



Historic England

The Disposal of Heritage Assets



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Although this document refers to English Heritage, it is still the Commission's current advice and guidance and will in due course be re-branded as Historic England.

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THE DISPOSAL OF HERITAGE ASSETS:

Guidance note for government departments
and non-departmental public bodies



ENGLISH HERITAGE



department for
culture, media
and sport

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INTRODUCTION

- I.1 This guidance note contains advice on the disposal of heritage assets by central government bodies in England. It replaces the 1999 guidance note on the disposal of historic buildings, listed by HM Treasury¹ as one of the mandatory guidance documents for asset management by public sector organisations. The term 'heritage asset' has been adopted in line with Planning Policy Statement 5: *Planning for the Historic Environment* and is defined in section 2. The guidance therefore applies to a wide range of asset types including historic buildings, monuments, memorials, archaeological remains, designed landscapes, battlefields and wrecks.
- I.2 Public bodies have an important role in promoting regeneration and sustainable development through the disposal of their surplus land and property. The purpose of this guidance note is to ensure that proper account is taken of the heritage values associated with any surplus land. This will help to minimise the risk of depreciation or damage to public assets and to avoid any unnecessary delays in the planning process. Government departments and agencies are committed by the *Protocol for the Care of the Government Historic Estate*² to protect any heritage assets on their land, including assets that are in the course of disposal.
- I.3 Guidance on the disposal of historic buildings was first issued in February 1995 by the former Department of National Heritage and subsequently updated and republished in 1999 by the Department for Culture, Media & Sport. This new edition has been updated and expanded following consultation with departments including HM Treasury. It supplements the guidance on disposal of land and property assets contained in Annex 4.8 of *Managing Public Money* (HM Treasury, 2007) and the *Guide for the disposal of surplus property* (Office of Government Commerce, 2005).³
- I.4 This guidance note applies across central government, including departments, executive agencies and the non-departmental public bodies for which they are responsible. Although not mandatory beyond central government, it provides the elements of best practice for the public sector as a whole, including local authorities, health trusts, public corporations and the police. It is complementary to the guidance published by English Heritage for local authorities on managing their heritage assets.⁴

1. www.hm-treasury.gov.uk/psr_mpm_index.htm

2. The Protocol is available at: www.helm.org.uk/gheu

3. www.ogc.gov.uk/documents/Guide_for_disposal_of_surplus_property_PDF.pdf

4. Managing local authority heritage assets, DCMS, ODPM, English Heritage (2003) www.helm.org.uk/upload/pdf/LA_Assets_leaflet.pdf

INTRODUCTION

Key points

- a. **Accepting the highest purchase offer is not always appropriate.** Maximisation of receipts should not be the overriding aim in cases involving the disposal of heritage assets (see paragraph 9.1);
- b. **Any options for reuse should be considered before deciding to sell.** It may be possible to retain and adapt a historic building for a different use, instead of selling it (see section 3);
- c. **Unused heritage assets need to be actively protected.** All vacant and non-operational historic buildings should be regularly inspected and maintained in a secure, safe and stable condition pending disposal (see section 5); important archaeological sites should be actively managed.
- d. **English Heritage should be consulted at an early stage.** English Heritage should be given the opportunity to comment regarding any site where there is potential for a significant heritage issue (see paragraphs 2.5, 7.4 and 10.3). Guidance on the handling of disposal cases is available from the Government Historic Estates Unit (GHEU).⁵
- e. **Departments should provide clear information for purchasers.** Disposals should always be accompanied by information regarding the significance of any heritage assets and any constraints on change due to their significance (see paragraphs 10.5 and 10.6). Information about any repair, maintenance or management liabilities should also be made available, including an up-to-date condition survey (see paragraph 5.2);
- f. **Heritage assets need sustainable ownership.** Departments should take reasonable steps to ensure that purchasers of vulnerable heritage assets have the resources to maintain them. Alternative methods of disposal other than open market sale may need to be considered to ensure appropriate ownership (see section 8 and 9.4);
- g. **Large historic sites should be considered as a whole.** The disposal of large sites should be handled holistically, to avoid isolating heritage assets and potentially damaging their setting (see paragraph 8.6).

5. www.helm.org.uk/gheu

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IDENTIFYING HERITAGE ASSETS

- 2.1 Those parts of the historic environment that have significance because of their historic, archaeological, architectural or artistic interest are called heritage assets. Planning Policy Statement (PPS) 5 defines a heritage asset as 'A building, monument, site, place, area or landscape positively identified as having a degree of significance meriting consideration in planning decisions. Heritage assets are the valued components of the historic environment. They include designated assets and assets identified by the local planning authority during the process of decision-making or through the plan-making process (including local listing).' The PPS defines a designated heritage asset as 'A World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area'. Further information about all aspects of heritage protection is available on the English Heritage website.⁶
- 2.2 The identification of the heritage assets on a site requires specialist advice. Some departments have in-house advisers who will have access to relevant information and further sources of advice. The Government Historic Estates Unit is available to provide advice to departments on disposal cases and can direct enquiries to the relevant team in English Heritage. Where appropriate, enquiries should be made with the local Historic Environment Records (see 2.6) and with the planning authority to ascertain the constraints which may arise in relation to any heritage assets (see 6.5). Once these enquiries have been completed, the information should be made available to potential purchasers and may be incorporated in a statement of significance or conservation management plan (see 10.6).

The Government Historic Estates Unit is available to provide advice to departments on disposal cases and can direct enquiries to the relevant team in English Heritage.

6. www.english-heritage.org.uk/server/show/nav.1368

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IDENTIFYING
HERITAGE ASSETS

2.3 Designated heritage assets are one of the following:

World Heritage Sites. There are seventeen sites in England inscribed under the UNESCO World Heritage Convention. All are subject to non-statutory management plans. A planning circular on the protection of world heritage sites was issued by Communities and Local Government in 2009⁷.

Scheduled monuments.⁸ These are designated under the Ancient Monuments and Archaeological Areas Act 1979 by the Secretary of State for their national importance. They include buildings (usually not in use), ruins and archaeological remains, such as field monuments. They also include buried sites, sometimes built over by later development.

Listed buildings.⁹ These are buildings of special architectural or historic interest. The protection afforded to a listed building includes its interior and any historic fixtures and fittings (e.g. coats of arms and memorials, where fixed to the building). Objects or structures within the curtilage of a listed building, unless constructed after 1 July 1948, are also protected. The local planning authority are required to have 'special regard' to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest which it possesses (section 66 and 67 of Planning (Listed Buildings and Conservation Areas) 1990).

Protected wreck sites. Under the Protection of Wrecks Act 1973, the Secretary of State has powers to designate wrecks, or any objects contained or formerly contained in them, of historic, archaeological or artistic importance.

Historic parks and gardens, where these are included in English Heritage's Register of Parks and Gardens of Special Historic Interest.

Battlefields, where these are included in English Heritage's Register of Battlefields.

Conservation areas. These can be designated by local planning authorities. The local planning authority must pay 'special attention' to the desirability of preserving or enhancing the character and appearance of any buildings or other land in a conservation area, under Sections 72 and 73 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

7. Circular 07/09: *Protection of World Heritage Sites*
www.communities.gov.uk/publications/planningandbuilding/circularworldheritage

8. Further guidance on scheduled monuments is available at:
www.culture.gov.uk/what_we_do/historic_environment/4171.aspx

9. Further guidance on listed buildings is available at:
www.culture.gov.uk/what_we_do/historic_environment/3330.aspx

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IDENTIFYING HERITAGE ASSETS

- 2.4 There are other types of heritage asset that, although undesignated, can be a material consideration in the determination of a planning application (see paragraph 7.4):
- **Unlisted buildings** where these make a positive contribution to the character or appearance of conservation areas and locally listed buildings where policies for their protection have been formally adopted by the local planning authority.
 - **Undesignated archaeological sites.** There are many heritage assets with archaeological interest that are not currently designated as scheduled monuments, but which are demonstrably of equivalent significance. Paragraph HE9.6 of PPS5 gives further advice on how they should be considered.

Disposals should always be accompanied by clear information regarding the significance of any heritage assets and any constraints on change due to their significance.

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IDENTIFYING
HERITAGE ASSETS

- 2.5 **Requests for listing or scheduling.** The process of disposal often draws attention to the potential for listing or scheduling of buildings or structures of historic interest. Anyone can make a request to English Heritage to consider a heritage asset for statutory protection, at any time. Such requests can be a cause of uncertainty and delay if they are made late in the disposal process. Rather than risk this, departments should consult English Heritage on the case for statutory protection at an early stage. In cases of urgency, where planning permission has been obtained, or has been applied for prior to a disposal, an application for a formal Certificate of Immunity from listing can be made.
- 2.6 **Buried remains.** As part of their research into the development potential of a site, departments should include an initial assessment of whether the site is known or likely to contain archaeological remains. Early consultations with the relevant Historic Environment Records (HERs)¹⁰ will help to provide prospective developers with advance warning of the archaeological sensitivity of the site. Contact details for HERs can be found on the Heritage Gateway website.¹¹ It may be necessary to commission an assessment by a registered archaeological organisation or professionally-qualified archaeologist, preferably a member of the Institute of Archaeologists. Information about registered organisations can be found on the Institute's website.¹²
- 2.7 **War memorials** require sensitive consideration, whether or not they are protected by listing. There is a UK National Inventory of War Memorials that can be searched online.¹³ Where it is proposed to move a war memorial, or to transfer ownership, at least six weeks' notice should be given to the War Memorials Trust, who may be able to help in finding a suitable new location. Further guidance is available in *War Memorials in England & Wales: Guidance for custodians*¹⁴ published by the former Department for Constitutional Affairs (now the Ministry of Justice) in April 2007.

¹⁰. www.heritagegateway.org.uk/gateway/CHR

¹¹. www.heritagegateway.org.uk/gateway

¹². www.archaeologists.net

¹³. www.ukniwm.org.uk

¹⁴. www.justice.gov.uk/guidance/docs/war-memorial-guidance.pdf

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IDENTIFYING
HERITAGE ASSETS

- 2.8 **Historic collections, artefacts and works of art.** Many public buildings contain items of artistic, historical, technical or scientific importance. Examples include furniture, books, paintings, machinery and memorabilia connected with the past use of a historic building. Expert advice should be sought to confirm their value, historical importance and measures for their protection. Such items may need to be inventoried and recorded in situ prior to the building being vacated. Consideration may need to be given to whether they can be retained in situ following disposal, and whether this can be secured by means of a legal agreement. Where this is not practicable, the most appropriate method of disposal will need to be considered. The Museums Association has published guidance on ethical disposal¹⁵ which is applicable to museums and other public institutions holding collections of artistic, historic or scientific importance. This guidance emphasises the importance of long-term public benefit and keeping collections in the public domain. It does not endorse the sale of collections.
- 2.9 **Records and archives.** Site-based records are vulnerable to dispersal or loss during the disposal period; care needs to be taken to ensure that any records are properly reviewed and that papers of historical interest are transferred to an appropriate archive. The first point of contact for enquiries relating to the disposal and archiving of records should be the Departmental Record Officer (each government department or agency has one). The National Archives (TNA) publishes guidance on its website¹⁶ for government departments and other organisations subject to the National Records Act 1958 on the retention of various sorts of buildings records.¹⁷ Alternatively, it may be appropriate to lodge records in a local archive or museum, or with a specialist collection such as one of the MoD's service museums. General guidance on Historic Environment Records and archives is available on the HELM website.¹⁸
- 2.10 **Marine heritage assets.** Aside from protected wreck sites (see para 2.3 above), there is little information available regarding heritage assets located in territorial waters. Currently, planning law does not apply to development at sea, and there is no planning guidance for the marine historic environment.¹⁹ However, there are new provisions for marine planning under the Marine & Coastal Areas Act 2009. English Heritage's Marine Archaeology Team can advise departments regarding the marine historic environment and should be consulted about the disposal of heritage assets.

15. www.museumsassociation.org/download?id=11113

16. www.nationalarchives.gov.uk/recordsmanagement

17. www.nationalarchives.gov.uk/documents/sched_buildings.pdf

18. www.helm.org.uk/server/show/nav.19606

19. Non-statutory guidance is available e.g. JNAPC, 2006, *Code of Practice for Seabed Development*, Joint Nautical Archaeology Committee and Crown Estate: www.thecrownestate.co.uk/jnapc_code_of_practice_2

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ALTERNATIVES TO BE CONSIDERED PRIOR TO DISPOSAL

- 3.1 When a property is being considered for disposal, an appraisal and evaluation should be carried out – see *The Green Book: Appraisal and Evaluation in Central Government*.²⁰ Further guidance on appraisals in relation to property disposals is available in the *OGC Guide for the disposal of surplus property*.²¹ An appraisal should consider wider property requirements and not simply the price that might be realised; for example, better value for money might be achieved through making improved use of the asset. The appraisal will also need to show what consideration is given to special matters such as listed building status, heritage and environmental issues.
- 3.2 If an asset is surplus to requirements in its present use, departments may need to consider whether they can make cost-effective alternative use of it. This will involve assessing: the feasibility of alternative uses by the owning department; the likely cost of adapting the asset to a new use, compared with alternative means of accommodating that use; and the prospects for disposal, and likely receipt. These comparisons should be based on whole-life costs of the alternatives, including the cost of securing the future of the heritage asset concerned.
- 3.3 In appraising these options, maintenance and running costs need careful assessment. It should not be assumed that historic buildings are more expensive to run than modern buildings.²² In assessing the financial prospects for disposal, account should be taken of the cost of maintaining the building while vacant, and the extent to which sale value may be depressed by restrictions on future use, or by costs of repair or adaptation which a purchaser would have to meet. This will require some exploration of the planning and conservation framework (sections 6 and 7) before the disposal decision is taken.
- 3.4 Where a public body no longer has a use for an asset, it should consider how to dispose of it in a way that gives best available overall value for money. In the first instance, public bodies must ensure that e-PIMS (OGC's Electronic Property Information Mapping Service)²³ is updated. It may also require adding to the Register of Surplus Public Sector Land operated by the Homes and Communities Agency. This enables other public bodies to express an interest in acquiring the asset. If there is no interest, the asset should then be disposed of by the most appropriate method (see section 8).

20. www.hm-treasury.gov.uk/data_greenbook_index.htm

21. www.ogc.gov.uk/documents/Guide_for_disposal_of_surplus_property_PDF.pdf

22. A study by the Ministry of Justice has shown that average energy costs per square metre for pre-1900 court buildings are significantly lower than for court buildings built between 1900 and 2000.

23. www.ogc.gov.uk/electronic_property_information_mapping_service.asp

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PARTNERSHIPS WITH THE PRIVATE SECTOR

- 4.1 Since the 1990s, government departments have made increasing use of private sector expertise in property management, through arrangements such as the Private Finance Initiative (PFI) and Public Private Partnerships (PPP). Another option is sale and leaseback (see *OGC Guide for the disposal of surplus property*, paragraph 5.1.4). Where maintenance responsibility for a heritage asset is transferred under one of these agreements, the department should ensure that appropriate levels of care are secured, (see section 5). For example, the contract documentation should specify the standard of maintenance to be achieved and any requirement for periodic condition surveys.
- 4.2 Where responsibility for maintaining heritage assets is to be transferred to a private sector body, clear information about them, including a statement of significance or conservation management plan, should be provided by the disposing department (see paragraphs 10.5 and 10.6). This will provide greater clarity to potential partners by explaining the significance of the asset, and defining any constraints and opportunities.
- 4.3 In some special cases involving historic buildings of outstanding importance, alternative beneficial uses may be difficult to find, and even then may involve such a degree of change that the special interest of the building is seriously compromised. It would be appropriate in such cases for the disposing department to require the refurbishment of a building as part of the contract, unless circumstances dictate otherwise. This approach may also apply to historic buildings whose form is very specific to their use – historic courts, for example – provided that it is viable to provide up-to-date operational facilities in the building concerned. If refurbishment of a historic building is the preferred option then the restrictions that apply should be made clear to those invited to tender.
- 4.4 Bidders should be required to demonstrate how best use can be made of any heritage assets in both heritage and service terms. Where assets are not required for their current purposes, bidders should be invited to identify sympathetic and innovative opportunities for re-use. Contracts should be structured so that responsibility is clearly assigned for keeping any heritage assets in good repair, and for any associated costs. The mothballing of redundant historic assets for indefinite periods should be avoided.

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PARTNERSHIPS WITH THE PRIVATE SECTOR

- 4.5 The criteria for the assessment of bids should always be clearly set out. English Heritage's Government Historic Estates Unit can advise departments on the evaluation of proposals for the re-use or alteration of heritage assets, and their future management. The potential costs and risks must be fully taken into account in the assessment of alternative proposals. These costs should include any maintenance deficit at the time of disposal and the cost of keeping the asset in a secure and weathertight condition while vacant (see paragraph 5.2).
- 4.6 In exceptional cases where a heritage asset has no economic use or a negative value, alternative ownership in the private, public and voluntary sectors will need to be considered, examining both the heritage and financial implications (see paragraph 8.7). Rather than leaving this to a private sector partner to resolve, it is preferable for departments to retain responsibility for disposal of heritage assets which are incidental or surplus to the contract, as this will help to ensure accountability for the public interest.

It may be possible to retain and adapt a historic building for a different use, instead of selling it.

5

SAFEGUARDING HERITAGE ASSETS PENDING DISPOSAL

- 5.1 It is important to set disposal procedures in train as soon as possible after heritage assets are judged surplus to requirements. Risks of deterioration, vandalism and theft are a serious threat to assets that are unused, unmanaged or unguarded. *Managing Public Money* advocates disposal of surplus residential property within six months and other surplus land and property within three years. However, this is not always achievable where the planning position is unusual or complex.
- 5.2 Where buildings are due for disposal, it is preferable to keep them in full or at least partial use up to the point of sale. Whether or not they remain in use, it is essential that buildings are regularly inspected, and that maintenance regimes are strictly observed to ensure that they are kept weatherproof and well ventilated. Inadequate maintenance will make ultimate disposal more difficult. The *Protocol* requires that all heritage assets on the government estate are subject to a periodic inspection report. This should be used as the basis for identifying outstanding repairs. The report will provide approximate costs for works in five categories of priority; works in the first three categories will be sufficient to keep the asset on a 'plateau of good repair' and should provide the basis for calculating a maintenance deficit. Departments should normally carry out works classed as Priority 1 (unavoidable/immediate) and Priority 2 (essential/urgent) in advance of sale, in order to avoid further damage or deterioration in the course of disposal. However, this may not be necessary where a new owner has already been identified with the resources to carry out a comprehensive repair scheme. Detailed guidance on periodic inspections and maintenance standards is available from GHEU.²⁴
- 5.3 Exceptionally, historic buildings or monuments stand empty for long periods, for reasons beyond the control of the department that owns them. Obtaining funding for condition surveys and repairs can become more difficult in such circumstances. Access may be constrained because of concerns about health and safety. As a result, the necessary works are likely to become progressively more expensive as time passes. Every effort should be made to avoid heritage assets being allowed to stand empty for a long period. Where this cannot be avoided, GHEU can advise on what is necessary in terms of inspection and urgent works.

24. See *Managing Heritage Assets: Guidance for government departments on the use of periodic inspections, forward work plans and asset management programmes*, English Heritage 2009. This is available to download at www.helm.org.uk/gheu

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SAFEGUARDING HERITAGE ASSETS PENDING DISPOSAL

- 5.4 English Heritage publishes an annual Heritage at Risk Register, available through its website.²⁵ Details of all designated heritage assets known to be at risk on the government estate, including grade II listed buildings, are also published in English Heritage's *Biennial Conservation Report on the Government Historic Estate*.²⁶ The criteria for inclusion in this list are the same as for the national online register maintained by English Heritage. In such cases, GHEU can advise on what measures are needed to protect the asset during the disposal period.

All vacant historic buildings should be regularly inspected and maintained in a secure, safe and stable condition pending disposal.

25. The 2009 register includes details of the following designated assets: grade I and grade II* listed buildings (plus grade II listed buildings in Greater London), scheduled monuments, registered battlefields, protected wreck sites, registered parks and gardens and conservation areas.
See: www.english-heritage.org.uk/risk

26. The report is available to download at www.helm.org.uk/gheu

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THE PLANNING POLICY FRAMEWORK

- 6.1 Planning Policy Statement 1, *Delivering Sustainable Development* (2005),²⁷ sets out the Government's overarching planning policies on the delivery of sustainable development through the planning system and its vision for community involvement in the planning process. It states that 'Local communities should be given the opportunity to participate fully in the process for drawing up specific plans or policies and to be consulted on proposals for development.'
- 6.2 The Planning and Compulsory Purchase Act 2004 replaced Local Plans with Local Development Frameworks (LDFs), which are made up of a number of Local Development Documents (LDDs) and Supplementary Planning Documents (SPDs). Planning Policy Statement 12: *Local Spatial Planning* (2008)²⁸ contains further guidance.
- 6.3 Under the 2004 Planning Act, supplementary planning guidance and site planning briefs have been replaced by Supplementary Planning Documents (SPDs). These have greater weight because they are part of the local development framework and have statutory status. The SPD has to comply with the requirements for community involvement and sustainability appraisal. This has the advantage of offering prospective purchasers a higher degree of certainty about what will be permitted. However, planning briefs can still be produced, for example in the absence of a Local Development Framework. Guidance on their role and preparation is available in *Planning and Development Briefs: A Guide to Better Practice*.²⁹
- 6.4 Crown bodies no longer benefit from immunity from the planning acts. CLG Circular 02/06, *Crown Application of the Planning Acts*, explains how planning applications from Crown bodies should be handled. However, Crown immunity has not yet been removed in relation to scheduled monument consent. GHEU has issued a guidance note³⁰ for Crown bodies on the removal of Crown immunity, which explains the procedures for both listed building consent and scheduled monument clearance.

27. Planning Policy Statement 1:

www.communities.gov.uk/publications/planningandbuilding/planningpolicystatement1

28. www.communities.gov.uk/planningandbuilding/planning/regionallocal/localdevelopmentframeworks/ppsl2

29. www.communities.gov.uk/publications/planningandbuilding/planningdevelopment

30. This can be found on the HELM website: www.helm.org.uk/gheu

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THE PLANNING POLICY FRAMEWORK

- 6.5 Before a formal planning application is submitted, enquiries should be made with the local authority regarding any planning policies affecting the asset and the authority's view of appropriate alternative uses. Such discussions will be particularly important where the planning position is not wholly clear – for instance, because the local planning framework is under review, or leaves open the possibility of more than one type of use. Professional planning advice, if not available in-house, will generally need to be sought (see paragraph 10.2 below). It will generally be inappropriate for departments to contest clear local planning policies in up-to-date development plans with the aim of maximising receipts.
- 6.6 Additionally, where large or sensitive sites are involved it will often be helpful for the disposing body to consult at an early stage with the relevant Government Office and other key agencies at the regional level including the Regional Development Agencies. The Commission for Architecture and the Built Environment (CABE) may also need to be consulted where proposals raise conservation or design issues of more than local importance.
- 6.7 The disposal of sites which have potential for development will usually secure the best price if sold with the benefit of planning permission. However, local planning authorities normally require planning applications affecting listed buildings to be supported by concurrent applications for listed building consent. In each case the disposing department will need to consider the most appropriate option (see section 8), including 'sale subject to planning permission'.

English Heritage should be given the opportunity to comment at an early stage regarding any site where there is potential for a significant heritage issue.

7

THE CONSERVATION POLICY FRAMEWORK

- 7.1 *The Government's Statement on the Historic Environment for England 2010*³¹ sets out the value of the historic environment and the contribution it makes to our cultural, social and economic life. Government policy on the conservation of the historic environment in England is set out in Planning Policy Statement 5 (PPS 5) *Planning for the Historic Environment*³². Guidance on the interpretation of the policies in the PPS has been published in the *Historic Environment Planning Practice Guide*³³. The PPS and the practice guide replace earlier policy and guidance in PPG 15 and PPG 16.
- 7.2 Local planning authorities will judge proposals for the alteration, demolition or change of use of heritage assets in accordance with the policies in PPS5, the practice guide and the policies in the local planning documents referred to in paragraph 6.2 above. PPS 5 (HE9.1) states that 'there should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be. Once lost, heritage assets cannot be replaced and their loss has a cultural, environmental, economic and social impact. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Loss affecting any designated heritage asset should require clear and convincing justification.'
- 7.3 In exploring alternative options for the future of surplus sites, departments will need to take account of PPS5 and the practice guide. Paragraphs HE9.2 – 9.4 set out the tests to be applied by local planning authorities where an application would lead to harm or loss of significance to a heritage asset, for example whether any harm or loss is necessary in order to deliver public benefits or the benefits of bringing the site back into public use. Proposals for the development of a heritage asset will ideally be for its optimum viable use. However, by their nature, some heritage assets have limited, or even no economic end use. It is reasonable for disposing departments to explore alternative options, so long as it is recognised that the most appropriate use for a heritage asset may not necessarily yield the maximum financial return.

31. www.culture.gov.uk/reference_library/publications/6763.aspx

32. www.communities.gov.uk/publications/planningandbuilding/pps5

33. www.english-heritage.org.uk/server/show/nav.21136

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THE CONSERVATION
POLICY FRAMEWORK

- 7.4 PPS 5 advises local planning authorities to take into account the impact of a proposal on the significance of any heritage asset, whether designated or not. Policy HE8.1 states that the effect of an application on the significance of an undesignated heritage asset is a material consideration in determining an application. It is thus important that in cases where government sites are due for disposal, any previously unrecognised heritage assets are identified at the earliest opportunity (see section 2).
- 7.5 English Heritage has a statutory role in responding to planning authorities in connection with applications for planning permission and listed building consent. In particular, English Heritage has to be consulted in all cases which involve grade I or II* buildings or the demolition of grade II buildings. English Heritage administers all scheduled monument consents/clearances on behalf of the Department for Culture, Media & Sport. In addition, it provides various types of non-statutory advice, including pre-application advice on important proposals affecting the historic environment in England, and advice on archaeology within Greater London. Further information about its role is contained in the English Heritage *Charter for Planning and Development Advisory Services*.³⁴
- 7.6 National amenity societies (six of which have a statutory role in commenting on applications for listed building consent) and other conservation bodies, both at national and local level, may wish to comment on proposals affecting heritage assets.³⁵
- 7.7 Care should be taken to protect the setting of heritage assets; unsuitable uses on adjoining land can seriously reduce the likelihood of successful disposal of a heritage asset (see also paragraph 8.6). Departments should take this into account when preparing proposals for the disposal of land adjacent to heritage assets. Local planning authorities are expected to take account of setting in considering planning applications that affect listed buildings and scheduled monuments.
- 7.8 Under the Marine and Coastal Access Act, provision is made for licensing of seabed developments by the Marine Management Organisation. The Act makes provision for management of non-designated features including the remains of any vessel, aircraft or marine structure which is of historic or archaeological interest. Where marine heritage assets are to be disposed, English Heritage's Maritime Archaeology Team can advise on designation and management issues.

34. www.english-heritage.org.uk/server/show/nav.19365

35. Links to each society are available on the website of the Joint Committee of the National Amenity Societies: www.jcnas.org.uk

8

METHODS OF DISPOSAL

- 8.1 Where a heritage asset has an economically viable use and has been kept in good repair, normal methods of open market sale will be used. However, special disposal procedures may be necessary in exceptional cases to secure appropriate ownership, repair or use of the asset. (See also section 5 of the *OGC Guide for the disposal of surplus property*). Guidance on marketing is being prepared by English Heritage.
- 8.2 **Method of sale.** Competitive tender is generally to be preferred to sale by auction, since it can provide the opportunity for information to be sought on the tenderers' proposals for the asset as well as the offer price, and can provide room for some negotiation with the short-listed potential purchasers. Sale by auction may, however, be appropriate in the most straightforward cases, like small tenanted offices. Sale by private treaty may be appropriate in exceptional cases: for example where a department wishes to sell an asset to a selected heritage body, such as a building preservation trust. Strict guidelines apply in such cases – see paragraph 9.2 below.
- 8.3 **Sales prior to planning permission.** In some circumstances the planning position cannot be resolved quickly, for example large complex sites containing heritage assets where lengthy negotiations will be required with the local planning authority. In such cases, disposing departments may wish to proceed with disposal before planning and heritage consents have been obtained. They will need to work with the planning authority to clarify the development potential of the site, for example through a Supplementary Planning Document (see paragraph 6.3). This process should confirm what heritage assets are affected, whether designated or not. It is important that the constraints and opportunities associated with these assets are clearly explained to potential purchasers, for example by means of a conservation management plan (see paragraph 10.6). In assessing tenders, departments will need to take into account whether bidders have understood these constraints and opportunities and any relevant planning policies.

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METHODS OF DISPOSAL

- 8.4 **Sales subject to 'overage' or 'clawback'.** An overage or clawback covenant (see OGC Guide, paragraph 4.11) may be used when a department is seeking a share in the development profit resulting from a subsequent grant of permission or from an appreciation in site value due to market conditions. Such sales may be appropriate in selling heritage assets, where they would expedite the transfer of responsibility for ongoing maintenance to a suitable purchaser.
- 8.5 **Exclusive options.** Treasury guidance (section 4.10 of the OGC guide) advises that exclusive options should be avoided wherever possible, as the Crown, in general, has sufficient resources to clarify the planning position. Options should only be used as a last resort where the site in question raises particularly complex planning, design or heritage issues which the public sector owner cannot expect to resolve satisfactorily using its own consultants.
- 8.6 **Packaging of disposals.** The break-up of heritage sites into separate ownerships can damage their integrity. The aim should be to encourage prospective purchasers to consider the potential of sites containing heritage assets as a whole, rather than to 'pick off' the most profitable elements. This is especially applicable to large institutional sites such as hospitals and military bases. If the site includes vulnerable heritage assets, for example historic buildings with a maintenance deficit, the marketing strategy should be designed to link their repair to the sale of more profitable parts of the site. The local planning authority may wish to secure this through a planning obligation under S.106 of the 1990 Planning Act. The distinctive character and cachet which heritage assets can contribute to redevelopment schemes may help to attract the more imaginative type of developer and may improve the attractiveness and success of a scheme overall.

The disposal of large sites should be handled holistically, to avoid isolating heritage assets and potentially damaging their setting.

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OF DISPOSAL

- 8.7 **Assets with no economic use or negative value.** Some heritage assets (such as ruins, field monuments and some fortifications) have no economic use within the constraints of their statutory protection. Even those with an economic use may have a negative market value because of a backlog of repairs and maintenance or due to limitations on alternative uses. Where the issue is disrepair, it may be necessary to put the asset into a reasonable state of structural repair before sale, to bring the market value up to a positive figure, rather than to pay a reverse premium or 'dowry'. This avoids the difficulties that arise in connection with covenants which require the purchaser to carry out repairs. In other cases, it may be more appropriate to dispose of the asset and allow the new owner to undertake repairs, for example where the asset is to be transferred to a building preservation trust. Another option may be to lease the asset and then sell the freehold once the necessary repairs have been completed. In all cases, departments are obliged to undertake precautionary measures to safeguard heritage assets pending disposal, as explained in section 5. Detailed surveys and technical studies may be necessary prior to transfer to ensure that adequate funding is in place to cover future maintenance liabilities. The onus should be on the disposing department to ensure that the purchaser is capable of maintaining the asset to an appropriate standard.
- 8.8 **Disposal to charitable trusts.** A trust may offer a solution where no one else is prepared to invest due to a negative value, or where the special character of the asset is not compatible with a commercial use, or where there is a compelling case for the asset to be used for the benefit of the wider community. Building preservation trusts are not-for-profit organisations with charitable status. They can raise various forms of finance from the Architectural Heritage Fund,³⁶ other trusts and foundations, lottery sources and public bodies. Building preservation trusts can often access funds which are not available to commercial or government organisations. Appropriate safeguards should be built into the trust deeds to ensure the repair of the asset and to control its future use. In exceptional cases trusts have been established specifically to take on heritage assets of national importance, such as the historic dockyards at Chatham and Portsmouth, the Royal Gunpowder Mills at Waltham Abbey, Somerset House in London and the Royal Naval College at Greenwich. The procedures which govern disposals to trusts are outlined in paragraph 9.4 below.

36. www.ahfund.org.uk

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PRICE

- 9.1 It is government policy that the maximisation of receipts should not be the overriding objective in the disposal of heritage assets. The aim should be to obtain the best value for the taxpayer, having taken into account the following factors, as well as the financial return:
- i. the provisions of the statutory development plan for the area;
 - ii. government planning policy for the historic environment;³⁷
 - iii. in particular, the clear recognition in government planning policy that the most appropriate long-term use for a heritage asset (when account is taken of the need to protect its special interest) may not be the use which generates the maximum financial return;
 - iv. the asset's current state of repair, and the likely costs of future maintenance and repair;
 - v. non-financial and wider regeneration benefits including environmental, cultural and long-term economic impact.
- 9.2 Departments should take particular care in their handling of private treaty sales (which should be taken to include exclusive options and partnership agreements), since they may be called on formally to defend the decisions they take in particular cases. Where a professional valuer who has experience of heritage assets is prepared to certify (a) that there are special considerations in the particular case which exceptionally justify a private treaty sale, and (b) that having regard to these considerations, the sale nevertheless represents full market value and has no concessionary element, Treasury approval will not be required. Otherwise the sale may be regarded as concessionary, and if so it should only go ahead if the Accounting Officer and, where appropriate, the Minister are prepared to defend it. The disposal of an asset at less than market value would need to be treated as a gift in accordance with Annex 4.12 of *Managing Public Money*.³⁸

37. See PPS 5 *Planning for the historic environment*:
www.communities.gov.uk/publications/planningandbuilding/pps5

38. www.hm-treasury.gov.uk/psr_mpm_index.htm

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PRICE

- 9.3 Problems have arisen in the past where heritage assets have been sold to purchasers who have not been able to maintain them properly. When sale is by competitive tender or by any form of private treaty, professional advice should, wherever possible, be taken on the financial soundness of the prospective purchaser.
- 9.4 Disposal to charities is a complex matter on which full legal and estates advice should be sought. Both the Architectural Heritage Fund and the UK Association of Preservation Trusts³⁹ can advise on procedures for transfers and potential funding. HM Treasury should also be consulted. If a building has a negative value the disposing department may transfer it with a dowry to cover the repair and maintenance deficit (see paragraph 5.2 above). It is generally accepted that the gift procedure applies, even though the assets may have a negative value. Gifts of an unusual nature – which are likely to include this sort of disposal – should be notified to Parliament through the Minute procedure.

Maximisation of receipts should not be the overriding aim in cases involving the disposal of heritage assets.

39. www.ukapt.org.uk

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MANAGING THE DISPOSAL PROCESS

- 10.1 General guidance on the management of the disposal process, from establishing objectives through to post-project appraisal, is set out in section 3 of OGC's *Guide for the disposal of surplus property*. Some departments have additional in-house guidance, for example the MOD's site closure guide.
- 10.2 Selecting the right team of professional advisers is essential to the success of disposal and development projects. Where heritage assets are involved, specialist consultants with proven conservation expertise will need to be appointed as part of the professional team, unless such advice is available in-house. GHEU can advise departments on the identification of appropriate consultants in individual cases.
- 10.3 Any heritage assets, whether designated or not, should be identified at an early stage, as explained in paragraph 2.2. Informal advice on the handling of disposal cases is available from GHEU,⁴⁰ who should be consulted promptly regarding any site where there is potential for a significant heritage issue.
- 10.4 Early consultation with the local planning authority and other stakeholders will assist in identifying and resolving potential problems (see paragraph 6.5). This can facilitate the passage of development proposals through the planning system in a non-adversarial manner. On large and complex sites, it may be necessary to involve local people and other interest groups through public meetings, exhibitions and open days.
- 10.5 Disposals should always be accompanied by clear information regarding any heritage assets. Statutory designation documents, such as list descriptions, are usually not sufficient for this purpose. In order to understand fully the heritage asset, it may be necessary to commission additional research, analysis, survey or investigation.⁴¹ To ensure value for money, any work of this nature should be proportionate to the nature of the asset and its significance. GHEU can advise on what type of assessment is appropriate, what it should contain and how it can be procured. Copies of this work should be offered to the relevant Historic Environment Record.

40. www.helm.org.uk/gheu

41. See *Informed Conservation*, Kate Clark, English Heritage 2001.

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MANAGING THE
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- 10.6 A **statement of significance** can be a helpful way to clarify the heritage values attached to a heritage asset, and their relative importance. Where a site raises complex heritage issues, a **conservation management plan** may be required. This begins with a statement of significance and uses this as a basis for defining the constraints and opportunities related to the heritage asset. Guidance on conservation management plans has been published by the Heritage Lottery Fund⁴² and the Princes Regeneration Trust⁴³. Any assessment should be subject to consultation to ensure that it is accurate and valid. For large sites (for example, institutional sites with multiple heritage assets), a **characterisation study** can help to provide a map-based analysis. See *Capitalising on the inherited landscape: an introduction to historic characterisation for masterplanning*, joint publication by Homes and Communities Agency and English Heritage, 2009.⁴⁴
- 10.7 It is important in all disposal cases to document and manage the disposal process to ensure that there is accountability and a clear audit trail behind key decisions (see paragraph 2.10 of the OGC guide).
- 10.8 Following the completion of the disposal, a post-project appraisal should be undertaken to assess the success of the project and to ensure that any lessons learnt are applied to future disposals (see paragraph 3.11 of the OGC guide).

Departments should take reasonable steps to ensure that purchasers of vulnerable heritage assets have the resources to maintain them. Alternative methods of disposal other than open market sale may need to be considered to ensure appropriate ownership.

42. www.hlf.org.uk/HowToApply/furtherresources/Pages/ConservationManagementPlanning.aspx

43. *How to Write Conservation Reports*, <http://princes-regeneration.org/publications.php>

44. www.homesandcommunities.co.uk/hca-english-heritage-guidance.htm

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