

## ANNEX A

### SCHEDULE OF REPRESENTATIONS RECEIVED AS A RESULT OF THE CHURCH COMMISSIONERS' REQUEST FOR THE SECRETARY OF STATE ('SoS') TO REVIEW HIS DECISION TO HOLD A NON STATUTORY PUBLIC INQUIRY

#### PROPOSAL BY THE CHURCH COMMISSIONERS FOR THE DEMOLITION OF THE CHURCH OF BIRCH ST PETER

Responses received as a result of the request for representations from SoS dated 31 August 2017 and the e-mail dated 7 September 2017 extending the deadline for replies. NB: Responses also received from those not contacted as an interested party.

<b>Representation from</b>	<b>Summary of Comments</b>
<b>Diocese of Chelmsford</b>	Urgent resolution required as the current situation impacts on diocese and the local church and is detrimental to the mission work of the church and pastoral needs of those who visit graves, some of which are not freely accessible to the public. Ongoing costs related to the building would be better used elsewhere. No objection to principle of residential conversion but fear that works may not be completed. Conversion would be subject to the outcome of a Draft Pastoral Church Buildings Disposal Scheme to legally provide for residential use which would take considerable time and could give rise to challenge and a further public inquiry. Does not support the NSPI – wants demolition to proceed. If an inquiry must be held then it must be done asap.
<b>Colchester Borough Council</b>	<p>Committed to ensuring all possible opportunities for the reuse of the church are fully explored before a final decision is made by the SoS. There is no change of material circumstances since the original decision of the SoS. Keen to avoid a costly inquiry if this can be avoided by collaborative working between interested parties to fully explore the possible conversion to a dwelling – this solution has delivered sustainable outcomes for other redundant listed buildings. Demolition requires robust justification (per NPPF) and should be a last resort.</p> <p>The Church Commissioners should work with Mr Cottee to explore if an agreement can be achieved which secures the reuse of the building and would render a costly inquiry redundant. The Council recommends that the SoS should consider deferring his decision on the NSPI and require the two parties (Church Commissioners &amp; Mr Cottee) to engage in constructive dialogue around a contractual framework to secure the reuse of the building.</p>

	<p>Suggest a dispute resolution mechanism is first agreed with the appointment of an appropriately experienced and qualified individual to mediate as required. In the event that no agreement is reached in 12 months, then the SoS should reconsider the request of the Church Commissioners with further evidence derived from the engagement process. An NSPI is premature at the present time as key parties are yet to engage meaningfully to explore a solution in the public interest.</p>
<b>Mr &amp; Mrs Cottee</b>	<p>Proposed conversion scheme has been developed in close liaison with the local planning authority and their Conservation Officer. Costings are based on expert opinion and disputes the content of some of the Church Commissioners' commissioned reports in this regard. As a Chartered Quantity Surveyor of 30 years' experience, works have been costed and the proposal is financially viable. There is local support for the proposed scheme. Right of access has been agreed with the landowner if ownership of the church is agreed. Sees no reason why the original decision of the SoS should be reviewed or overturned.</p>
<b>Birch Parish Council</b>	<p>Does not support the proposal to convert into a family home – this is not desirable in the open churchyard as it will continue to be used for burials. The conversion is not financially viable and has concerns that this proposal will prolong uncertainty and that the works may not be completed. Supports the demolition of the church with the land being incorporated into the churchyard as a garden of remembrance. No good purpose served by the inquiry going ahead.</p>
<b>Colchester &amp; North East Essex Building Preservation Trust ('CNEEBPT')</b>	<p>The ToR was prepared by the Church Commissioners and is not entirely in agreed form - have raised specific comments to the Inspector. The Statement of Common Ground not agreed by them. Want to minimise the issues that need to be dealt with. Have not seen the documents which will be attached to the statement and to which the Statement refers so cannot accept it. There is overwhelming local support for the retention of the church. Church is important as a listed building within the Conservation Area.</p> <p>They have liaised closely with the local authority and statutory bodies and are supportive of Mr Cottee's proposal which is financially viable. Financial viability is at the heart of the matter. Due to inquiry delays, more up to date information can be provided on the financial position of Mr Cottee which is of relevance to the Inspector.</p> <p>Listed building consent will be forthcoming and the scheme approved. Confident that a commercial agreement with the landowner can be achieved to provide access. Estimated cost of repairs is based on expert opinion.</p>

	<p>The basis on which the Church Commissioners' commissioned their reports is uncertain. There have been unnecessary delays to the NSPI process and the inquiry does not need to last 4 weeks. Costs associated with the NSPI are excessive. Would be a breach of natural justice for the inquiry not to go ahead.</p>
<p><b>The Victorian Society</b></p>	<p>There are a number of questions raised by the Church Commissioners' letter: the ToR is not agreed and there are strong outstanding objections from at least one party; the Statement of Common Ground is not agreed and objections have been sent to the Church Commissioners' agent; has the church been guilty of deliberate neglect; condition reports and maintenance records have not been released); other reports from 2016 not shared; there is a difference of professional opinion on viability which should be explored in an inquiry; had the Church Commissioners allowed Mr Cottee to proceed with his scheme in 2013, costs would not have escalated. The conduct of the matter over 3½ years raises concerns as follows: the future of listed buildings should not be decided in this way; the Church of England should not have an exemption from the requirement for listed building consent, the 'Skelmersdale' Agreement is an indefensible anachronism; Planning Inspectors have a lack of expertise for this type of case; ToRs must not be decided behind closed doors,</p> <p>Should the inquiry be cancelled, the conservation organisations concerned would need to give careful consideration to the possibility of challenging the decision at judicial review. No material change since the original decision to hold the inquiry was made. The Society recommends that after the inquiry, planning legislation should be amended to remove the anomaly of the Skelmersdale Agreement and ensure that in future, applications by the Church of England to demolish listed churches are decided in the secular planning system as they are for other denominations.</p>
<p><b>The Ancient Monuments Society</b></p>	<p>Serious concerns regarding the delay of the inquiry process. Do not favour determination without a public inquiry or further examination. At the very least the Council's suggestion that there should be a concentrated examination of the cases of the Church Commissioners and Mr Cottee should be carried out with a firmly agreed timetable and oversight by the SoS. Such an examination should have the rigour of a public inquiry but be speedy and mediated with clear decision making. There remains a clear argument for continuing with the public inquiry as planned.</p>

<b>CPRE</b>	Strongly objects to the demolition of the church. Supports Mr Cottee's proposal to save the grade II listed building. Mr Cottee is a construction professional and Quantity Surveyor who has submitted detailed plans and costings and has the financial resources to carry out the sensitive conversion.
<b>Priti Patel MP (Witham)</b>	Whilst appreciating the impact that the inquiry would have and the delays in establishing it, it is felt by some in the area, including Mr Cottee, that there is a viable scheme in place. Has been pointed out that the assessment from the Church Commissioners may be inaccurate. Mr Cottee and others are keen for there to be a fair and transparent process to determine the future of the church.
<b>Resident</b>	Church should not become a family home as its consecrated ground – the church will go so it should become a garden of remembrance.
<b>Resident</b>	Inappropriate for the church to redeveloped as a private dwelling as the churchyard is still used for burials. Concerns about viability – the works may start but not be completed. Concerns that the site may eventually accommodate more than one dwelling in the future. The space currently occupied by the church should be used as a memorial garden.
<b>Resident</b>	Mr Cottee's proposal is neither practical nor financially viable. Uncertainty about the future of the building has gone on for too long. There is no certainty that planning permission and listed building consent would be obtained. Cannot see the benefit of pursuing the inquiry in view of the evidence.
<b>Resident</b>	Only realistic solution is demolition. The scheme does not have planning permission or listed building consent and there is no realistic means of accessing the site from the public highway. The proposal is not viable and there are concerns that the works would start but not be completed. The site contains a churchyard with a burial site which is still in use. The escalating costs and risks to the likely completion of the current conversion proposal raise the question whether a public inquiry would result in any conclusion other than to proceed with demolition. Risks outweigh the benefits of such an inquiry – public inquiry is no longer justified or required.
<b>Residents</b>	Mr Cottee's proposal is neither practical nor financially viable. Uncertainty about the future of the building has gone on for too long. There is no certainty that planning permission and listed building consent would be obtained. Cannot see the benefit of pursuing the inquiry in view of the evidence.
<b>Resident</b>	Distress caused to local people due to inability to visit relatives' graves in an area of the graveyard. Mr Cottee's plan is not financially viable. The cost of a 4 week inquiry appears to be disproportionate to the benefit – no further money should be wasted. The SoS should reconsider his decision to hold a public inquiry.

Responses received as a result of the circulation of representations and request for final comments dated 3 October 2017

<b>Final Comments from</b>	<b>Summary of Comments</b>
<b>The Church of England Commissioners</b>	<p>Stand by their letter of 9<sup>th</sup> February 2017. Nothing in the representations submitted have substantively added to the information available to the SoS or demonstrably challenged the conclusions reached by the Commissioners. There is community support for swift resolution and support for demolition. There remains only one proposal to be considered to facilitate the reuse of the church and viability of the scheme is the central issue. Many of the amenity society representations are concerned with procedural issues. The Victorian Society representation offers no new information or evidence to counter the view that Mr Cottee's proposal is not a viable solution. None of the points raised by CNEEBPT are supported by new information or evidence meaning the SoS has to revert back to information provided by Mr Cottee in 2016. Mr Cottee has sought to substantiate some of the claims on viability made when his final scheme was presented last year but at no point has independent verification of his cost estimates been provided. The Council and the Ancients Monument Society misunderstand the legal basis of a non-statutory public inquiry which is shaping their approach to demolition and the consideration of Mr Cottee's proposals – the starting point is the ToR and viability not the NPPF. Welcome the Council's continued offer of constructive working but they are wrong to suggest that the parties have yet to engage meaningfully – two meetings have been held with Mr Cottee and meetings have been offered to the Council but not taken up. Welcome the Council's suggestion, supported by the Ancient Monuments Society, of Alternative Dispute Resolution ('ADR') - 6 months should be sufficient for an independent surveyor to examine the case and advise the SoS whether Mr Cottee's proposals are viable. A clear timetable must be fixed in view of concerns over prolonged timescales - suggested timetable for ADR is provided. The SoS should be invited to review the findings and decide whether or not a NSPI should proceed or not. Suggestions on how representations should be managed before consideration by the surveyor are provided.</p>
<b>Mr &amp; Mrs Cottee</b>	<p>Detailed comments made in response to various points raised in representations as follows: the curtilage of the garden does not include the open portion of the graveyard; previous submissions demonstrate that the project is financially viable; the building is to be converted into a family home with no intention of selling it in the near future – I am not a developer;</p>

demolition would cause the loss of a cherished local landmark, it is not possible for anyone to make a rational comment on net worth; there is already a garden of remembrance within the existing graveyard – the Parish Council confirmed in a public meeting that they have no funds available to maintain a new garden of remembrance; planning law is not understood – detailed planning permission would be needed including listed building consent prior to taking ownership of the building; if we were successful at inquiry we would be willing to the inclusion of a covenant limiting the buildings use to a single dwelling to protect the building from further development in perpetuity; the design of the building is vital including the retention of the spire (a detailed method statement for the remedial works to the spire will be required – the Council have made it clear that any scheme must include the restoration of the spire); the Council will not even allow garden buildings to be sited within the curtilage of the church so there will definitely not be ‘at least 3 houses on the site within 2 years’ as suggested by representations; a temporary road does not form part of our proposal; it is us that approached the Trust with the proposed scheme not the other way around; the draft scheme was carefully considered long before making contact with the Trust to ensure the proposal was viable and acceptable to planners; the scheme has been formulated with renowned conservation architects in close consultation with the Council’s planning department and their Conservation Officer; costings in reports commissioned by the Church Commissioners are incorrect as they refer to complete refurbishment rather than minimum intervention; we agree that the church is now in a very poor state – failure to maintain the church as undoubtedly increased the cost of saving the building; the Church Commissioners’ demolition scheme is likely to have a deleterious effect on the graves immediately adjacent to the building - in contrast our proposed scheme would have less impact on the graves within the active portion of the graveyard; the two reports estimating ‘at least £3m costs’ are not independent, costs have increased for the proposal; the building is capable of being restored; previous attempts to find viable alternative uses for the building related to commercial developers who needed to make a profit which is not the case with our proposal; we accept that the finished property is unlikely to command a market value anywhere near the final cost; the evidence which shows that the proposal is neither practical or financially viable has not been made available to us so we are unable to comment.

	<p>The Parish Council does not reflect the wishes of the vast majority of the local people who were willing to express an opinion in our survey statement. It only reflects the opinion of the parish councillors themselves. Would be happy to engage in meaningful dialogue with the Church Commissioners using some form of mediation. Have asked Pritti Patel MP to facilitate a meeting with the Parish Council to discuss their stated position.</p>
<p><b>Colchester &amp; North East Essex Building Preservation Trust</b></p>	<p>Concerns that not all residents have been consulted in the SoS's 'refer back' process. Some information circulated is one sided and unbalanced - only having part of the evidence is misleading and inaccurate. Detailed comments made in response to various points raised in representations as follows: there is extensive precedent for residential conversion (of churches); the part of the church yard to become in residential use is not used for active burials; the conversion is necessary to save the building from demolition; Mr Cottee's scheme is a viable project; a memorial garden already exists within the church yard but is unkempt and neglected in character; the provisions of the Planning Act and the NPPF and the legal control of the Church Commissioners imposed via covenants on disposal is misunderstood in terms of losing church in favour of new houses; temporary access has been agreed with the landowner during construction to avoid disturbance to the village green; the comment regarding cost versus end value is irrelevant as regards viability of the scheme as it will be a home for Mr Cottee; this project is not 'high risk' - at the time of our report we considered there to be abnormal risks associated with development of any type – sufficient information is now available, however, which is included in Mr Cottee's latest cost plan; it was never CNEEBPT's intention to acquire the church but to act as an 'honest broker' to find an alternative use and secure a solution – planning permission will be needed before a transfer of ownership can take place; CNEEBPT have not had sight of the two independent reports on viability commissioned by the Church Commissioners which are described in representations as 'persuasive' – without these any assumptions are futile and misleading; Mr Cottee would not contemplate beginning a project that risked his family's financial future; had the Diocese agreed to a scheme for conversion of the church when initially presented to them the project would be completed by now – any continuing uncertainty is the responsibility of the Diocese of Chelmsford, the Church Commissioners, DCLG and the Planning Inspectorate; although it must be upsetting that relatives are unable to visit graves behind the security fence, we understand that access can be arranged with the Diocese;</p>

	<p>objections have been received from a wide variety of non-government and voluntary organisations and charities as well as individuals within the Parish and those who have associations with the church in some way – an extensive doorstep survey has also been conducted with 80% of households wishing to see the church saved from demolition; the Trust has been denied information on the alternative proposal for the remembrance garden despite being requested – a cost would be attached to the maintenance.</p>
<p><b>County and Borough Councillor for the village of Birch</b></p>	<p>The matter has been long and drawn out. The cemetery is consecrated and still in use – a home so close to the cemetery is a concern to many. Although many local people will be sorry about the loss of the church it is now in poor condition. Not sure the costs of the ‘private’ option have been fully examined by the Council. The matter should be resolved for the benefit of all. Holding a public inquiry is not the way forward.</p>
<p><b>Resident</b></p>	<p>There is an absence of local support for the scheme. As one of three residents who attended the pre-inquiry meeting – concerns that 3 of the 4 qualifying bodies had not sent a representative. This and the lack of a Historic England rep seem to suggest a lack of enthusiasm for an inquiry. Mr Cottee’s proposal is not viable. This matter has gone on for too long and the SoS needs to reach a decision quickly on whether an inquiry is necessary. If an inquiry is considered necessary, it must take place asap.</p>
<p><b>Resident</b></p>	<p>Concerns regarding the viability of Mr Cottee’s proposal. There’s a risk that funds will run out and an alternative development sought. Any planning permission may metamorphose into a multi-dwelling scheme. The site is consecrated ground still used for burials and should not be subject to private development. Does not support a NSPI and wants demolition to proceed.</p>