



Listed Building CPO Report to the Secretary of State for Culture, Media and Sport

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Date: 27 May 2004

**THE DEPARTMENT FOR CULTURE, MEDIA AND SPORT
(APETHORPE HALL, APETHORPE, NORTHAMPTONSHIRE)
COMPULSORY PURCHASE ORDER 2002**

Inquiry held on 24-27 February, 2-5 March and 9-12 March 2004

at the Council Offices, East Northamptonshire Council, Thrapston, Northamptonshire

File Ref. HSD/68/2/38

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Apethorpe Hall, Apethorpe, Northamptonshire

- The Compulsory Purchase Order was drafted on 20 June 2002 by the Secretary of State for Culture, Media and Sport under the provisions of section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Acquisition of Land Act 1981.
- The purpose of the Order is to make provision for the proper preservation of Apethorpe Hall and its curtilage buildings and structures.

Summary of Recommendation: that the Order be made.

Procedural Matters and Statutory Formalities

1. Apethorpe Hall was listed on 23 May 1967 as a building of special architectural or historic interest. It is included in grade I.^A
2. A number of buildings and structures within the grounds were listed in grade II on the same date. They were: the walls, gatepiers and gates extending about 40m east of the east front of the Hall; the wall and gatepier attached to the north-east corner of the east front; the stables and attached house and granary about 30m north-east of the Hall; the well-head about 30m south-west of the orangery; the wall (extending about 170m south) and summer house attached to the south-west corner of the orangery; and the dovecote north-west of the Hall.^B
3. The dovecote was also scheduled as an ancient monument on 26 February 1969.^C
4. Additional buildings and structures were listed in grade II on 25 January 2001. They were: the Gardener's Cottage; the walled gardens; the sunken garden terrace; the pond in the sunken garden; the balustrade and steps to the west of the south front; the wall, balustrade, steps, gate and railings at the south-east corner of the Hall; the steps to the south of the south front arcade; the fountain and basin to the east of the summerhouse (the description actually says 'west'); and the walls, balustrades and steps to the south-west and south of the Hall.^D
5. The gardens are included in grade II in English Heritage's Register of Parks and Gardens.^E
6. A statutory repairs notice, made on 2 October 2001 under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990,^F was served by the Secretary of State for Culture, Media and Sport on the then owner of the Hall, Mr Wanis Mohamed Burweila, who had purchased the property in 1983. No reasonable steps having apparently been taken towards the proper preservation of the Hall, the Secretary of State resolved on 13 June 2002 compulsorily to acquire the property under section 47 of the Act. The compulsory purchase order^G was drafted on 20 June 2002 and served on Mr Burweila, then resident in Athens, on 26 June 2002.
7. In fact, Mr Burweila had, on 19 June 2002, exchanged contracts for the sale of the property to Kestrel Armana Limited, subsequently renamed Apethorpe Country Estate

^A Document CD1.

^B Document CD1 and the map at Document CD1A.

^C Document CD1B.

^D Document CD1 and the map at Document CD1A.

^E Document CD1C.

^F Document CD11A.

^G Document CD12.

Limited (and referred to hereafter in this report as ACEL).^A Important issues raised by ACEL at the inquiry were whether the exchange of contracts for the sale of the property might have been thought to constitute a reasonable step towards the proper preservation of the building and whether the draft compulsory purchase order should formally have been served on Kestrel Armana.

8. From the latter point arises debate as to whether the draft compulsory purchase order was, indeed, properly served. Otherwise, no objection is raised in relation to the statutory procedures and formalities.
9. A formal objection to the draft order was made by Mr Burweila. I understand that it was subsequently withdrawn, following the sale of his interest in the property, although I have not seen written confirmation of this. An objection was also made by Mr George Kelley, caretaker of the property and occupier of Corner Cottage, which forms part of the service courtyard of the Hall. His objection is relates purely to compensation and he did not appear at the inquiry.
10. Kestrel Armana Limited (now ACEL) formally objected to the draft order.^B ACEL was the principal party giving evidence against the order at the inquiry. It has now exchanged contracts for the sale of the property to Mr Simon Karimzadeh. He appeared at the inquiry independently of ACEL.
11. Others appearing at the inquiry were East Northamptonshire Council, the local planning authority (hereafter referred to as ENC), and Mr John Bootland, who has had an interest in acquiring the property.

^A Document ACEL/2 – Appendix 2 – negotiations and correspondence up to June 2002 were with The English Property Trust (EPT); Kestrel Armana Limited was a special purpose vehicle set up specifically to refurbish the Apethorpe Estate.

^B The objections to the CPO were not included in the Core Documents to the inquiry. For the sake of completeness, I have included copies of the objections by Mr Burweila, Kestrel Armana and Mr Kelley as Document CD12A (Document CD12 being the draft CPO itself).

Apethorpe Hall and its Surroundings

I give here only a brief description of the Hall and its surroundings, sufficient to enable this report to be self-contained. There was no dispute at the inquiry about the special architectural or historic interest of the building. Documents CD1 and CD1A-CD1E give details of all the statutory designations. Photographs of parts of the building can be found at Appendix 4 in Tab C in Document CD32A, the January 2004 application. Documents CD52(i)-(iii) are historical reports on Apethorpe Hall.

Nor do I dwell in this section on the condition of the Hall as I saw it during my site inspections. Again, there is no material dispute about the general condition of the fabric or the broad costs of repair. Detailed information is to be found in the Inspection Reports at Document CD38.

12. Apethorpe is a small village in Northamptonshire, roughly 7km north of Oundle and 17km west of the centre of Peterborough. It sits in pleasant countryside, neither on a major road nor on any direct route between towns of any size.^A It is a very attractive village, its older buildings mostly having honey-coloured stone walls and Collyweston stone slate roofs. The whole of the village is a designated conservation area.^B
13. Apethorpe Hall stands in substantial grounds on the south side of the village. It is virtually invisible from within the village or from the roads approaching the village. The original entrance, beside the church, nowadays serves only the Manor House, retained by Lord Brassey when he sold the Hall over 50 years ago. Access nowadays is by way of Laundry Road, a narrow cul-de-sac with houses on both sides that leads to a utilitarian gateway into the grounds.
14. The prospect on entering the gateway is stunning. Ahead (slightly to the left), prominent and magnificent across a wide area of open lawn (Walnut Tree Court), is the extensive north façade of the Hall.^C The development of the Hall over time is fairly evident – the kitchen almost central (a tall single storey in an otherwise two-storey range, 15th century, extended in the first half of the 16th century); to its left, the contemporaneous gate tower (two storeys above the gateway), the library wing beyond that (three storeys, a mid-18th century extension of earlier fabric) and, at the very eastern end, the north facade of the 17th century east wing (three storeys); to the right, the service range (generally two storeys, domestic in character, medieval but much altered over the years). The whole is stone built (save for an area of almost patchwork brick between the kitchen and the gate tower) with Collyweston stone slate roofs.
15. To the north-east of the Hall, on the far side of the lawn, is the stable block – stone-built, two-storeyed, seemingly low in comparison to the Hall, framed by and visually separated from the Hall by trees, the latter group including one particularly fine mature specimen.^D
16. The drive continues directly south from the gateway towards the very western end of the Hall buildings. Along its west side, detracting somewhat from the scene, are a bungalow and five pairs of semi-detached houses (with a sixth pair unseen at the southern end, at right angles), all built while the Hall was in use as an approved school. The brick-built

^A Document ACEL/16 – the small map on p.5 gives an indication of the location (Peterborough is at the very right hand edge; Oundle is obscured by the note bottom centre).

^B Document CD1A has a plan of the Conservation Area and also shows the relationship between Apethorpe Hall and the village.

^C Document CD32A – Appendix 4 in Tab C – photograph 1 shows the kitchen in the centre (with the tall windows) and the library at the very left edge; photograph 12 is an oblique view of the more westerly part of the range.

^D Document CD32A – Appendix 4 in Tab C – photograph 18.

bungalow looks out of place. The semi-detached houses are built with stone walls and stone slate roofs appropriate to their setting but their style and detail are clearly of their time (the 1950s) and their appearance suffers from over twenty years of disuse.^A

17. The Hall itself has grown around two courtyards, with outbuildings to the west forming a further service courtyard.^B The medieval hall is the centrepiece of the spine between the east and west (or kitchen) courtyards. Most of the north range, bordering both courtyards, dates originally from the late 15th and early 16th centuries, as does some of the building to the south of the hall. Building on the west side of the west courtyard also dates from the early 16th century. The State Apartments, on the south side of the east courtyard, were built in the mid-16th century and the Long Gallery, forming the east side of the east courtyard, in the early 17th century. These two ranges contribute most obviously to the architectural and historic interest of Apethorpe Hall. Their building also confirmed the essential sub-division of the Hall – the rooms around the east courtyard occupied by family and those around the west courtyard (still then open to the south) by staff. The orangery was built in the early 18th century, extending the area occupied by the family to the south side of the west courtyard. The rebuilding east of the gate tower to house the library followed a little later.^C
18. Seen today, the elegant east façade is a singular, powerful and very attractive architectural composition. It dates from the first quarter of the 17th century, has two storeys and an attic storey (of gables and dormers) and has the Long Gallery at first floor level.^D It faces over a fairly simple forecourt garden enclosed on its north and east sides by early 20th century walls with gates^E and on its south side by a hedge and a change in levels.
19. In contrast to the east facade, the south front is a rich mixture of scale, style and detail. At its right-hand end is the two-storey bay at the south end of the east wing; left of that is the gabled, arcaded and richly fenestrated three-storey façade of the State Apartments; left again, the more irregular and mainly two-storeyed central section, betraying its earlier origins; and then the much more rhythmical and formal composition of the orangery (altered and sub-divided vertically to give two floors when in use as an approved school).^F The State Apartments face on to a formal lawned garden enclosed by hedges (the Bowling Green), which leads in turn into the (also formal) Yew Walk.
20. The façade to the east courtyard of the east (Long Gallery) wing features ornate gables (like its external counterpart) and has what appears originally to have been an arcaded ground floor. The façade of the State Apartments to the south side of the courtyard is a Palladian composition with a pedimented centrepiece, more formal and restrained than the Long Gallery façade and also slightly larger in scale (and certainly less exuberant than its external counterpart).^G The west and north sides of the east courtyard, while embellished in later years, betray their earlier and more organic origins.^H
21. The west (kitchen) courtyard is entirely different in character – more domestic in scale and style and showing clearly the more modest nature of intervention, alteration and extension over the years. The rear of the orangery is hardly recognisable as such. A modern single-

^A Document CD32A – Appendix 4 in Tab C – photograph 15.

^B Document CD1 has the (very full) list description of the Hall, ref. 18/2.

^C Document CD52(iii) records the building chronology.

^D Document CD32A – Appendix 4 in Tab C – photograph 3.

^E Document CD1 – the walls, gate piers and gates are separately listed, refs. 18/3 and 18/4.

^F Document CD32A – Appendix 4 in Tab C – photographs 5 (State Apartments) and 9 (orangery).

^G Document CD32A – Appendix 4 in Tab C – photograph 4 shows both facades.

^H Document CD32A – Appendix 4 in Tab C – photographs 7, 6 and 2.

storey classroom sits fairly centrally within this courtyard.^A West again, the service courtyard is clearly that. The two-storey buildings separating it from the west courtyard,^B Corner Cottage on its north side (also referred to as George's Cottage, after the caretaker who lives in it) and the single-storey storage buildings along its western side give it a vernacular character and a somewhat modest scale compared to the rest of the Hall. Modern garages have been built within the wall on the south side and also centrally.

22. Internal conditions are no better than one might expect in buildings that have been vacant for over 20 years and had an institutional use, with the alterations that that entails, for some 30 years beforehand. The alterations are for the most part reversible without undue harm to the historic fabric of the building. The condition of that fabric obviously requires attention – and sooner rather than later. There is clear evidence of water penetration in many places, sometimes severely so, and also of dry rot (both where it has been eradicated and where mycelium has occurred/recurred). Most of that is due to, and can be traced to, defects in the stone slate roofing and in the areas of leaded flat roofing and guttering. Individual roof repairs have been carried out in many places, often on a temporary basis; more comprehensive repairs or re-roofing have been carried out in some areas. Repairs to leadwork are virtually all temporary in nature. Some of the temporary repairs carried out under earlier urgent works notices are still in place. The interiors of the State Apartments and the Long Gallery create an alarming impression, principally because of the amount of propping that has been installed – sometimes to support vulnerable ceilings and sometimes to relieve the strain on structural members. The condition of the roof over the courtyard side of the State Apartments is a serious cause for concern and the condition of the masonry gables and parapet copings around the East Wing roof is evidently poor, with clear signs of lateral movement as well.
23. The formal gardens lie to the south of the Hall^C – the Bowling Green in front of the State Apartments with the Yew Walk beyond it, the Cedar Lawn in front of the orangery and the Rose Garden (or Fountain Garden) to its south-west (south of the service courtyard), with the Millstone Walk, Sunken Garden, Walled Gardens and Quiet Garden beyond that. A tall brick wall runs the full length of the Rose Garden (with a summerhouse on its east side) and then the Millstone Walk and the Sunken Garden, along their west sides. (Its line continues as the west side of the Walled Gardens.) A length of it has collapsed and the condition of other sections gives cause for concern. The glasshouses in the northerly Walled Garden are in poor condition, as are parts of the balustrades in the other gardens.^D
24. The access drive, having passed the west side of the service courtyard, continues south for the full length of these walls. On its west side, opposite the northerly Walled Garden, is the Gardener's Cottage, which dates from about 1905.^E Some 50m north of it, on the edge of what used to be the orchard, is the apple store, an unusual (unlisted) building of blockwork and straw construction.

^A Document CD32A – Appendix 4 in Tab C – photographs 8, 10 and 13 – with the classroom most evident in photograph 11 and the rear of the orangery at the right hand side in photograph 10.

^B Document CD32A – Appendix 4 in Tab C – photograph 11

^C Document CD1C is the description from the English Heritage Register of Parks and Gardens; Document CD1D shows the boundary of the Registered Garden.

^D Document CD1 has the list descriptions for the wall and summerhouse (18/5), the well-head within the Rose Garden (18/6), the Walled Gardens (1745/18/10009), the Sunken Garden terrace (1745/18/10010), the pond in the Sunken Garden (1745/18/10011), the balustrade and steps to the west of the south front (1745/18/10012), the wall, balustrade, steps, gate and railings at the south-east corner of the Hall (1745/18/10013), the steps south of the south front arcade (1745/18/10014), the fountain and basin in the Rose Garden (1745/18/10015) and the walls, balustrades and steps south-west and south of the Hall (1745/18/10007). All are marked on the plan at Document CD1A.

^E Document CD1 has the list description (1745/18/10006).

25. Some little distance west of the service courtyard, with woodland on its west and south sides, is the sports hall. It was built when the Hall was in use as an approved school and has no architectural merit. On a low hill to the north of that, in a fairly open location but largely obscured from view by the Hunting Way houses, is the dovecote,^A converted for use as a water tower but now disused. Within the woodland to the south of the sports hall are the substantial remains of an icehouse (also unlisted).
26. Just to the north-east of the Hall is the stable block, forming a courtyard with the coach house and the granary and attached house.^B The whole group is two-storeyed and domestic in scale. The stable block was converted in association with the approved school. It is not easy to see exactly how all of the buildings were originally used. Parts of the stable block are in poor condition. Works are progressing, albeit slowly, on the granary and attached house, both of which are extremely damp. There are two linked modern buildings of no architectural merit just to the east of the group.
27. The Hall no longer has its estate. There is a small wooded area to the east and south of the Yew Walk and Walled Gardens and a modest area of parkland beyond that. A significant length of leylandii hedge has been allowed to grow to a great height just beyond the eastern boundary of the site, directly opposite the east façade, curtailing the open aspect one would expect to have (irrespective of estate boundaries) from a Hall of this size and nature.

^A Document CD1 has the list description (18/8);
Document CD1B is the scheduled ancient monument description.

^B Document CD1 has the list description (18/7).

The Proposals for Apethorpe Hall

28. Two schemes for the future use of Apethorpe Hall and its grounds were proposed by ACEL but applications submitted to ENC in July 2003 were not registered. They have effectively been superseded by a proposal from Mr Karimzadeh that amends one of those schemes. If the CPO were to be made, the estate would be passed by the Department for Culture, Media and Sport (DCMS) to English Heritage, which has a preferred option and a fallback scheme.

Apethorpe Country Estate Limited^A

29. 'Scheme A' proposed sub-division of the Hall into five dwellings (plus the existing Corner Cottage), conversion of the stables and granary into five dwellings, demolition of the Hunting Way houses and their replacement with eleven new dwellings in a courtyard on the site of the sports hall, 'conversion' of Gardener's Cottage and the erection of four dwellings in or adjacent to the walled gardens. The total number of dwellings was 26.
30. 'Scheme B' proposed the restoration of the Hall as a single dwelling. It was otherwise as Scheme A but with three additional new dwellings in the orchard adjacent to Gardener's Cottage. The total was 25 dwellings.

Mr Karimzadeh^B

31. Mr Karimzadeh's proposal is a variant of ACEL's Scheme B. He would use the Hall as his home, providing within it a chauffeur's flat, two staff flats and other staff accommodation. He proposes conversion of the stables and granary into five dwellings, 'conversion' of Gardener's Cottage and eleven new dwellings in a courtyard – but no new dwellings elsewhere in the grounds. The total, excluding the staff accommodation within the Hall, would be eighteen dwellings.

English Heritage^C

32. If the CPO were to be made, the building would pass to English Heritage, which would implement the works set out in the Repairs Notice with a view to selling the property (as and when an appropriate purchaser emerged) for use as a single dwelling. It would seek restoration of the stables and granary, and of Gardener's Cottage, for use ancillary to the residential occupation of the Hall. It would demolish the Hunting Way houses, the sports hall and other inappropriate modern additions and alterations. In the event of necessary public funding (by grant aid or commissioned repair works), it would secure arrangements for public access.
33. Were the preferred option to prove unfeasible, the fallback is to use part of the Hall (the east courtyard buildings plus the gardens) as a visitor attraction and educational resource. The remainder of the Hall would be converted for separate residential use (three dwellings plus Corner Cottage), as would be the stables and granary (five dwellings), along with Gardener's Cottage. The existing houses and sports hall would be demolished but no new residential development built. A public car park would be required on land nearby in the village.

^A Document CD32 comprises the applications, covering letters, Block Plans and Landscape Masterplans for both Scheme A and Scheme B.

^B Document CD32A has two ring binders each for the planning and listed building applications.

^C Document DCMS/6/P describes fully in Section 3 the preferred and fallback options and in Section 4 the intended manner of implementation.

The Case for the Secretary of State for Culture, Media and Sport

I give here the gist of the case for the Secretary of State for Culture, Media and Sport, drawn primarily from opening and closing submissions, amplified where necessary by reference to the proofs of evidence and what was said at the inquiry itself. I am submitting all documents produced for the inquiry, including proofs of evidence; they are listed at Annex B. Briefly:

- *in Document DCMS/1/P, Ms MacLeod explains the Secretary of State's actions and plans;*
- *in Document DCMS/2/P, Mr Edgar deals with the history and significance of the buildings and with English Heritage's advice;*
- *in Document DCMS/3/P, Mr Balkham deals with the Repairs Notice;*
- *in Document DCMS/4/P, Mr Stenning deals with the costs of repairs;*
- *in Document DCMS/5/P, Mr Haynes addresses the viability of the ACEL and English Heritage proposals;*
- *in Document DCMS/6/P, Mr Bee explains English Heritage's proposals;*
- *in Document DCMS/7/P, Dr Woodward deals with the market for heritage attractions;*
- *in Document DCMS/8/P, Mr Cooke addresses the viability of ACEL's Business Plans.*

Introduction

34. Apethorpe Hall and its surviving grounds are of great historic and architectural value.^A The Hall is one of the nation's most valuable historic buildings. Sir Reginald Blomfield, who knew it intimately, described it as 'one of the most important Jacobean houses in England'. Recent research has vindicated that judgement.^B
35. The house began life in the late 15th century as the seat of the Constable of Fotheringhay. Its earliest architectural elements reflect those origins. Some 75 years later, it passed to Sir Walter Mildmay. He added one of the first suites of rooms in Northamptonshire created specifically for entertaining the monarch. From the 1560s to the 1630s, Queen Elizabeth I and the first Stuart kings visited the Hall on at least thirteen occasions.
36. The Hall remained the seat of the Mildmay and Fane families for 350 years, during which time successive generations made their own contributions to its architectural and social history. The survival of the plan form, with the Hall in its undivided state, is of particular architectural and historic value, indicating the character and function of a great English country house throughout those many years. The evolution of the house and its associated buildings throughout that period, and later in the hands of the Brassey family, is an essential feature of its architectural and historic importance.
37. Mr Inskip's evidence on behalf of ACEL shows that there is no significant dispute as to the nature and degree of Apethorpe Hall's architectural and historic significance. It is common ground^C that its grade I listed status is fully merited. Moreover, the quality and integrity of the buildings, gardens and grounds of the surviving estate are properly attested to by their statutory listings. Ownership of such a property is a privilege – but comes with a heavy responsibility. It is of utmost importance and in the public interest that the owner of the Hall and its associated historic buildings and surviving estate, as custodian of such an exceptional historic asset, should perform his duties of repair and conservation diligently and conscientiously. No less is demanded by law and public policy.

^A Document CD1 gives the list description.

^B Document DCMS/2/P is Mr Edgar's proof of evidence, based upon his own expertise and experience as English Heritage Buildings Inspector for Apethorpe Hall, and draws upon – Documents CD52(i)-(iii), which show the extensive research he and others, from whom he has derived source material and assistance, have carried out.

^C Document ACEL/3 – Mr Inskip's proof of evidence at p.3, confirmed in cross-examination.

The Secretary of State's Fundamental Case

38. In 1949, the building was sold by Lord Brassey to Northamptonshire Roman Catholic Diocese and converted for use as an approved school. That closed in 1982 and the property was sold in 1983 to Mr Wanis Mohamed Burweila. With the exception of Corner Cottage (occupied by Mr Kelley, the caretaker), all of the buildings have been vacant since 1983. By the late 1990s, Mr Burweila had neglected his responsibilities to the extent that English Heritage had placed the building in the highest category of risk in its annual Buildings at Risk Register.^A In October 2001, the Secretary of State issued a statutory Repairs Notice,^B on the advice of English Heritage and against the background of neglect of the Hall and its grounds. Mr Burweila's reaction was to seek to sell the property and pass on responsibility for its repair to the purchaser.
39. It is not in dispute that the Repairs Notice correctly identified the necessary works in order to bring the Hall back into a proper state of preservation.^C That agreement is reflected in the fact that the quantity surveyors instructed by the parties have reached formal agreement as to the costs of the scheduled repairs.^D
40. In PPG15,^E the Secretary of State's policy guidance is that consideration should be given to the use of the power to issue a statutory repairs notice in a case where protracted failure to keep a listed building in reasonable repair places the building at risk. At the time of issue of the Repairs Notice on Apethorpe Hall, that was indisputably the position.^F
41. In his evidence in chief, Mr Inskip mentioned that the particular risk at Strawberry Hill was the lack of any clear way forward for bringing the historic building back into a proper state of preservation and securing its future preservation and use. That was demonstrably the position with Apethorpe Hall in 2001. In the light of the evidence heard at the inquiry, that demonstrably remains the position today. In short, the inquiry has not been shown that there is yet an acceptable, reliable and properly resourced scheme for the repair and proper preservation of Apethorpe Hall, other than acquisition by the Secretary of State and implementation of English Heritage's proposal.
42. Mr Inskip has rightly emphasised the need to have the reassurance of a scheme of repair and preservation which will actually be implemented.^G That concern is reflected in the Secretary of State's policy – that she needs to be satisfied that the means and the resources necessary to secure the building's repair will be available.^H The guidance is directed at planning authorities contemplating compulsory purchase action under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990. But it is also a measure of what is properly to be expected of a landowner seeking (as in the case of ACEL and Mr Karimzadeh) to throw off the shadow of compulsory purchase on the basis that a private sector solution is available for the proper preservation of the building. It is this concern

^A Document CD47 is an extract from the 2003 Register.

^B Document CD11A.

^C Document ACEL/3 – Mr Inskip's proof of evidence at pp.8-9, confirmed in cross-examination; it is agreed by Messrs Inskip and Balkham that a fully specified programme of works must be prepared for implementation and both have made significant progress in that respect.

^D Document DCMS/10 is the formal Memorandum of Agreement dated 23 February 2004. (See also Document ACEL/3 at p.9. Mr Cain has not costed the Stables as shown on the agreed schedule of costs. Mr Stenning's figure for that element has not been challenged and thus may be accepted as reliable.)

^E PPG15 (Document CD22) at para. 7.9.

^F The Planning (Listed Buildings & Conservation Areas) Act 1990, Section 48.

^G Document ACEL/3 – Mr Inskip's proof of evidence at p.12.

^H PPG15 (Document CD22) at para. 7.12 – see also para. 7.13 and the need for covenants to ensure that repairs will be carried out.

that lies at the heart of the case and, in the light of the evidence before the inquiry, leaves the Secretary of State with no alternative but to proceed with compulsory acquisition.

43. Mr Inskip has confirmed^A that no significant progress has yet been made with the main body of the scheduled repairs. The best that can be said is that, hitherto, an incoherent regime of holding repairs has been undertaken. That programme has not been without value.^B Neither expert, however, considers that those holding works have done more than to go some way towards stabilising the physical state of the building and its grounds and towards securing it against wind and weather. That is illustrated by the fact that further holding works are now in progress in response to Mr Balkham's findings, at his inspection of 28 January 2004, that additional urgent work was required in order to secure and stabilise the buildings at that basic level.
44. Mr Inskip and Mr Balkham agree that a programme running to some six years (and embracing suitable refurbishment of the Hall for single residential occupation) is realistic. ACEL's case to the inquiry is founded upon the proposition that the scheme proposed in the January 2004 planning and listed building consent applications^C provides an acceptable vehicle within which the statutory repairs will be undertaken. ACEL relies on the agreement of Mr Karimzadeh to buy Apethorpe Hall.^D ACEL also relies on:
- Mr Karimzadeh's personal wealth;
 - Mr Karimzadeh's stated desire to make Apethorpe his family home;
 - Mr Karimzadeh's willingness to instruct a properly qualified and experienced professional team to repair and restore the Hall for that purpose;
 - Mr Inskip's professional enthusiasm for playing a lead role in performing that project;
 - Mr Karimzadeh's willingness to defray the cost of the conservation deficit left by the proposed scheme.
- This, ACEL submits, finally gives the necessary confidence that the Secretary of State's three critical 'tests'^E are now fulfilled. The Secretary of State does not accept this.
45. Those three 'tests' are:
- that ACEL and/or Mr Karimzadeh have the necessary expertise to execute a project as challenging as Apethorpe Hall;
 - that they have an acceptable scheme which enjoys the support of the local planning authority;
 - that they have sufficient funds to deliver that scheme.
46. Mr Karimzadeh is a man of very considerable means, far in excess of the cost of performing the statutory repairs and of restoring the Hall as a private residence. Listed building consent authorising the statutory repairs remains extant. There is no reason to doubt that permission would be forthcoming for the restoration of the Hall as a private residence, since that is the local planning authority's preference and is fully consistent both with the planning brief^F and with national planning guidance.^G In the light of these considerations and of Mr Karimzadeh's stated desire to restore the Hall as his private

^A In cross-examination and in various places in his proof of evidence, pp.8-13.

^B Documents ACEL/3 and DCMS/3/P are Messrs Inskip's and Balkham's evidence – see also Document 38 for the various inspection reports by Mr Balkham.

^C Document CD32A.

^D Documents CD35A and CD35C.

^E Document CD49 – 19/7/02 (DCMS ¶ EPT), 13/10/03 (DCMS ¶ Karimzadeh).

^F Document CD18.

^G PPG15 (Document CD22) at paras. 3.8-3.10.

home, the Secretary of State had thought that he would be prepared to commit himself contractually to underwrite the performance of the repairs in advance of the determination of the applications submitted in January 2004. That would remove the continuing uncertainty that necessarily arises from the fact that planning permission and listed building consent have not been obtained for any scheme and have yet to be obtained for the January 2004 scheme.

47. Mr Karimzadeh has stated his willingness to work with Mr Inskip and a team of suitably qualified and experienced professionals in the performance of his proposed scheme for the repair and restoration of the Hall as his residence. In the light of that, the Secretary of State has made clear to Mr Karimzadeh, to ACEL and to the inquiry her willingness to withdraw the CPO on receiving a financial commitment from Mr Karimzadeh as mentioned above.^A Yet Mr Karimzadeh made clear in cross-examination that he was not prepared to make that commitment to the Secretary of State in order to secure her early withdrawal of the CPO. Instead, he made it very clear that his willingness to bind himself financially to the performance of the statutory repairs was entirely dependent on receiving planning permission for a scheme of development for the property as a whole that was 'acceptable' to him.^B Put simply, Mr Karimzadeh could complete the purchase of the property but would feel under no compunction to carry out the works identified in the Repairs Notice until he had been granted an 'acceptable' planning permission.
48. The logic of the Secretary of State's position is worth spelling out.
49. Since ACEL bought Apethorpe Hall, its proposals for the performance of the statutory repairs have consistently been founded upon a scheme of enabling development which would generate the funds required to defray the very substantial costs of those repairs.^C In other words, on its own case, ACEL's performance in carrying out the repairs (as distinct from holding works) has always been dependent upon having obtained planning permission and listed building consent for a scheme of development which would generate the funds needed for that purpose. It is for that reason that the Secretary of State has emphasised the key significance of ACEL securing the necessary consents, or at least a firm commitment from ENC to grant such consents. Her willingness to review the need to proceed with compulsory purchase has been stated to be dependent upon that key stage being reached.^D She could not properly or sensibly be satisfied that an enabling developer was in a position to take reasonable steps for the proper preservation of Apethorpe Hall until it was clear that the developer had the authority he needed to carry out the development which would enable those steps to be taken. In taking that view, the Secretary of State was adopting a position completely consistent with ACEL's own project financiers, the Anglo Irish Bank.^E
50. It has been the Secretary of State's position to encourage ACEL to secure the necessary consents as soon as possible. Only by so doing could this key issue be resolved. And only in the light of that resolution would the Secretary of State be in a position to decide whether to stay or withdraw the CPO and thus permit an *authorised* private sector solution to the necessary repairs to proceed, in accordance with her preferred policy.^F

^A Document DCMS18, put to Mr Karimzadeh in cross-examination.

^B In the terms put to the inquiry through Mr Levy (para. 190) and also in cross-examination (para. 196).

^C See, for example, Document CD31, the November 2002 Business Case.

^D Document CD49 – 24/2/03 (DCMS ¶ ACEL).

^E Document CD31 – Section 7, External Finance, and AIB letter of 28/11/02.

^F PPG15 at para. 7.13 – hence the willingness, following submission of the July 2003 applications, to accede to ACEL's request for an adjournment of this inquiry to allow the planning process to take its course.

51. The January 2004 applications are a hybrid in that they depend for their implementation in part upon an element of enabling development and in part upon Mr Karimzadeh's funding the residual conservation deficit. Potentially, however, the key difference arising from Mr Karimzadeh's involvement is that he is in a position, financially, to disengage the performance of the statutory repairs from the fate of the outstanding planning application. By contrast to ACEL, he does not require to be underwritten by a permitted scheme of enabling development in order to commit to the performance of the statutory repairs. Given that he desires to make the Hall his family home, the Secretary of State reasonably expected that he would be willing to make that commitment. Yet he is not. That being so, and given that his willingness to commit financially to fund the statutory repairs (if not the purchase of Apethorpe Hall^A) is wholly dependent upon having obtained a planning permission for the estate as a whole which is acceptable to him, the prospect of reasonable steps being taken properly to preserve Apethorpe Hall remains no more certain that it has been throughout ACEL's ownership. In short, that prospect remains as wholly dependent upon the outcome of as yet undetermined applications for planning permission and listed building consent as it ever was during the period of ACEL's ownership.
52. There is a potential conflict between Mr Karimzadeh's answer to the Inspector (that he would be prepared to carry out the repairs and recoup funds from development at a later date) and his answers in cross-examination.^B A degree of certainty is required in order to ensure proper preservation, a firm and unqualified commitment to preservation in the context of the Repairs Notice. That stage has not yet been reached.
53. It is to be noted that the substitution of the agreed costs of Mr Inskip's repair and restoration scheme into the Business Case submitted in support of the January 2004 scheme will increase the conservation deficit to be funded by Mr Karimzadeh by around £3 million.^C In his own evidence, Mr Karimzadeh appeared to take comfort from what Mr Booth had said about the merits of the January 2004 scheme. Indeed, he made it clear in cross-examination that he believed there was now no objection to that scheme; this persuaded him that he could forego the protection of the 'planning consent condition' subject to which he had agreed to buy Apethorpe Hall in October 2003 and thus agree to waive that particular condition precedent by entering into the Supplemental Agreement.^D
54. The reality of the position is rather different. The grant of planning permission is a matter for the local planning authority. Mr Booth and Mr Inskip in cross-examination and Mr Edgar in his written proof^E all identify a range of matters and issues which will need to be addressed in advance of any decision being taken by the local planning authority on the January 2004 applications. Certain fundamental matters deserve specific mention.
55. There is the need to work up a planning obligation to provide for the implementation of the statutory repairs as part of the permitted scheme and to secure the future management and integrity of the estate. There is the issue of whether the degree of fragmentation of use of the estate which the scheme proposes is acceptable to the local planning authority, having

^A Document CD35C.

^B In responding to Mr Mould, Mr Karimzadeh said that he was not prepared to restore the Hall without generating funds from conversion of the stables and granary and replacement of the Hunting Way houses.

^C In Document CD32A (Appendix B at pp.9-11), ACEL identifies a deficit of £3.557 million against total costs of £11.920 million, including £3.164 million repairs costs and £1.520 million conversion costs; in Documents ACEL/3 and ACEL/6, Mr Inskip estimates repair and restoration of the Hall and garden structures at £7.703 million, some £3 million more, even excluding works to garden structures not included in the Repairs Notice;

(in Document O/4, Mr Karimzadeh estimates the deficit at £3.416 million against costs similar to ACEL's).

^D Document CD35A is the original contract, amended by Document CD35C, the supplemental contract.

^E Document DCMS/2/P at Section 7.

regard to its desire to secure the long term integrity of the surviving estate. There is the question whether the proposed enabling development in its technical sense^A is acceptable – given that Mr Karimzadeh has ample funds to secure restoration of the Hall and its surviving estate as a single private dwelling without having to rely financially on such development. There is the question of the impact of the proposed new build and new infrastructure on the Hall and its setting, having regard to the fact that the submitted scheme has been put together without any overall, integrated conservation audit having been undertaken thus far.

56. These points are made with a view neither to usurping ENC's function nor to speculating on the prospect of planning and listed building consent being granted for the submitted scheme or some variation upon it which might be acceptable to Mr Karimzadeh. Rather, they are made in order to demonstrate that, at the time of the inquiry, the prospect of Mr Karimzadeh gaining planning permission and listed building consent for a scheme of development acceptable to him, and the period within which he may ultimately achieve that, must necessarily remain uncertain. Had he been willing to commit himself financially to underwrite the performance of the statutory repairs in advance of the resolution of that uncertainty (as the Secretary of State has proposed to him), then the continuing existence of that uncertainty would not be material to the present proceedings. But he is not willing. As a consequence, the continuing existence of that uncertainty remains a most compelling reason for the Secretary of State to continue with her proposed compulsory purchase of Apethorpe Hall.
57. The Secretary of State's position is thus that the case for compulsory acquisition under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990 remains a compelling one. It is beyond question that it is expedient on both architectural and historical grounds for provision to be made for the preservation of Apethorpe Hall. The case for compulsory purchase thus depends on whether the stage has yet been reached where there is a sufficient degree of reassurance that the statutory repairs will be performed without the need for the Secretary of State to act in default. It has plainly not been reached. The compulsory purchase should, therefore, be recommended to proceed.
58. On that basis, English Heritage's proposals have been presented to the inquiry through the evidence of Mr Bee and expert witnesses of relevant discipline and experience have been called to demonstrate their merits.^B
59. Insofar as the preferred option is concerned, that evidence and the proposal itself are substantially unchallenged. The preferred option enjoys the evidential support of Mr Booth, for the simple reason that it reflects both local and national policy for the restoration and future use of Apethorpe Hall in a way which fully respects its value as a historic building and a country house. The Secretary of State has sought to cost the preferred option realistically. A key issue, the prospect of securing a private purchaser to take on Apethorpe Hall and to own and occupy it as his private house with the prospect of limited public access, has been addressed in detail.^C Mr Haynes' evidence on the issue was not challenged either in cross-examination or by Mr Paton's evidence. Indeed,

^A Document CD27 sets out policy on enabling development – in essence, development that would ordinarily be contrary to policy but would not materially harm the heritage asset and would bring benefits clearly outweighing any disbenefits to the asset and its setting or to any other relevant planning interest.

^B Documents CD36 and CD36A; Documents CD37, CD37A, CD37B, CD37C and CD37D; see also Document DCMS/6/P (Mr Bee's proof of evidence) and various references in Documents DCMS/2/P, DCMS/4/P, DCMS/4/P/A, DCMS/5/P, DCMS/5/P/A, DCMS/7/P, DCMS/8/P and DCMS/8/P/A (other proofs of evidence and appendices).

^C Documents DCMS/5/P and DCMS/5/P/A.

evidence on the marketing process undertaken by Humberts in July 2003^A lent factual support to Mr Haynes' evidence.

60. It may confidently be concluded that there is a real likelihood of a suitable private purchaser being found in the event that English Heritage's preferred option proceeds. The only slight challenge to the preferred option came in the form of questions to Dr Woodward over the scale of traffic generation on peak days in the event of public access. Yet, as Mr Booth made clear in cross-examination, traffic movement would be very substantially less than would have been typical of the former institutional use of the Hall – and also much less than likely to result on a daily basis in the event that the January 2004 scheme were to be implemented. There is no reason to anticipate that this aspect of English Heritage's preferred option will be a significant obstacle to its acceptance by ENC.
61. The fallback option must be seen for what it is. It is proposed as a means of securing the future of Apethorpe Hall only in the event that the preferred option has been tried but demonstrably failed. It is clearly to be distinguished from the January 2004 applications. They are in no sense submitted by ACEL and Mr Karimzadeh as a fallback. Mr Booth referred to English Heritage's fallback option as a desperate measure. In the sense in which he meant it, that is a true statement of the position – it is put forward as an acceptable means of securing the future of Apethorpe Hall, and public enjoyment of it, only in circumstances where the national and local policy preference of single residential use has proved to be unrealistic. In that context, the fallback option makes sense as a realistic, conservation-led alternative to simply allowing the Hall to decay. ACEL's attack on some of the costings rather misses the point. The ultimate cost of the fallback option represents the price which the Secretary of State and English Heritage are committed to paying, as a matter of policy and priority, in order to save Apethorpe Hall.
62. Therein also lies the complete distinction between this case and Strawberry Hill, to which Mr Inskip referred. In that case, the Secretary of State was not prepared to make the financial commitment. In this case, the Secretary of State and English Heritage are prepared to do so and have Treasury approval for English Heritage to commit funds within its budget for that purpose. Ms MacLeod has given the Secretary of State's unqualified commitment to funding not only the acquisition of Apethorpe Hall but also the cost of repair, restoration and future use under English Heritage's proposal.^B Mr Bee has confirmed English Heritage's commitment to meeting the full costs of its proposal as a matter of priority from its annual grants budget.^C
63. By analogy, the policy of the Deputy Prime Minister is set out in Circular 02/03.^D That guidance applies to local authority compulsory purchase schemes where public finance is likely to be more constrained. Yet he will usually be satisfied with a general indication of funding intentions. There is greater certainty in this case, where the acquisition and future restoration and use of the property will be underwritten by central Government.^E
64. That English Heritage had no firm proposals for the property when it advised the Secretary of State to make the CPO is unremarkable – the important fact is that there was a firm commitment to the acquisition costs. Nor could the possibility that costs for the fallback proposal have been underestimated be critical – firstly, it is the fallback, not the preferred

^A Para. 185 – twenty people demonstrated the financial wherewithal to merit being shown round the property.

^B Document DCMS/1/P at para. 56 and also

Document CD49 – 04/12/03 (DCMS ¶ Fitzgerald).

^C Document DCMS/6/P at para. 4.5.

^D Circular 02/03 (Document CD53) – Appendix A at para. 19.

^E Document CD49 – confirmed in the letter of 23/12/03 from Ms MacLeod to Mr Fitzgerald.

option, and secondly, English Heritage would re-prioritise and re-direct its grants budget to absorb those costs.^A

Legal Context

65. This fundamental case properly and correctly reflects the legal basis upon which the Secretary of State's power is to be exercised in accordance with section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990. In particular, the question whether reasonable steps are being taken for properly preserving a listed building is a matter of fact and degree for the decision maker to resolve in the light of all the circumstances of the given case. There is no justification for putting any gloss on the plain words of the statute. The only point of legal context which the decision maker must bear in mind is that the power of compulsory acquisition is exercisable in relation to a listed building in need of repair; the question whether reasonable steps are being taken for the building's proper preservation will be informed by reference to the scale, complexity and cost of repair to be deduced from the requirements of the statutory repairs notice in the given case.
66. The leading case on section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is *Robbins v Secretary of State for the Environment and Another* [1989] 1 WLR 201 HL.^B It is not a case, however, which bears greatly on the present one. Firstly, the issue for the Court in *Robbins* does not arise in this case. That issue was the true meaning of the word 'preservation' in the context of section 47 and the effect upon the validity of a repairs notice of the fact that a number of the listed items of repair went beyond works which could properly be characterised as mere repair. The issue simply does not arise in this case, as the common evidence of Mr Balkham and Mr Inskip testifies. Secondly, the facts of *Robbins* were very different to those of the present case. The appellant there was the owner of converted windmill and the repairs notice specified twenty items of work, only fourteen of which were deemed to be reasonably necessary for the proper preservation of the building. The scale, complexity and cost of the required repairs at Apethorpe Hall are all of a totally different order of magnitude.
67. That distinction is important in setting the context for understanding what was said by Lord Ackner:^C '*Both counsel for the Appellant and counsel for the Respondents accepted that ... it was not essential for the owner to have actually carried out any work, so long as he could establish that he had taken reasonable steps with a view to carrying out such work...*'. What might, by common consent of the parties, have been sufficient, as a matter of fact and degree, in the circumstances of that case, cannot be taken as setting the legal yardstick for what is sufficient by way of taking reasonable steps in the quite different circumstances of Apethorpe Hall. The fundamental distinction, of course, lies in the means whereby ACEL has proposed (and with Mr Karimzadeh continues to propose) that it will undertake the statutory repairs – in the context of a scheme of development of the estate as a whole. That fact is central to the circumstances of the present case and, for the reasons already given, governs any sensible analysis of the question whether reasonable steps are yet being taken for the proper preservation of Apethorpe Hall. On the evidence, the compelling conclusion is that this is not yet the case.
68. What ACEL has done to date is not without value but does not amount to an appreciable start on the works set out in the Repairs Notice. Significant headway depends on as yet undetermined applications for planning permission and listed building consent.

^A Document DCMS/6/P at 4.5.1.

^B Document DCMS/12.

^C Document DCMS/12 at p.218D-F.

ACEL's Case on its Lack of Progress with the Works

69. ACEL's case to the inquiry appears to be that it has failed to make any significant progress with the statutory repairs for two reasons. Firstly, it says that the presence of the draft CPO has prevented it from obtaining funding to carry out the works. Secondly, it says that it has been hampered from carrying out the works by the fact that English Heritage has in the past asserted that listed building consent was required for all the works.

Effect of the CPO on ACEL's funding

70. In the light of Mr Fitzgerald's evidence in cross-examination, ACEL's assertion, that it has been starved of funds as a result of the presence of the draft CPO, is completely unfounded.
71. The reality of the position is quite straightforward. ACEL has had access to funds to defray the cost of purchasing Apethorpe Hall, to fund holding and urgent works of repair and to meet the costs of pursuing their planning and listed building consent applications. These funds were provided by Anaid Holdings by way of debenture secured upon the Hall to the tune, presently, of around £2.5 million (some £1 million of which was advanced to Anaid by the Anglo Irish Bank) and by Mr Fitzgerald himself in the sum of approaching £0.2 million. Up to January 2004, the total moneys available to ACEL and actually spent by it on Apethorpe Hall since acquisition amount to some £2.7 million.^A
72. Moreover, it is clear that the Anglo Irish Bank's willingness to fund ACEL's proposed development scheme (and thereby to enable ACEL to defray the cost of carrying out the statutory repairs) was conditional not only upon withdrawal of the CPO but also upon ACEL having obtained all necessary planning and related consents, that process to be funded necessarily from sources other than the Bank. Hitherto, such costs have been funded from other sources. Also, the Bank's conditions are consistent with those set by the Secretary of State for withdrawal of the CPO.^B
73. There is simply nothing at all in ACEL's assertion that it has been starved of funds by reason of the draft CPO. In terms of funding, the way has been open to it to pursue the course of action which, since the process began, the Secretary of State has consistently encouraged it to follow in order to secure the withdrawal of the CPO – i.e. to secure planning permission and listed building consent.
74. That fact also means that ACEL's complaints about events which immediately preceded the making and service of the draft CPO in April to June 2002 can logically have no material bearing on the question whether the CPO should now proceed. That is because ACEL cannot now sensibly assert that the presence of the draft CPO has inhibited its plans for the performance of the statutory repairs. Since it purchased, those plans have consistently been founded upon a scheme of enabling development. For that, it needed planning permission. For that, it needed to spend money other than money to be advanced by Anglo Irish Bank. It has had access to such alternative funds and has thus been in control of its own destiny insofar as pursuing the necessary planning permissions and listed building consents are concerned.

^A Document ACEL/2 – the letter at Appendix 23 states that the Anaid Group is committed to advancing a maximum of £2.6 million to ACEL;

Document ACEL/12 – the letters from Anaid at Appendix 8 offer a loan of £2,472,350 in February 2003, subsequently increased by £500,000 in January 2004.

^B Document CD31 – a letter of 28 November 2002 from the Anglo Irish Bank appears in Section 7; it notes that it has already funded the initial purchase of the property and states that any further facility would be subject to removal of the CPO and to all planning, listed building and other consents being in place.

75. That is a complete answer to ACEL's submissions about this being a bad order, about *Wednesbury* unreasonableness and about its reasonable expectations. Resources to carry out the repairs have not yet been shown to be available – but that does not flow from any starvation of funds to ACEL. To suggest that the CPO should be withdrawn as a bad order, leaving the building in its present parlous state purely because of failures in the process, is remarkable. That would be wholly inconsistent with the purpose of the repairs notice and compulsory purchase regime – the proper preservation of listed buildings.
76. In any event, there is no significant evidential foundation for ACEL's assertion that it was misled into purchasing Apethorpe Hall in June 2002 by assurances given by the Secretary of State and English Heritage. That was covered comprehensively in cross-examination of Mr Goldberg. His responses, based upon a true reading of contemporary correspondence, make it quite clear that ACEL simply failed to recognise and take proper account of both the clear message of discouragement and the complete lack of reassurance with its proposals for Apethorpe Hall that English Heritage, acting on behalf of the Secretary of State, conveyed to it during April to June 2002. Mr Goldberg, in particular, seems to have regarded his discussions and correspondence with English Heritage as no more than pre-application negotiations prior to seeking planning permission and listed building consent. Yet that was manifestly not the case.
77. The context was that a Repairs Notice had been made in October 2001 requiring a most extensive and costly scheme of repairs to be carried out to a grade I listed building at the highest level of risk. No works had been carried out in response to that statutory notice and no proposals had been put forward for the performance of the works required. It was a consistent and constant theme of English Heritage's letters from October 2001 onwards that a source of particular concern to it was the means whereby those works might be funded without recourse to development which would itself have unacceptably damaging consequences.^A That concern was clearly echoed by ENC.^B English Heritage made it quite clear that the proposals of the English Property Trust (EPT)^C, such as they were in April/May 2002, were (in English Heritage's judgement) positively dangerous to the proper conservation of the Hall and its surviving estate. In this context, English Heritage repeatedly asked EPT to provide information which went particularly to its proposed funding and resourcing of the statutory repairs. EPT positively declined to provide that information pending completion of its purchase of Apethorpe Hall.^D
78. On 30 April 2002, English Heritage had told EPT that it was now required to advise the Secretary of State in relation to the next steps to be taken subsequent to the Repairs Notice. On 1 May, it did so.^E In short, EPT simply missed the point. The two letters are entirely consistent – in timing and in content.
79. In the circumstances, there could have been no real doubt as to the import of the message given out by English Heritage in its letter of 6 June 2002 – that it was able to give the Secretary of State no assurances whatsoever that reasonable steps were being taken to preserve the listed buildings. It is not really necessary to resolve whether EPT failed to understand that message, chose to ignore it or was content to take the risk of compulsory

^A Document CD49 – letters referred to in cross-examination to included 26/10/01 (Streeten ¶ Goldberg), 21/3/02 (Goldberg ¶ Edgar), 30/4/02 (Streeten ¶ Goldberg), 15/5/02 (Goldberg ¶ Streeten), 23/5/02 (Streeten ¶ Goldberg), 27/5/02 (Goldberg ¶ Streeten), 6/6/02 (Streeten ¶ Goldberg), 6/6/02 (Goldberg ¶ Streeten).

^B Document CD49 – 8/6/02 (Ray ¶ Goldberg).

^C EPT carried out all the negotiations prior to purchase. Kestrel Armana Limited was a special purpose vehicle set up to refurbish the estate.

^D Document CD49 – 15/5/02 (Goldberg ¶ Streeten).

^E Document CD49 – 30/4/02 (Streeten ¶ Goldberg) and 1/5/02 (English Heritage ¶ DCMS).

purchase action being initiated at any time. The fact remains that, on an objective analysis and without the benefit of hindsight, the prudent purchaser, properly advised, would have understood that, in those circumstances, it purchased at real and present risk of such proceedings being begun at any time.

80. Ms MacLeod and Mr Edgar have both acknowledged that it would have been better to have made explicit what was necessarily implicit in that letter. Plainly, they were right to do so, given the consequences of that omission (the inquiry into the CPO). But that should not detract from the point that the messages given to EPT in the contemporary correspondence are clear – firstly, that nothing had been done to reassure English Heritage, as the Secretary of State’s advisor, of any real prospect of progress with the discharge of the statutory repairs notice and, secondly, that EPT’s proposals were seen as tending towards a deterioration in the chances of that happening.
81. Moreover, the correspondence and telephone notes providing a contemporary record of EPT’s actual reaction to being notified of the draft CPO in late June 2002 make no mention of any assurance given by English Heritage or the Secretary of State. That is in complete contrast to the explicit reliance upon the assurance from ENC, on which there is a contemporary record.^A EPT’s complaint to the Secretary of State at the time was simply that it had not been warned.^B That goes to the implicit/explicit point, acknowledged above, that things could have been handled better. Equally, there was enough implicit warning in English Heritage’s letters to have alerted EPT or its legal and planning advisors to the fact that a draft CPO was in prospect. Finally, it is to be noted that Mr Goldberg’s immediate reaction to being notified of the draft CPO was that he intended, subject to legal advice, to press on with his purchase of and plans for Apethorpe Hall.^C
82. There is absolutely no evidence to suggest that, at the time, EPT thought what had been put in writing by English Heritage had differed significantly from what had been said or that it had been misled by English Heritage.
83. ACEL’s allegation that the Secretary of State and English Heritage conspired to abuse the power of compulsory purchase for the improper purpose of recovering moneys due from Mr Burweila is completely lacking in any evidential basis – denied by both Ms MacLeod and Mr Edgar and wholly unsustainable. The contemporary correspondence^D is wholly consistent with Ms MacLeod’s explanation of the Secretary of State’s innocent strategy for seeking to recover from Mr Burweila the moneys spent in relation to section 55 urgent works notices. Mr Goldberg admitted that he has no evidential basis for his conspiracy theory. A cursory consideration of his theory reveals it to be manifest nonsense. Nor is there merit in the suggestion that the Secretary of State was treating Mr Baylis (an earlier potential purchaser) and EPT inconsistently. For that to be so, their proposals would have had to be of like merit. But Mr Baylis’s proposal was closely akin to English Heritage’s preferred option where EPT’s was not.

Need for Listed Building Consent

84. It is simply not accepted that English Heritage informed EPT that listed building consent would be required for any works at all. Nor is it accepted that, if (as appears to have been the case) EPT had such an understanding, it was the task of English Heritage to advise on the matter. EPT had access to its own advisers. The need for listed building consent was

^A Document CD49 – 11/6/02 (ENC [] Roythorne & Co) and 4/10/02 (ENC [] SSCMS).

^B Document CD49 – 28/6/02 (Marrons [] MacLeod).

^C Document DCMS/17.

^D Document CD49 – 9/5/02 (Goldberg [] Edgar), 16/5/02 (Edgar [] Goldberg), 24/5/02 (Goldberg [] Edgar), 31/5/02 (Nwanodi [] Goldberg), 7/6/02 (Lyndsell [] Goldberg).

principally a matter for ENC, which could have been asked to assist. In that respect, it is pertinent to note the comments made by the Head of Planning Services in her letter to Ms MacLeod in October 2002.^A

85. Mr Edgar stated categorically in evidence that he did not inform EPT or Mr Weighton that listed building consent was required for *any* works to the building. He went on to say that he had simply stated that EPT should seek the advice of the local planning authority. The contemporary notes reflect this entirely.^B Further, it is clear from the same notes that Mr Weighton expressly stated that some of the items set out in the Repairs Notice could be done without the benefit of listed building consent – indeed, some of the works *were* carried out without listed building consent.
86. Mr Goldberg stated in cross-examination that he believed Mr Edgar to be a ‘dark force’, who had intended to scupper the plans of EPT/ACEL at every opportunity. Apart from the allegation that Mr Edgar informed them that they needed listed building consent for ‘anything’, it is also alleged that he was ‘somehow involved’ in the decision of Mr Aiers of ENC to issue a caution to Mr Weighton, architect for ACEL. These allegations, which have no absolutely no basis in evidence,^C are unsustainable. They are simply another facet of the ‘conspiracy theory’ advanced by ACEL.

Mr Bootland

87. Mr Bootland seeks to convert Apethorpe Hall into a luxury hotel. The Secretary of State does not accept that he offers a credible, feasible and acceptable solution to the proper preservation of the listed building. He has not submitted a planning application, has not shown the inquiry any evidence of funding and has conceded during questioning that he has no experience of such a conversion. His proposals do not merit serious consideration.

Acquisition by Agreement

88. Since early 2003, the Secretary of State has been on record with ACEL as being willing to acquire Apethorpe Hall by agreement on ordinary land compensation terms. When it became clear that the parties were struggling to agree on a price, both suggested routes to arbitration with a view to resolving that dispute whilst giving the Secretary of State early possession of the land. The Lands Tribunal is given jurisdiction by statute to undertake that arbitral role by consent. For that reason, that is the route which the Secretary of State prefers to take.^D Contrary to ACEL’s earlier expressed concerns, that jurisdiction offers proper safeguards as to costs and the determination of the true value of the land. Both parties may protect their position by making sealed offers of price in the course of proceedings. The Lands Tribunal has unparalleled expertise and experience in this kind of reference. The parties are now at one on that point. In the event that matters change hereafter, and ACEL wishes again to pursue sale by agreement, there is reason to believe that the matter may ultimately be disposed of in that way. Nevertheless, that solution is

^A Document O/2 – the letter points out that it is for the LPA ‘to decide what particulars are necessary for determination of an application, if one is required’.

^B Document DCMS/13.

^C In fact, Mr Goldberg accepted that he had no evidence to suggest that Mr Edgar advised Mr Aiers to serve a caution. Mr Edgar gave evidence that he did not know about the caution until it was administered. The letter at Document O/2 explains the circumstances.

^D Document CD49 – letters of 23/12/02 (Fitzgerald ¶ MacLeod), 24/1/03 (Nwanodi ¶ Marrons), 20/2/03 (Fitzgerald ¶ MacLeod), 21/2/03 (Lyndsell ¶ District Valuer), 1/3/03, 19/3/03, 29/5/03, 30/5/03 (Fitzgerald ¶ District Valuer), 6/6/03 (District Valuer ¶ Fitzgerald), 12/6/03, 16/6/03 (Fitzgerald ¶ District Valuer), 18/6/03 (District Valuer ¶ Fitzgerald), 20/6/03 (Milton, DCMS ¶ Marrons), 3/7/03 (Fitzgerald ¶ District Valuer), 14/7/03 (Fitzgerald ¶ Milton), 14/7/03 (Milton ¶ Fitzgerald).

not open to ACEL at present because it is presently bound (subject to withdrawal of the draft CPO) to sell to Mr Karimzadeh.^A The Secretary of State is, therefore, presently unable to secure the purchase of Apethorpe Hall other than compulsorily.

Other Matters

89. ACEL has contended that service of the draft CPO was not properly effected and that this renders it a ‘bad notice’. It appears to be ACEL’s case that, were this to be accepted by the Inspector, it should go to his discretion in deciding whether to recommend that the CPO be made. There appear to be two elements to the allegation that service was not properly effected – that it was not formally served on ACEL and that, even when served informally, it was served to the wrong address (section 6 of the Acquisition of Land Act 1981 requiring service to be effected at the registered or principal address of a company).
90. Both elements of this assertion are rejected by the Secretary of State. In the first place, the purpose of service in this context is to give those with a proprietary interest in the land affected by the CPO a proper opportunity to avail themselves of their rights to object to the making of the CPO under the Schedule to the 1981 Act. That is what happened in this case. ACEL was served, it objected, its objection was treated as duly made and it has had the fullest opportunity to pursue that objection at the inquiry. In the second place, any breaches of the procedural requirements of the 1981 Act (of which irregular or informal service is an obvious example) are only sound in law if the complainant can show that he has been substantially prejudiced as a result.^B Such an allegation is wholly unsustainable in this case, for the very same reasons.^C

Conclusion

91. In all the circumstances, the Secretary of State respectfully requests the Inspector to find that it is now expedient to confirm the draft compulsory purchase order and to recommend accordingly.

^A On the terms and conditions set out in the Agreement (Document CD35A) as varied by the Supplemental Agreement (Document CD35C).

^B Acquisition of Land Act 1981 (Document CD15) at sections 23(2), 23(3)(a) and 24; also, Circular 02/03 (Document CD53), which shows no material change from Circular 14/94 (Document CD54), sets out relevant advice at paras. 27, 28 and 44.

^C Document DCMS/19 – Tsao v SSE [1995] EGCS 123.

The Case for East Northamptonshire Council

East Northamptonshire Council (ENC) is neither strongly for nor strongly against the CPO being made. Mr Edmund Booth of the Conservation Studio gave evidence on behalf of ENC. I give here the gist of his case, drawn from his summary proof of evidence and elaborated in relation to what was said at the inquiry. His proof of evidence is at Document O/1.

92. The history of Apethorpe Hall is well documented by English Heritage. ENC recognises the significance of the Hall as one of England's most outstanding country houses. The implication is that any compromise adopted in order to provide for the estate's long-term future must be more rigorously tested than might otherwise be the case. It is this need for rigour that underpins ENC's brief for the site.

ENC's involvement

93. ENC's position is expressed in its adopted Local Plan and in the Planning Brief.^A It served an Urgent Works Notice and a Repairs Notice in 1996, a further Urgent Works Notice in 1998 and a Compulsory Purchase Order in 1999.^B The planning position was made clear at the outset in discussions with potential purchasers, including ACEL.

94. ENC asked English Heritage to step up its involvement in the case. English Heritage served a Repairs Notice in 2001, which led to the present draft CPO. It also applied for listed building consent for the works involved.^C

95. ENC representatives attended many meetings with ACEL and its advisors throughout 2002/03. These meetings established the need to justify proposals, particularly through market testing and a conservation plan. Applications for two proposals were received in July 2003 but, due to inadequate detail, they were not registered and no action was taken. In parallel, ENC held discussions with others, including Mr Karimzadeh. In January 2004, some elements of the dormant applications for Scheme B (for use of the Hall as a single dwelling) were substituted with new documents and drawings. These revised applications have now been registered and the consultation process has begun.^D

Planning policy framework

96. PPG15 advises that the best use for a listed building will often be the use for which it was originally designed. This is the starting point for ENC's Planning Brief. PPG1 establishes conservation of the historic environment as one of seven key policy objectives of planning. It also stresses the importance of good design. ENC will look for robust justification for any relaxation of local planning policy and will expect high standards of design in any alterations or new development. English Heritage's guidance on enabling development is relevant where proposals would be contrary to policy.^E It presumes against enabling development unless proposals can satisfy a series of criteria. The current applications will be tested against these criteria.

97. The East Northamptonshire District Local Plan, adopted in 1996, includes objectives for the preservation and enhancement of the historic environment, supported by detailed policies. Further policies resist the construction of new dwellings in the countryside, limit replacement dwellings to a size and scale similar to the original and support development

^A Documents CD16 and CD18.

^B Documents CD2, CD3, CD4 and CD5.

^C Document CD24 – English Heritage made the application at ACEL's suggestion but it was several months before ENC felt it had the necessary information to grant listed building consent.

^D Document CD32A.

^E Document CD27.

for recreation, leisure and tourism. The Planning Brief summarises the importance of the site, gives the planning background and sets out ENC's expectations of any owner or developer. The overall direction is clear and full justification is expected for any departure from the Brief.

98. ACEL's proposals have always involved some form of departure from policy. This will be assessed in consideration of the current planning and listed building applications.

Repairs

99. A detailed schedule of repairs was specified in the Repairs Notice. Some were thought to require listed building consent but ENC made it clear that others could be undertaken immediately. Repair work did begin but did not appear to follow a coherent plan. Patch repairs to the roof were followed by more substantial repairs; the kitchen windows were hastily renewed; and the granary roof was stripped. Stripping out above the plaster ceilings of the State Rooms led to wholesale and unnecessary removal of historical limeash floors without agreement. The subsequent appointment of a structural consultant was welcome – but work soon ceased. The consultant's recommendations for the granary roof were also agreed – but little has happened since. Mr Karimzadeh wishes to appoint a different structural consultant.
100. The scattergun approach to repairs and the lack of any overall professional supervision is evident in requests for advice on leadwork for the orangery roof and for approval of ideas for strengthening plasterwork – both would normally be contained in a systematic specification of works. ENC has not been asked to review the conditions attached to the listed building consent and there seems to be no programme for discharging them. These failings were acknowledged by Mr Inskip, who said he had called a halt to repairs while they were put into a rational programme (though it may not be 100% certain that he will have responsibility for implementation, despite assurances to the inquiry).
101. By November 2003, the lack of weatherproofing was evident. There was standing water in several parts of the Hall, accompanied by fresh falls of plaster. The granary was completely saturated.

Options for development

102. Any development of the site is constrained by the existing access to a relatively low level of usage. ENC's preference is for single usage of the Hall. If this were not possible, the case for sub-division would have to be proved with evidence on marketing, valuation and the consideration of alternatives.
103. ENC's preference for the stables and granary is that they remain ancillary to the Hall. Sub-division may be technically possible but it would be necessary to demonstrate that it could be achieved without detrimental fragmentation of the Hall's curtilage. There is the potential for employment, educational or leisure uses in association with the Hall.
104. The bungalow and houses on Hunting Way are deemed to be within the curtilage of the Hall but, being post-1948, their demolition would not require listed building consent. The same applies to the sports hall. These properties do not enhance the Hall – but demolition is not the only solution. ENC would accept the sustainability of re-use but, equally, would not object to demolition. Any relocation of replacement dwellings or any significant increase in size would go against Local Plan policy. It would have to be fully justified as enabling development within the terms of English Heritage's policy.

105. The options for use and development must demonstrate maximum benefit to the estate with minimum effect. Market testing can establish the case for or against single use while a conservation plan can provide the rationale for any departure from policy.

ACEL's proposals

106. Scheme A submitted in July 2003 proposed sub-division of the Hall into five dwellings, without adequate detail of how it might be achieved or how it might be justified in policy terms. Scheme B reluctantly accepted the possibility of single occupation of the Hall but proposed further compensating development within the walled gardens and orchard, this despite market testing having demonstrated potential demand for single ownership and use of the estate.
107. The current planning and listed building applications provide for – single use of the Hall, including a chauffeur's cottage and two staff flats; retention of George's Cottage; conversion of the stables and granary into five dwellings; retention of the bungalow by the entrance, demolition of the remaining Hunting Way houses and their replacement with eleven houses in a courtyard on the site of the sports hall; and the renovation of Gardener's Cottage. These proposals clearly involve departures from policy and an element of enabling development. There are also issues relating to ownership. There appears still to be the possibility of Mr Karimzadeh owning the Hall and gardens only, while ACEL retains the rest of the estate. ENC is apprehensive about such fragmentation.

English Heritage's proposals

108. English Heritage's preferred option falls entirely within the policy framework as it provides for the full repair of the listed buildings and single use of the estate without the need to develop the stables. The fallback option combines a limited development on the sports hall site and a degree of public use, which would be acceptable subject to agreement on traffic, access and visitor management arrangements and limitations on the level of use.

Conclusions

109. ENC is keen to see repair and re-use of Apethorpe Hall. This ambition has been held for so long that it is enshrined in the Local Plan. The history of ENC's involvement has shown a consistent willingness to engage in dialogue and to secure urgent repairs.
110. Confirmation of the CPO depends on whether reasonable steps are being taken for the proper preservation of the listed building. Those steps should include a scheme of repairs, proposals for re-use and provision of long-term safeguards.
111. It is evident that repairs are not being carried out in a systematic manner. If that persists, there may be a case for further statutory action. There is also evidence that some works may be in breach of listed building consent requirements. Applications for re-use have only recently been registered. They will require extensive consultation and testing. It is far too early to speculate on whether they may be acceptable and whether they would bring benefits not provided for in the English Heritage scheme. There also appear to be uncertainties about future ownership that could affect the long-term viability and preservation of the Hall.

The Case for Apethorpe Country Estate Limited

I give here the gist of the case for Apethorpe Country Estate Limited (ACEL), drawn primarily from closing submissions, amplified where necessary by reference to the proofs of evidence and what was said at the inquiry itself. I am submitting all documents produced for the inquiry, including proofs of evidence; they are listed at Annex B. Briefly:

- Documents ACEL/1, ACEL/2 and ACEL/12 give the evidence of the directors of ACEL on their understanding of events as they have unfolded and on the position as it is now;
- Document ACEL/3 is Mr Inskip's professional evidence on architectural and historic matters and on repairs, costs and proposals;
- Document ACEL/13 is Mr Paton's evidence on the changes in condition and status of Apethorpe Hall since purchase in 2002.

112. ACEL invites the following findings of fact set out in paragraphs 113-154 below.

113. Mr Wanis Mohamed Burweila acquired Apethorpe Hall and its surviving estate in or about 1983.

114. In June 1997, ENC published its Planning Brief for the Hall.^A

115. During the period of Mr Burweila's ownership, few, if any, meaningful works of maintenance, repair or renovation were carried out to the Hall. By October 2001, the Hall and its historic structures were in such a state of disrepair as to merit the service by the Department for Culture, Media and Sport (DCMS) of a notice under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

116. There is no evidence that Mr Burweila responded to that Notice by putting in hand, or arranging for the commencement of, the works required thereby.

117. Earlier, the deteriorating condition of the historic buildings on the Apethorpe Estate attracted the attention of ENC. It served a Repairs Notice on 23 October 1996^B and made a CPO against Mr Burweila on 4 May 1999.^C

118. From at least 1996, English Heritage had been interested and involved in relation to the Apethorpe Estate.^D

119. The English Property Trust (EPT) became aware that the Hall and estate were for sale when approached by Messrs Savills in or about August 1999. Mr Goldberg visited the hall and was interested in acquiring it. He proposed a subdivision of the main Hall itself and the 'redevelopment or conversion of other buildings within the grounds'. ENC explained its philosophy regarding single use and the current position with the CPO.^E

120. Messrs Goldberg and Gibbeson met with ENC on 8 September 1999. They explained that they thought subdivision of the Hall the best way forward and that they wished to develop within the grounds. They also explained that they understood ENC's wish to see the option of single occupancy eliminated before subdivision would be considered.^F

121. On 16 September 1999, a company with which Mr Goldberg was associated, Howlett Estates Ltd, wrote to ENC thanking them for the meeting and stating that 'whilst I

^A Document CD18.

^B Document CD4.

^C Document CD5.

^D Document CD49 – 13/11/96 (Roythorne & Co [] EH).

^E Document CD49 – File Note 1/9/99 – presumably the note was made by Mr Ray.

^F Document CD49 – File Note 8/9/99.

understand that you would prefer one occupant for the entire property, you would accept that the property could be divided into no more than 20 separate residential units, which would include the new properties to be built on the Dovecote Site ...'. The letter proposed 20 units, fourteen on the Dovecote site, one in each of Gardener's Cottage, George's Cottage and the Main House, and three in a conversion of the stable block.^A

122. ENC's response to this proposal was positive (thus indicating that single occupation of the entire estate was not 'written in stone'). The response, dated 28 September 1999,^B repeated ENC's 'preferred solution for the site', namely 'the retention of the Hall itself as a single unit and ideally, because of their historic association, the coach house and stables should form part of that unit'. But it continued that, given the existence of seventeen units on the site at present, 'I go on to confirm that a development that provides this amount of residential use within the complex as a whole is our preference'. Specifically, ENC accepted in principle the erection of fourteen dwellings on the Dovecote site, the retention of Gardener's Cottage as a dwelling house, the proposal for the Main House to remain as a single dwelling and the separate occupation of George's Cottage. The letter raised some concerns over the separate occupation of the stable block, together with concerns over access thereto. The conclusion to the letter stated that 'the redevelopment of the existing modern houses for 14 dwellings, the use of the Hall as a single dwelling and the retention of Corner Cottage and the Gardener's Cottage is likely to attract support from the Officers. Sub-division of the stable block into three units as suggested ... may be acceptable but this is not initially favoured ...'. Thus, in summary, it is proper to find that, as at September 1999, ENC was content, albeit in principle, for a scheme involving seventeen residential units on the estate and was not writing off the possibility of three units in the Stable Block.
123. By 6 December 1999, English Heritage (Mr Edgar) was aware of the proposed scheme for redevelopment at the estate. At that point in time, the concerns related 'not so much to the principles of the approach adopted – to retain the house in single residential use by permitting some form of enabling development in the immediate surroundings – but to the degree and extent of development and the location of the new units, as well as the all-important, watertight and legally binding agreements necessary to ensure the desired outcome'. Mr Edgar expressed unease about the concentration and scale of development on the hill around the dovecote and suggested 'a joint reassessment of the opportunities for a more dispersed form of development'. He suggested other potential locations for development including 'a few units on the site of the orchard or of the existing swimming pool ... Nor should the provision of a number of units in the stable block, coach house and granary complex be ruled out; the stable building and some of the adjacent outbuildings contain little historic fabric which is highly sensitive'.^C
124. Also by December 1999, ENC had become disillusioned with English Heritage's approach to the estate. English Heritage had apparently raised issues about four years too late and had delayed for some weeks in responding to letters or telephone calls. ENC's experience was that it was not 'really impressed with the idea that [it] should liaise with officers of English Heritage. Whilst they may be very knowledgeable and experienced in these matters, regrettably they do not know the difficulties in relation to the issues concerning this particular property'. The upshot of ENC's irritation over English Heritage's involvement was that it wanted to hand over all matters to English Heritage.^D

^A Document CD49 – 16/9/99 (Howlett Estates ↔ ENC).

^B Document CD49 – 28/9/99 (ENC ↔ Howlett Estates).

^C Document CD49 – 6/12/99 (EH ↔ ENC).

^D Document CD49 – 7/12/99 (ENC ↔ EH).

125. In January 2000, ENC confirmed to EPT that it was, in principle, in agreement with the proposals in Mr Goldberg's letter of 16 September 1999.^A
126. By May 2000, it became apparent that, for whatever reason, Mr Burweila was not going to exchange contracts with EPT.^B There was occasional correspondence between EPT and English Heritage thereafter^C but EPT's involvement in the Estate ended in the early summer of 2000.
127. In or about late October 2001, EPT came back on the Apethorpe scene. English Heritage wrote to Mr Goldberg informing him that a Repairs Notice had been served, stating English Heritage's belief that the cost of repairs would exceed the eventual market value of the Hall itself, and saying that certain parts of the site were capable of profitable use within an overall scheme that would contribute towards the very substantial costs of repairing and maintaining the principal listed buildings.^D The letter also stated that 'any owner or prospective purchasers would need to demonstrate that the future of Apethorpe Hall can be safeguarded satisfactorily in the context of the local authority's Planning Brief'. This letter is of interest – it expressly states that parts of the site are capable of profitable use within an overall scheme and also refers to the planning brief.
128. That same day, English Heritage (Dr Streeten) wrote to Mr Burweila's agent stating, with reference to Mr Goldberg, that his proposals appear to involve a substantial amount of enabling development and may therefore lead to potential conflicts with planning policy. It continued, 'we would naturally be willing to look at definitive proposals, but it is difficult to see how the sequential test of marketing for residential use can be conducted *after* acquisition'.^E It is striking that English Heritage should have written to Mr Goldberg as it did, noting that parts of the estate would be capable of profitable use within an overall scheme, yet, that same day, write to Mr Burweila's agent and tell him that Mr Goldberg's outline proposals caused concern because of the sequential test.
129. In any event, EPT and Mr Goldberg appear to go off the scene again until March 2002.
130. In the meantime, three separate developments proceed. Firstly, there is the possibility of Mr Burweila selling to Mr Baylis, of Charter Projects (Development) Limited. Secondly, English Heritage is becoming concerned about the recovery of costs incurred in carrying out default works (pursuant to the Urgent Works Notices served by English Heritage but not implemented by Mr Burweila). Thirdly, English Heritage formally considers recommending the Secretary of State to make a draft CPO.
131. As regards the potential of a CPO, it appears that the Commission of English Heritage met on 19 December 2001 and agreed that two recommendations should be implemented according to circumstances. The first was that, if Mr Burweila had exchanged contracts, the purchaser should be asked to prepare and submit, by the end of March 2002, a full, credible and acceptable programme for the proper preservation of the building. The purchaser should also be asked to demonstrate that the financial resources required for the repairs were available. 'In the event of sale, and if these requirements were satisfied, the Secretary of State should be advised to postpone the service of a new Repairs Notice on the new owner and compulsory purchase proceedings until further advice was given'. If these events did not occur, and in the continued absence of a full

^A Document CD49 – 13/1/00 (ENC ↔ EPT).

^B Document CD49 – 25/5/00 (Goldberg ↔ Edgar).

^C Document CD49 – 19/6/00 (Goldberg ↔ Edgar) and 25/7/00 (Edgar ↔ Goldberg).

^D Document CD49 – 26/10/01 (Streeten ↔ Goldberg).

^E Document CD49 – 26/10/01 (Streeten ↔ Paton, FPD Savills).

programme for the proper preservation of the buildings, then the Commission should advise the Secretary of State to proceed with compulsory purchase.^A

132. In January 2002, DCMS wrote to English Heritage noting that the time for compliance with the Repairs Notice of 5 October 2001 had expired. It asked for advice as to whether English Heritage considered that reasonable steps were being taken to address the repairs and also sought advice on the Secretary of State's options, including whether it would be appropriate to invoke compulsory purchase powers.^B
133. Also in January 2002, DCMS wrote to English Heritage regarding a possible business plan to underlie any advice regarding compulsory purchase and noting that, if compulsory purchase was an option, a planning inspector would need to see 'convincing evidence of any plans for [the] Hall's repair and use and sources of funding'. This letter also addressed the recovery of funds in relation to the default works carried out by English Heritage.^C
134. English Heritage replied to both letters on 31 January 2002. As regards the Repairs Notice and compulsory purchase, it said that it was considering its advice in the light of continuing discussions with the prospective purchaser. It went on to say that, in light of the proposed purchase by Charter, further work and expense on the business plan could not be justified at that stage. The penultimate paragraph of that letter expressed English Heritage's concern that it was taking the Secretary of State too long to pursue recovery of costs and noted the increasing risk that the property could be sold without a recovery being made, in which case the 'Commissioners [of English Heritage] are likely to ask me to seek reimbursement of the relevant costs from the Department'.^D
135. In February 2002, DCMS wrote to English Heritage noting that it had been approached by Mr Baylis's agent seeking confirmation that the Secretary of State would withdraw the Repairs Notice so that Mr Baylis could repair the property free of the threat of compulsory acquisition.^E
136. English Heritage replied that, owing to evolving circumstances (presumably the on-going negotiations between Messrs Burweila and Baylis), it was premature to give definitive advice. It referred to the discussion of its Commission in December 2001 and the conclusions reached at that meeting – to the effect that, if Mr Baylis exchanged contracts, he would be asked to prepare a full programme and demonstrate financial means. If he satisfied the requirements, the Secretary of State would be advised to postpone compulsory purchase. In English Heritage's view, the Repairs Notice could either remain in place or could be served on a new owner if the need for compulsory purchase arose again. On the other hand, if the sale did not go through, and Mr Burweila did not present a full programme, the Secretary of State should proceed with compulsory purchase. The letter ended by again requesting details of the progress the Secretary of State had made with recovery of moneys for English Heritage's default works.^F
137. It appears that EPT came back on the scene in March 2002, when it wrote to ENC saying that it hoped to be the 'preferred purchaser' and that it had located an individual who

^A Document CD49 – Commission Minutes immediately after EH letter of 1/5/02 to DCMS.

^B Document CD49 – 25/1/02 (DCMS ¶ EH, 1st letter).

^C Document CD49 – 25/1/02 (DCMS ¶ EH, 2nd letter).

^D Document CD49 – 31/1/02 (EH ¶ DCMS).

^E Document CD49 – 25/2/02 (Lyndsell ¶ Giddins).

^F Document CD49 – 7/3/02 (Giddins ¶ Lyndsell).

wished to use the main building as his private residence.^A Likewise, EPT informed English Heritage of this.^B

138. By April 2002, English Heritage had ‘lingering optimism’ that the deal between Messrs Burweila and Baylis would go through and thus considered it premature to offer the Secretary of State definitive advice on compulsory purchase. It remained interested in the recovery of the costs of the default works.^C Also at that time, English Heritage wrote to Mr Burweila’s solicitors stating that (amongst other things), in view of the progress between Messrs Burweila and Baylis, it was treating the correspondence from Mr Goldberg as ‘the expression of an unfounded aspiration’.^D
139. By letter dated 19 April 2002, Roythorne & Co informed English Heritage that, as well as dealing with Mr Baylis, Mr Burweila had instructed the firm also to negotiate with Mr Goldberg.^E On receipt of this letter, English Heritage made arrangements to meet Mr Goldberg. That meeting was crucial so far as EPT and ACEL were concerned. At it, as the letter of 30 April 2002^F makes clear, English Heritage learned that Mr Goldberg had put down a deposit of £20,000 for the ‘privilege’ of exclusive negotiations with Mr Burweila. That was a sign of Mr Goldberg’s earnestness and interest in acquiring the Hall.
140. It is abundantly clear from Mr Edgar’s evidence, as well as Mr Goldberg’s, that the latter was led to believe by Messrs Edgar and Streeten that, if he purchased, he would be given time to put in a scheme for the preservation of the hall, together with a planning application, without the threat of a CPO. They also gave the clear indication that such an application would be dealt with before any CPO was contemplated. Mr Edgar agreed in cross-examination that this process would take between four and six months; accordingly, at the meeting on 26 April 2002, Mr Goldberg was given a legitimate expectation that no CPO would be ordered within, say, four to six months of purchase. In point of fact, other evidence at the inquiry (from Mr Inskip) has indicated that it would take considerably longer to put together a proper planning application. In so far as that is correct, then Mr Goldberg’s legitimate expectation would have been that he would have had a longer period to put together the necessary scheme.
141. In his evidence, Mr Goldberg spoke of the assurance he had been given by English Heritage (in the form of Messrs Edgar and Streeten) at the meeting on 26 April 2002. He was not seriously cross-examined on this, not unreasonably given Mr Edgar’s unequivocal evidence on the point. Mr Goldberg also said that he felt that, at the meeting, Messrs Edgar and Streeten appeared to be trying to dissuade him from purchasing the Hall. In view of what followed, if they had any notion as to what action might be forthcoming, such a stance might have been sensible.
142. That Mr Goldberg should have been given such an assurance sits relatively comfortably with other events. Was there any reason why Mr Goldberg should have been treated differently to Mr Baylis? In relation to Mr Baylis, English Heritage’s position was that he should be allowed to buy and then put in a scheme. At the meeting on 26 April 2002, English Heritage did no more than say to Mr Goldberg what they had already said with regard to Mr Baylis.

^A Document CD49 – 21/3/02 (EPT ¶ ENC).

^B Document CD49 – 21/3/02 (EPT ¶ Edgar).

^C Document CD49 – 4/4/02 (Streeten ¶ Lyndsell).

^D Document CD49 – 4/4/02 (Streeten ¶ Roythorne & Co).

^E Document CD49 – 19/4/02 (Roythorne & Co ¶ Streeten).

^F Document CD49 – 30/4/02 (Streeten ¶ Goldberg)

143. On 30 April 2002, English Heritage wrote to Mr Goldberg setting out what was discussed at the meeting four days earlier.^A The text at the top of the third page of that letter confirms both Mr Goldberg's and Mr Edgar's recollection of what was said at the meeting. In cross-examination, Mr Edgar accepted not only that Mr Goldberg would have left the meeting with a legitimate expectation that he could buy without any CPO but also that this letter would have confirmed that.
144. There is no getting away from what Messrs Edgar and Streeten told Mr Goldberg at the meeting of 26 April 2002; and no getting away from what the letter of 30 April 2002 says. English Heritage and Mr Goldberg agree on it.
145. The very day after that meeting, English Heritage wrote to DCMS formally advising, and requesting, the Secretary of State to acquire the estate compulsorily.^B
146. That English Heritage should have acted in this manner is nothing short of extraordinary. It might be thought nothing short of scandalous. The very day before, its Assistant Regional Director (Dr Streeten) and one of its Historic Buildings Inspectors (Mr Edgar) had met a prospective purchaser who had already expended money with a view to acquiring the estate. At that meeting, by Mr Edgar's own admission, both he and Dr Streeten had given Mr Goldberg the impression that he could buy the property free from a CPO and put in the necessary applications, which would go through the system in the normal way without threat of a CPO.
147. On 30 April 2002, Dr Streeten forwarded DCMS copies of the correspondence with Mr Goldberg.^C Thus, DCMS knew of the assurances contained on the third page of English Heritage's letter of 30 April 2002 to Mr Goldberg. English Heritage's letter to DCMS also pressed in relation to recovery of the default moneys.
148. English Heritage's letter of 1 May 2002 was written by its Regional Director, Mr Giddins. It is clear that he had spoken to, or received a report from, either or both of Mr Edgar and Dr Streeten.^D Either Mr Giddins had omitted to inform DCMS of the assurances they gave to Mr Goldberg or, for whatever reason, he chose to ignore them. It matters not. The plain fact is that, by this time, both English Heritage and DCMS were aware of the assurances given to Mr Goldberg – yet they both chose to ignore them.
149. What followed thereafter can best be described as extremely shabby conduct on the part of both English Heritage and DCMS.
150. In May 2002, a letter from DCMS^E referred to the Repairs Notice and noted that the time for compliance had expired. It noted that the Repairs Notice 'would remain valid and enforceable against a new owner and, as such, one of the options open to the Secretary of State is compulsory purchase of the Hall'. Importantly, it continued, 'however, that may not be necessary if the property passed to a new owner who ensured its timely and satisfactory repair. We would naturally want to be assured of that new owner's plans for the property's repair. It is unlikely that the [Secretary of State] would consider withdrawing her Repairs Notice, and the consequent possibility of compulsory acquisition, until there had been considerable and satisfactory progress with the repair works'.

^A Document CD49 – 30/4/02 (Streeten ¶ Goldberg).

^B Document CD49 – 1/5/02 (Giddins ¶ Pillman).

^C Document CD49 – 30/4/02 (Streeten ¶ Lyndsell).

^D Document CD49 – 1/5/02, second and third paragraphs on second page.

^E Document CD49 – 7/5/02 (Lyndsell ¶ Goldberg).

151. In his evidence, Mr Goldberg said that he considered this letter not radically different to what he had been told by Messrs Edgar and Streeten on 26 April 2002 and in the letter of 30 April. Mr Goldberg's evidence was honest and sensible. The passage quoted above sits comfortably with what Mr Goldberg was told by English Heritage – compulsory purchase would not occur if the new owner ensured the Hall's timely repair. And Messrs Edgar and Streeten had already assured Mr Goldberg that he would have the time to put together a scheme, and that the scheme would be considered, before there was any prospect of compulsory purchase.
152. After 7 May 2002, correspondence continued. Mr Goldberg kept both English Heritage and DCMS fully informed of what EPT was doing – but at no stage did either tell Mr Goldberg or EPT of the advice and request from English Heritage to the Secretary of State, or of the progress of that towards the Secretary of State's ultimate decision to make the order.
153. What conclusions might be reached as to the reasons for the failure of DCMS and English Heritage to inform Mr Goldberg and EPT? Having heard Ms MacLeod express regret for her Department's failure to inform Mr Goldberg of the advice and request received, Mr Edgar asserted that, uncomfortable as he felt about the unfolding situation, he was bound by a duty of confidentiality. There is no evidence at all on this alleged duty of confidentiality. The documents disclose nothing to suggest that any advice was taken as to whether, in the extremely unfortunate circumstances of this case, the supposed duty of confidentiality could be broken in order to prevent the events which subsequently occurred. Ms MacLeod said that, the advice having gone to the Secretary of State, she could not pre-empt that decision – but she freely accepted that she could have, and with hindsight should have, informed Mr Goldberg of the advice and request received from English Heritage. This must cast doubt on Mr Edgar's assertion that, despite his discomfort, he could not inform Mr Goldberg of the advice given. One is left to wonder why the advice and request should not be confidential in the hands of DCMS but would be confidential in English Heritage's hands. In any event, Mr Edgar produced no credible evidence that the advice and request was confidential. The suggestion came extremely late in the day. It should be disregarded.
154. Returning to the correspondence after 1 May 2002, the following findings of fact may be made.
- a) EPT acted in an open and transparent manner towards English Heritage and DCMS and, as best it could, kept both informed of events leading up to the exchange of contracts on 19 June 2002.
 - b) Neither DCMS nor English Heritage had any reason to believe that ACEL would not exchange contracts.
 - c) English Heritage and DCMS knew that ACEL would not exchange contracts if the extant ENC CPO was in place.
 - d) Neither had reason to believe that ACEL would look differently on a DCMS CPO.
 - e) At a meeting on 8 May 2002, DCMS confirmed that, subject to amendments to the supporting documents, in particular the draft White Book Appraisal, DCMS was ready to commend English Heritage's advice to the Secretary of State.^A
 - f) The draft White Book Appraisal was never amended.^B
 - g) English Heritage and DCMS knew that ACEL would not exchange contracts if it believed it would shortly be served with a DCMS draft CPO.

^A Document CD49 – 17/5/02 (DCMS Π EH).

^B There is only one version in the disclosed documents.

- h) English Heritage pressed the Secretary of State to make an order.^A
- i) English Heritage pressed the Secretary of State on the recovery of default costs.^B
- j) DCMS was concerned to recover default costs by whatever route and thus sought (and obtained) EPT's undertaking to pay purchase moneys to Mr Burweila's solicitors.^C
- k) No steps were taken to serve the draft Order on Kestrel Armana Ltd – or even to find out where its registered office was.^D
- l) Mr Goldberg was not the Secretary of Kestrel Armana, nor was his address the company's registered office (which was in St Neots).^E
- m) The effect of the draft CPO was to deprive Kestrel Armana of funding to go about the repairs or put together a scheme.^F
- n) The effect of the draft CPO was to force Kestrel Armana to spend moneys on matters other than the preservation of the estate, notably lawyers.^G
- o) After acquisition, Kestrel Armana was left with the impression that it could do no works at the estate without listed building consent and that, despite informing English Heritage and DCMS of this, it took a long time before it was disabused of this misapprehension. This delay is a serious matter irrespective of whether English Heritage caused the misapprehension; why could not English Heritage have taken immediate steps to put ACEL right?
- p) Kestrel Armana operated in a climate of fear after its architect was officially cautioned by ENC.^H

155. In short, what is set out above discloses a truly astonishing sequence of events. It is a matter of grave public concern that two such agencies, both professing to operate policies of openness and transparency, should have acted as they did.

Purpose of compulsory purchase

156. The Secretary of State's own advice^I is that 'in making or confirming an order, [she] must be satisfied that it is expedient to make provision for the preservation of the building and to authorise its compulsory acquisition for that purpose'. Expedient does not mean 'necessary'; it means 'advantageous; fit, proper, or suitable to the circumstances of the case'.^J

Legal framework and departmental guidance

157. Paragraph 3 of Schedule 1 to the Acquisition of Land Act 1981 provides that the Minister shall serve on every owner of any land comprised in a CPO a notice in the prescribed form. 'Owner' is defined in section 7 of the Act as 'a person ... who is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion, and includes ... a person who would have power to sell and convey or release the land to the acquiring authority if a compulsory purchase order were operative'. The 'prescribed form' is Form 8 of the Compulsory Purchase of Land Regulations 1994 (SI 1994 No. 2145) and contains a schedule in which the names of the owners should be listed.

^A Document CD49 – 22/5/02 and 23/5/02 (EH ¶ DCMS).

^B Document CD49 – 22/5/02 (EH ¶ DCMS).

^C Document CD49 – 31/5/02 (TSol ¶ EPT).

^D Ms MacLeod's oral evidence in cross-examination.

^E Mr Goldberg's oral evidence in chief – and Document ACEL/19.

^F Oral evidence from Messrs Fitzgerald and Goldberg; conceded by Ms Macleod in cross-examination.

^G Mr Goldberg's oral evidence.

^H Mr Goldberg's oral evidence.

^I PPG15 at para. 7.12.

^J See the Shorter Oxford English Dictionary.

158. Section 6(1) of the Act provides that ‘any notice or other document required or authorised to be served under this Act may be served on any person either by delivering it to him, or by leaving it at his proper address, or by post ...’. Section 6(2) goes on to say that ‘any such document required or authorised to be served upon an incorporated company or body shall be duly served if it is served upon the secretary or clerk of the company or body’. Section 6(3) provides that ‘for the purposes of this section and of section 7 of the Interpretation Act 1978 the proper address of any person upon whom any such document as aforesaid is to be served shall, in the case of the secretary or clerk of any incorporated company or body, be that of the registered or principal office of the company or body’.
159. Circular 14/94^A gives explicit guidance to acquiring authorities. Paragraph 3 enjoins them to ‘ensure that their order submissions are accurate; comply with all the statutory requirements; take account of any guidance issued by the relevant Department; and that the procedural guidance set out in this Circular is carefully followed’. Paragraph 8 provides that compulsory purchase orders should not be made unless there is a compelling case in the public interest, that there should be no delay between the making and submission of an order and that an authority should, so far as reasonably practicable and possible, make, advertise and submit a fully documented order as soon as they have resolved to make one. Paragraph 11 refers to earlier guidance, reminding authorities that, where practicable, they should seek to acquire land by negotiation ‘before embarking on compulsory purchase’. Paragraph 15 has salutary warnings for authorities. It states that ‘correctly describing all the interests in land proposed for compulsory purchase can be difficult. In consequence, errors or omissions may occasionally emerge after an order has been made and submitted’. It warns that the Secretary of State’s powers of modification are circumscribed by section 14 of the 1981 Act. Paragraph 16 goes on to say that the Secretary of State ‘must also be satisfied that the statutory procedures, for example in relation to the service of additional or amended personal notices, have been correctly followed, even in respect of an unopposed order’. Paragraph 23 provides that, whilst only the courts can rule on the validity of CPOs, ‘the Secretary of State would not think it right to confirm an order if it appeared to be invalid. Where this is the case, the Secretary of State will issue a formal reasoned decision refusing to confirm the order’.
160. Appendix E to Circular 14/94 deals, in paragraph 16, with ‘Scheduled Interests’ – those that should be shown in the schedule to a CPO. It provides that ‘the names and addresses of owners ... upon whom notice is required to be served should be shown in the Schedule to the Order’ and invites authorities to note a number of points – including ‘(a) the Schedule should include persons who may have a valid claim to be owners or lessees for the purposes of the 1981 Act, eg. persons who have entered into a contract to purchase a freehold or lease’ and ‘(c) service should be effected on the Secretary or Clerk at the registered or principal office of a *corporate* body, which should be shown in the appropriate column, ie. as owner, lessee etc; *NB Under Company Law requirements, notices served on a company should be addressed to the Secretary of the Company at its principal or registered office*’.
161. DCMS has acted in flagrant disregard not only of the statutory provisions but also of the guidance in Circular 14/94. Despite that, it still urges a recommendation that it is expedient to make the CPO. DCMS’s many and varied breaches are set out below.
162. Kestrel Armana was an owner within the meaning of the 1981 Act but has never been served with the draft Order. That a person who has exchanged contracts to acquire land is

^A Extant at the time the CPO was drafted; now superseded by Circular 02/03.

an owner within the meaning of the 1981 Act is not simply clear from the guidance in paragraph 16 of Schedule E to Circular 14/94, it is pretty much trite law. The purchaser is to be regarded as the beneficial owner, at least for the purposes of disposition. From the moment of exchange, the vendor holds the property on trust for the purchaser; the only disposition the vendor can make is one in favour of, or at the direction of, the purchaser. Thus, ACEL became entitled to dispose of the fee simple from 19 June 2002. The guidance in Schedule E to Circular 14/94 is recognition of the true legal position.^A

163. Thus, from 19 June 2002, Kestrel Armana was an owner. Despite the guidance in paragraph 15 of Circular 14/94, and also Appendix E thereto, and despite DCMS and English Heritage both knowing that exchange of contracts was imminent, no steps were taken to include Kestrel Armana in the schedule and/or to serve Kestrel Armana formally or at the correct address. Yet there was plenty of time available to DCMS, after the Secretary of State had resolved to make the order, to correct the Schedule and organise proper service on Kestrel Armana. No excuse or explanation is given for this failure. What was the urgency to serve Mr Burweila?
164. It follows that, contrary to paragraph 3 of Schedule 1 to the 1981 Act, the notice of the draft CPO was not in the prescribed form – because the form used did not include details of owners. Likewise it follows that DCMS was in breach of the guidance in paragraph 3 – because it did nothing, despite the time available to it, to ensure that its order submissions were accurate, complied with statutory requirements, took account of guidelines and so on. Yet, despite this, and despite taking no steps to correct the matter (such as serving a proper draft on Kestrel Armana), it seeks to uphold the draft Order and urges a recommendation that a final Order be made.
165. In addition to the apparent disregard for the law and guidance, DCMS has failed, in breach of the guidelines, to initiate negotiations for the acquisition of the land by agreement. It waited (some months) for ACEL to commence such negotiations and, even then, does not appear to have advanced those negotiations with any vigour.

The draft Order is bad and should not be confirmed

166. As stated above, the Secretary of State will only confirm the draft Order if she is satisfied that ‘it is expedient to make provision for the preservation of the building and to authorise its compulsory acquisition for that purpose’. The first question must be – is it expedient?
167. The notion of expedience cannot simply be limited to the fabric of the building. As a matter of simple English, ‘expedient’ does not mean necessary, or even beneficial. It means ‘advantageous; fit, proper, or suitable to the circumstances of the case’. Even assuming that in this context it only means ‘advantageous’, the notion of advantage has to be considered against the background in which the draft order was made. It may well be advantageous to the building, but advantage should not be considered in such a blinkered manner.
168. Furthermore, it could not be said to be expedient in circumstances where it is only the service of the draft order that causes the alleged expedience. Thus, as here, where service of the draft Order had a deleterious effect on ACEL’s ability to attend to the works, and where ACEL was not disabused of its understanding (however caused) that it could not do any works, it is nigh on impossible to say it is expedient to make a final Order. In

^A In *Megarry & Wade's Law of Real Property*, 6th Edition, 2000, para. 12/052 says, of a purchaser between exchange and completion, that ‘the purchaser is regarded as the beneficial owner, at least for the purposes of disposition’ and refers to the decision in *Baldwin v Belcher [1844] 1 Jo. & Lat 18 at 26*.

short, if it is the draft Order that causes the expedience, then the expedient thing to do is to remove the draft Order rather than to perfect the wrong caused by its service.

169. This analysis is, of course, predicated on 'expedient' meaning 'advantageous'. If it is ascribed a broader meaning, to embrace other meanings, namely 'fit, proper, or suitable to the circumstances of the case', then that certainly opens up for consideration the circumstances in which the Order was made. If that is so, then everything points against a recommendation that the Order be confirmed.
170. One is entitled to go a step further. If it appears that the draft Order would certainly be set aside on public law grounds, then it would be proper to recommend that the Order should not be confirmed because it was bad in law.
171. And it is abundantly clear that the draft Order was bad for two reasons. Firstly, in the circumstances that existed in June 2002, no reasonable authority would have made the Order. Secondly, ACEL had a legitimate expectation that no order would be made.
172. As to unreasonableness, the following matters contribute to a watertight case;
 - a) the conversation with English Heritage on 26 April 2002;
 - b) the letter of 30 April 2002;
 - c) the fact that a copy of the letter of 30 April 2002 was sent to DCMS;
 - d) the fact that Mr Edgar confirmed that what was said at the meeting on 26 April and in the letter of 30 April gave ACEL a legitimate expectation that it would not be met with a CPO until it put together and submitted its scheme and that had been adjudicated upon;
 - e) the fact that Ms MacLeod could not divine any construction of the letter of 30 April other than that contended for by ACEL;
 - f) the fact that Ms MacLeod admitted ACEL's legitimate expectation in cross-examination;
 - g) Ms MacLeod's admission that there was no reason why the fact of English Heritage's advice should not have been relayed to ACEL even before the Secretary of State's decision;
 - h) Ms MacLeod's admission that ACEL would not have purchased with a CPO in place;
 - i) the fact that Ms MacLeod realised, with hindsight, that she should have informed ACEL;
 - j) No legitimate reason was given for not informing ACEL (had ACEL been told before entering into a contract, there would have been no incentive for the directors to have done anything other than thank DCMS and politely withdraw from negotiations with Mr Burweila).
173. It is difficult to see how, in these circumstances, DCMS could even arguably have acted reasonably. In failing to inform a serious potential purchaser that it had received advice from its statutory advisers to purchase compulsorily, and that the Secretary of State would make a decision on that advice, DCMS was very clearly acting unreasonably.
174. The second ground for concluding that this draft Order is bad is the frank admission from both Mr Edgar and Ms MacLeod that ACEL had a legitimate expectation that it would be able to buy the estate free from any order, and have time to put in its proposals, which would be considered and adjudicated upon before any draft Order was made.
175. In view of these matters, it is absolutely clear that the draft Order is bad on public law grounds. Support for this 'badness' comes from the procedural irregularities, never

properly addressed by DCMS, outlined above. The position is clear. An Inspector might not normally expect to have to grapple with the legal niceties of a draft Order – but it is also clear that there is no reason why objectors should be put through the mill where it is inevitable that an order will be struck down.

Case Law

176. The facts of this case are about as far removed from those in *Robbins*^A as it is possible to conceive, as a matter of both fact and degree. In this case, the cost of responding to the Repairs Notice runs to several millions of pounds and, on any sensible analysis, will take a number of years to effect.^B And a person carrying out those repairs will likely do them as part of an overall scheme for the restoration (as opposed to pure ‘preservation’) of the Hall. This will avoid duplication of expensive works and facilitate a co-ordinated response to the building and its needs.
177. Mr Karimzadeh’s evidence is credible. He volunteered that he would enter into reasonable contracts with the Secretary of State to ensure that works were done. He proffered realistic proposals to save the Hall on condition that the CPO were removed, namely:
- a) that he would employ Mr Inskip to develop the scheme and obtain the necessary listed building and planning consents and supervise the repair works (it should be noted that, in view of his removing from the contract the condition of planning consent, his devotion to the scheme cannot be doubted);
 - b) that, upon obtaining the necessary consents (which by virtue of the Supplemental Agreement now excludes planning consent), he would complete the purchase and begin the implementation of works to include all the repairs in the Repairs Notice and would also offer a cash deposit or bond or bank facility to guarantee one year’s works in the sum of £1.5 million and a personal guarantee or a guarantee from his company that the works would be completed;
 - c) he agreed to enter into such reasonable covenants as DCMS might require.
178. Given this, and without hearing Mr Karimzadeh’s evidence, one may properly conclude that reasonable steps are being taken for the preservation of the building. The only impediment to matters actually being put in hand is the draft Order itself.
179. However, as a result of Mr. Karimzadeh’s oral evidence, there can be no doubt that steps are being taken for the preservation of the building. Mr. Karimzadeh has now agreed to buy the estate if the draft CPO is lifted. In his evidence in response to ACEL’s counsel, Mr. Karimzadeh confirmed that he was bound to buy if the draft CPO was lifted and that he would then be acquiring a property subject to a repairs notice which obliged him to do the works. In those circumstances, there can be no doubt but that the works will be carried out and that this draft Order, which should never have been made in the first place, should be lifted at the earliest available opportunity.

General observations

180. In cross-examination of Mr Inskip, DCMS sought to make inroads into Mr Karimzadeh’s proposals by attacking the costings in the ‘post-filleted planning application’.^C It is clear that this is an oversight and that Mr Inskip proceeded on the basis of the figures as agreed between the DCMS and ACEL.

^A *Robbins v Secretary of State for the Environment* [1989] 1 WLR 201.

^B Mr Inskip’s evidence on the proper response to the repairs notice is authoritative, correct and credible.

^C The July 2003 application, which had not been registered, was ‘filleted’ in the sense that the proposals were amended and the supporting information amended accordingly – but not, accidentally, entirely.

181. As to the 'Conservation Audit', there are not the gaps in it that DCMS may suggest. As Mr Inskip said in evidence, the impact on the house of Mr. Karimzadeh's scheme is fully covered in his 'Supporting Information', since the 'Proposals' section sets out each alteration in the context of the historic development of the particular area. Mr Inskip accepts the point about the need for a similar assessment of the impact of Mr Weighton's proposals on the grade II structures and the registered gardens. However, this is covered in part by Land Use Consultant's Conservation Plan – although, as he stated at the inquiry, Mr Inskip will submit additional information as soon as possible regarding the impact of the drive, the housing, the conversion of the stables and granary, and the alteration of the Gardener's Cottage in order to progress the planning and listed building consent applications. He is confident that the proposals will withstand scrutiny as regards the listed buildings, since the alterations are minimal and the stable yard buildings are already considerably altered.
182. As to the evidence concerning use of the estate as a heritage attraction, it is questionable whether it would be as great an attraction as Dr Woodward contends or could continue to operate with the deficits that would inevitably arise. Dr Woodward admitted that his estimate of 15,000-18,000 visitors a year was the maximum that could be expected. His deficit of £45,000 to £55,000 would be increased if, as he suspected, visitor numbers tailed off. His analysis appears to have paid little attention to the costs of solving parking issues, were it necessary to provide parking outside the estate. Furthermore, he did not take account of the need, identified by Mr Inskip, to provide three gardeners, at a cost of approximately £75,000. English Heritage's suggestion that it would fund the costs, whatever they may be, must be set in the context that it had not necessarily taken all potential costs into account. The suggestion that it would obtain funding elsewhere was called into question when Mr Inskip gave his evidence.^A
183. A further issue of some interest is that, at the date the draft CPO was made, the evidence is that English Heritage did not have the necessary funding in place. It had not yet approached the Heritage Lottery Fund and such negotiations as there were between English Heritage and DCMS had not resulted in secured funding.
184. The evidence from Mr Cooke, even if admissible, was of marginal interest or significance. As to admissibility, it was tolerably clear that none of the authors of the report had any experience of a project for the preservation of a grade I listed property, or indeed heritage property projects generally; a brief perusal of the lengthy CVs submitted with the report demonstrates that the experience lay in commerce. As such, the evidence was not expert evidence and views expressed as to whether any particular figure was more appropriate than another should be disregarded. The financial calculations were fairly elementary – hardly sufficient to render the evidence 'expert'.
185. Mr. Booth's evidence was ultimately to the effect that Mr Karimzadeh's scheme would likely attract planning permission, subject to resolving a number of issues. His evidence regarding the marketing campaign was almost without merit. His suggestion that the property should have been advertised a second time may have some logic – but there is no telling whether people attracted the first time might have lost interest if the property was re-advertised. And, as the evidence showed, the advertising that took place in the summer of 2003 drew out twenty people who could demonstrate the financial wherewithal to merit being shown round the house. Ultimately, we are left with Mr Karimzadeh, a very rich man, who has contracted to purchase the property subject only to

^A Mr Inskip said that the Heritage Lottery Fund, though initially 'keen' on country house projects, had moved away from those, and 'elitist' projects, and towards urban regeneration and social inclusion.

the lifting of the CPO and has said he will do the works and enter into any necessary agreements with DCMS to that end.

Overall Conclusion

186. No impartial observer of the evidence could help but conclude that ACEL has been extremely hard done by. It cannot be over-emphasised that the events that resulted in the inquiry are a cause for real concern. The state has commenced proceedings to expropriate real people's real property and, in so doing, has conducted itself in a manner which demonstrates scant regard for those people's expectations of fair, honest and open treatment. Neither DCMS nor English Heritage has offered any credible explanation for their conduct. It is little wonder that Mr Goldberg was left to conclude that the only possible explanation for what befell ACEL was a desire on the part of the powers that be to recoup whatever expenditure they could,^A especially when peering into the financial abyss in front of them. It may be concluded that that was the driving force behind the events which took place. If so, then it goes without saying that such motivation would have been in such bad faith as to invalidate the draft Order, which should be stopped in its tracks as soon as possible.
187. Even if that was not the driving force, it can, and should, be found that both English Heritage and DCMS have acted in a manner which is so unreasonable that no reasonable authority, properly conducting its affairs, could have acted as they did. Both English Heritage and DCMS have acted in breach of ACEL's legitimate expectation that it would be allowed to acquire the estate and put forward proposals which would be properly considered before a draft CPO would be contemplated. If that is the case, then again the draft Order should be stopped in its tracks.
188. Finally, and almost uncontrovertibly, there can be no doubt that, as matters stand, there is a man of great wealth who has fallen in love with the house and has committed himself to its restoration. He is prepared to commit his financial wherewithal to that end. He will not tolerate a staying of the CPO. Several witnesses have given evidence as to the effects of the CPO itself. In circumstances where his commitment is clear and unequivocal, it matters not how he intends to fund the works. It is beyond doubt that a stayed CPO would preclude a private sector solution – yet a private sector solution is the one that both English Heritage and DCMS profess to prefer. There is thus no credible reason why the draft CPO should not be removed as soon as possible, to allow the restoration of this fine house and its grounds.
189. The Inspector is respectfully urged to report and recommend accordingly and bring this whole unfortunate saga to an abrupt end in order to facilitate a sensible private sector solution.

^A Of the moneys spent on the section 55 works.

The Case for Mr Simon Karimzadeh

Mr Karimzadeh has exchanged contracts with ACEL for the purchase of the property. The Agreement is at Document CD35A. It is dated 3 October 2003. The conditions precedent are the withdrawal of the CPO and the grant of planning permission (for development described in clause 1.28). If the CPO has not been withdrawn by 3 April 2004 (now passed), then either party may end the Agreement within 14 days. If both conditions precedent are not satisfied by the Longstop Date (3 April 2005), the Agreement may be ended by either party. There is also a Put Option Agreement, exercisable if the CPO has been withdrawn but the Longstop Date has passed without planning permission being granted. It enables ACEL to require Mr Karimzadeh to purchase the freehold of the Hall and gardens only, excluding the stables and granary, the walled gardens and the whole of the land to the west of the access drive (the Hunting Way houses, the sports hall, the dovecote, the orchard and Gardener's Cottage).

A Supplemental Agreement was executed during the inquiry. It is at Document CD35C. It is dated 9 March 2004. In essence, it deletes the condition precedent on planning permission, leaving withdrawal of the CPO as the only condition precedent; and it extends the original 'period of 6 months' (expiring on 3 April 2004) until 30 September 2004.

Mr Karimzadeh's witness statement and Business Plan are at Document O/4.

On 2 March 2004, Mr Karimzadeh asked Mr Levy (Counsel for ACEL) to put the following open statement to the inquiry.

190. Mr Karimzadeh puts forward the following 5-point proposal as a basis for resolving the differences between the parties and avoiding the need to continue further with the inquiry:

- DCMS should withdraw the CPO;
- Mr Inskip would develop a scheme, obtain planning permission and listed building consent and supervise the repairs (as set out in the Repairs Notice);
- on obtaining planning permission and listed building consent, Mr Karimzadeh would complete purchase of the property, begin implementing the scheme, including all repairs, and provide for (a) either cash on deposit or a bond or a bank facility (as may be agreed) to guarantee one year's work (in the sum of £1.5 million) and (b) a personal guarantee or an Eskar^A corporate guarantee that the works will be completed;
- DCMS should encourage ENC and English Heritage to grant all necessary consents; and
- in relation to the above, Mr Karimzadeh is prepared to enter into such reasonable covenants as DCMS may require (for example, on the progress or order of works or on the retention of Mr Inskip's services).^B

Mr Karimzadeh gave his evidence to the inquiry on 11 March 2004.

191. Mr Karimzadeh said that he is soon to be the owner of Apethorpe Hall. He is walking into it with his eyes wide open. He has taken advice. He has referred to the *Robbins* case. Mr

^A Eskar International Ltd, the company over which Mr Karimzadeh has full control.

^B In the immediate discussion following that offer, Mr Mould, for DCMS, pointed out that commencement of the repair works and the commitment thereto were dependent on the grant of planning permission and listed building consent. I said it seemed to me that works to ensure that the building was wind- and water-tight would need to go on in the meantime. Mr Karimzadeh said he had a contractual obligation with ACEL to that end. Mr Mould wondered what would happen if planning permission and listed building consent acceptable to Mr Karimzadeh were not forthcoming and he was therefore not prepared to proceed; the CPO having been withdrawn, DCMS would find itself back at 'square one'. Further consideration was left to take place outside the inquiry but the proposal did not come to fruition.

Mould said there was a difference of scale between *Robbins* and Apethorpe. He thinks it is only a question of scale. DCMS and English Heritage raise three main points – funds, a professional team and planning permission. He has the first two and there is the likelihood of the third. *Robbins* says that, if the intention is there, there is no need for the CPO.

192. He has learnt a lot from ACEL, including the need to approach English Heritage and DCMS. ACEL was told that to sell the Hall for £1 would not be to preserve it. Equally, it was told that to sell off other development would not preserve the estate. ACEL's scheme is dependent on enabling development or grant aid but that is not necessarily the right way forward. His proposal takes on board all the advice given by others. There would be less than twenty dwellings on the estate, there would be no enabling development, funding would be available, a professional team is (or will be) in place and planning permission would be likely.^A That gives him confidence to move forward.

In response to Mr Mould's questions, Mr Karimzadeh said the following.

193. He could walk away if the CPO is not withdrawn by April 2005 – but he might not. He was prepared to give ACEL the option (the Put Option) of obliging him to buy the Hall alone, with its immediately surrounding buildings and gardens, with ACEL retaining ownership of the balance. He originally preferred to have the certainty of a planning permission, so as to be able to get on with things without further negotiation, but the evidence to the inquiry suggests that planning permission for what he seeks would be reasonably likely.
194. Repair of the stables for no effective use would lead to a huge deficit, one he is not prepared to absorb, hence the proposal for five dwellings. Similarly, to demolish the unattractive Hunting Way houses and the sports hall would be another negative cost – hence the proposal for new dwellings. It would not make economic sense, however much he loves the Hall, to walk into a deficit of perhaps as much as £13 million.
195. He agrees that the deficit on the scheme would be around £3.5 million.^B Mr Inskip accepted that the deficit would likely be greater but Mr Karimzadeh thought it would depend on how one went about it. He acknowledged that Mr Inskip's phased programme of repair and restoration for the Hall and garden structures was based on his own proposals and totalled £7.7 million – but he himself thought savings could be made on that. He thought that to incorporate repairs into refurbishment work would reduce the cost to his own estimate for the house of £5.843 million to first fit. Even so, he acknowledged that, if the deficit exceeded his expectations, he would absorb the extra. There were two ways of defraying the costs apart from out of his own funds – grant aid and enabling development. He had made no application for grant aid and was uncertain whether any would be forthcoming. On enabling development, he was thinking in terms of residential development elsewhere, not within the estate but, again, had had no more than preliminary conversations on the matter. He accepted that conversion of the stable block and replacement of the Hunting Way houses would, technically, be enabling development but was not proposing any more development within the grounds. If he got the property tomorrow, he could commit the £4.6 million estimated for repairs to the Hall from cash reserves. Eskar has funds of more than £117 million, available to draw down towards the purchase and repair of Apethorpe Hall, not locked in any way.
196. In the end, Mr Karimzadeh confirmed the terms of the proposal made earlier to the inquiry. He would be prepared to spend the necessary money to defray the costs of repairs to the Hall, stables and garden structures, as set out in the Repairs Notice, on condition that

^A Document CD35B, Mr Karimzadeh's Masterplan for Apethorpe Hall gives more details.

^B Mr Karimzadeh's Business Plan shows a deficit of £3.416 million, ACEL's a deficit of £3.557 million.

the CPO is withdrawn and planning permission and listed building consent granted on a scheme acceptable to him. That scheme includes conversion of the stables and granary to residential use and replacement development for the Hunting Way houses. He is prepared to commit himself to the Secretary of State on those terms but is not prepared to restore the Hall without that further development.^A

In response to Mr Levy's questions, Mr Karimzadeh said this.

197. He understood that, if the Secretary of State withdrew the CPO within the relevant timeframe, ACEL would have an enforceable contract against him. He would then be acquiring a property subject to a Repairs Notice and would be prepared to carry out the obligations thus imposed. If the Repairs Notice fell with the CPO, he would carry out works as advised by his professional team and restore the Hall as in Mr Inskip's scheme.^B If the CPO were withdrawn and the Repairs Notice fell with it, but a new and updated Repairs Notice were then served, he would start on the same works towards restoration and with the same professional team to see that through. If, however, the CPO were merely stayed, his contractual obligation runs only until 30 September 2004; if the contract were then rescinded, he would consider looking elsewhere.

^A In responding to my question, Mr Karimzadeh appeared to answer differently, saying that he was prepared to carry out the repair works and recoup the costs later (from the development indicated).

^B A rider to this was that he would not carry out works to the point where it would interfere with his ultimate plan for the Hall – for example, he would keep the orangery as a shell.

The Case for Mr John Bootland

Put briefly, Mr Bootland's proposal is fully to restore the Hall and its grounds as a top-of-the-range hotel with a golf course on additional land to be acquired and with on-site leisure facilities both period and modern in nature. The stables and granary would be converted for residential use and executive housing built elsewhere, mainly off a new access road to the estate. Greater detail is within Mr Bootland's submission at Document O/5.^A

198. It seems likely that a deal will be done but, if not, his proposals are on the table whether or not the CPO is made. If it is made, then English Heritage ought to look at his proposals because there would be no cost to the tax payer. They would produce a completely restored building with a use able to fund continuing essential maintenance expenditure.^B
199. His figures were consistently within touch of English Heritage's. He met English Heritage in 2001 when in competition with ACEL. His estimate then was within 5% of English Heritage's. His estimate now for full restoration was £12.5 million compared with English Heritage's of £11.9 million. His estimate of the time needed for the works, 3.5-4 years, was also comparable.
200. The proposals would enhance the estate by adding some 55 hectares to it and enhance the village by providing a walkway through the grounds, parking for Laundry Road, a playground and affordable housing (the last within the additional hectareage). They would also create jobs at various levels – local jobs for local people. And they would offer limited access to the public even though not taking public money.
201. The question of sub-division of the Hall to form the hotel is for his professional team. He would be delighted to meet English Heritage to discuss proposals. Some compromise would be inevitable – but it would be minimised. He is offering English Heritage 120% of what it is asking ACEL.
202. Mr Bootland has very little experience of listed buildings. He sees himself as essentially a facilitator. His job is to put the team together – a team that *is* very experienced. The proposal first came through Alderport Limited; it has withdrawn but he carries it on. He is aware of English Heritage's and ENC's preferred use for the Hall but sees his proposal as having the advantage of retaining the estate in a single use, even if not residential. He has £6 million available to start the project; the rest would come from development opportunities. One hotel group has expressed great interest in his proposal but commercial confidentiality prevents it being made known. He would need a letter of intent before starting but he would take the risk of purchase and then go to the hotel group.

^A In his submissions, Mr Bootland is critical of the treatment he received from Mr Booth on behalf of ENC. It is not central to my conclusions but is nevertheless fair to record Mr Booth's response that the requests for meetings could not be agreed because they came at such very short notice; in addition, Mr Bootland was given a full response to his proposals in writing.

^B His estimate of essential maintenance costs was 2.5-3.0% of initial repairs costs annually.

Other Submissions

203. **Mr George Kelley^A** is in full support of steps being taken for the proper preservation of the Hall but, if it is made, the nature of his occupation of Corner Cottage^B means he is likely to be eligible for a home loss compensation payment. For this reason, he objects to the Order.
204. **Ms Victoria Ferguson^C** objects to what she understands is proposed, saying that all previous consents should be set aside and that new proposals should take into account the current status of the property, its access and the adjacent village.
205. She says that Laundry Road is very narrow, offers the only available parking for residents on that road, that vehicles already mount the kerb to pass parked cars and that the situation, in the road and at its junction with Main Street, can only get worse with the 230 daily vehicle movements associated with the proposals. She thinks that the main objective should be the management of ‘this national treasure’ and that its future should be secured before there is any development of its grounds and ancillary buildings. She thinks that replacements for the Hunting Way houses might be more pleasing to the eye but notes that there is no provision for affordable housing.
206. **Apethorpe Parish Meeting^D**, having felt powerless to intervene in the deterioration of the Hall over more than twenty years, now expresses a number of concerns about the present situation and the future of the Hall. The general opinion of the village is that ‘this development^E’ is the best way forward because it would have a relatively small effect on traffic, it would increase the population of the village to a manageable degree, the Hall would be repaired and be a single dwelling, it would cost the tax payer nothing and the repairs and development would be completed quickly.
207. The Meeting considers unacceptable the nuisance that would be caused by construction traffic over some six years for English Heritage’s scheme for restoration for use as a single dwelling. It believes that a private purchaser could carry out repairs to the same standard but in a much shorter time. It is also concerned about the stipulation for public access arising from English Heritage’s proposals, which it thinks could make the fallback scheme almost inevitable. And it is more concerned about the need for parking within the village caused by the fallback, the cost of that to the tax payer, the unacceptability in highways terms of the increase in traffic that would arise from 18,000 visitors a year and the effects for residents of the village of the litter, noise and disturbance and loss of privacy that would be caused by those 18,000 visitors.
208. In short, the Meeting objects to the CPO so long as English Heritage’s fallback scheme is part of the proposals for Apethorpe Hall.

^A Document CD12A(3).

^B Part of the fabric of the Hall and often referred to as George’s Cottage.

^C Document O/6.

^D Document O/7.

^E Which I take to mean Mr Karimzadeh’s scheme, as proposed in the January 2004 applications.

Conclusions

Superscript numbers in these Conclusions refer to earlier paragraphs of this report. Footnotes continue to be identified alphabetically.

209. In my opinion, ACEL's objections to the CPO raise five main considerations. Firstly, is the Order a bad one legally, such that it should be struck down for that reason alone? Secondly, and in similar vein, did English Heritage and/or DCMS act so unreasonably in relation to EPT that the Order ought not to be allowed to proceed? Thirdly, if it is judged expedient to make provision for the preservation of Apethorpe Hall, does that expediency arise purely from the consequences of serving the Order? Fourthly, does the proposed sale to Mr Karimzadeh, coupled with his proposals, give sufficient assurance that the Hall and its grounds would be properly and satisfactorily preserved without compulsory purchase? Fifthly, would English Heritage's proposals achieve satisfactory preservation? More particularly, would the fallback option be practical and viable? The answers to these considerations must then be weighed in the balance in order to come to a recommendation. First of all, however, I shall look briefly at the nature and extent of the works needed to repair and restore the Hall and its ancillary and garden buildings.

The nature and extent of repairs

210. There is no dispute about Apethorpe Hall's architectural and historic merit.³⁷ There is no material dispute between the respective professionals about the extent of the repairs to be done (whether or not in the Repairs Notice).³⁹ And the respective quantity surveyors have formally agreed the estimated cost of the scheduled repairs to the Hall (£4.614 million).³⁹ Nor is there any material difference of opinion on how long one might expect the works to take (some six years).⁴⁴ English Heritage's and DCMS's cause for concern in this respect (shared by Mr Inskip^{43,100} on behalf of ACEL and Mr Karimzadeh) has been about what has or has not been done since the draft Order was served.

211. Given this overall level of agreement, I have felt it unnecessary, and potentially confusing, to indicate within the cases for the parties where differences occur. The quantity surveyors came to similar costs despite slightly different approaches and despite coming to different estimates on some aspects of the work. Nevertheless, they were sufficiently confident of the total to sign the memorandum of agreement.^A The prioritised schedule of works prepared by Mr Balkham for DCMS^B put a large proportion of the items in the 'priority' category (to be done within one or two years). Mr Inskip took a different approach, proposing holding works for some areas of the building while carrying out permanent repairs to others.^C There are different ways to go about it but this seems to me an entirely sensible approach.^D It would require constant monitoring of the holding works to ensure that they continued to achieve their purpose. The programme flows from Mr Inskip's view that one should not aim to spend more than £1.5-£2 million annually – because the building demands a 'gentle approach', it would be difficult to ensure the availability of specialist craftsmen and conservators in a more condensed programme and the

^A Document DCMS/10 – 'The two Surveyors are in general agreement with each other's figures'.

^B Document DCMS/9.

^C Document ACEL/10 – the drawings explain in simple terms the approach adopted by Mr Inskip.

^D It was my suggestion at the pre-inquiry meeting that a prioritised schedule of repairs be drawn up.

I suggested that repairs might be differentiated as needing to be done, for example, within 1-2 years,

3-5 years or longer-term. Unfortunately, this was interpreted by DCMS as a definitive categorisation.

Mr Balkham said that he would have had two additional categories – 'urgent' and 'within six months'.

Mr Inskip said that the drawings in Document ACEL/10 explain his alternative to simply prioritising the works set out in the Repairs Notice.

professional team needs time to prepare properly the best scheme.^A And, of course, his estimate for the duration of works is no different to Mr Balkham's.

212. In the circumstances, I do not need to dwell longer on the nature, extent, likely cost of and time needed for repairs to the Hall. I am confident that, if ACEL or Mr Karimzadeh were left to carry out the works under the control of Mr Inskip, what he proposes would achieve the proper preservation of the building and its grounds to a standard, by a time and at a cost not significantly different to those envisaged by English Heritage. That, however, does not go to the heart of any of the five main considerations I have identified above – which I shall now look at in turn.

Is it a bad Order?

213. Whether or not it is a bad Order¹⁵⁷⁻¹⁶⁴ is a matter of law. My views are as follows.
214. The Secretary of State resolved to make the Order on 13 June 2002. It was drafted on 20 June and served on Mr Burweila on 26 June 2002.⁶ Kestrel Armana Limited exchanged contracts for the purchase of the property with Mr Burweila on 19 June 2002.⁷ Those facts, on my understanding of the law, make Kestrel Armana a party on whom the draft Order should formally have been served.^{157,162,163}
215. Mr Goldberg, under EPT's letter heading, wrote to Mr Edgar on 20 June 2002 informing him of the exchange of contracts. Roythorne & Co (Mr Burweila's solicitors) wrote to Dr Streeten on the same day in similar terms. Dr Streeten, on 21 June, faxed both letters to DCMS (Mr Lyndsell), and wrote later that day to Mr Lyndsell.^B Neither English Heritage nor DCMS seems to have known of the exchange on the day the Order was drafted. On the other hand, each was well aware that exchange was both likely and imminent.¹⁵⁴ DCMS could, and arguably should, have taken steps to establish the exact position before actually making the draft Order.
216. Nevertheless, English Heritage notified Mr Goldberg by letter dated 26 June 2002 that the Secretary of State had that day served the draft Order. DCMS sent a copy of the Order to Mr Goldberg on 27 June. Kestrel Armana, by way of a letter dated 17 July 2002 from Marrons (Solicitors), formally objected to the Order.^C It is Kestrel Armana (subsequently ACEL) with whom DCMS and English Heritage have corresponded ever since that time. ACEL has been treated as a statutory objector and was the principal objector contributing to the inquiry.⁹⁰ I too have treated ACEL as a statutory objector. Indeed, it is possible that an inquiry into the Order might not have been necessary had not ACEL been so treated.
217. The net effect is that ACEL, in my opinion, has not been in any way prejudiced by not being identified as a party on whom the Order should formally have been served – nor because it was Mr Goldberg who was sent a copy of the Order, rather than it being addressed to the company's registered office.
218. Accordingly, while I offer no opinion in law as to whether it is a bad Order, I cannot see that any prejudice has resulted. Closing for DCMS, Mr Mould's view was that breaches of the procedural requirements would only be unsound in law if substantial prejudice resulted.⁹⁰ Save for any constraints the CPO may have placed on ACEL's ability to carry out repair and restoration works, which I deal with as the third of the five main considerations, I can find no disadvantage to ACEL that could compel me to recommend against the Order without first giving proper consideration to its merits.

^A Document ACEL/3 – the second paragraph on p.10.

^B Document CD49 has all three letters and the fax.

^C Document CD49 has all three letters.

Did English Heritage and/or DCMS act in an unacceptably unreasonable manner?

219. There are two aspects to this matter. Could/should English Heritage and/or DCMS have been more open in informing EPT, when it was negotiating to purchase Apethorpe Hall, of English Heritage's request and the Secretary of State's decision to draft the CPO? And were English Heritage's and DCMS's actions in any way linked to a desire to recover moneys spent by English Heritage on executing the works set out in the urgent works notices issued under section 55?
220. On the first aspect, the critical events are the meeting between English Heritage and EPT on 26 April 2002, the letter of 30 April 2002 from English Heritage confirming what was discussed at that meeting, English Heritage's advice to DCMS by letter dated 1 May 2002 and subsequent correspondence up to the drafting of the CPO.^{76-82,139-155,172-175:A}
221. The letter of 30 April 2002 notes the deposit paid by Mr Goldberg and the intention to exchange contracts within six weeks of 22 April 2002 (in fact, exchange took place just over eight weeks later). It sets out English Heritage's understanding of EPT's proposals (the accuracy of which was not questioned then or at the inquiry), followed by its advice.
222. That advice begins critically. It sees the proposals as going against 'the fundamental principle that the site should be treated as an entity in terms of development assets ... and liabilities ...', rendering the estate 'vulnerable to the disposal of asset value without proper safeguards to ensure' adequate funding for preservation. But it then goes on to say that, 'If proposals such as you have outlined were to [be] presented on behalf of the present owner [Mr Burweila] as a convincing response to the Repairs Notice ... the purchaser [EPT] should be asked to prepare and submit a full, credible and acceptable ... programme for the proper preservation of the building and ... to demonstrate that the financial resources required for repairs were available'. The letter then sets out what the necessary information should include. The advice concludes by rejecting 'unbridled enabling development' and commending 'a carefully managed solution' rooted in a sound appreciation of the history and significance of the site.
223. Read on its own, I find that advice almost self-contradictory. It is clear from the initial assessment (and, to a lesser extent, the conclusion) that English Heritage had grave concerns about what was being proposed. Yet the letter sets out what information would be sought if the proposals were to be presented 'as a convincing response to the Repairs Notice'. It is difficult not to interpret the advice as meaning that the proposals might come to be considered acceptable notwithstanding the concerns held at the time by the particular English Heritage personnel at the meeting.
224. The concluding paragraphs of the letter explain that English Heritage must advise the Secretary of State on the present owner's response to the Repairs Notice. It suggests that EPT may wish to clarify various aspects of its proposals but reiterates the concerns that the site should be treated as a single entity and that there should be viable arrangements for securing the necessary repairs. It notes the lack of credible estimates for the repairs, of a clear indication of the resources available and of any information on the alternative option involving enabling development and the sub-division of the Hall.
225. Taken overall, the letter gives me the clear impression that the proposals might come to be considered acceptable, perhaps with some amendment, subject to additional information and clarification being provided. Either way, I cannot disagree with the conclusion^{140,143} that Mr Goldberg would have had a reasonable expectation of being given time to put

^A Document CD49 has the letters of 30 April, 1 May and subsequently.

together an appropriate scheme – a conclusion both Mr Edgar, for English Heritage, and Ms MacLeod, for DCMS, have accepted.^{144,174}

226. On the same day, English Heritage wrote to Roythorne & Co^A (Mr Burweila's solicitor) setting out much less ambiguously its concerns about the fundamental principle that the site should be treated as a single entity and about the prospect of significant enabling development being proposed. The letter states clearly that 'these very generalised proposals ... cannot be regarded as an acceptable response to the repairs notice ...' or as 'reasonable steps towards the proper preservation' of the Hall.
227. On 1 May 2002, English Heritage wrote to DCMS advising that 'there seems to be no prospect of a full, credible and acceptable ... programme for the proper preservation of the buildings' and requesting the Secretary of State to 'exercise her powers ... to compulsorily acquire the building and its grounds'. With the letter is a report written after the meeting of 26 April and addressing the need for compulsory purchase.^B It concludes that EPT's proposals are 'unclear, uncertain and not viable', 'seem to be based on unrealistic expectations' and 'likely to be unacceptable in planning and conservation terms as they would involve a substantial amount of enabling development and potentially would result in the disintegration of the estate ... extremely damaging having an adverse impact on the historic buildings and their settings'. And it suggests that, in over two years since its first involvement, EPT seemed 'hardly to have begun the essential work'.
228. The letter to Roythorne & Co seems to me a much plainer statement of English Heritage's views as I understand them to have been. The letter to DCMS certainly is. Both may be seen as running counter to the reasonable expectation given to Mr Goldberg that EPT would have time to prepare an acceptable scheme. A letter to EPT in such terms might have given clearer warning as to what an acceptable scheme might be expected to provide.
229. English Heritage's request to DCMS flowed from a resolution of its Commissioners in December 2001. The Commissioners apparently re-affirmed their resolution on 1 May 2002.^C It is hard to believe that the conclusion was not already emerging before the meeting on 26 April 2002. At the least, what transpired at the meeting of 26 April may have been what finally convinced English Heritage that action for the proper preservation of the Hall was not going to be forthcoming (there having been no effort to date by Mr Burweila¹¹⁶). Whichever, that seems to me a conclusion that could and should have been provided to Mr Goldberg, as opposed to what was actually given – an expectation that EPT would have time to prepare an acceptable scheme. If English Heritage's conclusions on EPT's proposals were as clear as expressed in the paper with the letter of 1 May, one may ask why EPT could not have been told in similar terms – why the concerns, though set out in the letter of 30 April, were expressed within an overall context that could reasonably be interpreted as allowing time either for clarification of the proposals or for a suitably amended proposal to emerge.
230. The letter of 7 May 2002 from DCMS to Mr Goldberg does nothing to clarify matters. It seeks to ensure that Mr Goldberg is aware of the Repairs Notice and of the expiry of the three-month period for compliance with it. It states that the Notice would remain valid and enforceable against a new owner and that compulsory purchase is thus an option. But it makes no mention of English Heritage's request to the Secretary of State to purchase compulsorily, noting instead that compulsory purchase 'may not be necessary if the property passed to a new owner who ensured its timely and satisfactory repair'. In effect,

^A Also in Document CD49.

^B It is not mentioned in the letter but appears with it in Document CD49 and has the same reference (TSol103).

^C Document CD49 – 1/5/02 (Giddins ¶ Pillman), 2nd full para. on p.2.

that letter would only have confirmed Mr Goldberg's expectation of time to prepare an acceptable scheme.

231. There was considerable correspondence between 7 May and 20 June 2002. Much of it might have prompted a clearer explanation of the position but none emerged. In particular, letters from Roythorne & Co to both English Heritage and DCMS made clear that EPT required ENC's Repairs Notice and CPO to be withdrawn.^A It is inconceivable that EPT would seek this but be unconcerned about the prospect of a CPO by the Secretary of State.
232. In another letter to English Heritage, which went also to DCMS,^B Mr Goldberg says that he found the meeting on 26 April 'mildly confusing' because English Heritage was endeavouring to persuade EPT not to purchase the property.¹⁴¹ It may well be that that was exactly what English Heritage was trying to do, given its opinion on the unsuitability of EPT's proposals – but that it was somehow thought inappropriate to couch its criticisms to the potential purchaser in the same unambiguous way that it felt able to do in writing to DCMS. But here, surely, was the opportunity to explain more clearly. Instead, English Heritage's response,^C though certainly expressing concern over the various aspects of the proposals that it considered inappropriate, suggests that a period of about three months would normally be allowed to assess a definitive scheme and take it through the planning process. And it concludes that English Heritage is unable to advise the Secretary of State that reasonable steps are being taken for the proper preservation of the listed buildings – without no suggestion at all that it has actually requested the Secretary of State to make a compulsory purchase order.
233. In a letter to DCMS,^D English Heritage recognises the importance of responding 'before Mr Goldberg reaches his final judgement of the implications arising from his intended exchange of contracts'. The letter closes, however, by urging the Secretary of State to take decisive action to ensure 'a properly managed solution to secure the repair and appropriate future use of Apethorpe Hall'. That seems to be motivated by a wish to avoid the future of the Hall resting 'on the outcome of an unseemly process of competitive bidding' between Mr Goldberg and Mr Baylis. It may be that English Heritage thought that a prompt decision by the Secretary of State to purchase compulsorily would stifle such an auction. On the other hand, one cannot easily escape the conclusion that English Heritage saw compulsory purchase by the Secretary of State as the solution for the property and that it failed properly to consider the potential consequences for EPT if it were to proceed to exchange contracts (known to be imminent) on the basis of what was considered to be an inappropriate scheme.
234. Had EPT been told before it exchanged contracts of the Secretary of State's decision to draft the CPO, it would surely have withdrawn from discussions with Mr Burweila.^{172(j)} Indeed, had it been told of English Heritage's request to the Secretary of State to purchase the building compulsorily, it must be highly likely that it would have withdrawn.
235. Both Mr Edgar, for English Heritage,¹⁵³ and Ms MacLeod, for DCMS,^{80,172(g)(i)} conceded to the inquiry that, with hindsight, EPT should have been properly informed of English Heritage's advice. The messages about the inadequacy of the proposals may have been clear in the correspondence⁸⁰ but, on my reading as well as that of Mr Goldberg, they were within an overall message that the issues might be capable of resolution and that an

^A Document CD49 – 14/5/2002 (Roythorne & Co ¶ English Heritage and Roythorne & Co ¶ DCMS).

^B Document CD49 – 15/5/02 (Goldberg ¶ Streeten and Goldberg ¶ Lyndsell).

^C Document CD49 – 23/5/02 (Streeten ¶ Goldberg).

^D Document CD49 – 23/5/02 (Streeten ¶ Lyndsell) – this letter appears to have been faxed to DCMS to seek observations in advance of replying to Mr Goldberg that same day.

opportunity would be allowed for that to be done. I do not think it can truly be said that EPT simply failed to recognise the messages⁷⁶ or simply missed the point.⁷⁸ In my opinion, in the letters at least, those messages were set in a context that time would be allowed for an acceptable scheme (which might or might not be amended from the proposals at the time) to be prepared.

236. As to the reasons why those messages were not made clear, I can perhaps understand why Mr Edgar should have felt a duty of confidentiality¹⁵³ – English Heritage’s advice was to DCMS and a decision on whether to inform others of that advice might be thought properly to lie with DCMS. At the same time, I cannot see why English Heritage could not have said what it had requested the Secretary of State to do, adding that she would make her own decision in due course. That would sit better with the view expressed at the inquiry by Ms MacLeod that DCMS could have made known the request before the Secretary of State had decided upon it.¹⁵³
237. I am in no doubt that English Heritage and DCMS acted unreasonably. I think that, with hindsight, one can see that both failed to act openly and transparently. At the very least, both failed to explain clearly to EPT the position with regard to the potential compulsory purchase of Apethorpe Hall. That is not the same as the argument put by ACEL – that no reasonable authority, properly conducting its affairs, would have made the Order.^{171,187} I think that both English Heritage and DCMS may be seen as, in principle, taking reasonable action to resolve what they saw as an unacceptable train of events. But, in so doing, they acted unreasonably in not making their intended actions clear to EPT. The result was that Kestrel Armana purchased the property when otherwise it very likely would not have.
238. On the second aspect of this matter, ACEL suggested that, in the absence of any other obvious explanation, recovery of the moneys spent on implementing the section 55 works was the driving force behind the decision to purchase compulsorily.¹⁸⁶
239. It is true that, from early 2002, correspondence concerning the Repairs Notice and compulsory purchase referred also to recovery of the section 55 moneys.^{133,134,136,147} I do not find that particularly surprising given that the actions under section 48 and section 55 involved the same building (Apethorpe Hall) and the same bodies (English Heritage and DCMS). Some of the personnel were bound to be the same. Nor do I find it surprising that English Heritage was pressing for recovery of the moneys and that DCMS was looking at whatever options were open to it to recover those moneys.^{154(j)} Both would have been open to justifiable criticism if they had not.
240. Mr Goldberg acknowledged that there was no evidence to support his theory.⁸³ In the end, I believe it comes down to searching for a reason why the CPO might have been drafted when it was despite English Heritage’s advice having given him the expectation that ACEL would have time to put together an acceptable scheme for the preservation of Apethorpe Hall (which I have already concluded was an expectation reasonably drawn from the letter of 30 April 2002 and the subsequent correspondence from English Heritage and DCMS up to the exchange of contracts). On this second aspect, therefore, I find no support for the argument that no reasonable authority would have made the Order.
241. Whether my conclusion on the unreasonable behaviour by English Heritage and DCMS is enough to warrant a recommendation against making the CPO is another matter. Sections 47 and 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 enable the proper preservation of a listed building to be secured when effective steps to that end are not being taken by its owner. On the practicalities of the matter, rather than the legal niceties, I agree with Mr Mould’s conclusion⁷⁵ that it would go against that purpose to

withdraw the Order for reasons of legality or unreasonableness if the result would be to leave the building in a state where its proper preservation seemed unlikely to be realised.

Has the draft Order inhibited proper preservation?

242. ACEL claims that the effect of the draft CPO was to deprive it of funding to go about the repairs or put together an acceptable scheme, instead forcing it to spend money on matters other than preservation, notably on lawyers.^{154(m)(n)} Indeed, one might naturally expect the threat of a CPO to inhibit an owner's ability to raise money for works of repair, restoration or development. That is testified to not only by EPT seeking withdrawal of ENC's Repairs Notice and CPO^{154(c)} but also by Ms MacLeod conceding both that ACEL would not have purchased with a CPO actually in place and that it would have had difficulty raising funds as a result of the CPO.^{154(m),172(h)} The evidence, however, suggests that the CPO was not, on its own, a fundamental constraint.
243. Anglo Irish Bank funded the purchase of the property to the tune of £1.315 million and expressed itself prepared to consider further funding subject to, in short, the draft CPO being withdrawn and all planning, listed building and other consents being in place.⁷² The existence of those consents would enable the Secretary of State to consider withdrawing the CPO, subject to her being satisfied that reasonable steps were being taken for the proper preservation of the building. In principle, therefore, the Bank and the Secretary of State both see planning permission and listed building consent as a primary requirement – the Bank for funding, the Secretary of State for withdrawing the CPO. One could argue that what would be an acceptable scheme to the Bank for funding purposes might not be for the Secretary of State's purposes – on the other hand, it must be assumed, especially bearing in mind ENC's past involvement,^{93-95,97} that a scheme not providing for the proper preservation of the Hall would not gain planning permission and listed building consent.
244. Anaid offered ACEL a loan of virtually £2.5 million in 2003, drawn down by 2004 when a further £0.5 million was offered. Consistent with that, Mr Fitzgerald's evidence was that £2.7 million had been spent to date, of which he himself had provided £0.2 million.⁷¹ Even after deducting the purchase price, a considerable sum has thus been available to ACEL for carrying out essential repairs and pursuing planning permission and listed building consent for its proposals. ACEL's plans, whether for single occupation or subdivision of the Hall,^{29,30} have been founded on a scheme of enabling development. One would expect very high priority to have been given to gaining planning permission and listed building consent for those proposals – yet applications were not submitted until July 2003 and, contrary to optimism at that time,^A had not even been registered, due to inadequate detail, by January 2004.⁹⁵
245. Accordingly, while a natural first assumption might be to the contrary, I conclude that ACEL has not been seriously hampered in its progress towards the proper preservation of Apethorpe Hall because the CPO has made it difficult to raise funds. Rather, it is the failure to take rapid steps towards securing planning permission and listed building consent for its proposals that has proved the obstacle. There have, however, been other difficulties which, rightly or wrongly, might be ascribed to the draft CPO.
246. ACEL gained the understanding that listed building consent would be needed for virtually any work to Apethorpe Hall. I do not particularly need to go into how, or how justifiably,

^A At the pre-inquiry meeting in July 2003, I postponed the opening of the inquiry from September 2003 to February 2004, with the agreement of DCMS, because it seemed likely that decisions on the applications would have been made or that they would have been called in for decision by the First Secretary of State. It was my view at the time (shared, I believe, by others) that the need for an inquiry into the draft CPO would have evaporated if planning permissions and listed building consents had been granted.

this understanding arose. The fact is that it did – and it inhibited progress on repairs. It took several months for listed building consent to be granted⁹⁴ – again something that need not be examined further in this report. In truth, the reasons for both are somewhat unclear.

247. Mr Weighton, the architect acting for ACEL, clearly knew that some of the repair works would not require listed building consent.⁸⁵ ENC obviously also maintains an open mind on whether a listed building application might be necessary and, if so, what information might be needed to determine it.^{84,99} Without in any way criticising Mr Weighton (because architecture is a wide-ranging subject and different practitioners gain expertise in different areas), it seems to me that ACEL did not help itself by failing to instruct an architect who had suitable experience of dealing with substantial repairs to a large grade I listed building. Mr Inskip did not come on to the scene until mid-2003 but to have appointed him (or someone of similar expertise and experience) immediately after purchase would have been enormously helpful in rationalising what needed to be done, and in what order, negotiating with ENC and seeking listed building consent with appropriate information for those works that needed it. But the problems that arose cannot be attributed to the draft CPO – based on the evidence, it is my opinion that they would likely have occurred whether or not there was a draft CPO.
248. I am sure that the caution issued to Mr Weighton⁸⁶ must also have inhibited progress. I can understand why such action might be taken in enforcement cases – but I wonder if it was a little heavy-handed to have done so in this case.^A Certainly, I can understand why Mr Goldberg should have been sufficiently taken aback to call a halt to all work that did not have listed building consent and might therefore prompt legal action by ENC.^B Again, though, the rather haphazard way in which repairs were being carried out⁹⁹ suggests that this problem would likely have arisen even if there had been no draft CPO.
249. Accordingly, I conclude (using the terms of the legislation) that however expedient it may be to make provision for the preservation of Apethorpe Hall, that expediency does not arise solely, or to any significant extent, from the drafting of the CPO.

Would the Hall's proper preservation be secured without compulsory purchase?

250. ACEL has carried out a significant amount of work at Apethorpe Hall – not, apparently, to any coherent plan or programme^{99,100} but not without value.⁴³ At my site visit before the pre-inquiry meeting in July 2003, it was agreed that the building was, at that time, wind- and water-tight. Later that year,¹⁰¹ and in early 2004,⁴³ it is clear that it was not. The Hall is perhaps in no worse condition now than it was when ACEL acquired it; equally, it is not, overall, in any significantly better condition. There has been no real progress with the main body of repairs scheduled in the Repairs Notice.⁴³ Some areas have been repaired, either temporarily or permanently. But the experts agree that that has gone only part of the way to stabilising the fabric of the building and securing it against wind and weather.⁴³ There remains a need for works (either temporary or permanent) to prevent the building deteriorating further – as well as an urgent need to address the obviously poor condition of some specific areas.²²
251. In my opinion, however, what ACEL has or has not done is no longer to the point. ACEL has exchanged contracts for the sale of the property to Mr Karimzadeh. The applications submitted in July 2003 relating to the use of the Hall as a single dwelling have been amended in accordance with his proposals and the amended applications have now been

^A Document O/2 gives the background to why the caution was given and exonerates English Heritage from any involvement.

^B Mr Goldberg stated this in evidence in chief though there is no reference in his proof to the caution or the effect it prompted.

registered (albeit that there are still inconsistencies in the supporting information¹⁸⁰). Since he is contracted to purchase the property, it is now necessary to examine Mr Karimzadeh's intentions and proposals to establish if reasonable steps are being taken for properly preserving the listed building. As an alternative, lest for some reason the sale were not to be completed, one must also look to see if ACEL is now in a position to secure the preservation of the building (as opposed to looking at its performance since June 2002).

252. Mr Karimzadeh proposes to repair, restore and adapt the Hall as his own residence, using some areas for staff accommodation and retaining the majority of the gardens as part of the private curtilage. He also proposes: to convert the stables and granary (with its attached house) to a total of five dwellings, with a new access along the northern edge of Walnut Tree Court, well away from the Hall itself; to restore Gardener's Cottage as a separate dwelling; and to demolish the semi-detached houses on Hunting Way, replacing them with a new courtyard development of houses on the site of the sports hall.
253. That varies from English Heritage's preferred solution, which would keep the whole of the estate in single occupation, retaining the stables, granary and Gardener's Cottage in uses ancillary to the Hall and demolishing but not replacing the Hunting Way houses. I am in no doubt that English Heritage's aspiration is the correct one. The question is whether a purchaser would emerge who would be willing to commit himself or herself to it. While Mr Karimzadeh's proposal would be a private sector solution to the problem of Apethorpe Hall, which is to be preferred,^{50,188} it would have the disadvantage of fragmenting the occupation of the estate (even if the single ownership remained) and thus preventing any opportunity of single occupation re-emerging in the future.
254. In my opinion, a building of such exceptional architectural and historic importance ought to have grounds around it as consistent as possible with its status – and the evidence from earlier marketing is that an appropriate purchaser might well come forward.^{59,185} If one did not, then a scheme such as Mr Karimzadeh's deserves very serious consideration.
255. But there are other aspects of Mr Karimzadeh's proposals that give me cause for concern.
256. He clearly wants to own and live in the Hall – though my impression is that he has his terms for so doing. Initially, his proposal to the inquiry¹⁹⁰ was dependent on obtaining planning permission and listed building consent for a scheme acceptable to him, after which he would complete the purchase and begin implementing repairs. The obvious question is what would happen if what he considered an acceptable planning permission and listed building consent were not forthcoming? The Supplemental Agreement^A does away with the condition precedent on planning permission. At the same time, it is clear that he will still seek that permission – it is simply that the evidence to the inquiry has persuaded him that he would be reasonably likely to obtain it.^{53,193}
257. There is a substantial difference (approaching £2 million) between Mr Karimzadeh's and Mr Inskip's cost estimates. Yet Mr Inskip's is based on Mr Karimzadeh's proposal.¹⁹⁵ It is worrying that Mr Karimzadeh should prefer his own estimate to one coming from his consultant, an acknowledged expert in the field – especially as that estimate is, to a great extent, corroborated by DCMS's consultants. One wonders, therefore, what might happen if Mr Inskip's figures proved correct. Mr Karimzadeh said that, if the deficit exceeded his expectations, he would absorb the extra costs¹⁹⁵ – but his evidence on recouping some of the restoration costs from development elsewhere in the estate¹⁹⁴ suggests that there must be a limit.

^A Document CD35C.

258. Responding to Mr Mould towards the end of the inquiry, Mr Karimzadeh indicated that he was prepared to spend the necessary moneys on repairs to the Hall, stables and garden structures, as set out in the Repairs Notice, provided that the CPO was withdrawn and that planning permission and listed building consent were granted on a scheme acceptable to him.¹⁹⁶ That was pretty much in line with what he had said earlier to the inquiry, through Mr Levy.¹⁹⁰ Responding to me, he said that he did not need to wait for the consents to be granted; he was prepared to spend what was necessary on repairs and recoup later from development enabled by those consents.^{52,196} That might suggest that Mr Karimzadeh is prepared to disengage the repair and restoration of the Hall from the fate of the outstanding applications. But it is not how I interpret the evidence. Any disengagement, if that is the word, would be only temporary – because Mr Karimzadeh’s assumption is that consents *will* likely be granted on a scheme acceptable to him¹⁹³ and that he *will*, therefore, be able to recoup some of his expenditure.
259. At the time of the inquiry, however, the prospect of planning permission and listed building consent being granted on Mr Karimzadeh’s proposals was necessarily uncertain. If consents were not granted, what would Mr Karimzadeh do? And what then would be the fate of Apethorpe Hall? If consents were granted, but the cost of repair and restoration was at or above Mr Inskip’s estimate, would Mr Karimzadeh be able to recoup as much as he wished from the consented development? If not, would he seek consent for further development? And what would be the likelihood of any additional development (as opposed, perhaps, to a different or larger initial scheme, which could be considered as an entity in itself) being acceptable? The answers to *all* of these questions are necessarily uncertain.
260. I do not criticise Mr Karimzadeh for his approach. Just because he is a very rich man and wishes to live at Apethorpe Hall does not mean he should be expected to have little regard to the expenditure actually necessary to achieve his desire. The evidence¹⁸⁵ suggests, however, that there may be others who would put different values on what they want from where they live and what they would be prepared to pay for it.
261. In the end, I have to conclude that Mr Karimzadeh’s proposals fall short, though not by very much, of what I would define as the proper preservation of Apethorpe Hall (which is akin to English Heritage’s preferred solution) and that his intentions do not give the certainty of proper preservation that I think is needed in this particular case and at this particular time. They might, in the end, represent an acceptable solution – indeed, further negotiations with DCMS might enable agreement to be reached on a way forward. As matters stand, however, my misgivings lead to a conclusion, without further undertakings in place, that reasonable steps are not presently being taken for the proper preservation of Apethorpe Hall and its gardens and ancillary buildings.
262. And, if the sale to Mr Karimzadeh did not take place, ACEL would be less well placed. ACEL has always relied on enabling development but the only definite scheme at present is Mr Karimzadeh’s (even if the applications are in ACEL’s name) – and that scheme does not propose the number of new dwellings that ACEL has previously envisaged.
263. I do not find much assistance in the *Robbins* judgement.^{66-67,176,191} The building in that case was a windmill converted into a dwelling and there were just fourteen items properly to be described as works of repair. The scale and complexity of what is required at Apethorpe Hall are totally different. It was accepted there that it was sufficient for the owner to have established that he had taken reasonable steps with a view to carrying the works. Here, repair by ACEL is dependent on funds generated from other development within the estate for which there is presently no firm proposal and for which the likelihood of planning permission and listed building consent is thus pure speculation. Repair by Mr

Karimzadeh appears also to depend on development elsewhere within the estate. In his case, applications have been submitted and dependence upon the funds generated by that development, if approved, appears less critical. Even so, I do not believe it can yet be said that reasonable steps have been taken towards carrying out the repairs.

English Heritage's proposals

264. As I say above, English Heritage's primary intention⁵⁸ cannot, in my opinion, be seriously criticised.⁵⁹ English Heritage would repair the Hall and its ancillary and garden buildings with a view to occupation as a single dwelling. It would keep the stables and granary in uses ancillary to the Hall. It would demolish the Hunting Way houses and the sports hall – but it would not look to any form of replacement development, preferring to keep the whole of the existing estate in single occupation and, at the same time, enhancing the setting of the Hall. That accords with the Planning Brief¹⁰⁸ and with the guidance in PPG15. English Heritage would be prepared to sell the property to an appropriate occupier at any stage during the process of repair, given a suitable guarantee of completion by the purchaser. Depending on the money it had invested in repairs, it would seek agreement on some form of public access to the preserved building. I consider all of that to be precisely what ought to be the aim of compulsory purchase – and there appears to be enough indication from previous marketing exercises that a purchaser might come forward who wished to occupy the Hall as a single dwelling and not to sub-divide the remaining estate in any inappropriate way.⁵⁹
265. The fallback option should be viewed as just that.⁶¹ Failing the preferred option, it would retain the most important parts of the Hall and garden as an educational resource open to the public while putting the remaining parts of the Hall and estate into an effective use that would give them a secure future.
266. I do, however, share with ACEL its reservations about the extent to which this fallback option has been rigorously considered.¹⁸² The estimated visitor figures seem optimistic to me, especially given the relative isolation of Apethorpe.¹² The anticipated annual deficit appears to ignore the cost of employing gardeners – despite the gardens being an essential and integral part of the proposed visitor attraction. And there is no obvious source of outside funding that might help defray the deficit, whatever its actual size.
267. That said, there is very possibly a middle way. Mr Karimzadeh wishes to occupy the Hall as his residence, converting some of it to staff accommodation – but he does not wish to keep the stables and granary, or Gardener's Cottage, as ancillary to the Hall. He would also look to demolish the Hunting Way houses and build new houses, as a replacement development, roughly on the site of the sports hall. All this has been actively considered at various times over the past few years and thought potentially acceptable, depending on circumstances, by both English Heritage^{122,123} and ENC.^{102-105,108} Indeed, the fallback option would see the stables and granary converted to residential use. It would also see separate dwellings within those parts of the Hall not retained for public use.
268. If a purchaser were not found who would occupy the Hall as a single dwelling with the rest of the estate ancillary to it, then a scheme along the lines of Mr Karimzadeh's proposal might not fragment the estate any more harmfully than the fallback option and might not be without merit.^A The extent to which any public access arrangement would be thought commensurate with English Heritage's expenditure on preservation might be a key factor. Importantly, however, I do not see the fallback option as the only alternative to occupation

^A My understanding is that DCMS also takes this view, evident from the adjournments I granted during the early part of the inquiry to enable discussions with Mr Karimzadeh, albeit that, in the end, they did not bear fruit.

as a single dwelling. It should perhaps be viewed more as a last resort – in which case, any deficits in running costs might well be justified as expenditure by the State necessary to the preservation and maintenance of an extremely important heritage asset.⁶¹

269. English Heritage may not have had firm proposals for the property at the time it requested the Secretary of State to make the CPO.^{64,183} But it has now – and the financial position is also clear now^{61,63} – and I have been able properly to consider both the preferred option and the fallback. Accordingly, I do not think it necessary, or helpful, to review the position when the CPO was drafted.

Other matters

270. The question of traffic was raised in connection with most of the proposals suggested for the estate. The existing dwellings on Hunting Way, if refurbished (as they could be), could be expected to generate some 90 vehicle movements daily (7/dwelling). The stables and granary, in some sort of use ancillary to the Hall, would be bound to generate a not insignificant amount of traffic. And one must add to that the traffic reasonably to be generated by use of the Hall itself as a single dwelling. The sum of these must influence what would be considered an acceptable amount of traffic in Laundry Road – because, quite simply, that is what could result from the desirable objectives of restoring the original use of the Hall and having something akin to the original ancillary use of the stables and granary, plus refurbishing the Hunting Way houses. If ENC were concerned that the likely traffic from a particular proposal might jeopardise highway safety, then it would have to balance the merits and disadvantages of that proposal.
271. DCMS was criticised for not seeking to acquire the property by agreement, the suggestion for that having come first from ACEL.¹⁶⁵ Progress, however, seems to have foundered on dispute over the mechanism by which to achieve agreement.⁸⁸ Even if it had been DCMS that initiated discussions, it seems to me that similar disputes about the means would have arisen. I do not believe that there has been any significant prejudice to ACEL from the failure of DCMS to take the lead on this matter. It appears that there was no attempt to negotiate with Mr Burweila before the CPO was drafted. His response to the Repairs Notice was to seek to sell the property.³⁸ That might or might not have brought about the desired result. In practice, English Heritage and DCMS concluded that sale to EPT (Kestrel Armana) would not and I have considered the ramifications of that above.
272. Prior to ACEL's acquisition of Apethorpe Hall, it had seemed likely that the property might be sold to Mr Baylis of Charter Projects (Development) Ltd¹³⁰ and there is the suggestion that Mr Goldberg was treated differently to Mr Baylis, and less favourably, by English Heritage.^{135-138,142} I do not have details of Mr Baylis's scheme but I understand it to have been very much in line with English Heritage's preferred option.⁸³ If so, English Heritage may simply have had greater confidence that the Hall would be repaired and restored to its satisfaction. In any event, my conclusions elsewhere in this report are that the drafting of the CPO was not a fundamental constraint on ACEL's actions towards the repair of the Hall.
273. There are other matters raised by the parties and reported above in the respective cases that do not go to the five main considerations I have defined. None influences my overall conclusions and I see no need to need to address them further, all the more so those that are not directly related to the planning and listed building merits of the case.

Overall conclusion

274. There is no material dispute about Apethorpe Hall's architectural and historic merit, about the extent of the repairs required to it, about the estimated cost of the scheduled repairs or about how long the works would be likely to take.
275. I offer no opinion in law as to whether the CPO is a bad Order. Even if it is, however, I cannot see that any prejudice to ACEL has arisen as a direct result.
276. I have no doubt that English Heritage and DCMS acted unreasonably in the period leading up to the drafting of the CPO. With hindsight, one can see that both failed to act openly and transparently; both failed to explain clearly to EPT the position with regard to the potential compulsory purchase of Apethorpe Hall. As a result, Kestrel Armana purchased the property when otherwise it very likely would not have. But I do not consider their actions so unreasonable as to warrant, on their own, a recommendation against making the CPO. Nor do I find any support for the theory that the driving force behind drafting the CPO was recovery of the moneys spent on implementing the section 55 works on the Hall.
277. I conclude that it is expedient to make provision for the preservation of Apethorpe Hall, whether the property is sold to Mr Karimzadeh or remains with ACEL. The evidence does not, however, support the suggestion that the expediency arises solely, or at all significantly, from the drafting of the CPO.
278. English Heritage's preferred option is precisely what I consider it ought to be to justify compulsory purchase. The viability of the fallback option seems open to question, even when the deficit is described as a price properly to be paid by the State for the preservation of such an important part of the country's heritage. Given the evidence on Mr Karimzadeh's proposals and the clear interest in them shown by DCMS, there may be a middle way that leaves the Hall as a single dwelling but accompanied by conversion of the stables and granary and perhaps also judicious replacement of the Hunting Way houses.
279. There is a balance to be struck. On the one hand, the draft CPO may be legally flawed and I have concluded that English Heritage and DCMS acted unreasonably in the period leading to its being drafted. Added to that is my opinion that Mr Karimzadeh's proposals may not be very far from providing an acceptable solution. On the other hand, I do not believe that ACEL has been prejudiced by not being served formally with the draft CPO and I have concluded that securing funds to pursue its proposals was not hampered by the shadow of the CPO. And, however near to acceptable Mr Karimzadeh's proposals may be thought, in my opinion they fall crucially short of providing the certainty that I consider is required. Overall, I do not believe it can be said that reasonable steps are being taken by him, at the present time, for the proper preservation of Apethorpe Hall and its gardens and ancillary buildings.
280. I conclude, on balance, that the CPO should be made.
281. I raised the question, towards the end of the inquiry, of whether, as a matter of law, the Repairs Notice would cease to have effect if the CPO were withdrawn. The feeling was that it would not – but it seems to me at least possible, since a Repairs Notice is an essential precursor of a CPO, that a formal decision not to pursue compulsory purchase could mean that the Repairs Notice would no longer be valid. My uncertainty has not influenced my conclusion. If I were recommending that the CPO should not be made, it would have been on the clear basis either that the Repairs Notice would remain valid or that, if it did not, and if appropriate progress were not being made, a new and up-to-date Repairs Notice would be prepared.
282. One way of avoiding the legal question might have been for the Secretary of State to indicate formally that she would take no action on the CPO for a specific period of time.

That could have enabled proposals for the Hall to progress while allowing the Secretary of State to continue at a later date with compulsory purchase if they did not. I had thought that that course of action might be helpful to Mr Karimzadeh in pursuing his intentions but it was clearly not acceptable to him.¹⁸⁸ Accordingly, I have not considered it further.

Recommendation

283. I recommend that The Department for Culture, Media and Sport (Apethorpe Hall, Apethorpe, Northamptonshire) Compulsory Purchase Order 2002 be made.

Inspector

APPEARANCES

FOR THE SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT

Mr Tim Mould of Counsel Miss Carine Patry of Counsel with him They called	Instructed by the Treasury Solicitor on behalf of the Department of Culture, Media and Sport.
Ms Frances MacLeod MTheo(Hons)	Head of Historic Environment Policy Branch, Architecture and Historic Environment Division, DCMS.
Mr James Edgar BA(Hons) MSc IHBC MRTPI	Inspector of Historic Buildings, English Heritage; also Historic Areas Adviser for Northamptonshire and Inspector of Historic Parks and Gardens for Leicestershire, Northamptonshire and Rutland.
Mr Mark Balkham BSc(Hons) DipArch(UCL) RIBA	Partner in Rodney Melville & Partners, Chartered Architects.
Mr Adrian Stenning BSc(Hons) FRICS	Partner in Bare, Leaning and Bare, Chartered Quantity Surveyors.
Mr Richard Haynes BSc MRICS	Partner and Head of Consultancy & General Practice, Knight Frank LLP, Property Consultants.
Mr Steven Bee MRTPI	Director of Planning and Development, English Heritage.
Dr Simon Woodward BA(Hons) PhD	Director, PLB Consulting Ltd, Management Consultants.
Mr Andrew Cooke MBA FCACA	Principal Consultant, Atkins Management Consultants.

FOR APETHORPE COUNTRY ESTATE LIMITED

Mr Robert Levy of Counsel He called	Instructed by Apethorpe Country Estate Limited.
Mr Stephen Goldberg	Director of Apethorpe Country Estate Limited and Chief Executive of the English Property Trust.
Mr Maurice Fitzgerald DipEstMan ARICS	Managing Director of Apethorpe Country Estate Limited.
Mr Peter Inskip DipArch MA	Director, Inskip & Jenkins, Architects.
Mr John Paton FRICS FAAV	Partner, Humberts Agricultural LLP.

OTHERS APPEARING AT THE INQUIRY

Mr Edmund Booth BA DipUD MRTPI IHBC	Director of the Conservation Studio, on behalf of East Northamptonshire Council.
Mr Simon Karimzadeh	29 Brim Hill, London, N2 0HD – purchaser, subject to contract, of Apethorpe Hall.
Mr John Bootland	17 Edna Street, South Elmsall, Pontefract, West Yorkshire, WF9 2RZ.

DOCUMENTS

CORE DOCUMENTS*

- CD1 List descriptions of listed buildings.
- CD1A English Heritage map showing Apethorpe listed buildings and conservation area.
- CD1B Scheduled ancient monument – dovecote.
- CD1C English Heritage Register of Parks and Gardens of Special Historic Interest.
- CD1D Sites and Monuments Record Map for Apethorpe – Northamptonshire County Council.
- CD2+3 ENC Urgent Works Notices (x2).
- CD4 ENC Repairs Notice.
- CD5 ENC CPO and Statement of Reasons.
- CD6-10 DCMS/EH Urgent Works Notices (x5).
- CD10A Bundle of plans referred to in the DCMS/EH Urgent Works Notice.
- CD11A DCMS Repairs Notice.
- CD11B Schedule of Repairs – other structures not covered by Document CD11A.
- CD12 DCMS CPO and annexes, including Statement of Reasons.
- CD12A Objections to the CPO from Mr Burweila, Kestrel Armana and Mr Kelley

Acts of Parliament

- *CD13 Town and Country Planning Act 1990.
- *CD14 Planning (Listed Buildings and Conservation Areas) Act 1990.
- *CD15 Acquisition of Land Act 1981.
- *CD1A Compulsory Purchase Act 1965.
- *CD15B Planning and Compensation Act 1991.

Planning Policy

- CD16 ENC Local Plan, adopted 1996.
- CD17 Northamptonshire Structure Plan, March 2001
- CD18 ENC Planning Brief for Apethorpe Hall.
- *CD19 PPG1, General Policy and Principles, 1997.
- *CD20 PPG3, Housing, 2000.
- *CD21 PPG7, The Countryside – Environmental Quality and Economic and Social Development, 1997.
- *CD22 PPG15, Planning and the Historic Environment, 1994.
- *CD23 RPG8, Regional Planning Guidance for the East Midlands Region, 2002.
- *CD53 ODPM Circular 02/03.
- *CD54 DoE Circular 14/94 (not in the original list of documents – referred to only at the inquiry).

English Heritage Documents

- CD24 Listed Building Consent, January 2003.
- CD25 Development in the Historic Environment, 1995.
- CD26 Informed Conservation, .
- CD27 Enabling Development and the Conservation of Historic Assets, 2001.

ACEL Documents

- CD28 Headline Appraisal, July 2002.
- CD29 Schedule of Urgent Works by R Weighton with drawings 906-20 and 906-21, August 2002.
- CD30 Outline Programme by R Weighton, December 2002.
- CD31 Business Case, November 2002.
- CD32 Scheme A and Scheme B planning applications, July 2003 – (nb. only the covering letter, planning application, block plan and landscape masterplan for each are included).

* Although referred to at the inquiry as Core Documents, copies of Acts of Parliament, PPGs, RPG8 and Government Circulars are not submitted with this report.

- CD32A Amended Scheme B planning and listed building consent applications, January 2004 – (two lever arch files for each).
- CD33 Ridout Associates Report, July 2003.
- CD34 Alan Baxter Reports.
- CD35 Humberts' Marketing Material.
- CD35A Agreement between ACEL, Anaid Holdings Limited and Mr Karimzadeh and Put Option Agreement between ACEL and Mr Karimzadeh.
- CD35B Mr Karimzadeh's Masterplan for Apethorpe Hall, January 2004.
- CD35C Supplemental agreement between ACEL, Anaid Holdings Limited and Mr Karimzadeh (submitted at the inquiry).

English Heritage Proposal

- CD36 Proposal for the Repair and Re-use of Apethorpe Hall, December 2003.
- CD36A Revised costs, February 2004, for Document CD36 (submitted at the inquiry).
- CD37 PLB Report - Review of Heritage Attraction Potential, April 2001.
- CD37A PLB Report - Business Plan for a Heritage Attraction, April 2001.
- CD37B PLB Report - Review of Educational Potential, October 2002.
- CD37C PLB Report - Review of Access Opportunities under Private Ownership, June 2003.
- CD37D PLB Report - Masterplan for Public Access, December 2003.

Monitoring Reports

- CD38A Inspection Report, September 2001.
- CD38B Inspection Report, January 2002.
- CD38C Inspection Report, March 2002.
- CD38D Inspection Report, August 2002.
- CD38E Inspection Report, May 2003.
- CD38F Inspection Report, September 2003.
- CD38G Inspection Report, December 2003.
- CD38H Inspection Report (Preliminary), January 2004.
- CD38I Inspection Report, February 2004 (submitted at the inquiry).
- CD39 Draft outline Schedule of Urgent works, September 2002.
- CD40 Report on urgent works undertaken by owner, November 2002.
- CD41 Review on Urgent works undertaken by owner, January 2003.

Other Reports

- CD42 Bare Leaning & Bare Report, August 2000.
- CD43 Bare Leaning & Bare Report, January 2001.
- CD44 Davis Langdon & Everest Report, December 2002.
- CD45A Rodney Melville & Partners: Draft 1: Schedule of Repairs for Repairs Notice, August 2000.
- CD45B Rodney Melville & Partners: Draft 1: Garden Structures Schedule of Repairs, December 2000.
- CD46 Extracts from Buildings at Risk – a New Strategy, English Heritage, 1998.
- CD47 Extracts from Buildings at Risk Register, English Heritage, 2003.
- CD48 [no document]

Other Documents

- CD49 Chronological inter-party correspondence (four lever arch files).
- CD50 Secretary of State's Statement of Case, May 2003.
- CD51 ACEL's Statement of Case, July 2003.

English Heritage Historical Reports

- CD52 Apethorpe Hall: The development of the state suite, with reference to the sixteenth and seventeenth centuries – Historic Buildings and Areas Research Department Reports and Papers 79(i)-(iii), 2003.

DEPARTMENT OF CULTURE, MEDIA AND SPORT DOCUMENTS

- DCMS/1/P Ms MacLeod's proof of evidence.
- DCMS/2/P Mr Edgar's proof of evidence, with
Annex 1 – Apethorpe Country Estate and the English Property Trust.
- DCMS/3/P Mr Balkham's proof of evidence.
- DCMS/3/P/A Appendices to Mr Balkham's proof of evidence:
A – Summary of urgent works notices;
B – Comments on progress on urgent works following acquisition by ACEL;
C – Comments on drawings accompanying Scheme A and B applications;
D – Comments on list of repairs completed, as compiled by ACEL;
E – Rodney Melville & Partners practice profile.
- DCMS/4/P Mr Stenning's proof of evidence.
- DCMS/4/P/A Appendices to Mr Stenning's proof of evidence:
A – CV;
B – Original Repairs Notice Report, August 2000;
C – Original Garden Structures Report, January 2001;
D – Building Cost Information Tender Price Indices;
E – Comparison of Order of Cost Estimates between Bare, Leaning & Bare and
Davis, Langdon & Everest;
F – Assessment of cost/sqm for conversion of Apethorpe Hall to a single residence
presented in Magistrates Hearing evidence;
G – Estimate of cost for development as a single residence based upon proposal for
fitting out provided by Knight Frank;
H – Estimate of cost/sqm of internal gross floor area for new housing development;
I – Estimate for English Heritage Preferred Option as a single residence;
J – Estimate for English Heritage Preferred Option in relation to demolition of
Hunting Way and re-landscaping;
K – Estimate for English Heritage Fall-back Option in relation to 'first fit' of West
Courtyard, Stables and Gardener's Cottage;
L – Estimate for English Heritage Fall-back Option in relation to 'full fit out' of
West Courtyard, Stables and Gardener's Cottage;
M – Estimate for English Heritage Fallback Option in relation to development as an
educational resource.
- DCMS/5/P Mr Haynes' proof of evidence.
- DCMS/5/P/A Appendices to Mr Haynes' proof of evidence:
I – ACEL Schemes A & B – ACEL inputs;
II – ACEL Schemes A & B – Knight Frank and Bare, Leaning & Bare inputs;
III – Analysis of English Heritage Preferred Option;
IV – Analysis of English Heritage Fallback Option;
V – Schedule of comparable evidence/availability.
- DCMS/6/P Mr Bee's proof of evidence.
- DCMS/6/P/A Appendices to Mr Bee's proof of evidence:
A – List of Practices;
B – Indicative scheme for Hunting Way;
C – Indicative scheme for division of Hall and Stables;
D – Framework programme for procurement and work;
E – Draft text prepared by Knight Frank to advertise for sale Apethorpe Hall Estate;
F – Indicative specification for fitting-out Apethorpe Hall.
- DCMS/7/P Dr Woodward's proof of evidence.
- DCMS/8/P Mr Cooke's proof of evidence.
- DCMS/8/P/A Appendices to Mr Cooke's proof of evidence:
A – CVs;
B – Summaries of Financial Model results.
- DCMS/9 Summary of Costs of Prioritised Schedules of Repairs.
- DCMS/10 Memorandum of Agreement of Expert Quantity Surveyors.
- DCMS/11 Extracts from the Acquisition of Land Act 1981 as amended.

- DCMS/12 Robbins v Secretary of State for the Environment and Another [1989] 1WLR 201.
DCMS/13 Manuscript notes of meeting on 2 July 2002 (see CD49 for correspondence relating to the meeting).
DCMS/14 Letters of 3 September 2003 and 7 November 2003 relating to Mr Bootland's interest in Apethorpe Hall.
DCMS/15 Photocopy of English Heritage publication on grant aid (title illegible).
DCMS/16 Letters of 5 June 2002 and 20 June 2002 (two) relating to the payment of purchase moneys by Kestrel Armana on acquiring Apethorpe Hall.
DCMS/17 Email sent 27 June 2002 by Ms MacLeod to G Lyndsell, A Corrigan and others.
DCMS/18 Draft Heads of Terms for an agreement between DCMS, ACEL and S Karimzadeh to secure the preservation of Apethorpe Hall in a manner acceptable to DCMS.
DCMS/19 Extract from the Estates Gazette: Tsao v Secretary of State for the Environment and Another [1995] EGCS 123.

ACEL DOCUMENTS

- ACEL/1 Mr Goldberg's proof of evidence, with appendices:
I – Correspondence with English Heritage, DCMS and ENC;
II – Correspondence with W S Atkins;
III – Scheme B – development costings and income;
IV – Repairs carried out to date.
- ACEL/2 Mr Fitzgerald's proof of evidence, with appendices:
1 – CV;
2 – Certificate of Incorporation on Change of Name;
3 – ENC letter of 11 June 2002 to Roythorne & Company;
4 – Anglo Irish Bank letter of 14 January 2004 to Mr Fitzgerald;
5 – EPT letter of 15 May 2002 to DCMS (Mr Lyndsell);
6 – Mr Winton's letter of 3 July 2002 to DCMS (Ms MacLeod);
7 – Extract from Ms Macleod's evidence to the Magistrate's Court Hearing;
8 – P & J Griffin's letter of 13 December 2002 to Mr Fitzgerald and reply;
9 – DCMS (Ms Macleod) letter of 23 December 2002 to Mr Fitzgerald;
10 – ACEL letters of 13 December 2002 to W S Atkins;
11 – Ms MacLeod's email of 6 December 2002 to Mr Fitzgerald;
12 – ACEL letter of 23 December 2002 to Ms MacLeod;
13 – ACEL letter of 7 March 2003 to Ms MacLeod;
14 – ACEL letters of 2 May and 19 May 2003 to Mr Lyndsell and 19 June 2003 to Ms MacLeod;
15 – ACEL letter of 2 December 2003 to the District Valuer;
16 – Lands Tribunal letter of 20 January 2004 to Mr Fitzgerald;
17 – DCMS (Ms MacLeod) letter of 4 December 2003 to Mr Fitzgerald;
18 – ACEL letters of 7 January 2004 to Rt Hon Gordon Brown MP, of 11 December 2003 to Dr Simon Thurley of English Heritage and of 17 November and 2 December 2003 to Ms MacLeod;
19 – ACEL letter of 12 November 2002 to R Giddins of English Heritage and Kestrel Armana letter of 29 August 2002 to Mr Baylis;
20 – ACEL letter of 4 August 2003 to the District Valuer;
21 – Scheme B Landscape Masterplan;
22 – ACEL letter of 31 October 2003 to the Treasury Solicitor (Mr Nwanodi);
23 – Mr Winton's letter of 17 January 2003 to Ms MacLeod.
- ACEL/3 Mr Inskip's proof of evidence, with appendices:
A – Statement on holding works;
B – Bar chart programme.
- ACEL/4 Appendix C to Mr Inskip's proof of evidence – DCMS repairs schedule with Inskip & Jenkins' response.
- ACEL/5 Appendix D to Mr Inskip's proof of evidence – G Cain: refurbishment cost build-up.
ACEL/6 Appendix E to Mr Inskip's proof of evidence – G Cain: collection sheet.

- ACEL/7 Appendix F to Mr Inskip's proof of evidence – architectural drawings (strip out).
ACEL/8 Appendix G to Mr Inskip's proof of evidence – architectural drawings (proposals).
ACEL/9 Appendix H to Mr Inskip's proof of evidence – supporting information and annotations (for the ACEL/8 drawings).
ACEL/10 Appendix I to Mr Inskip's proof of evidence – architectural drawings (holding works and phasing).
ACEL/11 Drawings schedule for ACEL/7, 8 and 10.
ACEL/12 Mr Winton's statement of evidence.
ACEL/13 Mr Paton's proof of evidence, with appendices:
A – CV;
B – Plan of Apethorpe Hall estate;
C – Sale Particulars;
D – Floor plans;
E – Dates of visits;
F – Photographs;
G – Photographs of condition of interior at time of purchase.
ACEL/14 Rebuttal of Ms MacLeod's evidence.
ACEL/15 Mr Inskip's letter of 19 February 2004 to the Treasury Solicitor (P Haines).
ACEL/16 Humberts' sale brochure.
ACEL/17 Financial Review of Development Proposals for Apethorpe Hall, report by W S Atkins for DCMS, January 2003.
ACEL/18 District Valuer's letter of 23 February 2004 to DCMS (Ms MacLeod).
ACEL/19 Extracts from Companies House documents relating to Kestrel Armana and ACEL.
ACEL/20 Extracts from Mr Stenning's report prepared for the Magistrate's Court hearing.
ACEL/21 Site layout plans as existing and for Scheme A, Scheme B and Scheme B as amended, with schedule showing numbers of dwellings.
ACEL/22 Extract from The Law of Real Property, Megarry and Wade, 2000.
ACEL/23 Baldwin v Belcher [1844].
ACEL/24 Extract from The Judicial Review Handbook, Third Edition, Michael Fordham.

OTHER DOCUMENTS

- O/1 Mr Booth's proof of evidence on behalf of ENC, with appendices:
EAB.1 – Letter of 28 September 1999 to Mr Goldberg;
EAB.2 – Letter of 13 January 2000 to Mr Goldberg;
EAB.3 – Letter of 8 August 2003 to Lovejoys;
EAB.4 – Letter of 30 January 2004 to Lovejoys;
EAB.5 – ENC Planning Brief, 1997;
EAB.6 – Letter of 6 August 2003 to Alan Baxter & Associates;
EAB.7 – Letter of 18 November 2003 to English Heritage.
O/2 Letter of 7 October 2002 from ENC to Ms MacLeod.
O/3 ENC Development Committee Reports relating to the Planning Brief for Apethorpe Hall:
O/4 Mr Karimzadeh's witness statement, plus his Masterplan for Apethorpe Hall.
O/5 Mr Bootland's submission, plus his Summary Project Report on Apethorpe Hall.
O/6 Letter of 23 February 2004 from Ms Victoria Ferguson.
O/7 Letter of 2 March 2004 from Mr Richard Parkinson, Chairman of the Apethorpe Parish Meeting, with the Meeting's written submissions.
O/8 Lists of persons present at the inquiry.