate re-use, and ongoing management/maintenance of the listed building, through submission of:

- A Conservation Plan, defining all aspects of significance of the building and landscape, its vulnerability, and guidelines or policies for sustaining its significance. This should include consideration of where any new build enabling development would be most appropriately sited.

- A Conservation Management Plan, which sets out the ongoing actions necessary to sustain the significance of a listed building once works to restore and re-use the building have been completed. In particular, it should identify:
 - a) who will be responsible for the long-term management of the listed building
 - b) the necessary maintenance tasks and the frequency with which they will be undertaken.
 - c) how future maintenance will be funded in the long term

3.4 These plans should be prepared by a suitably accredited professional in building conservation. Historic Scotland's 'Conservation Plans: A Guide to the Preparation of Conservation Plans' (2000) provides useful information on conservation planning and management.

3.5 It is important that restoration works are carried out as soon as possible, in order to prevent further deterioration of the listed building(s). In light of this, proposals must demonstrate how the funds raised by the enabling development will be channelled into the restoration of the listed building at the earliest possible opportunity, i.e. through a phasing plan.

The Only Means Possible

3.6 Policy HE3 requires that enabling proposals are the '**only means**' of preventing the loss of a listed building and securing its long term future. This reflects the fact that enabling development should only be used as a last resort as it often requires disbenefits to be accepted in return for greater public benefits. In addition, enabling is an inefficient means of funding a conservation deficit, usually requiring development with a value of three or four times the conservation deficit to break even.

3.7 To comply with the above policy requirement, an options appraisal should demonstrate that:

1. a number of potential uses have been investigated, with the proposed use being the optimum viable use that is compatible with the listed building.
2. the listed building has been subject to market testing, unless:
 - it has been unsuccessfully marketed during the past 18 months or has been recently acquired for a price that reflects the current condition.

Where a listed building forms part of a larger historic entity, i.e. a Garden and Designed Landscape, it is expected that the historic entity will be market tested, unless it can be demonstrated, to the satisfaction of the Council and Historic Environment Scotland, that this would be inappropriate. This approach is intended to prevent the detrimental fragmentation of the historic entity through the sale of the listed building only.

Market testing will normally include the offer of the unrestricted freehold or long leasehold (125 years or more) on the market at a realistic price reflecting the condition of the place, the presumption to retain and restore the asset, and, so far as ownership allows, with an appropriate curtilage. There should be no inflation of the price in the hope of demolition or additional development. The marketing should be carried out by a suitable firm of chartered surveyors or estate agents and include the placing of advertisements in all relevant journals. Assuming normal market conditions, the minimum period of active marketing will be six months. The emphasis must be on active marketing rather than merely placing the property's details on a website after an initial advertising campaign.

3. The potential for grant aid has been investigated and none is available. Where grant aid is available, but insufficient to cover the conservation deficit, this should be used in combination with enabling development to restore and secure the future of the listed building. Available grant aid should be included in the 'development appraisal' to be submitted with the planning application.

4. no other groups, such as a development trust, are willing to undertake the project.

The Minimum Necessary

- 3.8** Policy HE3 requires enabling development proposals to be the **'minimum necessary'** to restore and secure the long term future of a listed building(s). This reflects the fact that enabling development can only be justified by the inherent lack of viability of the listed building, not an owner's inability to fund a commercially viable scheme.
- 3.9** To comply with this policy requirement, proposals should meet, but not exceed an identified 'conservation deficit', which exists when the existing value, plus the development cost (e.g. restoration, conversion to an appropriate use and developer profit), exceeds the value of the listed building after development.
- 3.10** With regard to developer profit, it is right and proper that a developer be allowed a fair and reasonable return on their investment, to reflect the risk involved in the development project. The appropriate level of developer profit will be determined on a case by case basis, taking into account the location of the development, length of development period, the target market, complexity of the scheme, possibility of unforeseen problems (although a contingency figure in the building costs should take this risk into account) and the stability of interest rates etc.
- 3.11** Compliance with this policy requirement should be confirmed through submission of a development appraisal, which covers all financial aspects of the proposed enabling development in sufficient detail to enable scrutiny and verification by the Council. The development appraisal must establish and justify the 'need' for enabling development and the scale of development necessary to meet that need. A template for a typical development appraisal is provided in Annex 1. While this template is for a single phase development, it can be adapted to cover multi-phase proposals and a variety of circumstances.
- 3.12** The development appraisal should be substantiated by:
 - a) justification for current value, if not nominal;

- b) justification for end values, based on comparable transactions;
- c) detailed costed schedules of works;
- d) justification for any other exceptional costs; and – sensitivity analysis

3.13 Enabling proposals will not be justified where:

- a developer pays a higher price for a development opportunity than is justified by market conditions
- market conditions change to such an extent that the developer may not be able to realise the anticipated return on their investment.
- the owner's insurance is considered inadequate to meet the cost of repair and reinstatement following a normally insurable loss.

Public Benefits

- 3.14** Enabling development is often contrary to one or more planning policies and justified on the basis that the public benefits of the proposal decisively outweigh any disbenefits. While the restoration of a listed building is the key public benefit derived from enabling development, in terms of contributing to the retention and maintenance of the wider historic environment, it does not provide a direct benefit to the public/local community, who are likely to be most directly affected by any disbenefits. In light of this, a proposal should demonstrate how it will provide a significant public benefit, in addition to the restoration of the listed building. It is expected that public benefits will be directly related to the use of the listed building and/or its setting. However, off-site public benefits, which are proportionate to the proposed development, will be considered. While not exhaustive, the following is a list of potential benefits.
 - New or improved public access to the listed building and/or its setting
 - Restoration/reinstatement of the setting of the listed building (must be accompanied by public access)
 - Biodiversity enhancements on site (must be accompanied by public access)

- Conversion of the listed building to a public use (i.e. tourist attraction, education facility etc)
- Provision of Employment opportunities

3.15 The appropriateness and significance of public benefits will be determined by the Regeneration and Planning Service, taking into account the scale and impact of the proposal and public comment received during the statutory 21 day consultation period.

Location of New Build Development

3.16 In some cases applicants, who own or have control of land outwith the site of the listed building, may wish to locate the new build element off-site, either because there is no scope for new build development within the curtilage of the site, or to remove potential impacts on the setting of the listed building. This type of proposal will be considered on its merits, including the suitability of the off-site location. It should be noted that any additional costs associated with off-site development, such as the purchase of land, will not be accepted as a 'development cost', as this will increase the 'conservation deficit' and the scale of enabling development required to meet it. This would be contrary to the principle of 'the minimum necessary'.

Provision of Supporting Information

3.17 Supporting information should be of sufficient detail to allow the Regeneration and Planning Service and its consultees to make an informed decision on whether an enabling proposal meets the criteria set out in this Supplementary Guidance. While some of the requirements for supporting information have already been highlighted under specific criteria, applicants should ensure that all the supporting information listed below is submitted with a planning application.

Checklist:

1. A report, including survey drawings, showing the existing form of the building and associated landscape and how it has developed through time.

2. A Conservation Plan, defining all aspects of significance of the building and landscape, its vulnerability, and guidelines for sustaining its significance
3. A Conservation Management Plan, which sets out the ongoing actions necessary to sustain the significance of a listed building once works to restore and re-use it have been completed. In particular, it should identify:
 - a. who will be responsible for the long-term management of the listed building
 - b. the necessary maintenance tasks and the frequency with which they will be undertaken.
 - c. how future maintenance will be funded in the long term
4. A design and access statement
5. An options appraisal (covering potential uses and sources of funding)
6. Proposals, defined in sufficient detail to understand their impact on the significance of the place
7. A development appraisal, substantiated by:
 - justification for end values, based on comparable transactions
 - detailed costed schedules of works
 - justification for any other exceptional costs; and sensitivity analysis
 - justification for current value
8. A Phasing Plan
9. Pre-Application Consultation Report (where undertaken)
10. A parallel application (if applicable) for scheduled monument consent or listed building consent

Type of planning application

3.18 As highlighted in the sections above, the determination of enabling development applications requires a full understanding of the benefits and disbenefits of each proposal, which can only be achieved if a sufficient level of detail is submitted with the application. For example, detailed information on layout and design and the financial justification are required to determine the proposals impact on the listed building and its setting and to establish and quantify the need for enabling. In light of this, applications for planning permission in principle, where substantive matters are reserved for later approval, are not appropriate and all enabling development proposals must be submitted as full/detailed planning applications.

4.0 Supporting Processes

Pre-Application Discussion

4.1 Applicants are encouraged to engage in pre-application discussion with the Regeneration and Planning Service, in order to highlight the key issues and identify any obstacles which need to be addressed. This should avoid unrealistic expectations and ensure that the determination of planning applications is not unduly protracted.

Professional Advice

4.2 An enabling development application will include detailed supporting information on a wide range of issues, including building conservation/management and development finance. The process of assessing and verifying this information requires a range of professional skills. While the Council will, whenever possible, utilise internal resources and statutory consultees, independent professional advice may be sought to verify supporting information. For example, where appropriate, an independent professional in building conservation may be used to verify the conservation statement and conservation management plan.

4.3 For all enabling development applications, an independent professional agency, chosen by the Council, will be used to verify the financial justification (development appraisal) submitted.

Consultation Process

4.4 Since the principle of enabling development involves a degree of disbenefit being accepted in return for a greater public benefit, it is important that the views of stakeholders are integrated into the decision making process. This will be achieved through the consultation process. As a statutory consultee, Historic Environment Scotland will be consulted on all enabling development proposals, with other bodies, such as the Architectural Heritage Society of Scotland and the Scottish Civic Trust, consulted as and when required. The statutory 21 day public consultation period will provide the opportunity for local communities to comment. Applicants are encouraged to carry out pre-application public consultation, in the form of one public meeting. This will enable local communities to contribute to the identification of public benefits and provide the opportunity for any concerns/issues to be identified and resolved before submission of a planning application. Where pre-app consultation is undertaken, a consultation report, setting out the issues raised and how these have been taken into account, should be submitted with the planning application.

Use of Legal Agreement and/or Planning Conditions

4.5 A Section 75 legal agreement and/or planning conditions will be used to ensure that the design, layout, public benefits and phasing agreed at the development management stage are delivered.

5.0 Summary

5.1 Scottish Planning Policy makes it clear that the planning system has a role to play in preventing the loss of listed buildings and securing their long term future by supporting 'enabling development', where appropriate.

5.2 This Supplementary Guidance provides the detailed criteria for assessing compliance with Policy HE3 and identifies the supporting information required. In particular, the criteria clarifies when a listed building will be considered at risk of being lost, when a proposal is the 'only means' and the 'minimum necessary' to restore and secure the long term future of a listed building and what public benefits will be appropriate. The guidance does not address those issues which relate to enabling development, but are covered elsewhere in the Plan.

- 5.3** This Supplementary Guidance also sets out the processes which will support the assessment, determination and implementation of enabling applications, including pre-application discussions, professional advice, the consultation process, and the use of legal agreements and/or planning conditions.
- 5.4** This guidance should be read and applied in conjunction with other relevant Local Development Plan policies and supplementary guidance documents.

ANNEX 1

Example of a typical development appraisal layout for a single-phase development

Site costs

Market value of property in existing condition

Costs incidental to acquisition:

Stamp Duty Land Tax on acquisition at market value legal fees on acquisition at market value
agent's fees on acquisition at market value reasonable holding costs

Total site costs £ xxx

Design and construction

Survey costs

Research and analysis costs

Contamination costs

Construction costs:

- repair
- conversion
- New build

Landscaping costs

Professional fees:

- project manager
- architect/surveyor
- landscape architect
- quantity surveyor
- structural engineer
- M&E engineer
- planning supervisor
- other

Contingency on design and construction costs

Total design and construction costs £ xxx

Statutory and other charges

Planning fee

Building control fee

Funding and valuation fees:

- funding fees
- financial cap
- bank valuation fee
- bank's legal and monitoring fees second charge costs

Payments required under Article 40 agreement

Legal costs of Article 40 agreement

Total statutory and other charges £ xxx

Interest (preferably calculated by way of cash flow)

Site cost + fees

Construction + fees

Statutory and other charges

Voids

Total interest costs £ xxx

Letting and sales costs

Agent's letting fees

Legals on letting agent's sale fees

Legals on sales promotion costs

Total letting and sales costs £ xxx

Deductions from costs

Short-term income from site

Grants

Total deductions (£ xxx)

Developer's profit

Total @ x % on net costs £ xxx

TOTAL COSTS £ xxx

COMPLETED MARKET VALUE OF SCHEME (£ xxx)

SURPLUS/DEFICIT £ 0

NOTES:

In an enabling development scheme, the surplus/deficit should be approximately zero.

Developer's profit is calculated on all costs except any cash grant or subsidy from public funds.



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