

Response ID ANON-KGUB-HPHV-Y

Submitted to **Conservation Covenants**

Submitted on **2019-03-22 17:31:10**

Introduction

1 Would you like your response to be confidential?

No

If you answered "yes" to this question, please state why?:

2 What is your name?

Name:

Andrew Wiseman, General Counsel & Corporate Secretary

3 What is your email address?

Email:

andrew.wiseman@historicengland.org.uk

4 What is your organisation?

Organisation:

Historic England. We are the Government's statutory adviser on the historic environment.

Conservation Covenants Questions

5 Should conservation covenants be introduced into the law of England?

Yes

What demand do you foresee for conservation covenants? What is the basis for your view?:

In relation to historic buildings, archaeological land and Scheduled Monuments we would foresee a small demand in terms of number each year however we believe that where they are used they will make a lasting impact and be a very useful tool.

6 What potential do you foresee for conservation covenants to deliver lasting conservation outcomes? What is the basis for your view?

please respond:

Often public bodies will provide grants to regenerate complicated heritage sites with a variety of potential future uses. The power for a suitable body to agree covenants with owners could be a very helpful way to secure the return for the public investment through maintenance, access and resale obligations. If a disposal takes place, following substantial public investment on conservation and repair, a measure of public access and control for a period after disposal would ensure a public benefit and return on that initial investment. This is extremely complicated to achieve under the current law if the buildings are sold freehold as it would not be feasible to retain any adjoining land.

Historic England provides funds through regular grant programmes to property owners restoring or conserving historic properties. The grant contracts oblige the recipients to continue to maintain the properties and to provide some public access â€” a means of ensuring public benefit from the taxpayer investment. However, they can obviously only bind the original grant recipient. If the property changes hands within a certain period (commonly ten years) the grant contract provides for repayment of the grant in full. This crude mechanism is ameliorated by a discretionary waiver of part or all of the grant refund depending on the circumstances in each case. This is an unsatisfactory arrangement for both the owner and Historic England. Conservation covenants binding on successors in title would maintain the public benefits of the grant contract through ownership changes and remove the uncertainty for owners over possible repayment.

7 What use would you make of conservation covenants?

please respond:

Historic England occasionally provides funds to a suitable body such as an archaeological or building preservation trust to assist in the acquisition of a heritage property. In such cases the future uses of the property are often not developed at the acquisition stage and a conservation covenant could be used to ensure that an appropriate management regime is ensured if the property is later sold on to a third party or as a way of guaranteeing that the building conservation interests are observed whatever the final shape of the project design.

We would also advocate their use by conservation charities. Buildings preservation trusts are often in a similar position to Historic England of having made an investment in the conservation of a building that they would prefer then to pass back into private sustainable use. The benefits a charity may see from a conservation covenant in securing the benefit of the investment of charitable monies mirror those that Historic England would see.

What, if any, unintended consequences might there be? What is the basis for your view?:

8 What changes, if any, to the Law Commission proposals do you consider necessary to make conservation covenants more effective tools?

please respond:

9 Should tenants be able to enter into conservation covenants?

Yes

10 If so, do you agree that the qualifying threshold for the remaining length of a lease should be set at a minimum of 15 years?

Yes

If not, what level would you set it at and why? :

11 Should tenants be required to secure the agreement of the freeholder before entering into a covenant?

Yes

If not, what is the basis for your view? :

12 Should freeholders be required to secure the consent of a tenant before entering into a covenant when the land affected is leased?

No

13 Should public oversight provisions require responsible bodies to provide details of the location and headline conservation objectives of conservation covenants held by them?

Yes

If not, what would you propose and what is the basis of your proposed alternative? :

14 Should for-profit bodies be able to hold conservation covenants?

No

Should there be additional mechanisms introduced for for-profit bodies which provide assurances that the covenants they hold are delivering conservation outcomes for the public good? If so, what mechanisms would you suggest?:

We do not see an obvious need for or conservation benefit in allowing for profit companies to hold covenants. However, as long as there are sufficient safe guards to avoid any conflicts of interest and if the Secretary of State is satisfied that any such company is acting primarily in the public interest when agreeing a covenant there could be a case for the power being extended to a for profit company

15 Do you consider the Law Commission proposals, with the proposed amendments set out above, as containing sufficient safeguards to ensure they are not abused?

Yes

If not, what changes would you make?:

16 Do you consider the Law Commission proposals, with the proposed amendments set out above, as simple, practical and capable of delivering lasting conservation outcomes?

Yes

If not, what changes would you make to them?:

17 Do you consider the Law Commission proposals, with the proposed amendments set out above, contain sufficient safeguards to ensure they are not used to block development, or otherwise abused?

Yes

If not, would you support additional safeguards? Please give details. :

18 What alternative or supplementary processes might be used to seek remedies against breaches of conservation covenants?

please respond:

what do you see as their advantages and drawbacks?:

Consultee Feedback on the Online Survey

19 Overall, how satisfied are you with our online consultation tool?

Neither satisfied Nor dissatisfied

Please give us any comments you have on the tool, including suggestions on how we could improve it. :