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The Rt Hon Sajid Javid MP
Secretary of State for Communities and Local Government
Department for Communities and Local Government
Fry Building
2 Marsham St
London
SW1P 4DF

Our Ref: ZA47647

29 September 2017

Dear Sajid,

**Non-statutory Public Inquiry under the Mission & Pastoral Measure 2011 & the
Skelmersdale Agreement 1986 - Proposed Demolition of the Church of Birch St Peter in
the Diocese of Chelmsford**

Further to my letter of 5 September, I understand that there continues to be some interest in the public inquiry process being allowed to continue.

I appreciate the impact that an inquiry would have and the delays in establishing the inquiry. However, it is felt by some in the area, including Mr Cottee who has put the proposal together, that there is a viable scheme to maintain the spire. It has also been pointed out to me that the assessment from the Church Commissioners in the correspondence they have sent to you may be inaccurate.

I understand that Mr Cottee will be in contact regarding this matter and trust that his comments can be fully considered by you as I know that he and others are keen for there to be a fair and transparent process to determine the future of Birch Church.

Yours ever,

Rt Hon Priti Patel
Member of Parliament for Witham

CPRESSEX, RCCE HOUSE, THRESHELFORDS PARK, INWORTH ROAD, FEERING,
COLCHESTER, ESSEX CO5 9SE email: office@cpressex.org

Ms Lorraine Gamble
Planning Caseworks Manager
Department for Communities and Local Government
St Philip's Place
Colmore Row
Birmingham B3 2PW

Ref: PCU/RARE/A1530/77929

September 10 2017

Proposed Demolition of the Closed Church of Birch St Peter in the Diocese of Chelmsford Referral under the Mission and Pastoral Measure 2011 and the Skelmersdale Agreement of 1986

Dear Ms Lorraine Gamble,

The Campaign to Protect Rural Essex strongly objects to the Church Commissioners intention to demolish the Grade II listed closed Church of Birch St Peter. The Church Commissioners are requesting that the Secretary of State should withdraw his decision to hold a Non Statutory Enquiry concerning the future of the Church; we disagree.

This Church is an important skyline building of architectural significance, seen and admired by locals and passers by. Living within a mile of the Church for almost 50 years my family and I see and respect it every day. It settles in to its attractive precinct surroundings very comfortably, opposite Birch School. Demolition would leave an ugly gap in the village. A modern house on the site would be an eyesore.

A construction professional, Mr Cottee, a qualified Quantity Surveyor, has for some time expressed his wish to buy the closed Church and convert it into a family home. He has submitted his detailed plans and costings. Outside, the building would appear much the same as it does today. Importantly the landmark spire, visible from miles around, would be retained. Mr Cottee has the financial resources to carry out the sensitive transformation.

Such an opportunity as this is rare and should be encouraged not condemned as the Church Commissioners request.

Many organisations support Mr Cottee's plans, including Colchester Borough Council, English Heritage, The Victorian Society, Colchester and North Essex Building and Preservation Trust and Defending Historic Buildings. At the Campaign to Protect Rural Essex

we also support Mr Cottee's proposals.

We ask the Secretary of State to uphold his decision to hold a Non- Statutory Public Enquiry and help this enterprising scheme and not condemn this important building to the grave yard.

Yours sincerely,

Lorraine Gamble

From: Matthew Saunders <matthew.saunders@ancientmonumentsociety.org.uk>
Sent: 27 September 2017 17:58
To: Lorraine Gamble
Cc: Chris Costello; Simon Cairns; Davidbalcombe@email.com
Subject: Public inquiry St Peter's Birch

To Lorraine Gamble, PINS

I write with reference to the proposal to cancel the public inquiry called well over three years ago to consider the total demolition of the above listed building.

You will have received formal responses from the Victorian Society, Colchester Council and the Colchester and NE Essex BPT.

None of them favour determination without an inquiry or further examination and neither do we.

We share the view that the way this case has been handled constitutes the most shocking case of procrastination by Government. It is the worst that I have ever encountered in 40 years of processing casework.

Incidentally we never received a substantive response to our email to Jenny Tynan of 20th December 2016, which deplored the delays hitherto. The history of the case laid out in the most recent letter of the Victorian Society, which continues the story up to the present day makes chilling but compelling reading.

At the very least the suggestion of the Council that there should be a concentrated examination of the schemes prepared for the Commissioners and for Mr Cottee is the minimum that should be done. We would have no role in that as it is essentially a technical comparison of the conflicting figures. If this is pursued there should be a firmly agreed timetable with oversight and vetting by the Secretary of State. The examination should have the rigour of a public inquiry but be speedy, mediated and with clear decision-making.

There remains a clear argument too that the public inquiry should go ahead as planned and as envisaged way back in 2014.

We look forward to learning of your decision

Matthew Saunders
Secretary, Ancient Monuments Society
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THE VICTORIAN SOCIETY
The champion for Victorian and Edwardian architecture

Lorraine Gamble
Planning Casework Manager
Planning Casework Unit
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27 September 2017

pcu@communities.gsi.gov.uk

Your ref: PCU/RARE/A1530/77929
Our ref:

Dear Ms Gamble,

Re: Birch St Peter

Thank you for your letter dated 31 August 2017. This is a long-running case, and I will set out a (non-exhaustive) chronology, to give some context, before giving the Victorian Society's view on the Church Commissioners' request to waive the requirement to hold a non-statutory inquiry in to the proposed demolition of St Peter Birch.

The building

The church was built in 1850, designed by *SS Teulon*, and was listed at Grade II in 1982. It was closed for public worship on 1 November 1990, since when responsibility for its maintenance has been with the Diocesan Board of Finance for the Diocese of Chelmsford. At this time the costs of repair were estimated at over £200,000 (equivalent to £417,000 in 2016 prices).

Obligations of the Diocesan Board of Finance (DBF)

Section 61(2)(a) of the Mission and Pastoral Measure 2011 states that once a church is closed for public worship, "*the diocesan board of finance shall be responsible for the care and maintenance of the building closed for regular public worship, so far as is reasonable in all the circumstances, and the safe keeping of its contents, whether in the building or elsewhere, and shall insure the said building and contents*". This replaced the Pastoral Measure 1983, which contained the same commitment (at Section 49(2)(a)).

These extracts from Chapter 16 of the Mission and Pastoral Measure 2011 Code of Practice, explain the responsibilities of the DBF under Section 61(2)(a):

"The DBF has a crucial role in maintaining the building in a reasonable condition so as to assist the use seeking process. Prompt action and often modest expenditure in dealing with urgent repairs can enhance the chances of securing a new use and a

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reasonable sale price. ... The Commissioners make the final decision on what is to happen to a closed church building. It is important that the outcome is not prejudiced by neglect of the building during the use seeking period. ... The particularly vulnerable parts of a closed church are the doors and windows and the DBF should consider boarding up windows before damage occurs, especially in areas of high risk from vandalism, or if the stained glass is valuable. ... The DBF should make every effort to prevent the building acquiring a neglected appearance and arrange for it to be inspected regularly. ... The DBF should ensure the building is kept in a wind and waterproof condition. Keeping gutters and downpipes clear of obstructions is essential. Any vegetation growing at the foot of the walls or up the building should also be destroyed. ... Where the building is already in a very poor state of repair the essentials are for the DBF to keep the building secure against unauthorised entry, undertake those repairs required by the insuring company, and keep the building watertight. ... The DBF should make adequate budgetary provision to meet known or likely commitments in its role as custodian of closed church buildings during the use seeking period, not least so as to retain asset value. Failure to do so may well prove a false economy leading to reduced sale proceeds or costs arising from a non-statutory public inquiry in the event that demolition of a listed building is proposed." [emphasis added].

Re-use proposals

There then followed at least two abortive proposals for reuse of the building. In January 2012 the church was surveyed by architects Purcell Miller Tritton, who estimated repair costs at £1.24 million exclusive of VAT and fees (equivalent to £1.344 million at 2016 prices). In October 2012 the Victorian Society was told by the Commissioners about draft proposals for demolition of the church. In 2013 the Colchester & North East Essex Building Preservation Trust undertook a feasibility study that identified a development partner, a Mr Cottee, who is a local quantity surveyor and builder, who formulated a scheme costed at £1.2 million to convert the church (minus the south aisle which would be demolished) into his family home.

2014 demolition decision

In February 2014 the Commissioners decided finally to press ahead with the draft scheme for demolition of the church, despite the existence of this proposal. Due to the objections of English Heritage, the Victorian Society, the Ancient Monuments Society and other stakeholders, the proposals were referred to the DCLG, for the Secretary of State to decide whether to hold a non-statutory public inquiry under the Skelmersdale Agreement. This should have been a simple decision, given the strength of the objections, yet it took until 18 July 2014 for the DCLG to inform the parties that a decision had been made to hold a non-statutory public inquiry.

2015

After this delay, it was not until 10 September 2015, well over a year later, that a letter was received from PINS setting out a timetable for the inquiry. No explanation was given for this extraordinary delay. This letter set out a timetable that specified that the Commissioners would take the lead in preparation of a statement of common ground, to be submitted by 22 October 2015. On 6 October 2015 the parties received a letter from PINS delaying the inquiry, due to discussions with the Commissioners. There were private discussions between PINS and the Commissioners about "*the inquiry venue, the notice required to be given and other matters of procedure*". The terms of reference were set by means of private discussions between PINS and the Commissioners, without reference to the other parties.

2016

The Victorian Society did not receive an amended timetable from PINS until 12 May 2016, when a letter was sent out with a timetable (envisaging an inquiry in July/August

2016) and terms of reference, along with the extraordinary statement that "you may submit comments regarding the terms if you so wish, however, the terms will not be subject to revision".

The Victorian Society submitted specific complaints about the Terms of Reference in an email to PINS dated 13 May 2016:

1. *"As a matter of principle it does not seem fair that the terms of reference for the public inquiry should be set between PINS and one of the parties to the inquiry without the other parties having an opportunity to influence them. Allowing us to submit comments on the terms of reference while stating explicitly, before you have heard any comments, that the terms will not be subject to revision, is prejudging the issue; this is not fair.*
2. *The Victorian Society objects to the inclusion of number six of the terms of reference, namely "The significance of preserving, appropriating to other uses, or demolishing the building, in relation to the work of the Church of England within the parish of Birch with Layer Breton and the Diocese of Chelmsford". The implications of the decision for the work of the property owner is not a proper matter for consideration at a planning inquiry. ...*
3. *The Victorian Society would like another item to be added to the terms of reference; namely whether or not the Diocesan Board of Finance of the Church of England has adequately maintained the building since closure, as required under Section 61 (2) (a) of the Mission and Pastoral Measure 2011, and whether the starting point for consideration of the viability of any reuse scheme should be the current condition of the building, or the condition of the building when it was closed for regular public worship."*

We eventually received a reply from PINS on 20 July 2016, which did not substantively address any of the points above.

On 28 July 2016 a pre-inquiry meeting was held. Incredibly Mr Cottle does not appear to have been notified of this. The minutes of it make no mention of the objections to the Terms of Reference that the Victorian Society had submitted to PINS. At the meeting it was disclosed that the Commissioners' lead barrister would be acting at an unrelated planning inquiry due to start on 1 November 2016 that would last for six months. It was therefore suggested that the Birch inquiry would be postponed at counsel's convenience until May 2017. The option of the Commissioners instructing a different barrister does not appear to have been considered.

On 19 December 2016 the parties were sent a second draft of the statement of common ground by Turley, the Commissioners' planning consultants. The Victorian Society made objections to several points on 20 December 2016, and asked the Commissioners for copies of condition reports and details of maintenance work carried out on the church during the years since the closure of the church and the few years before the closure of the church. We have never received a response to these requests, or to our objections to the draft Terms of Reference.

Also on 20 December 2016 PINS wrote to the parties saying that due to commitments of the Commissioners' barrister, the inquiry would now not be able to be held until late summer / early autumn 2017. PINS promised to write "very early in the New Year" setting out the next steps. The Victorian Society and the Ancient Monuments Society wrote reasoned and serious emails of complaint about this further delay the same day. No response has been received to these emails.

2017

The parties heard nothing more from the authorities about Birch until 31 August 2017, when it emerged that the Commissioners had covertly requested that the public inquiry be waived in February 2017, a request that the DCLG had sat on for nearly seven months.

To summarise the procedural situation, the Secretary of State was asked if he wanted to hold a public inquiry in February 2014. Despite the passage of over 3½ years since then, the DCLG and PINS have not, for various reasons, actually held a public inquiry. There have been extensive private discussions between PINS and the Commissioners during that time, to which the other parties have not been privy. These have covered a huge range of issues from the timing of the inquiry, to its location, to the terms of reference. Rather than PINS being a neutral umpire between the parties that wish to demolish and the parties that wish to retain the listed building, PINS and the Commissioners have set the terms of reference together, and pushed back the timetable several times for the convenience of the Commissioners. By contrast other parties have been informed about key decisions after they have been made, with no opportunity to influence them. This is unacceptable, and gives rise to serious questions about the fairness of the process and the closeness of PINS and the Commissioners.

Church Commissioners' letter of 9 February 2017

There are a number of questions raised by the Commissioners' latest letter:

- On page 1 it is incorrect to say that Terms of Reference have been agreed; there are strong outstanding objections by at least one of the parties, as outlined above.
- On page 2 it states inaccurately that the matters to be considered have narrowed to the question of the viability of the Cottee scheme. The letter's use of the draft Statement of Common Ground as 'evidence' for this is disingenuous, given that it has not been agreed by all the parties; in fact the Commissioners' agents have been sent objections to it, which they have failed either to address or to disclose to you.
- Another major matter that needs to be considered is whether the Church has been guilty of 'deliberate neglect' of the building, and whether the current deteriorated state of the building should therefore not be the starting point in terms of considering viability (see para 130 of the NPPF).
- The Commissioners have failed to release the condition reports and maintenance records that would provide the evidence base on the question of neglect, and have, to the best of my knowledge, maintained complete silence on the topic, which is perhaps understandable given its potential ramifications, not only in this case but in those of other closed listed churches that the Commissioners may one day wish to demolish.
- The Commissioners have not shared with the other parties the September 2016 Quinquennial Inspection, nor the cost report by Sawyer and Fisher. It is unreasonable to expect the other parties to comment on reports that we have not had an opportunity to interrogate.
- Given that Purcell, a respected firm of conservation architects, estimated repair costs at £1.24 million in 2012, and that Mr Cottee, a chartered quantity surveyor, estimated costs of his scheme at £1.2 million, it seems fairly clear that there is a substantial difference of professional opinion on viability and costs; a public inquiry is exactly the right forum in which to resolve this.
- The Commissioners complain about escalating costs. Had the Commissioners allowed Mr Cottee to proceed with his scheme in 2013, either the building would now have been brought back into use, or it would have been demonstrated that it was undeliverable; either of these outcomes would have resolved the issue that is still at stake, without the Commissioners having to incur these costs.

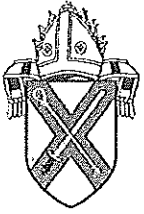
The conduct of this matter over the last 3½ years raises serious concerns. It demonstrates exactly why the future of listed buildings should not be decided on the basis of 'gentleman's agreements'; the Skelmersdale Agreement is an indefensible anachronism. There is no good justification for the retention of the Church of England's exemption from the requirement to get listed building consent for demolition of its churches. Planning Inspectors should not have to consider the mission of the Church, an area in which they presumably do not have any expertise, or criteria for judgment or weighting, in a public inquiry. The terms of reference of a public inquiry should not be decided behind closed doors by PINS and the partisan property owner involved. Proposals to demolish listed buildings belonging to the Church of England should be scrutinised in exactly the same way as those belonging to other denominations and indeed other property owners. Were the public inquiry to be cancelled, it is easy to imagine how the situation outlined in this letter might be portrayed in the press. The conservation organisations concerned, given their charitable aims, would have to give careful consideration to the possibility of challenging such a decision at judicial review.

The Victorian Society's view is that the public inquiry should go ahead; there has been no material change since the original decision was made. After the inquiry has taken place, 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, at a fraction of the cost and time involved in this case.

Yours sincerely,

Christopher Costelloe
Director

cc



The Church of England
in Essex and East London
Diocese of Chelmsford

The Venerable Annette Cooper, Archdeacon of Colchester
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13 September 2017

Lorraine Gamble
Planning Casework Unit
Department for Communities and Local Government
5 St Philips Place
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B3 2PVV

Dear Lorraine

Thank you for your letter of 31 August 2017 inviting interested parties to make representation to the Secretary of State's consideration of the decision to hold a Non Statutory Public Inquiry in to the proposed demolition of St Peter's Church in Birch.

It is now 27 years since this building was formally closed for Anglican worship. We believe this case has been going for far too long. There have been several serious attempts to save the building, in all or part, none of which have been successful, as well as numerous other expressions of interests and unrealistic proposals.

There is a pastoral need for a resolution to this case. The ongoing uncertainty around the building impacts on both the diocese and the local Church and is detrimental to the mission work of the Church, especially in the locality. It is also detrimental to the pastoral needs of those who visit graves in the Churchyard, which remains open, some of which are not freely accessible to members of the public due to the hoarding that we have had to erect around the building for public safety purposes.

There is an ongoing cost involved with the building in respect of insurance and scaffolding which, needless to say, could be better used supporting costs elsewhere.

After the Church Commissioners granted the Colchester and North East Essex Building Preservation Trust (CNEEBPT) time to undertake their own viability study the CNEEBPT concluded that a residential conversion was not financially viable and that it represented too much of a risk for the Trust to take ownership of the church building and proceed with a conversion. The only proposal under consideration is Mr Cottee's proposal for residential conversion.

Although we do not object to the principle of a residential conversion of our former church buildings, we believe this should be considered on a case by case basis. There are a number of examples in this diocese of successful residential conversions.

In this particular case, Mr Cottee has failed to convince the Church Commissioners of his scheme's viability. We do not want to find ourselves in a situation, as has happened in other dioceses, where a closed building is taken on for residential conversion but not completed. The parish has a genuine fear that this might create a permanent memorial to failure. The findings of the Church Commissioners suggest that there is a very real risk of that scenario arising. Furthermore, we do not believe there is enough support for this scheme from the local residents.

In addition to planning and listed building consent, a residential use would still be subject to the publication and outcome of a Draft Pastoral (Church Buildings Disposal Scheme) to legally provide for residential use under the Mission and Pastoral Measure 2011. This would take considerable time, and conceivably could lead to challenge and give rise to a further request for a public inquiry.

In conclusion, we are in support of the withdrawal of the Non Statutory Public Inquiry and the Scheme for demolition proceeding.

However, should it be decided that an Inquiry must still be held, we request that this is arranged as soon as is practicable so that some sense of closure to this episode may be given and the healing begin.

Ven Annette Cooper
Archdeacon of Colchester
(for and on behalf of the Diocese of Chelmsford)

Planning Services

Ms Lorraine Gamble
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Planning Casework Unit
5 St Philips Place
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Contact: Simon Cairns
Phone: 01206 508650 Fax: (01206) 282598
E-mail: planning.services@colchester.gov.uk
Your ref: PCU/RARE/A1530/77929
Our ref: 161203
Date: 18 September 2017

Dear Madam

Our Ref: 161203
Proposal: Referral under the Mission and Pastoral Measure 2011 and the Skelmersdale Agreement of 1986: Draft Pastoral (Church Buildings Disposal) Scheme Proposed demolition of Grade II listed Church.
Location: St Peters Church, Church Road, Birch, Colchester

Thank you for your letter dated 31 August 2017 and emails received on 31.08.17 and 7.09.17 regarding the above request made to the Secretary of State to reconsider the decision made to call a non-statutory inquiry into the referral of the Church Commissioners decision to seek demolition of the Church of St Peter. I can confirm that the Council remains committed to ensuring that all possible opportunities for the re-use of this grade II listed building at the heart of the Birch Conservation Area are fully explored before a final decision is made by the Secretary of State. We are unable to find any material change in circumstances since the original decision of the Secretary of State to hold a non-statutory inquiry was made in July 2014 sufficient to justify an alternative conclusion.

We are sympathetic to the capacity issues experienced by the Planning Inspectorate that led to initial delay in securing a timetable for the Inquiry and to the subsequent substantial delay as a result of the unavailability of the Commissioner's Counsel, Morag Ellis QC. We are surprised that the commissioners have now requested that the non-statutory inquiry process is abandoned in the absence of a solution having been agreed. Nevertheless, the Council is keen to avoid a costly inquiry if this can be avoided through collaborative working between the interested parties to fully explore the possible conversion of the church to create a dwelling – a solution that has delivered a sustainable solution in numerous other situations where listed buildings are redundant for their original purpose.

The Council is advised by the Colchester and North East Essex Building Preservation Trust that Mr Cottee remains committed to the conversion of the church to create a family home. We believe that the tests for total demolition of designated heritage assets as set out at paragraph 133 of the Framework are of relevance and establish that demolition requires robust justification and should be seen as a last resort. In our opinion, whilst there are parties apparently committed to securing the re-use of church then it would be premature to proceed with costly processes as a precursor to demolition. Instead, it seems more logical in a climate of mutual

respect and co-operation for the Church Commissioners to work with Mr Cottee to explore whether an agreement can be achieved that secures the re-use of the listed building. This could render the need for a costly inquiry redundant. To that end, the Council respectfully suggests that the Secretary of State considers the merits of deferring his decision on the request of the Church Commissioners to require the two parties (The Church Commissioners and Mr Cottee) to engage in constructive dialogue around a contractual framework to secure the re-use of this listed building. It is suggested that 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 it has not proved possible to reach agreement between the two parties within a twelve month period, then the Secretary of State could then reconsider the request of the Church Commissioners with further evidence derived from the engagement process. We believe that a non-statutory inquiry is essentially premature at the present time as the key parties have yet to engage meaningfully to explore a possible solution in the public interest.

We trust that the Secretary of State finds our suggested approach constructive as a possible means of avoiding a potentially unnecessary and costly inquiry.

Yours sincerely

Simon Cairns

Simon Cairns
Major Development & Projects Manager

Textphone users dial 18001 followed by the full number that you wish to call.

The Birch Parish Council

Parish Clerk c/o



email:birchparishclerk@aol.com (www.birchpc.org.uk)

Ms Lorraine Gamble
Planning Casework Manager
Department for Communities and Local Government
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6th September 2017

Your ref: PCU/RARE/A1530/77929

Dear Ms Gamble

Proposed Demolition of the Closed Church of Birch St Peter in the Diocese of Chelmsford

Referral under the Mission and Pastoral Measure 2011 and the Skelmersdale Agreement of 1986

I acknowledge receipt of your letter of 31st August inviting representations on the matters raised by the Church Commissioners in their request that the decision to call a public inquiry be reconsidered.

This matter was discussed at the meeting of Birch Parish Council held on Tuesday 5th September. The views of the Council are as follows.

The Council would be sorry to lose the tower and spire of Birch church which are acknowledged to be a distinctive local landmark. Nevertheless the Council understands and accepts that the only options for the building now are either demolition as proposed by the Church Commissioners or its conversion to residential use as proposed by Mr Cottee.

The settled view of the Council is that it does not support the Cottee proposal. Conversion of the church building to a large family residence is not considered desirable in the open churchyard which will continue to be used for burials for many years to come. The Cottee proposal offers no element of public amenity for the local community. The Council understands that if the building is demolished its footprint will be incorporated into the churchyard as a garden of remembrance. This would offer some public amenity and is the option favoured by the Council.

For some time the Council has had serious doubts about the practicality of Mr Cottee's proposal, the likely costs of completing it and Mr Cottee's access to sufficient funds to meet these costs, particularly unanticipated costs arising once the project was started. The information disclosed in the Church Commissioners' letter of 9th February this year has been of great interest to the Council. It notes that two independently commissioned reports from professional firms put the costs of external and internal fabric repairs alone at more than £3 million. These estimates do not include the costs

of converting the building to a family home which must be considerable. Against that, the Council notes that Mr Cottee's estimate of his total net worth is less than £1.5 million.

The Council takes the view that the information contained in the Commissioners' letter of 9th February is compelling evidence that the Cottee proposal is not financially viable. The Council shares the Commissioners' concern that if the Cottee proposal was allowed to go ahead it is highly likely that once partial demolition and repair was commenced the project would founder and be abandoned. The Council is eager to avoid such an eventuality and the damaging impact it would have on the local environment.

The Council is conscious of the very long time the issue of the future of Birch church has dragged on. Any agreement to allow the Cottee proposal to proceed would only prolong uncertainty about the building's future. It would welcome an early resolution of this long-standing matter.

It is the unanimous wish of the Council that the Secretary of State should agree to reconsider the decision to call for a public inquiry. It believes that the evidence now available shows that the Cottee proposal is neither practical nor financially viable and that no good purpose would be served by holding a public inquiry.

Yours sincerely,

Clerk, Birch Parish Council

On Behalf of the Chair



Colchester & North East Essex
Building Preservation Trust

14th September 2017

For the attention of Lorraine Gamble
Your Ref: PCU/RARE/A1530/77929

Dear Madam

**The Church of St Peter, Birch – Referral under the Mission and Pastoral
Measures and the Skelmersdale Agreement**

We refer to your letter of 31 August addressed to “All Interested Parties” a copy of which was passed to us by Colchester Borough Council. We have not received the letter independently. We are an interested party.

We see absolutely no reason why the Secretary of State’s predecessor’s decision should be reviewed or reversed. Nothing has changed in the basis for the Inquiry. The fundamental point remains that the Church Commissioners wish to demolish the Church, notwithstanding there is a demonstrable alternative use by conversion to a single residential dwelling, which is a clear impediment to any decision to demolish. This is not a matter of policy.

We will respond to the matters raised by the Church Commissioners in their request. We should however first make the point that for reasons which are not clear, but might be surmised, we were not sent copies of these letters of request, nor, so far as we are aware, were a number of other statutory bodies and interested parties who have been supportive of retention of the Church.

1. Terms of Reference: the Terms of Reference were produced by the Church Commissioners. They are not entirely in agreed form. We raised specific comments on them (as did others) and at the Inspector’s request provided him with a further copy of the comments made.
2. The Statement of Common Ground was prepared by the Church Commissioners and has not been agreed by us. We have detailed comments on this statement. We were sent a second draft in December 2016 that prompted various comments but a third draft reflecting the passage of time and later exchanges (including at the PIM) has not been produced. It remains our intention to minimise the issues that need to be dealt with. The Statement envisages that a number of documents will be attached to the Statement and to which the Statement cross refers. Until we see these, as some are unknown to us, we cannot accept the

Statement. It is also the case that a number of other documents are referred to and selectively quoted from but not disclosed, which cannot be appropriate.

3. While clearly the question of a viable alternative use is at the heart of the matter, it is also highly relevant that there is demonstrable and overwhelming local support for the Church's retention not least because of its importance as a listed building and a key building within the Conservation Area, but also because of its place in the social history of the village, being part of a group of buildings built at the same time by a philanthropic landowner.
4. While we are an independent Charity, we were responsible for identifying the alternative use of alteration of the Church to a single residential dwelling and helped develop the scheme through consultation with appropriate experts and the local authority. Mr Cottee is a Quantity Surveyor and developer who wishes to make this his family home. He is known to the Trust (and indeed the Diocese of Chelmsford who employ him). As you would expect we have liaised closely with the local authority and the relevant statutory bodies to achieve a high level of confidence that listed building consent will be forthcoming and the scheme will be approved.
5. In terms of access to the building we have consulted the relevant landowner and although a commercial agreement will need to be concluded we have again received sufficient assurance to be confident this will be achieved.
6. The discussion as to the viability of the scheme contained in Mr Lewis's letter sets out precisely the issues which are appropriate to be considered by the Inspector. Whilst Mr Cottee is a developer this scheme will not be carried out with a view to making a commercial margin. Mr Cottee's estimated cost of repairs to the spire are based on expert opinion and the estimate of a specialist stone subcontractor.
7. The basis on which the Church Commissioners commissioned their reports is unknown with certainty, but from discussions it appears that they have been done on the basis of a total renovation of the Church as a building to be brought back into ecclesiastical use, which is clearly not what is planned here. It is inconsistent with best practice, which is to adopt a conservative repair approach with minimised intervention. (We would note that it was totally unnecessary for the Churches Conservation Trust to have commissioned a Quinquennial Survey since it is patently obvious they have neither the resources, ability or interest to take on Birch Church.)
8. Sawyer and Fisher's evaluation appears not to take account of the fact that Mr Cottee is a developer and doing this on his own account, or that the method of repair is minimised intervention with ongoing

maintenance. Mr Cottee's views are equally valid, particularly because they will be supported by current key subcontractors quotations.

9. The net worth calculation is again a matter of relevance to the Inspector. The critical question is whether the development can be carried out sustainably. Since that last estimate of net worth, Mr Cottee has completed sales and obtained further planning permissions on his properties which have enhanced the value. His business continues and will continue. Mr Cottee has also got the confirmed capacity to borrow which should not be ignored. Furthermore, in view of the prolonged delay of the Inquiry the previously submitted cost plan and net worth estimation from Mr Cottee should be now regarded as out of date. It would be our intention to present more relevant figures that are fixed to a date closer to when the Inquiry is now to be held.
10. The period proposed for the Inquiry of four weeks was a suggestion of the Church Commissioners counsel. We think this is a substantial overestimate because of the confined nature of the issues. The delays in starting the Inquiry are due to their counsel's stated unavailability (it is not clear why alternative counsel could not have been instructed and I would note the delay was made without reference to our own counsel or his commitments).
11. We quite agree the costs are excessive. It should not have reached this stage. The Church Commissioners are not being required to field eight witnesses - that is what they are proposing to do, and a number of them will be completely unnecessary because they will contribute nothing to the matters that need to be determined. We would not be in this position if the Church Commissioners had shown themselves willing to approach this matter constructively, with a view to finding a solution for preservation rather than destruction. From the perspective of preservation of our heritage, particularly the heritage assets in the hands of the Church, it would be a disastrous precedent if the process of an Inquiry ceased to be available to deal with matters which are perfectly validly being challenged on the basis the costs for the party being challenged (for what appears to be a capricious and unilateral decision) are in their opinion excessive and not justified in public benefit terms. As you will appreciate the term "public benefit" as used in context ignores the importance of the asset as an heritage asset, its important place in the landscape and the local support for its preservation.
12. As regards the question whether once an Inquiry has been determined to be held it is possible to reconsider that decision, it would seem wrong if it were. Your predecessor was in full command of the facts and took the decision in the knowledge of the arguments raised by the Church Commissioners. We are in process at the moment and it would seem extraordinary and both a breach of natural justice and the planning system which is the reference point, for the decision to be reconsidered in

the light of special pleading by the party in respect of whose decision the Inquiry is being conducted.

We are a charity and rely on donations, grants and support from specialists to enable us to conduct our work. We are entirely prepared to pursue this Inquiry in order to do what is necessary to stop something happening which is so damaging and so unnecessary. We would not be spending our limited resources on this unless we had confidence in the alternative, both in terms of viability and sustainability.

We would be grateful if you would ensure this letter is made available in full to the Secretary of State in view of its importance and the potential far-reaching consequences of his decision.

We further understand that the deadline for submission of representations has at the request of Priti Patel MP been postponed until 21st September. Further representations may be forthcoming in that timeframe.

Yours sincerely

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Chairman

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