Incentivizing Historic Rehabilitation and Adaptive Reuse in the United States and the United Kingdom

by

John Royall Warman

B.A., History and Foreign Affairs, 2009

University of Virginia

Submitted to the Program in Real Estate Development in Conjunction with the Center for Real Estate in Partial Fulfillment of the Requirements for the Degree of Master of Science in Real Estate Development

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Signature of Author____
Center for Real Estate
January 10, 2020

Certified by____
Jennifer Cookke
Lecturer, Department of Urban Studies and Planning
Thesis Supervisor

Accepted by____
Professor Dennis Frenchman
Class of 1922 Professor of Urban Design and Planning
Department of Urban Studies and Planning
Director, MIT Center for Real Estate

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ABSTRACT

The societal value in protecting historic properties and districts through rehabilitation and adaptive reuse has been studied and recognized for several decades, following still-older government policies to protect historic structures and neighborhoods. Approaches to such protection, rehabilitation and reuse reflect a combination of factors including the history and impact of early preservation movements, systems of development control, tax policy and government intervention in the marketplace. Primarily a qualitative comparison, this thesis examines those factors and approaches and specifically the use of incentives in spurring historic rehabilitation in the United States and in the United Kingdom. The thesis examines the mixture of forces and timing of implementation which have led to two different, yet each robust, government systems to ensure the continuity of the historic built environment. In the United States, the result of these combined forces led to the creation and continued use of a market-focused incentive structure – primarily through the creation of rehabilitation investment tax credits – to enable the private sector to revive historic places for income-producing purposes. Conversely, in the United Kingdom, an equally strong – yet different – array of factors led to the establishment of a solid, top-down development-control system that to date has rendered unnecessary its use of any US-style market-focused incentives. The thesis concludes by examining whether lessons and approaches from the United States can be applied in the United Kingdom, and vice versa.

Thesis Supervisor: Jennifer Cookke
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1. Introduction

Today, towns and cities in the United States, United Kingdom (and everywhere for that matter) compete with one another to attract residents, businesses, tourists and investment. Historic neighborhoods and main streets offer irreplaceable and unique visual identities, and adaptively reused spaces create sustainable and architecturally appealing alternatives to many new buildings.

The adaptive reuse of historic buildings in a contemporary context has roots in antiquity and calls to protect historic structures date to the mid-19th century. Still, the use of government policy to encourage the rehabilitation of buildings by the private sector is a relatively newer concept.

Building rehabilitation and adaptive reuse can be challenging:

- alteration work can be prohibitively costly;
- structures might require extensive upgrades to meet modern accessibility standards, building codes and service requirements; and
- such projects' higher risk-profiles, relative to other real estate classes, can limit available financing and make capital prohibitively expensive.

When successful, however, rehabilitation and adaptive reuse projects can generate outsize financial returns to investors. They offer a sustainable alternative to new construction, establish and burnish developers' reputations, add value to the surrounding areas and become foundational sites for neighborhood and community revitalization.

Recognizing that value could be derived from effective rehabilitation and adaptive reuse, after World War II and an ill-considered period of urban renewal, governments sought to preserve their historic built environments, pursuing similar goals via markedly different means.

While both the United States and United Kingdom started the historic preservation movement at the same time and today have robust programs and strong stated goals towards preserving the historic environment, their respective policies and incentive structures to facilitate historic conservation are markedly different.

This thesis explores those differences and seeks to understand how and why the government-led facilitation of adaptive reuse and historic rehabilitation is different in the United States and the United Kingdom. Those contrasts are largely a result of 1) each country's preservation history and building inventory, 2) approaches to land use control and the timing of when each policy was introduced, and 3) the influence upon the marketplace of politics and tax policy. The heavily incentivized, government-sponsored efforts to foster historic rehabilitation and adaptive reuse via the for-profit market in the United States are a direct result of those combined factors. Likewise, the synthesis of those same dynamics offers an explanation for the lack of government-led incentives in the United Kingdom. Last, the thesis briefly considers whether lessons from the United States can (or could usefully) be applied to the United Kingdom, and vice versa.

2. Historic preservation in context

2.1. A very short global history of historic preservation

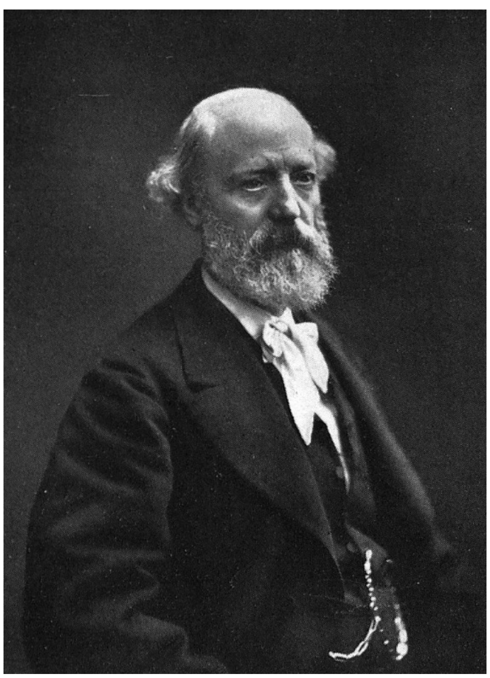
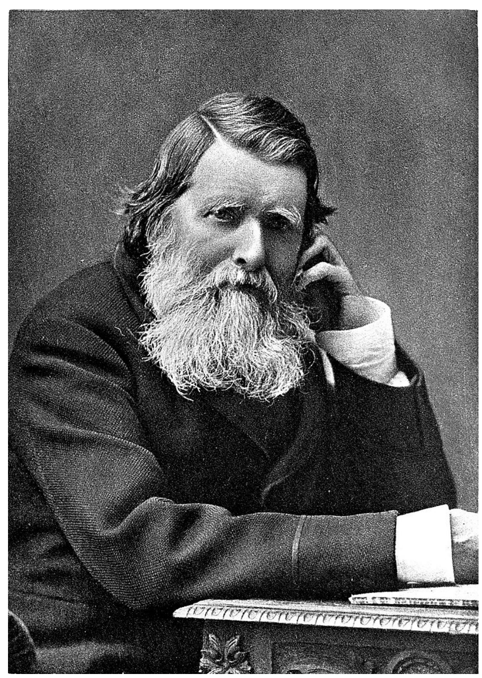
There is little consensus with regard to the first efforts to protect historic structures though they date at least as far back as the ancient Greeks in c. 330 BCE with the preservation of Cyrus the Great's tomb by Alexander the Great in modern day Pasgardae, Iran.[1] Few records exist from that time documenting efforts to preserve heritage places, however, many of the structures built by the Ancient Greeks, Romans and other early empires were preserved and used by subsequent civilizations. It would make little economic sense at the time to demolish a building that might have taken decades to build. Rather, the reuse of buildings by new occupiers for new purposes was standard. For example, what was once a frigidarium at the Roman Baths of Diocletian would be incorporated by Michelangelo Buonarotti in the 16th century into the Basilica of Santa Maria degli Angeli e dei Martiri.[2]

Cyrus the Great's Tomb (left by Mohammed Reza Domiri Ganji on [Wikimedia Commons](#)) in modern day Pasgardae, Iran, one of the first known structures to be consciously preserved by Alexander the Great in c. 330 BCE. The Basilica of Santa Maria degli Angeli e dei Martiri (right image by Fczarnowski on [Wikimedia Commons](#)) in Rome, Italy, one of the first known adaptive reuse projects completed by Michelangelo Buonarotti in the 16th century.

[1] David Fixler, "The Charters and Standards – Codifying Conservation and Interventions" (History 4384: Building Conservation and Renewal, September 13, 2019).
[2] David Fixler, "Adaptive Re-Use I: Traditional Building Construction and Alterations" (History 4384: Building Conservation and Renewal, September 27, 2019).

The first known heritage guidelines were written by Julian the Apostate in the 4th century CE to protect early Roman monuments. Fast-forward more than a millennium later, and laws were put in place to prevent the dismantling of Roman structures such as the Coliseum and to protect the buildings from villainous developers looking for cheap access to high-quality stone.[3]

Modern-day global historic conservation is typically founded on the beliefs of two men active in the 19th century, the Frenchman Viollet le Duc and the British John Ruskin. Each thought historic structures were crucial to retaining cultural identity, but they had divergent views of appropriate historic preservation methods. Le Duc believed that buildings that had deteriorated or were damaged over time should be restored to their original glory – even if that meant determining what that renovation should be. Largely reacting to the destruction that the French Revolution wrought upon buildings, Le Duc sought to repair them. Thus, despite its 13th century origins, St. Chapelle, the chapel on Paris's Île de la Cité stands today essentially as a 19th century reconstruction. As another example, the spire that burned in the April 2019 fire at Notre-Dame de Paris was in fact a 19th century reconstruction completed by Le Duc with reference to 13th century drawings.

Photographs of the fathers of the modern preservation movement. Viollet le Duc is on the left (photo by Nadar on Wikimedia Commons) and John Ruskin is on the right (photo by Herbert Rose Barraud on Wikimedia Commons).

In contrast to Le Duc, John Ruskin – an English social thinker and art critic – suggested that any damage and deterioration adds to a building's heritage and should be left as is. He advocated that historic structures

[3] Fixler, "The Charters and Standards – Codifying Conservation and Interventions."

be treated as monuments, writing that “the greatest glory of a building is not in its stones, or in its gold. Its glory is in its age.”[4] Ruskin challenged Le Duc by suggesting “that ‘restoration’ was the most complete destruction that could be suffered by an historic building, a destruction accompanied by a false description of the thing destroyed.”[5]

Ruskin’s and Le Duc’s views carried through the 19th century and variously influenced the thinking of other early preservationists such as Alois Riegl and William Morris. At the same time, it established a philosophical foundation for private and government led preservation efforts in the early 20th century. Today, contemporary preservationists consider both Ruskin’s and Le Duc’s perspectives to be extreme.

At the turn of the 20th century, organized preservation campaigns were more often reactive than proactive. Preservationists would lobby that buildings be saved before demolition rather than advocating for protective legislation or incentivizing the private sector to keep a building.[6] In parallel with movements to save buildings, organizations with similar vision also sought to protect countrysides, landscapes, neighborhoods and triumphs of engineering.

The impetus to establish international standards for the protection of historic buildings started in the interwar years in Europe. The first initiative was the product of a 1931 summit attended by internationally known architects, archaeologists, preservationists and engineers. Their seven-point manifesto, known as the Athens Charter for the Restoration of Historic Monuments in 1931, laid out foundational principles for the preservation of historic monuments. Importantly, however, it had no compulsory power. It was not until after World War II that the first comprehensive, modern guidelines were established through the Venice Charter of 1964. These guidelines would serve as an important basis for the development of national policies throughout the world, including in the United States and the United Kingdom.

2.2. Conservation methods

One legacy of the Venice Charter was the creation of definitions to describe different conservation approaches. These definitions formed the basis of the US standards used by the US Department of the Interior and its subsidiary organization, the National Park Service (NPS). The NPS – the government organization overseeing the conservation of historic structures in the United States – has defined different approaches to historic conservation and established principles for each approach. Though sometimes used

[4] Norman Tyler, Ilene R. Tyler, and Ted Ligibel, *Historic Preservation : An Introduction to Its History, Principles, and Practice.*, 2nd ed. (New York : W.W. Norton & Company, 2009), 22.
[5] John Ruskin, *The Lamp of Memory* (United States: n.p., 1885) 17.
[6] Diane Barthel, “Historic Preservation : A Comparative Analyses,” *Sociological Forum* 4, no. 1 (1989), 88.

interchangeably, words such as *preservation, restoration, reconstruction* and *rehabilitation* all have different meanings. Historic conservation organizations in other countries – the UK included – utilize similar terminology.

Historic *preservation* seeks to maintain an existing structure with as few modifications as possible. As a result, the building's historic integrity, original fabric and features remain as close as possible to the building's original design. Changes that may have been incorporated over the lifetime of the building are retained.[7] A preservation intervention seeks to protect and stabilize properties, undertake necessary maintenance and repair historic materials. Modifications to exteriors of buildings or the incorporation of new additions are not allowed, but, if carefully integrated, upgraded mechanical, electrical and plumbing systems to meet contemporary building codes and accessibility requirements are permitted.[8]

Federal Hall, the Greek Revival edifice located on Wall Street in New York City, is an example of historic preservation. To the naked eye, today, the structure looks as it did from the time of its opening in 1842. Still, over the course of the 20th century and more recently after the 9/11 attacks, the building has undergone several upgrades to meet contemporary codes and accessibility requirements.[9] Historically preserved buildings usually maintain their initial use or are opened to the public as museums.

The goal of historic *restoration* is to bring a building or parts of a building back to a form that corresponds to a specific, often historically significant, moment in time. Restoration reincorporates additions and features that were lost over the course of a buildings' life and the removal of elements that are inconsistent with the specified time period.[10] Homes designed by or occupied by historic figures (Montpelier – the Virginia home of James Madison – being a particularly well-known example) are typical candidates for restoration and (as with Montpelier) may be opened to the public as heritage museums.

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[7] Tyler, Tyler, and Ligibel, *Historic Preservation*, 192.
[8] Kay D. Weeks and Anne E. Grimmer, "The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings" (Washington D.C.: US Department of the Interior, National Park Service Technical Preservation Services, 1995), 2.
[9] David Fixler, "Conservation: Repair, Renewal and Adaptation – Meaning and History" (History 4384: Building Conservation and Renewal, September 6, 2019).
[10] Weeks and Grimmer, "The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings," 3.

Before and after images of James Madison home, Montpelier in Orange, Virginia. The image on the left depicts the mansion in 1984 after decades of alterations. The image on the right (by Peggy Harrison) shows the house, today, after a $25 million restoration completed in 2008 to return the building to its 1820 state.

Reconstruction, in the context of conservation means the rebuilding of a lost or partially lost structure with appropriate but new materials to replicate the form, features, and detailing of a building or landscape at a particular moment in time.[11] These structures (or parts of structures) may have been destroyed during war, natural disaster or simply dismantled. Examples of historic reconstruction include the Frauenkirche church, destroyed in the Dresden firebombing of World War II and rebuilt in 2006, and the Globe Theatre initially demolished in 1642 in London and rebuilt in 1997 in a nearby location.

The Frauenkirche church in the aftermath of the Dresden (Germany) firebombing in 1945 (left image unattributed) and after reconstruction was completed in 2006 (right image by Kolossos on Wikimedia Commons)).

[11] Ibid., 3.

Preservation, restoration and reconstruction are all crucially important approaches in maintaining the built environment, the sense of place of a neighborhood and the cultural wealth of a city. That said, each method – by intentionally seeking to retain a building's initial use and design – limits the possible adaptation of that building to its modern highest and best use. For this reason, the private, for-profit sector rarely engages exclusively in preservation, restoration or reconstruction unless for charitable and philanthropic purposes.

Historic *rehabilitation*, the most widespread form of historic conservation today can be divided between two categories, rehabilitation and "adaptive reuse". Both interventions incorporate portions or features of a building to retain that structure's historical, cultural, or architectural qualities. With rehabilitations the initial use of the structure is continued or enhanced. Adaptive reuse is a relatively new term (first known to have been used in 1973) describing a building's conversion to a new use to meet modern demands and market needs.[12] [13] Rehabilitations and adaptive-reuse projects typically limit the degree of intervention to the existing structure's exterior – to preserve historic character – while modifying the interior to embrace the new intended use of that structure, contemporary building codes and accessibility requirements. Provided that they are harmonized with the existing structure, additions and annexes can be incorporated into rehabilitations and reuses as well. Scale is not a factor, and creativity can yield phenomenal outcomes – old bus stations can be converted to restaurants (The Grey in Savannah, Georgia), while former train stations or factories have been given new life as art museums (the Musée d'Orsay in Paris and MassMOCA in North Adams, Massachusetts).

A before and after view of the main gallery at the Musée d'Orsay in Paris, France. On the left (image unattributed on [Wikimedia Commons]) is a photograph taken in c.1900 when the Gare d'Orsay was one of the primary rail stations in Paris. On the right (image from Alexander Franke on [Wikimedia Commons]) is a contemporary image of the completed conversion to one of world's premier art museums.

[12] Tyler, Tyler, and Ligibel, *Historic Preservation*, 197.
[13] "Adaptive Reuse (n.)," in *The Merriam Webster Dictionary*, accessed November 25, 2019, https://www.merriam-webster.com/dictionary/adaptive%20reuse.

Preservation, restoration, reconstruction, rehabilitation and adaptive reuse are not mutually exclusive (i.e. historically significant elements might be restored as part of an adaptive-reuse conversion), though one overarching approach will probably drive decisions for the entire project.[14] When the different approaches are combined creatively and successfully, historic conservation can generate significant benefits both to the greater public and to the private sector. This is especially the case with rehabilitation and adaptive reuse.

2.3. The benefits of rehabilitation and adaptive reuse

Every real estate project is different. The economics and values of prospective developments are driven by a variety of often cited factors – location, market condition, zoning, etc. Historic rehabilitation and adaptive-reuse schemes can provide unique opportunities to the private sector and social benefits to towns and cities. These include:

- comparatively better locations than greenfield development sites (cities expand outward as they grow over time);
- in many cases, the retention of a building constructed with higher quality materials than typical of builds of the same scale today;
- the possibility to creatively reuse a building to meet current market trends and demands;
- an iconic architectural style; and
- the ability to add value to the surrounding buildings and revitalize neighborhoods.

Not surprisingly, most literature (academic and for lobbying purposes) examining the benefits of rehabilitation and adaptive reuse is generated by advocates of historic conservation and suggests that the public benefits of undertaking and incentivizing rehabilitation are a form of social good. Proponents of conservation point to the larger effects that conservation and reuse of historic buildings can have in revitalizing neighborhoods, enhancing a city's tourism prospects, strengthening urban economies and meeting broader goals of urban planning and sustainability.

Several of these social and civic benefits are described below:

Historic preservation is societally important: This subjective statement is rarely challenged by policy makers, developers and the academic community. As architecture firms operate in the same cities throughout the world and the same building materials are used globally, it is apparent that cities today are increasingly homogenized in their visual identity. Historic neighborhoods help to define cities and give them a sense of place. As part of a local and national history, they serve as tangible educational tools to

[14] Tyler, Tyler, and Ligibel, *Historic Preservation*, 198.

foster understanding of the past's contributions to present and future culture. The rehabilitation and reuse of buildings allows continuity of that built environment, street grid and urban landscape while conforming to modern market demands.

Jobs and the local economy: Historic conservation projects create more jobs compared to new builds of the same scale. In rehabilitations, labor makes up a greater portion of the total development costs – on average 60% for labor and 40% for materials. The percentages are reversed for ground up development.[15] At the same time, with rehabilitations and adaptive reuse, comparatively more local jobs are created as is the use of a comparatively greater supply of local construction materials.[16] In the United States, case studies from both the National Park Service (NPS) and from state historic preservation offices (SHPO's) attest to the value of using rehabilitation to naturally revitalize downtowns and local economies. The NPS cites that through 2018 over 2.7 million jobs have been generated since historic rehabilitation tax credits program was established in 1978.[17] While similar analyses cannot be found for the United Kingdom, the author suspects comparable results would obtain.

Tax basis, property values and neighborhood revitalization: Academic researchers have shown that property values for areas that have received historic designations increase their property values over time and thus the tax basis for a local town.[18] Further research shows that for every $1 dollar reinvested in communities through historic tax credits in the United States, $1.20 is raised in taxes.[19] What is more, rehabilitation of historic buildings in heritage dense areas can help to drive the revitalization of neighborhoods that have decayed over time. That said, however, historic designation is not a silver bullet, and individual designations in economically depressed communities might not significantly improve property values in such neighborhoods.

Tourism: Efforts by city governments to preserve landmark buildings or neighborhoods have shown documented increases in tourism and related entertainment spending, providing an influx of outside money into the economy. "Historic preservation has been identified as an important element of a new postmodern or symbolic economy in which cultural strategies drive the production of commercialized urban spaces

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[15] "State Historic Tax Credits: Maximizing Preservation, Community Revitalization, and Economic Impact" (Washington D.C.: National Trust for Historic Preservation, 2018), 5.
[16] Donovan Rypkema, *The Economics of Historic Preservation: A Community Leader's Guide* (Washington D.C.: National Trust for Historic Preservation, 2005), 12.
[17] Technical Preservation Services and Rutgers Edward J. Bloustein School of Planning and Public Policy, "Annual Report on the Economic Impact of the Federal Historic Tax Credit for FY 2018" (Washington D.C.: National Park Service, 2019), 7.
[18] Stephanie Ryberg-Webster and Kelly L. Kinahan, "Historic Preservation in Declining City Neighbourhoods: Analysing Rehabilitation Tax Credit Investments in Six US Cities," *Urban Studies* 54, no. 7 (2017): 1685–86, https://doi.org/10.1177/0042098016629313.
[19] Historic Tax Credit Coalition and National Trust for Historic Preservation, "Federal Historic Tax Credit," Summary Sheet (Washington D.C.: Historic Tax Credit Coalition, 2019), 1.

geared toward entertainment and tourism."[20] Globally, tourism is growing significantly and "heritage tourism" (a subset of tourism with a specific focus on visiting historic sites) is one of the fastest growing subsectors. Studies comparing heritage tourists to regular tourists point to longer hotel stays and higher expenditures in local establishments.[21]

Sustainability: The reuse and rehabilitation of buildings are more sustainable alternatives to new construction. Recent studies indicate that for every four buildings constructed, one is demolished and that over one billion square feet of buildings are dismantled annually in the United States.[22] The construction industry is the largest consumer of raw materials globally and is growing significantly. Over 40 percent of the world's energy produced is consumed by buildings and 1/3 of world greenhouse gases come from building operations.[23] [24] Rehabilitation reduces greenhouse gas emissions by avoiding the need to demolish entire buildings, clear their waste (and send to a landfill) and then rebuild anew. Further, individual studies have shown rehabilitation and adaptive reuse can comparatively reduce energy, water and fossil fuel consumption and reduce the number of materials used. However, "the main driver of environmental benefits in the literature is "embodied energy" which is the cumulative energy inputs that were required to construct the building initially and process/operational energy consumed during the building's use."[25] It is not surprising that climate change experts have called on the industry to make significant changes quickly in order to counteract global warming.[26] Rehabilitation is one step towards reducing that energy footprint, making (in the words of one observer) "the adaptive reuse of cultural heritage buildings a win for the environment."[27]

Architects and developers that are delivering new buildings today should have adaptive reuse and historic rehabilitation fifty years from now in mind.

Synergies with urban city planning philosophies today: The retention of historic structures and neighborhoods is aligned with contemporary urban planning philosophies. These models promote sustainable cities, transportation alternatives to automobiles and a mixture of densities and livable uses to

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[20] Alexander J. Reichl, "Historic Preservation and Progrowth Politics in US Cities," *Urban Affairs Review* 32, no. 4 (1997): 515, https://doi.org/info:doi/10.1177/107808749703200404.
[21] Randall Mason, "Economics and Historic Preservation: A Guide and Review of the Literature" (Washington D.C.: The Brookings Institution, 2005), 47–49.
[22] Mohamed Rayman, "Adaptive Reuse: A Review and Analysis of Its Relationship to the 3 Es of Sustainability," ed. Boyle Robin, trans. Tangari Joseph, *Facilities* 35, no. 3/4 (January 1, 2017): 143, https://doi.org/10.1108/F-12-2014-0108.
[23] Gillian Foster, "Circular Economy Strategies for Adaptive Reuse of Cultural Heritage Buildings to Reduce Environmental Impacts," *Resources, Conservation and Recycling* 152 (2020): 2, https://doi.org/10.1016/j.resconrec.2019.104507.
[24] Rayman Mohamed, "Adaptive Reuse: A Review and Analysis of Its Relationship to the 3 Es of Sustainability," 142–43.
[25] Foster, "Circular Economy Strategies for Adaptive Reuse of Cultural Heritage Buildings to Reduce Environmental Impacts," 3.
[26] Ibid., *2.*
[27] Ibid., *3.*

foster community and reinforce neighborhoods. New urbanism - a popular planning theory today - incorporates throughout its charter (published in 1996) the integration of heritage properties within the built environment. The charter demands "the preservation of our built legacy", and that the "preservation and renewal of historic buildings, districts and landscapes affirm the continuity and evolution of urban society."[28]

While each of the social benefits described above may also appeal to individual, socially responsible developers and their limited partners, the private sector is predominantly driven by profit-seeking and wealth accretion. Rehabilitation and adaptive reuse developments can yield profits at the same level (and sometimes greater) than typical ground-up developments. Today, it is increasingly seen as a viable, opportunistic asset class.

Many of the opportunities and benefits of specific interest to the private sector are highlighted below.

Location: A function of cities growing outward as they expand, historic buildings in urban areas are often in exceptional locations and can be adapted into iconic properties. A former mill or factory building located in a prime riverfront location or a former bank headquarters in a central business district (and built to the 19th century's highest standards) might not meet modern office demands, but either could serve as a fantastic location for a hotel and entertainment venue.


Two adaptive reuse projects opened in the last 15 years. On the left (image by Doug Kerr) are the Cork Factory Lofts, completed in 2007, a conversion of the former Armstrong Cork Factory to residential apartments on the banks of the Allegheny River in Pittsburgh, Pennsylvania. On the right (image by EPR Architects) is central atrium at The Ned, a rehabilitation of the former Midland Bank headquarters in the City of London which was converted to a hotel and entertainment destination in 2017. [29]

[28] CNU, "The Charter of the New Urbanism" (Washington D.C.: Congress for the New Urbanism, 2001).
[29] EPR Architecutrs

Cost benefits compared to ground up construction: In urban areas, especially where land costs are high, the economics of acquiring a building and repurposing it can be less costly than site acquisition and development of a new structure, especially if there is no ability to increase floor area ratio (FAR). Furthermore, rehabilitations and adaptive reuses can reach stabilization faster than the alternative of permitting a new development, demolishing an old building and constructing a new one.

Ability to phase: Reuse projects both large and small can provide the option to phase a rehabilitation and open parts of a completed building over time. By doing this, developers can reduce the riskiness of a project, control costs and avoid bringing an oversupply of space to the market.

Grandfathering: Zoning or planning limits (based upon FAR in the US or plot ratios in the UK) that were in place when the building was initially constructed might be greater than contemporary planning regulations may allow. This means that if the historic structure was razed, a new building could not be built to the same density.

Historic preservation meets market demand: Historic structures can present prime opportunities to meet current market demands. Buildings of architectural distinctiveness might make perfect candidates for hotels, while former industrial buildings with high ceilings and wide spans are prime targets for residential or commercial conversions. Developers will often underwrite projects on the basis that they will be able to charge market rent for rehabilitated (reused) buildings. However, they might also incorporate sensitivity analyses anticipating higher rents on the basis that the project becomes "iconic" due to its unique character.

Private incentives: Private organizations from the local to the international level foster historic preservation and reuse by offering grants, expertise and technical assistance to developers. This is especially the case when a building is at risk of being demolished.

Government incentives: Governments often incentivize developers with lower impact fees and tax benefits to make rehabilitation and adaptive reuse projects more financially attractive. Incentives can often be layered on one another too. For example, in the United States, historic tax credits at the federal and state level can be combined and paired with low income housing and new market tax credits. Together, the credits – which are funded through tax-equity syndicates - can account for up to 40% of redevelopment costs. In the United States, the National Park Service indicates that since the inception of the rehabilitation investment tax credit (RITC) program over $162 billion (inflation adjusted) of private funds have been invested in historic buildings taking advantage of various government incentives.[30] See Sections 5 and 6 for a comparative review of government incentives in the United States and the United Kingdom.

2.4. Challenges of historic rehabilitation and adaptive reuse

Historic rehabilitations and adaptive reuse projects are considered opportunistic investments for good reason: in general, compared with other parts of the real estate market, they are riskier, harder to underwrite and more difficult to finance, and they typically present unique challenges, for example:

Construction costs: Given the comparatively older age of buildings, mechanical systems (electrical, HVAC, plumbing) will frequently need to be updated to both conform to contemporary regulations and to meet modern day market expectations – especially in the case of a change of use. Further, a sizable amount of a development budget may need to address upgrades to meet current accessibility requirements and building codes, health codes and ordinances.

Shortages of specialist labor and materials: Due to the complexities of rebuilding and restoring architecturally significant or structurally critical elements, specialist labor and materials might be required. Both special labor and materials are more expensive and difficult to source, thus potentially driving up costs and extending completion timelines. Examples could include the difficulty of finding masons with experience to repoint a 19th-century-brick mill building or finding replacement brownstone for an older urban edifice.

Listing of buildings: When buildings or districts are designated as being historically significant, the added regulation could reduce the ability to modify or add to a building, thus decreasing the development value of the site. In addition, laws and ordinances may require specific consents for historic structures before works can be undertaken annulling as-of-right development. Further, urban infill projects in historic districts may also have restrictions placed on their design, height and mass.

Structural Uncertainty: Many historic buildings that might serve as target adaptive-reuse opportunities may have been vacant for long period of time. Parts of the building might be mothballed, or as-built drawings may not exist. Developers must accept the risk that starting works on a vacant building could yield discoveries (both above and below ground) that make redevelopment not viable.

[30] Technical Preservation Services and Rutgers Edward J. Bloustein School of Planning and Public Policy, "Annual Report on the Economic Impact of the Federal Historic Tax Credit for FY 2018," 7.

Planning risk: Planning and zoning committees treat historic properties differently than modern builds. Often, they will be led by a policy that prioritizes historic preservation. Approval boards will voluntarily (or sometimes as required by law) consult with local preservation groups and may restrict the degree with which historic buildings can be modified or added to. At the same time, city ordinances might require minimum parking amounts and densities depending on the intended use of the property.

Availability of debt financing: Banks lend comparatively less often for historic rehabilitation projects than for new builds, given the added uncertainty surrounding adaptive-reuse projects. Also, applicable bank-regulatory standards might make banks hesitant to lend, given the absence of recognized market data to support their underwriting files for adaptive-reuse projects and rehabilitations.[31] Altogether, historic renovation projects are considered risky opportunistic developments and will likely have to accept lower LTV's than core, core-plus, value-add and ground up developments.

Availability of equity capital: Given the high-risk premium associated with adaptive reuse and rehabilitation projects, sources of equity partners are scarcer. Large institutional investors and insurance providers with lower risk-thresholds are rarely possibilities as equity capital. Further, in the United States, given some of the restrictions in order to qualify for tax credits such as minimum hold periods, potential investor pools are further diluted. Those investors that do invest in adaptive reuse and historic rehabilitation projects will often expect minimum IRR's of 18%.

Public pressure: Public opinion can make or break a project. Properties with any historic significance or those that have been part of a neighborhood for any significant amount of time will generate strong sentiments, both positive and negative. Saving a building might bolster support from one part of the community while a proposed change-of-use for that structure could alienate another part, with, in either case, unpredictable impact upon threatening whether the project receives planning approval.

3. Historic preservation in the United States and United Kingdom

3.1. The roots of historic preservation in America

Early conservation efforts sought to protect military sites that were vital in the protection of America's nascent sovereignty. The preservation of Fort Wayne (the fort itself, not its urban namesake) and of the site of the Battle of Fort Meigs from the War of 1812 was organized in the 1840s primarily by individuals and without government support.[32] Soon after, the first recognized preservation movement was organized

[31] David Wilson, "Adaptive Reuse: Turning Blight into Bright," 3Q18 Commercial Real Estate Insights (Chicago: CCIM Institute, 2018), 9.
[32] Tyler, Tyler, and Libigel, *Historic Preservation*, 29.

to protect George Washington's estate, Mount Vernon, in 1853. This successful movement would create the foundation for other patriotic organizations - such as the Daughters of the American Revolution – to be established with the mission of preserving buildings associated with important local figures. Still at this time, help sought from the federal government was refused.[33]

The US government showed only sporadic interest in the protection of historic monuments until the end of the 19th century. The first federally led preservation efforts took the form of safeguarding natural conservation areas and early Native American monuments such as Yellowstone National Park in 1872 and the Casa Grande ruins in Arizona. Casa Grande would become the first federally protected structure in the United States in 1892. As other prehistoric Native American sites were discovered in the American West, vandals pillaged and damaged many of them, creating the need for federal management and protection.[34] The US government (under the stewardship of Theodore Roosevelt) responded by introducing the Antiquities Act in 1906 to protect ancient, indigenous monuments – the first federal preservation legislation. The Antiquities Act effectively gave the president the right to safeguard sites (both built and natural) from destruction by declaring them national monuments. Ten years later, the National Park Service was established as an organization within the Department of the Interior. The NPS had the mandate to assign and protect lands and sites that were too large for individuals and localities to manage. Today, the National Park Service is the central preservation instrumentality of the United States federal government.

By the middle of the 19th century, the effects of the industrial revolution had fundamentally altered the US economy. It would also disrupt the places where people lived and society's views of the past and present. And yet, some of the very people that most exploited new economic realities were in the forefront of protecting America's built landscape. Henry Ford's Greenfield Village in Dearborn, Michigan, John D. Rockefeller Jr.'s efforts to restore and reconstruct Colonial Williamsburg in Virginia and other smaller scale, open-air museums – such as Old Sturbridge Village in Massachusetts – all date to the early 20th century.[35] These museums, while celebrating history, did little to integrate with the modern environment and essentially served as reminders of a quainter way of life – thanks, ironically, to the same people who were disrupting it.

The turn of the century 20th century also saw the emergence of private organizations with broader goals for the preservation of examples of early American architecture, neighborhoods and places of historic interest.

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[33] Barthel, "Historic Preservation," 88.
[34] United States Conference of Mayors Special Committee on Historic Special Committee on Historic Preservation, *With Heritage So Rich: A Report* (Random House, 1966), 48.
[35] Barthel, "Historic Preservation," 93-94.

Many of the places deemed to need the most protection were upper-class neighborhoods where the preservationists lived.[36]

From 1900 to the Great Depression, the United States would witness rapid modernization through technological advancements that would fundamentally transform urban life and character, two of the most consequential being 1) the development of the steel-framed building, which would permit taller buildings and greater urban densities, and 2) the invention of the automobile, which would necessitate wider streets and services serving an increasingly auto-centric culture.

Such rapid changes in land use, together with the growth of industry, prompted local governments to begin to institute land use and development controls in the early 20th century. First in Los Angeles in 1908, an early zoning system was established to create residential and industrial districts separated from one another. In 1916, in New York City, the first zoning regulations were enacted in response to the construction near Wall Street of the Equitable Building, a 40-story structure with a floor-area ratio of 30 that cast shadows on surrounding buildings and blocked sunlight. The regulations placed limits on floor-area ratios on buildings in different parts of the city (structures in residential neighborhoods were to be shorter) and introduced requirements for building setbacks that led to so-called "wedding-cake architecture." In 1922, the Federal government passed the Standard State Zoning Enabling Act, encouraging state governments to pass laws enabling zoning in their jurisdictions. By the end of the 1920s many American urban areas had instituted zoning as their primary form of development control, and the landmark 1926 Supreme Court case of *Village of Euclid vs. Ambler Realty* had affirmed the constitutionality of zoning ordinances by siding with the village of Euclid against a speculative developer Ambler Realty. Euclid, a Cleveland suburb, instituted a zoning policy with the intention of protecting residential areas from unchecked industrial expansion in the city's periphery. Ambler Realty claimed that the city's zoning designation had significantly and unconstitutionally reduced the land value of its property, but the Supreme Court sided with the State and city in their adoption of zoning rules perceived to be in the general public interest.

With land-use ordinances having obtained constitutional backing in the 1920s, it is not surprising that the first local historic-preservation ordinance was legislated in 1931. Charleston, South Carolina was the first city to do so, seeking to prevent the destruction of historic buildings and specifically to stop the construction of a gas station in the historic part of town.[37] [38] The ordinance also called for the establishment of an

[36] Ibid., 94.
[37] Charles Edwin Chase, "Charleston: Guarding Her Customs, Buildings, and Laws," *Historic Preservation Forum* 13, no. 1 (1997): 8.
[38] Tyler, Tyler, and Ligibel, *Historic Preservation*, 38.

architectural review board. The review board was to be consulted if the facade of any structure in the district was to be modified.[39] While this ordinance and regulatory district were established without state approval (and conceivably might have been overturned in court, had it been challenged), local support for the measure set a national precedent. The Vieux Carré quarter in New Orleans, Louisiana was designated as an historic district shortly thereafter.[40]

The Great Depression played a crucial role in expanding the size, focus and enthusiasm around historic-preservation practices in the United States by creating job opportunities for almost 1,000 out-of-work architects. A make-work program for jobless architects, they were tasked with documenting historic structures as part of the development of the Historic American Buildings Survey (HABS) in 1933. The program, administered by the National Park Service, mandated "the survey shall cover structures of all types from the smallest utilitarian structures to the largest and most monumental. Buildings of every description are to be included so that a complete picture of the culture of the times as reflected in the buildings of the period may be put on record."[41] After a lull during the Second World War, the program resumed – this time led by architecture students – documenting over 35,000 structures (some now demolished) to this day.

In 1935, the federal government passed the Historic Sites Act which importantly asserted that the historic preservation of buildings and sites for public enjoyment would be a national policy. This act would ultimately lay the foundation for historic-conservation policy after World War II.

3.2. The roots of historic preservation in the United Kingdom

The concept of historic preservation in the United Kingdom predates the United States, but like the US it accelerated in response to the industrial revolution. The movement was led less out of a sense of patriotism, but more in revulsion with the way industrialization was changing the British landscape.

Led by artists and intellectuals (with Ruskin at the forefront), the movement lionized past forms of architecture (baroque, gothic, Tudor) and older ways of life in their belief that age in and of itself was virtuous and that the rapid newness of industrialization would threaten the landscapes they loved.

[39] Ibid., 38
[40] Reichl, "Historic Preservation and Progrowth Politics in US Cities," 529.
[41] Barthel, "Historic Preservation," 95.

The first organization led by these men was the Commons Preservation Society in 1865. The Society sought to protect access to commonly held land for the enjoyment and use of the public, rather than allow it to be enclosed by abutting private landowners. The success of the Commons Preservation Society in preserving areas such as Hampstead Heath, Wimbledon Common and Berkhamsted Common led to the creation of the Society for the Protection of Ancient Buildings in 1877.[42] The stated goal of this society was to prevent the demolition or "senseless" restoration and alteration of historic buildings. The group's efforts were successful and influenced the passage of the Ancient Monuments Protection Act of 1882. The act placed the protection of ancient monuments, such as Stonehenge, in the hands of the British state, identifying 68 such sites across England, Wales, Scotland and Ireland (then under English administration). A subsequent act in 1900 granted public access to the monuments.

Support for movements led by Ruskin, John Stuart Mill and William Morris (amongst others) grew beyond the artistic and intellectual classes and proliferated within local communities throughout Victorian Britain. The groundswell at the grassroots level ultimately paved the way for the foundation of the National Trust for Places of Historic Interest or Natural Beauty in 1895.

The National Trust as it is commonly known, then and today, became the crucial organization in the movement for the protection of historic buildings in the United Kingdom. It was founded as a public, nonprofit company backed by donations from wealthy philanthropists and individual members. The term 'trust' was used rather than 'company' to stress the non-commercial character of the organization. The National Trust first gained recognition by defending against unfettered development in the "Save the Lake District" campaign by galvanizing a small but loyal (and wealthy) membership base. With time, the successes of the National Trust grew, as did its membership and the number of properties that it managed. The Trust would eventually stop accepting any and all properties offered for it to manage and launched the "Country House Scheme" which would provide funds to families who were at risk of losing their estate in exchange for opening parts of their home to visitors at certain times of year. In 1931, Scotland established The National Trust for Scotland, leaving the National Trust in charge of England, Wales and Northern Ireland.

Also, in 1931, the British government created the first government grant program for ancient monuments, and in the 1932 Town and Country Planning Act put in place orders to prevent the destruction of threatened historic buildings. That same year, in Scotland a list of buildings that were quintessentially Scottish was

[42] Ibid., 90.

compiled by a Scottish nobleman, the Marquess of Bute, which would serve as a precursor for the British historic "listing" system. Twelve years later, the Town and Country Planning Act 1944 would begin to formalize the "listing" system by allowing local authorities to place a preventative preservation order on alterations, extensions and demolitions of designated historic buildings.[43]

3.3. The US after the Second World War: the origins of modern preservation policy

After World War II, the United States would commence the professionalization and bureaucratization of the historic movement through the foundation of national and private organizations, the legislation of conservation laws and the establishment of legal precedents.

An important first step was the formation of the National Trust for Historic Preservation in 1949. The National Trust, modeled on the British National Trust, was established to bridge public and private efforts to protect buildings across America. The Trust's stated mission was to:

1) identify and act on important national preservation issues;
2) support, broaden, and strengthen organized preservation efforts;
3) target communications to those who affect the future of historic resources;
4) expand private and public finance resources for preservation activities.[44]

The Trust was critical in bringing historic preservation mainstream in the United States and in advocating for the protection of buildings at risk of demolition during urban renewal in the 1950s and 1960s. The National Trust was also an important lobbyist for the passage of stronger and wider conservation legislation, including the Preservation Act of 1966.

The National Historic Preservation Act of 1966 was, and remains, the most important piece of legislation to bolster historic preservation in the United States. Passed as one of Lyndon Johnson's Great Society legislative acts, the law tied to his vision of a socially and culturally progressive America.[45] The act garnered support through the success of *With Heritage So Rich* – a book published by the National Trust and the US Conference of Mayors that noted that, of the 12,000 buildings that had been documented in the HABS study during the Great Depression, more than half had been destroyed or were damaged beyond repair.[46] With its passage, the National Historic Preservation Act:

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[43] Charles Mynors, *Listed Buildings, Conservation Areas and Monuments*, 4th ed. (London: Sweet & Maxwell, 2006), 8.
[44] William J. Murtagh, *Keeping Time : The History and Theory of Preservation in America.* (New York : John Wiley & Sons, 1997., 1997), 47.
[45] Richard Swaim, "Politics and Policymaking: Tax Credits and Historic Preservation.," *Journal of Arts Management, Law & Society* 33, no. 1 (2003): 32.
[46] National Park Service, "National Historic Preservation Act - Historic Preservation (US National Park Service)," National Park Service, December 2, 2018, https://www.nps.gov/subjects/historicpreservation/national-historic-preservation-act.htm.

- mandated the establishment of the National Register of Historic Places, which officially identifies and catalogues buildings of historic significance in the United States;
- advocated for the creation of local historic districts;
- encouraged the foundation of state historic preservation offices;
- created an advisory council to review federal development proposals that encroach on historic places in what have come to be called "Section 106 reviews"; and
- most important for rehabilitation and adaptive reuse, broadened the focus of protection to neighborhoods and buildings whose architectural forms were worth preserving for what they were, without regard to whether anyone of historic import had lived in the building.

Against a backdrop of the retrenchment of the manufacturing industry in today's "Rust Belt" cities and the demolition of buildings and entire neighborhoods as part of urban renewal plans, the National Historic Preservation Act helped to formalize historic preservation at all levels of US government. "Cities were on the front line of conflicts over urban renewal, and during the 1960s, many cities responded with landmarks laws to protect historic structures from the growing tide of destructive renewal projects."[47]

The bicentennial of the United States of America in 1976 was another crucial moment for historic preservation and the beginning of a uniquely American approach to adaptive reuse. The bicentennial itself was important in encouraging people to appreciate their history and to visit places of historic importance – thus spurring "heritage tourism."[48] More important, the passage of the Tax Reform Act of 1976 provided the early framework for the use of tax credits to encourage private investment in historic rehabilitation.

Significant tax reform was launched in the late 1970s, in part to catapult the United States out of a national recession and energy crisis by creating a new market, driven by the real estate industry.[49] Up until that point, developers that were faced with choice of rehabilitating a building or demolishing a structure and rebuilding would almost always choose the latter option, given the tax incentives offered. The 1976 Act, however, made two changes to the tax law which would make the demolition of structures less attractive. First, it removed a provision in the tax code that permitted accelerated depreciation for new income-producing buildings as compared to existing structures. Second, it cancelled a provision that allowed demolition expenditures and the remaining undepreciated cost basis of a demolished building to be written

[47] Reichl, "Historic Preservation and Progrowth Politics in US Cities," 513.
[48] Tyler, Tyler, and Ligibel, *Historic Preservation*, 54.
[49] Renee Tapp, "Layers of Finance: Historic Tax Credits and the Fiscal Geographies of Urban Redevelopment," *GEOFORUM* 105 (October 2019): 16, https://doi.org/10.1016/j.geoforum.2019.06.016

off in the year demolition occurred.[50] At the same time, a preservation-friendly tax advantage was offered to developers by permitting the accelerated depreciation of buildings where substantial rehabilitation was undertaken helping to offset costs in the initial years of the project.[51]

Just two years later, in 1978, the Supreme Court ruled in favor of local preservation ordinances by siding with New York City's local preservation law and landmarks commission in the *Penn Central Co. vs. City of New York* case. This milestone case enforced the rights of cities to be able to designate historic landmarks and prevent their demolition or significant alteration. The court determined that it was constitutional for local planning boards to determine whether development would adversely affect the wellbeing of the city. The effect of the decision 1) saved Grant Central Terminal from redevelopment, 2) reinforced preservation legislation, 3) brought national attention to historic preservation, and 4) affirmed that the strongest protectors of the historic environment in the United States are local governments.

3.4. The UK after the Second World War: the origins of modern preservation policy

After the Second World War, Great Britain embarked on a new approach to development control, a new period of reconstruction, an embrace of modern architectural forms (Modernism) and a greater organization and administration of historically and architecturally significant buildings.

The 1947 Town and Country Planning Act launched the modern planning system in the UK. The Act mandated that consent by a local planning body (established as part of the act as well) would be required before any new development or major alteration – of historic or normal structures – was undertaken. Local authorities would control changes of use, give grants and loans at their discretion and create development plans for their constituencies. These development plans were meant to be updated frequently, in consultation with constituents, and would reflect the views of the ruling party (usually Conservative or Labour) in the locale. As a last resort, planning decisions that were overly contentious could be called in by Secretary of State essentially giving the national government the power to make decisions on local planning affairs.

In the United Kingdom a system of zoning was not established. Development plans served similar purposes and discretionary approvals would be granted (or denied) by local and regional planning authorities. The

[50] Stephen F. Weber, "Historic Preservation Incentives of the 1976 Tax Reform Act: An Economic Analysis" (Washington D.C.: National Bureau of Standards, Department of Commerce, 1979), 2.
[51] Tyler, Tyler, and Ligibel, *Historic Preservation*, 57.

foundation of the British planning system rests on principles of flexibility, case law, development plans and control.

The Town and Country Planning Act of 1947 also introduced an article requiring continuation of the listings of historic buildings started by the Marquess of Bute. Subsequent parliamentary acts in the early 1950s gave government ministers the right to allocate funds for the repair and maintenance of "buildings of outstanding historic or architectural interest and associated land or objects," and/or to make grants available for the National Trusts to acquire buildings.[52]

In its nascence, the listing system did not hold much power to prevent demolition or clumsy alteration. Just as in the United States though, in the 1960s a British version of urban renewal threatened many buildings of historic, architectural and cultural significance from the 19th century. In response, the government conferred broad powers on planning bodies that gave them blanket authority to grant the ability to demolish or alter listed buildings. As with the demolition in the United States of New York City's Penn Station, the 1963 demolition of London's Euston Station and its front arch served as the catalyst for Britons to demand greater protections for their historic structures.

In 1967, again driven by significant public pressure, the 1967 Civic Amendments Act led to the creation of the first conservation zones – though relatively weak in authority - in the United Kingdom. In 1968, the Town and Country Planning Act mandated that consent was automatically required for the demolition of buildings that were incorporated into the listing scheme, and in 1974, controls were put in place over the demolition of non-listed buildings in conservation areas.[53] [54]

A debate over development versus preservation was again sparked in the 1970s over the future of Covent Garden in central London. Historically, Covent Garden was a food market housed in a neo-classical arcade built in the 1830s. For the next 140 years, the market grew in size and the area became more congested with traffic. The market functions were ultimately moved several miles away and the building sat vacant for many years. Developers saw a great opportunity, especially given its central location, for the redevelopment of the site with modern buildings. Preservationists called for the building's reuse and the protection of buildings in the immediate vicinity. Eventually a compromise was reached which would retain the building and convert it into a retail and entertainment space like Quincy Market in Boston. The

[52] Mynors, *Listed Buildings, Conservation Areas and Monuments,* 8.
[53] Jack Warshaw, Stephen Levrant, and Philip Grover, *Conservation of the Historic Environment : A Good Practice Guide for Planners.* (London : Royal Town Planning Institute, c2000., 2000), 4.
[54] Mynors, *Listed Buildings, Conservation Areas and Monuments*, 15.

renovation was a success, both by satisfying preservationists and by transforming the surrounding area into a retail zone geared heavily towards tourism; it signally "demonstrated that property developers could prosper equally from renovation and new construction."[55]

Before and after images of the Covent Garden as a food market in the 1910s (left – [Popperfoto/Getty Images]) and in 2018 (right – [David Sury]) as a retail destination.

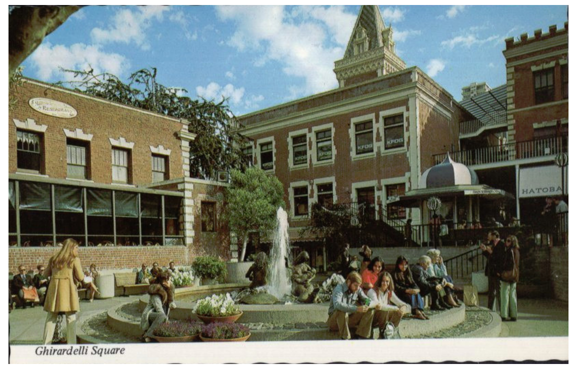
The National Heritage Act of 1983 established the Historic Buildings and Monument Commission, which would become "English Heritage" and be given a role in historic-designation approvals as part of the Local Government Act of 1985.[56] English Heritage is intended to manage historic buildings in public ownership, advise government officials in their exercise of powers as they relate to historic structures and most importantly, "to act as a statutory consultee on the more significant applications for planning permission and listed building consent."[57] In subsequent years, additional acts were passed that specifically addressed the enforcement of historic preservation laws, but did little to alter the substance of the protections and process of listing. English Heritage is not a formal part of the government and accordingly differs from organizations in Scotland (Historic Scotland), Wales (Cadw) and Northern Ireland (Built Heritage directorate of the Environment and Heritage Service Agency), each of which is wholly part of its respective government.

3.5. US politics, the real estate market and historic rehabilitation from the 1970s to the present

In the United States, "by the 1970s the potential of historic preservation as a strategy for commercial development was apparent. Government studies justified preservation as an economic strategy for local officials by providing evidence of increased values and tax revenues in revitalized historic districts and by emphasizing its potential for reducing local political conflict."[58]

[55] Susan S Fainstein, *The City Builders: Property, Politics, and Planning in London and New York* (Oxford, UK: Blackwell, 1994), 43.
[56] Mynors, *Listed Buildings, Conservation Areas and Monuments,* 17.
[57] Ibid., 25.
[58] Reichl, "Historic Preservation and Progrowth Politics in US Cities," 519.

In the same period, adaptive reuse and historic rehabilitation also would find genuine demand in the market from “upwardly mobile young investors” who prized the “restoration of architecturally rich older buildings (which) offered status and distinction” and offered a valued alternative to the “uniformity and anonymity of the modernist, International Style boxes being constructed by the renewal process.”[59]



Postcards (unattributed) depicting Trolley Square (left) after opening in 1972 and Ghirardelli Square (right) after opening in 1964.

Further, early, commercially driven, large-scale adaptive reuse projects such as Ghirardelli Square in San Francisco and Trolley Square in Salt Lake City gained widespread national acclaim in the 1960s and 1970s for their successful conversions, attractive yields for developers and the ability to serve as foundational sites for urban revitalization.[60]

A natural market was developing for historic rehabilitation and adaptive reuse projects in the United States.

In the same year that historic conservation protections were strengthened by the landmark *Penn Central* Supreme Court decision, the 1978 Tax Act introduced the first Rehabilitation Investment Tax Credit (RITC). The RITC permitted developers a tax credit, calculated as 10% of rehabilitation costs of historic structures intended to be income-generating. The credit was more attractive than a tax deduction, of course, as it allowed the claimant to remove from their taxes owed an amount equal to 10% of the total qualifying expenses, as opposed to merely excluding that amount from their taxable income. With the credit, in many cases, developers could generate higher returns than demolitions and new builds.

By the 1980s, through the RITC, the United States had established a distinctly American, market driven form of preservation. The program reacted to the American development environment and integrated politically driven, economic growth models of neoliberal tax policy into the historic preservation

[59] Ibid., 517.
[60] Weber, “Historic Preservation Incentives of the 1976 Tax Reform Act: An Economic Analysis,” 2.

movement. Preservationists and developers – two natural antagonists were united in the preservation of buildings.

The initial success of the RITC led to its expansion in the early 1980s with the Economic Recovery Tax Act (ERTA) and would be codified in the Tax Reform Act of 1986, passed during the Reagan administration. It would stay in place, essentially unchanged until the passage of the 2017 Tax Cuts and Jobs Act. In the first ten years of the tax credits existence, "nearly 17,000 projects, valued at $11 billion, took advantage of the program," and several states started to organize their own tax incentive programs to stimulate urban revitalization through redevelopment.[61]

The Tax Reform Act of 1986 offered incentives for developers who were seeking to rehabilitate and improve buildings that were either historic or non-historic. Non-historic buildings were classified as non-residential buildings constructed before 1936 and qualified for a 10% tax credit against qualifying expenses. Historic buildings must have been considered a Certified Historic Structure - meaning that it was on or eligible to be placed on the National Register of Historic Places – or was designated a crucial part of a federally recognized historic district. Historic buildings qualify for a 20% credit and must too be used for an income producing purpose. The RITC from the 1986 act allowed the credit to be redeemed immediately and in full once works had been completed. The law also permitted that the tax credits be syndicated and passed through to individuals seeking to reduce their taxes.

In 1980, after a three-year pilot program in three midwestern towns, The National Trust for Historic Preservation launched the Main Street America program. The program was started in response to the deterioration of downtowns as shopping malls transformed the retail sector. Main Street America specifically targeted the revitalization of commercial districts through preservation-based economic development in smaller towns or distinct neighborhoods in large cities. Leveraging their national presence, the Trust organized a series of incentives at the local level to promote historically conscious real estate development in places that were (and are) of less interest to large commercial real estate developers.

The late 1980s real estate market bust created significant opportunity for adaptive reuse in the 1990s. A construction boom in many US cities in the 1980s would lead to an oversupply of office space and high vacancy rates in Class B and C office buildings which had comparatively smaller floorplates to Class A

[61] Tyler, Tyler, and Ligibel, *Historic Preservation*, 250.

buildings. Coupled with policies in many US cities to create more residential units to absorb a growing urban population and a renewed gentrification spurred by the prosperity of the mid-1990s "conversions of underused office buildings to residential properties gained a firm foothold in big cities." [62] At the time, many of these conversions were not of historic buildings but were more profitable than demolition and rebuilding.

A market-driven trend of adaptive reuse would continue in the 21st century's first decade. A study conducted between 2000-2010 in ten major US cities found that at least 40% of buildings that claimed a rehabilitation tax credit had initial uses of office and commercial space. After rehabilitation, the number of buildings converted to residential and mixed-use increased while the number of commercial and industrial buildings decreased. "A substantial amount of adaptive reuse occurred, often removing oversupplied office space and vacant or underused industrial buildings and fulfilling the growing demand for downtown housing and mixed-use development." [63]

The aftermath of the financial crisis of 2008 was a boon for historic refurbishments and adaptive reuse too as the financialization of real estate assets matured. The historic tax credit became increasingly viewed as another commoditized piece of a bundled real estate asset that could be bought and sold on secondary markets.[64] Nearly 40% of the total amount invested in the program has come in the 10 years after 2008.[65]

Last, in the last two decades, some local governments - sometimes in partnership with the Main Street America program - have adopted ordinances friendly to adaptive reuse. This zoning overlays specifically engender reuse and rehabilitation using a variety of incentives. For example, Los Angeles, the first city to adopt such an ordinance (in 1999), offers an expedited approval process and a separate set of zoning and building code requirements compared to new builds. Other cities such as Chicago, Tucson, Phoenix, and St. Petersburg have similar adaptive reuse specific ordinances in place and still more cities are considering their adoption.

3.6. UK politics, the real estate market and historic rehabilitation from the 1970s to the present

The 1970s were a difficult time in Britain. The country was exposed to global and local economic crises, collapsing industry (coal mines in particular) and weak, thin parliamentary majorities or weaker minority

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[62] Robert A. Beauregard, "The Textures of Property Markets: Downtown Housing and Office Conversions in New York City," *Urban Studies* 42, no. 13 (2005): 2436.
[63] Stephanie Ryberg-Webster, "Preserving Downtown America: Federal Rehabilitation Tax Credits and the Transformation of US Cities.," *Journal of the American Planning Association* 79, no. 4 (2013): 273.
[64] Tapp, "Layers of Finance: Historic Tax Credits and the Fiscal Geographies of Urban Redevelopment," 14.
[65] Ibid., 15.

governments. Three prime ministers came to power between 1970 and 1979 and the country would require an economic bailout from the IMF in 1974 when the pound collapsed. With strikes either occurring or on the verge, the UK government was in need of money and turned to real estate. "In the latter part of the 1970s, as had been the case in the US for a much longer time, commercial redevelopment became a specific tool of British urban policy."[66] Margaret Thatcher was elected Prime Minister in 1979 and would stay in power until 1990. The "Iron Lady" introduced deregulation, privatized nationalized industries and embraced free-market policies. Her government's efforts to increase credit helped to expand the economy.[67]

"After the Thatcher government took office in 1979, [it] introduced a series of measures intended to spur private economic activity and diminish local authority activism. In 1982, the capital gains tax was indexed to the rate of inflation, greatly increasing the potential profitability of property ownership; reduction of corporation taxes further encouraged activity by property companies… Through a series of circulars, legislation, and decisions by the Secretary of State for the Environment, it pressed local authorities to grant planning permission more readily."[68] Until that time, "planning had been archaic, disorganized, unpredictable, fraught with pitfalls."[69]

The United Kingdom was fundamentally transformed by government policies enacted during the Thatcher years. Essentially, from the beginning of the 1980s, the Conservative government reduced the state's role in development control. Before then, the British state played the crucial function in both promoting and regulating development.[70] One way this was done was via the establishment of Urban Development Corporations (UDC's) - quasi-autonomous non-governmental organizations (QUANGO's) – that had finite lifespans and were intended to spur economic development in stagnating inner-city areas in England and Wales. These sites were located in major cities across the country including, Bristol, Cardiff, Manchester, Liverpool, Plymouth, Sheffield, and London to name a few. The UDC's were intended to regenerate areas – build housing, create jobs, improve transport networks, provide community facilities - by combining government planning power, funds and tax incentives with additional capital and development expertise from the private sector.[71] In these areas, development control powers were shifted from local authorities to the UDC. UDC's were given the right to acquire, clear and develop land. By 1997, the cumulative impact of thirteen UDC's accounted for:

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[66] Fainstein, *The City Builders: Property, Politics, and Planning in London and New York*, 4.
[67] Ibid., 7.
[68] Ibid., 38.
[69] Ibid., 39.
[70] Ibid., 15.
[71] Paul Lawless, "Urban Development Corporations and Their Alternatives," *Cities* 5, no. 3 (August 1, 1988): 278, https://doi.org/10.1016/0264-2751(88)90046-7.

- the reclamation of 3,553 hectares of derelict land;
- the completion of 40,576 housing units;
- the development of 7.65m square meters of commercial space,
- the creation of 222,194 permanent jobs; and
- £14,319,000,000 in committed investment from the private sector.[72]

London, the economic heart of the country, embraced several major development schemes too. This included 32 acres in the City of London at Broadgate in the late 1980s and 67 acres at King's Cross in Camden and Islington which would open only recently after failed attempts in the 1980s and 1990s. Additional developments were planned on former docklands such as London Bridge City development and over 97 acres at Canary Wharf located in East London. To note, the Canary Wharf site was facilitated by the London Docklands Development Corporation a UDC established in 1981. Combined, these developments cemented London's place as a world financial hub and also significantly increased the supply of office space in the United Kingdom.

As in the United States, the financial crash of 1987 and subsequent collapse of the property market had a significant impact in the United Kingdom – felt acutely in London - and created an opportunity for widespread adaptive reuse. New styles of working - driven by technological change - and competition modified the demands of what the modern office should look like. "Demand side changes of this kind in the UK, alongside recession, resulted in unprecedented high levels of under-utilization, long-term vacancy and redundancy in some types of building stock, particularly in the public and private office sectors, by the mid-1990s. Unlettable office space in the City of London alone reached 500,000 square meters by 1995. In other sectors, such as the rented housing market, there was a severe scarcity of supply and further dramatic increases in demand were predicted."[73] By the mid-1990s refurbishment activity would represent 42% of the total construction output in the UK (more than twice that in the 1970s) with change of use refurbishment (adaptive reuse), estimated to represent almost a quarter of investment at £ 5 billion.[74] Using several boroughs in the UK as a base case for study it was found that over a roughly two year period (January 1993 – November 1994) in London, office made up the largest original use (49.4% of all applications) while residential was the largest destination use (56.7% of all applications.)[75]

[72] Rob Imrie and Huw Thomas, *British Urban Policy: An Evaluation of the Urban Development Corporations* (SAGE, 1999), 25.
[73] David Kincaid, *Adapting Buildings for Changing Uses: Guidelines for Change of Use Refurbishment*, (London: Spon Press, 2002), 7.
[74] Ibid., 3.
[75] Ibid., 4.

From the mid 1990s onwards, despite the political differences of the Labour and Conservative parties, the United Kingdom's view towards real estate development as an engine for growth would remain. At the same time, so would restrictive government control over planning. Local authorities would increasingly levy charges in exchange for planning consents. These funds, Section 106 charges, which were intended to offset the effects of additional development were first introduced as part of the Town and Country Planning Act of 1990. Section 106 charges help to fund socially beneficial initiatives that might be prohibitively costly to finance via tax collection.

The United Kingdom, having grown significantly economically in the preceding two decades and then contracting as part of the 2008 financial crisis, still faces a chronic housing shortage. To address this issue, in 2010, the government undertook a series of consultations to whether planning guidance should be updated. Specifically at issue was whether changes of use to land or buildings that were classified as B1 (businesses, offices, research and development premises and light industry) B2 (general industrial) and B8 (storage & distribution) and converted to C3 (dwelling houses) should be considered permitted development. From the government perspective this would help alleviate the housing shortage.

From 2012 through to the present the government has loosened their rules on what is considered to be permitted development to not only address the housing shortage but also to generally promote development. Agreed permitted development includes both the change of use from commercial and industrial zones to residential.[76] While planning permission (and possibly listed building consent) would still need to be sought for the construction or alteration of a building, the planning uncertainty regarding change of use has been removed.

Writing a month subsequent to the UK's December 2019 elections, with Brexit now a near-certainty and with a Conservative government (typically development-friendly) in power currently and (given its sizable majority in those elections) for the foreseeable future, the author will be interested to see, going forward, how planning law may change and with what impact on historic conservation, adaptive reuse and rehabilitation in the UK.

[76] Office of the Deputy Prime Minister, "The Role of Historic Buildings in Urban Regeneration," Report, together with formal minutes, oral and written evidence (London: House of Commons, July 21, 2004), 9.

4. Contemporary preservation practice and policy in the United States and United Kingdom

4.1. The National Register and contemporary preservation policy in the United States

Having a building listed on the National Register of Historic Places is one of the strongest designations that can be afforded to buildings in the United States. Only National Monuments (like the Statue of Liberty, the Casa Grande ruins and George Washington's birthplace) and national landmarks (like the Golden Gate Bridge, the Telluride Historic District, Graceland and the Empire State Building) are considered of higher importance.

At the end of 2019, there are in the United States 128 national monuments, 2,622 national landmarks and more than 95,000 properties on the national register of historic places.[77] Whereas national monuments and landmarks are designated as properties with national influence, buildings on the national register are deemed to have greater state and local resonance. Buildings and structures on the national monuments and landmarks lists are automatically added to the national register of historic places.

In order for a building or district to be designated on the national register, one must follow a clearly defined process. Anyone can apply for any building or district to be placed on the register whether a property owner agrees or not. In practice, most nominations are prepared by historic consultants and societies, architecture firms, or affiliates of university programs.[78] The following process is typically followed:

1. Applications are made first to State Historic Preservation Offices (SHPO's) and the owners of the properties are notified.
2. If the owner rejects the proposal a separate eligibility process is undertaken by the National Park Service. If the owner accepts the proposal, the applicable SHPO reviews the application, as do State National Register Review Boards. This process takes at least 90 days.
3. If the proposal is approved at the state level, the application is sent to the National Park Service for final review within 45 days and (if confirmed) listing on the register.[79]

Placing a building on the national register does not require building owners to grant public access or bind the owner to undertake any specific maintenance works to the property. However, the National Park Service stresses that "listing properties in the National Register of Historic Places often changes the way

[77] Technical Preservation Services, "Federal Tax Incentives for Rehabilitating Historic Buildings: Report for Fiscal Year 2018" (Washington D.C.: National Park Service, 2019), 2.
[78] Tyler, Tyler, and Ligibel, *Historic Preservation*, 149.
[79] NPS Cultural Resources, "National Register of Historic Places" (National Park Service, US Department of the Interior, 2018), no page.

communities perceive their historic places and strengthens the credibility of efforts by private citizens and public officials to preserve their resources as living parts of our communities."[80]

In order to be approved and designated on the register, buildings must pass a series of criteria that examine the property's significance, age and integrity.

> "Criteria for Evaluation
>
> The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:
>
> A. that are associated with events that have made a significant contribution to the broad patterns of our history; or
> B. that are associated with the lives of persons significant in our past; or
> C. that embody the distinctive characteristics of a type, period, or method of constructions, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction;
> D. or that have yielded or may be likely to yield, information important in history or prehistory."[81]

The National Park Service goes further to specify the types of structures that would only qualify in exceptional circumstances. These include cemeteries, religious properties, birthplaces of historic figures, reconstructed historic buildings and/or properties that are fewer than 50 years old.

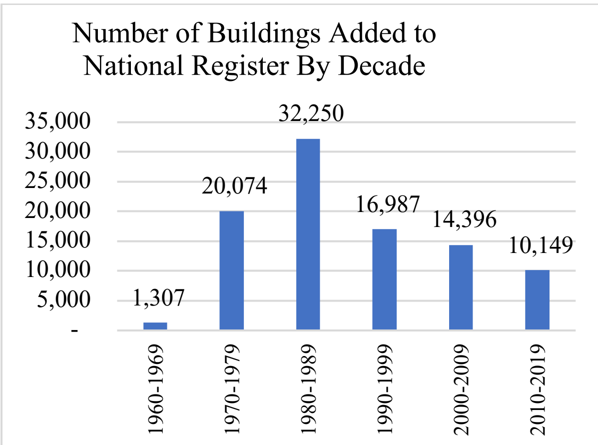
Today, more than 10,000 historic districts are listed with the National Park Service up from 2,300 in 2009. Historic districts are designated and treated at the national level in the same way as historic buildings.[82]

A property or district listed on the national register raises awareness, provides for a review of projects that might negatively affect historic structures and permit the use grants and tax incentives from federal programs. Importantly, however, listing a building on the register does not provide compulsory protections for the building itself. Listing on the national register does not prevent owners from developing or selling

[80] Ibid., no page.
[81] Ibid., no page.
[82] Norman Tyler, Ilene R. Tyler, and Ted Ligibel, *Historic Preservation: An Introduction to Its History, Principles, and Practice.*, 3rd ed. (New York : W.W. Norton & Company, 2018), 72.

property, stop federal, state, local or private projects on the site, or guarantee that financial incentives will be available for rehabilitation projects.

Figures relating to the evolution of places on the national register and a breakdown of places that are considered monuments, landmarks and registered historic places are below:



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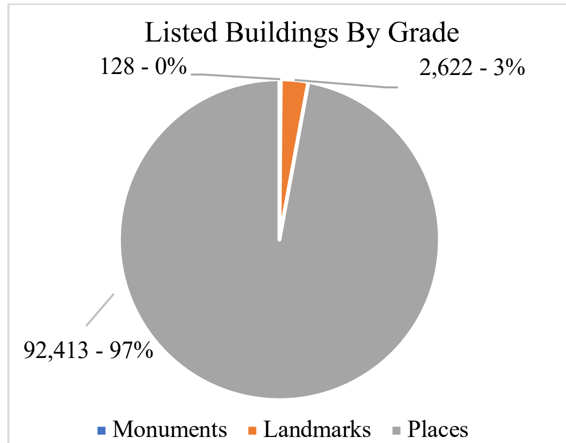

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One of the key tenets of the Historic Preservation Act of 1966 was the requirement that states establish SHPOs to manage and organize conservation activity at the state level. SHPOs have responsibilities which include:

a) conducting systematic surveys of historic properties within the state and specially to indicate properties that may not be designated and are at risk of demolition;
b) supporting the National Park Service in processing designations;
c) administering grants;
d) supporting local governments that do not have established local preservation organizations;
e) reviewing applications and make recommendations for projects to receive federal rehabilitation tax credits;
f) consulting in Section 106 reviews;[85]

States often have state level listing programs similar to the national register. Properties on state lists are designated by SHPOs. Depending on the state, places (both buildings and districts) listed on state registers may be treated identically to those on the national register or may have in place stricter limitations on

[83] Technical Preservation Services, "Federal Tax Incentives for Rehabilitating Historic Buildings: Report for Fiscal Year 2018" (Washington D.C.: National Park Service, 2019), 2.
[84] Technical Preservation Services, "Federal Tax Incentives for Rehabilitating Historic Buildings: Report for Fiscal Year 2018" (Washington D.C.: National Park Service, 2019), 2.
[85] Tyler, Tyler, and Ligibel, *Historic Preservation*, 56.

modifications or demolitions. States also have established Historic Preservation Review boards that review proposals for places to be included on the national register.

While states can offer stronger compulsory protection for historic buildings, it is at the local level where the strongest protections for historic properties are often stipulated. The reason for this is that the majority of land use control has been delegated to the local level. The Historic Preservation Act of 1966 permitted local governments to establish historic district and landmark commissions, administer legal ordinances, conduct design reviews and determine which places were of local significance to them. "There are as many as 3,000 communities in the United States that have historic districts, and at least 75 percent of those have some level of design review based on a local ordinance and administered by a design review board, historic district commission (HDC), zoning board of appeals or similarly empowered entity."[86] These design reviews prevent the encroachment of modern buildings that could disrupt the strong visual identity of locally designated historic districts. Landmark commissions such as those in New York (made famous from the *Penn Central* Supreme Court Case) can organize their own listing programs, place restrictions on landowners forcing them to seek approval before modifying or demolishing buildings in an historic district.[87] Despite the claims from some property owners that the restrictions on development in historic districts lower their property values, in many cases, the opposite is true. In New York for example, property values on a per-square-foot basis in historic districts between 1980 - 2000 grew at a faster rate than those outside.[88]

In the United States, all levels of government influence the designation and protection of historic places and impact them in different ways. While the federal government administers and sets guidelines for the system as a whole it has little compulsory power over owners. It is state and local governments – the police power – that ultimately have the ability and the responsibility to safeguard and embrace historic places via development control.

4.2. The National Heritage List and contemporary preservation policy in the United Kingdom

Anyone can make an application for a building to be listed - either through English Heritage or the other equivalent national organizations - though the Secretary of State is tasked with compiling and approving

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[86] Ibid., 115.
[87] Richard Wakeford, *American Development Control: Parallels and Paradoxes from an English Perspective.* (London : HMSO, 1990., 1990), 60–61.
[88] Edward L. Glaeser, "Preservation Follies: Excessive Landmarking Threatens to Make Manhattan a Refuge for the Rich. | City Journal," City Journal, Spring 2010, https://www.city-journal.org/html/preservation-follies-13279.html.

new buildings in consultation with English Heritage (and other equivalent organizations) and appointed inspectors. English Heritage (referred to as Historic England after 2015) had written a specific list of criteria to determine whether a building should be added to "The List" - as it is commonly referred to. They are:

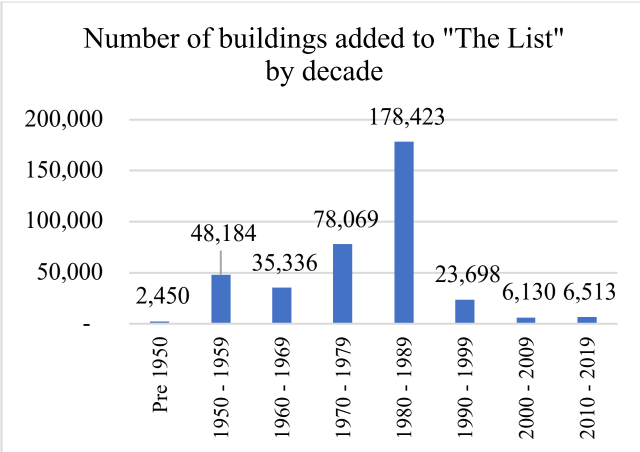
1) "Architectural interest – the lists are meant to include all buildings which are of importance to the nation for their architectural design, decoration and craftsmanship; also, important examples of particular building types and technical and significant plan forms;
2) Historic Interest – this includes buildings that illustrate important aspects of the nation's social, economic, cultural or military history;
3) Close historical associations – with nationally important people or events;
4) Group value - especially where buildings comprise an important architectural or historic unity or a fine example of plan."[89]

The criteria also specify building-age in creating the list:

1) "Before 1700: all buildings, that survive in anything like their original condition;
2) 1700 to 1840: most buildings, although some selection is necessary;
3) 1840 to 1914: only buildings of definite quality and character, including the best examples of particular building types;
4) After 1914: only selected buildings:
    a. Between 30 and 10 years old: only buildings that are of outstanding quality and under threat; and
    b. Less than 10 years old: none."[90]

The first listing program in England ran from 1947 to 1968, and additional resurveys were carried out in 1969 and accelerated in the 1980s. Cumulative figures as to the age of listed buildings and their breakdown by grade are on the next page.

[89] Mynors, *Listed Buildings, Conservation Areas and Monuments,* 60.
[90] Ibid., 60



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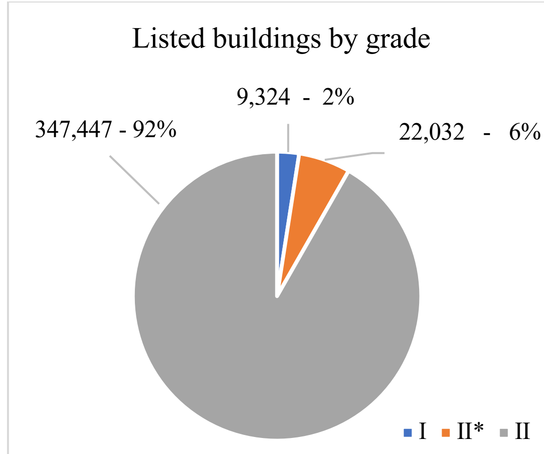

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Today, there are more than 30,000 listed buildings in Wales, 47,000 in Scotland and 8,900 in Northern Ireland. Together with the 378,803 listed buildings in England, there are almost 465,000 listed buildings in the UK.

Listed buildings are classified into grades. In England and Wales the grades are Grade I, Grade II* and Grade II (n.b. Scotland uses Grade A, Grade B, and Grade C while Northern Ireland has Grade A, B+, B1 and B2). Grade I listed buildings are considered of exceptional interest, Grade II* of more than special interest and Grade II are considered to be of special interest warranting every effort to preserve them. Monuments are separately designated from listed buildings and consist of those sites deemed to be of the absolute, highest importance, such as Stonehenge. "The primary administrative goal for scheduled monuments is complete protection, while for listed buildings, the main emphasis is continued use."[93]

Additions or modifications to, and proposed demolitions of, listed buildings typically require a separate consent from the applicable planning permission, affording an extra degree of development control over historic places.

The above criteria listed were created as part of *Planning Policy Guidance 15: Planning and The Historic Environment* (PPG 15) which was first published in 1990. Since then, planning guidance regarding historic conservation has been refined and updated with *Planning Policy Statement 5: Planning and the Historic Environment* in 2010 and again in 2012 when all planning policy statements were condensed and

[91] Historic England, "Listed Buildings Data Set" (Historic England, December 20, 2019), https://services.historicengland.org.uk/NMRDataDownload/SecurePages/Download.aspx.
[92] Historic England, "Listed Buildings Data Set."
[93] Rebecca L. McCleary, "Financial Incentives for Historic Preservation: An International View" (University of Pennsylvania, 2005), 37.

consolidated into the National Planning Policy Framework (NPPF) document. Further revisions occurred in 2018 and the most recent version was published in February 2019.

The content in the NPPF is largely consistent with the initial planning proscribed in PPG5 and earlier government circulars concerning the protections that should be afforded to the historic environment. Key policy quotes from PPG5 include:

"Secretaries of State have made it clear that as a matter of policy buildings of special interest in England should be preserved." [94] And further: "The Secretaries of State would not expect consent for demolition to be given simply because redevelopment is economically more attractive to the developer than repair and reuse of a historic building, or because the developer acquired the building a price that reflected the potential for development rather than the condition and constrains of existing historic buildings."[95]

Listed buildings can still be demolished, but only in exceptional situations and with consent. The NPPF advises that planning officers should deny these applications unless the benefits to the public substantially outweigh the harm or loss of the building. The NPFF clearly outlines that finding a viable use in the medium or long term is crucial, given the lack of viable funding to solely restore buildings without a long-term use in mind. It goes on to say that, "where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use." And further: "the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."[96]

Conservation Zones add an extra layer of protection for the historic built environment in the United Kingdom. First established in 1967, there are today over 10,000 conservation areas in England covering 2.2% of the entire land area of England, with the largest conservation area covering 71 square kilometers in the Yorkshire Dales. 41% of conservation zones are in urban areas, and their designation mimics historic districts in the United States, as they might not contain any buildings of particular architectural merit or

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[94] Mynors, *Listed Buildings, Conservation Areas and Monuments,* 476.
[95] Ibid., 476.
[96] Secretary of State for the Environment and Secretary of State for National Heritage, "Planning Policy Guidance 15: Planning and the Historic Environment," Policy (London: Department of the Environment, Department of National Heritage, September 1994), 197.

historic importance but collectively represent a "cherished local scene".[97] The effects of a designation of a conservation area are similar to those of listed buildings, and importantly, conservation consent is required for the demolition of any unlisted building in the area, permitted development rights are limited and financial assistance may be available for the upkeep of a building in the area.[98]

5. Incentivizing Rehabilitation and Adaptive Reuse in the United States

When does it make sense to undertake an adaptive reuse project in the United States without any form of public incentive? Like most questions in the real estate industry, it depends.

Depending on the size of the project, the experience of the general partner, the risk-and-hold requirements of the capital partner and the degree to which a building must be converted, from an economic standpoint, it could make sense to develop without any incentive. The crucial factors in the end become what rents the market can support and the costliness of the conversion. In many cases, financial incentives are used to de-risk a project or bridge a gap (where traditional financing might not be available) and are viewed by the government and preservation interests as short-term costs that yield worthwhile, long-term benefits.

5.1. National and state incentives

The Federal Historic Preservation Tax Incentives Program: This program is the most important lever that the United States government uses to ensure protection of historic buildings at the federal level and an enormous instrument to incentivize private developers. The historic tax credit program has been successful on multiple levels (maintaining buildings, regenerating neighborhoods, preserving heritage) and has evolved over its 44-year life. The purpose of the program is 1) "not to restore significant older buildings as museum pieces, but to return their use to meet current housing, retail, industrial and commercial needs," and 2) to help close a financing gap when lending institutions might not offer one.[99]

The process to obtain approval from the NPS and qualify for the tax credit starts with an application made to a State Historic Preservation Office (SHPO) by the developer. The SHPO will review and submit the application to the National Park Service with a recommendation to approve or deny the application. The National Park Service decides whether to approve and (if approved) the IRS administers the funds. The

[97] Secretary of State for the Environment, "CIR 8/87 Historic Buildings and Conservation Areas -Policy and Procedures," Policy (London: Department of the Environment, 1987), 6.
[98] Mynors, *Listed Buildings, Conservation Areas and Monuments,* 140.
[99] Tyler, Tyler, and Ligibel, *Historic Preservation*, 250.

IRS technically can deny funding though only if the developer is in adverse standing with the tax authority. The application for the tax credit incorporates three parts:

1) an evaluation of the property demonstrating what makes it historic;
2) a description of the changes to be made; and if approved
3) a request for a certification through a notice that works have been completed with supporting imagery.

In order to qualify for either of the two credits, several criteria must be met.

- First, the credits themselves can only be applied to qualifying rehabilitation expenses. The schedule of expenses and works undertaken must receive approval from the National Park Service, working in partnership with State Historic Preservation Offices. Expenses that do and do not qualify are listed below:

Qualifying expenses	**Non-qualifying expenses**
1) Rehabilitation costs;	1) Additions and construction not associated with rehabilitation;
2) Construction interest and taxes;	2) Acquisition costs, interest and taxes;
3) Architectural and engineering fees;	3) Brokerage fees;
4) Legal and professional fees;	4) Landscaping costs;
5) Developer fees;	5) Sales and marketing costs.
6) General and administrative costs.	

- Second, works must meet a "substantial rehabilitation requirement" meaning that the redevelopment must exceed the value of the adjusted basis – the owner's cost of property less land plus any capital expenditure less depreciation - of the building or $5,000.
- Third, the building must have been occupied in the past.
- Fourth, for rehabs seeking the 10% tax credit, minimum proportions of walls (internal and external) must be maintained to qualify.
- Fifth, the building must be held by the same owner for five years in order to claim the entire credit, otherwise 20% of the credit is disallowed per year under different ownership.

After 30 years in place, portions of the 1986 provisions were repealed by the 2017 Tax Cuts and Jobs Act in order to offset other incentives and breaks offered within the total tax reform package. The modifications to the historic tax credit included spreading the 20% tax credit over five years (4% per year) from the building's placed-in-service date and eliminating the 10% credit for non-historic buildings built before 1936. Repeal of aspects of the RITC was estimated by the US Treasury to save $2.6 billion over the next 10 years.[100] Opponents of the historic tax credit claim that in addition to these savings, more new housing units will be created, because historic rehabilitations and historic districts (typically having lower densities) will not receive the same degree of interest from private developers.

At the time of this writing, revised bills are in the Senate and House of Representatives with bipartisan support for the expansion of the tax credit again. Referred to as the "Historic Tax Credit Growth and Opportunity Act of 2019," proposals within the bill include a provision to offer a 30% credit for small projects and "expand the types of buildings eligible for rehabilitation by decreasing the rehabilitation threshold from 100% to 50% of project expenses."[101] The bills "also eliminate the basis-adjustment requirement for the credit."[102]

The RITC has been effective to a degree well in excess of what could have been originally been hoped for it. From the time that tax credits were first offered in 1977 through the end of 2018, $96.87 billion dollars have been privately invested in the rehabilitation of historic properties in the United States. The federal tax credit program has affected 44,341 properties, rehabilitated 285,264 housing units and created 302,460 new apartments (of which 166,210 are low-to-moderate-income housing).[103] The National Park Service claims that $162.0 billion (inflation adjusted) in private investment has been leveraged in communities with historic places and that, net of $30.4 billion in tax credits taken, more than $35.0 billion in federal tax revenue has been generated.[104]

The RITC continues to grow. In 2018, the program saw 9% more applications for Part 1 of the historic tax credits process than the previous year with 1,805 submitted projects. Over $7.48 billion in estimated rehabilitation costs were underwritten as Part 2 of the process and over $7.70 billion in private investment was certified in Part 3. Further, 20% of the projects proposed included properties that have not yet been added to the National Register of Historic Places.[105]

The size of projects based on qualified rehabilitation expense ranged significantly as well:

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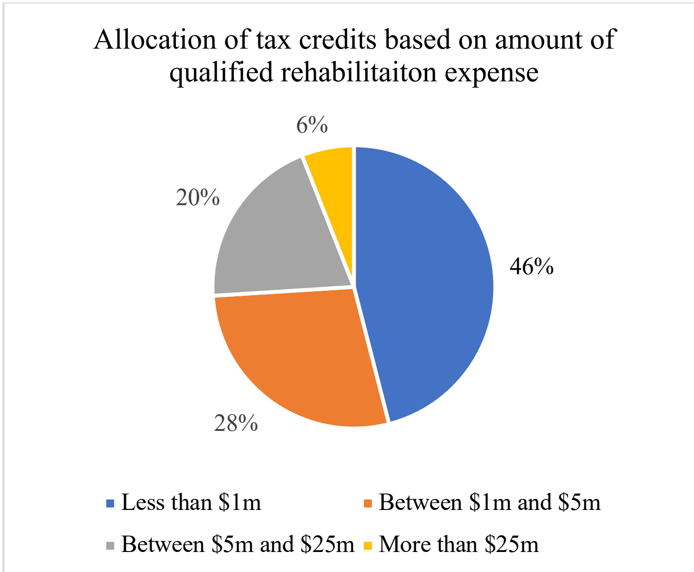
[100] Historic Tax Credit Coalition and National Trust for Historic Preservation, "Federal Historic Tax Credit," 2.
[101] US Congress, Senate, Historic Tax Credit Growth and Opportunity Act of 2019, S 2165, 116th Congress, 1st sess., introduced in Senate October 16, 2019, https://www.congress.gov/116/bills/s2615/BILLS-116s2615is.pdf
[102] US Congress, Senate, Historic Tax Credit Growth and Opportunity Act of 2019, S 2165, 116th Congress, 1st sess., introduced in Senate October 16, 2019, https://www.congress.gov/116/bills/s2615/BILLS-116s2615is.pdf
[103] Technical Preservation Services, "Federal Tax Incentives for Rehabilitating Historic Buildings: Report for Fiscal Year 2018," 2.
[104] Technical Preservation Services and Rutgers Edward J. Bloustein School of Planning and Public Policy, "Annual Report on the Economic Impact of the Federal Historic Tax Credit for FY 2018," 7
[105] Ibid., 4.



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Beyond the direct private reinvestment in historic properties, rehabilitation tax credits have been beneficial in supporting urban housing growth policies. Rehabilitation tax credits "support rehabilitation across a range of neighborhoods, from very-low-income to upper-income tracts. In other words: under the right financial circumstances, investment can occur in legacy city neighborhoods."[107] Further, research suggests that policy can be adapted in legacy cities (defined in a study as cities, with large amounts of vacant office and industrial space, that had sustained significant population losses between 1950-2010) to further drive private investment in historic rehabilitation – and development in general – by designating historic districts and increasing public funding to public spaces in those areas, with resultant increases in property values.[108]

State historic tax credits have existed since 1984, when New Mexico introduced the first state program. They have since grown in popularity, especially in recent years. Today, there are 37 states that offer programs (most recently, in 2019, California and Hawaii launched historic tax rehabilitation credit programs). State legislatures determine their existence, scale and reach. State programs largely model themselves off of the federal program – with many of the same qualification requirements - though the specific incentives vary from state to state. States may specifically tailor credits to meet specific preservation goals or reflect historic supply that they would like to see rehabilitated (such as mills in North

[106] Technical Preservation Services, *Federal Tax Incentives for Rehabilitating Historic Buildings: Report for Fiscal Year 2018*, 2.
[107] Ryberg-Webster and Kinahan, "Historic Preservation in Declining City Neighborhoods: Analyzing Rehabilitation Tax Credit Investments in Six US Cities," 1675.
[108] Kelly L. Kinahan, "The Neighborhood Effects of Federal Historic Tax Credits in Six Legacy Cities," *Housing Policy Debate* 29, no. 1 (January 2, 2019): 169, https://doi.org/10.1080/10511482.2018.1452043.

and South Carolina) or to address geographic particularities (such as seismic retrofits in Oregon and Washington).[109]

Variations from the federal historic tax system often include:

- placing dollar caps on the maximum amount of credits that could be claimed per credit;
- modifying the percentage of credits that could be claimed from 10% up to 30%;
- capping the size of the credit dependent on the income of the claimant;
- permitting tax credits to be transferable;
- adjusting the timing of when the tax credits can be claimed; or
- limiting the type of real estate product type that can qualify for state tax credits;

"Unlike the federal tax credit, which is not taxed federally, state historic tax credits are taxed by the federal government. Consequently, state HTCs are always worth less than their face value after federal law is taken into account because direct transfers trigger a short-term capital gain and the inability to take a deduction on state tax paid with a state historic tax credit." [110]

The National Trust for Historic Preservation suggests that states with the most effective tax credit programs:

- do not impose caps on the amount of funding that can be recuperated through the credit; and
- that the tax credits can be transferred or sold to taxpayers that have tax liabilities in that state.[111]

The ability to directly sell tax credits is unique to many state programs, whereas within the federal system, tax credits are effectively "sold" through tax-equity financing. 26 out of the 37 states that offer historic tax credits allow the credit to be syndicated to third parties and 20 states allow the direct sale of historic tax credits to parties that have liability.[112]

Comprehensive, aggregated data illustrating the annual impact of State Historic Tax Credits does not yet exist. Such programs are growing, however, in terms of the number of states that partake in the program on a regular basis. Analysis undertaken in 2012 by the Office of Revenue Analysis determined that states with active tax credit program receive boosts to certified expenditures of federal tax credits ranging from

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[109] "State Historic Tax Credits: Maximizing Preservation, Community Revitalization, and Economic Impact" (Washington D.C.: National Trust for Historic Preservation, 2018), 5.
[110] Ibid., 8
[111] Ibid., 7.
[112] Ibid., 7.

$15 – 35 million. Thus, each state receives an additional $3 to $7 million dollars in investment via the federal government by offering the program.[113]

Many of the laws legislating for state tax credits have expiry dates that are often renewed. However, depending on 1) tax policy, 2) the controlling political party in state legislatures and 3) the need for possible short-term cash, states may look to rescind tax credit programs. When rescinding a program is threatened, preservationists, commercial developers, and local government officials often unite to lobby against their revocation. They argue that the extra revenue and jobs generated by the program more than outweighs the immediate dollars saved by removing the tax credit. Efforts in several states to remove the tax credit recently – Wisconsin, Nebraska, Missouri, to name a few – have met significant local pushback. When programs have expired and have not been immediately renewed – as in Rhode Island – companies and developers may look elsewhere to places where they can take advantage of the tax credit.[114]

Tax credits were introduced in the United States in the 1960s by the Kennedy administration via the investment tax credit. Since then, tax credits have been introduced not only for historic rehabilitation, but also to stimulate construction in underprivileged communities, to facilitate film production, to offset the cost of healthcare and to incentivize the use of energy efficient power sources such as solar panels. Many tax credits are transferable, meaning that if someone generates $1,000,000 of qualifying costs and receives a 20% tax credit, they will be able to "sell" via tax equity financing $200,000 worth of tax liability to someone who is looking to reduce their tax liability. "Buyers" are typically banks, firms that specialize as tax-credit financiers or wealthy individuals. Since 2000, The National Trust also acted as a tax credit syndicate via their National Trust Community Investment Corporation (NTCIC). The Developers qualifying for the tax credit can of course decide to keep the tax credit for themselves as well.

Tax credits are typically sold through brokerages for as low as 77 cents (but sometimes more than 100 cents) to the dollar. Often sold before a tax credit is actually claimed, anticipated tax credits can serve as a source of funds for a development project.[115] Thus, that $200,000 worth of tax liability, if sold at 90 cents on the dollar, can generate $180,000 up front as tax-equity financing to help fund a development project.

When a state historic tax credit is combined with a federal historic credit and a project is located in a place or has a scope that qualifies for further tax credits it is very possible that a sizeable portion of a developer's

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[113] Harry K. Schwartz, "State Tax Credits for Historic Preservation" (Washington D.C.: National Trust for Historic Preservation, September 2018), 2.
[114] Elain S. Povich, "Why Cutting Historic Preservation Tax Credits Won't Be Easy," Stateline (Washington D.C.: The Pew Charitable Trusts, November 29, 2017).
[115] Tapp, "Layers of Finance: Historic Tax Credits and the Fiscal Geographies of Urban Redevelopment," 14.

source of funds come from tax credits sold through brokerages. Astute developers with knowledge of tax incentives will often take further advantage of additional tax credits which can be layered on one another and also bought and sold through syndication. In fact, in a 2010 survey conducted by the National Trust for Historic Preservation, of the respondents who claimed an historic tax, "100% also used federal low-income housing tax credits, 80% used federal new markets tax credits, and 30% used federal renewable energy credits."[116] A chart highlighting some of the major tax incentives is below:

Tax Incentive Name	Description
New markets tax credit (NMTC)	Allows one to deduct 39% (5% in Y1-Y3, 6% in Y4-Y6) of qualifying expenditure in designated Certified Development Entities (CDE's) which invest in low-income communities over a 6-year period.
Low income housing tax credit (LIHTC)	Allows one to deduct either 30% or 70% of the present value of the qualified basis of costs for the construction of residential units intended for low-income residents. New construction and substantial rehabilitation qualify for the 70% credit while smaller rehabilitations receive the 30% credit.
Investment tax credit (ITC)	Allows one to deduct 30% (reducing to 26% in 2020 and further in subsequent years) of the cost of installing a solar energy system from federal taxes for both residential and commercial projects.
Opportunity Zones (OZs)	Awards tax breaks on capital gains to investors who develop real estate in one of 8,700 designated census tracts to drive economic growth.

To obtain tax equity financing, developers form a partnership (typically via an LP or LLC) with the tax credit investor. The money partner will hold a 99% stake in the entity and the development partner a 1% stake. During the course of the partnership the partners in the entity are subject to upside (profits, depreciation, credits) and downside (losses) in accordance with their partnership stakes. Negotiated up-front, these agreements will specify the percentage tax credit equity contribution for every dollar invested by the money partner in the agreement. The agreement will also incorporate a date (typically at the end of the five year compliance period for the federal tax credit) when the investing partner can exercise a put option to exit the partnership and sell their rights (negotiated up front) for an amount no greater than the fair market value of the investor's interest at the time of exercise.[117] At the same time, the IRS permits a

[116] Ibid., 19.
[117] Office of the Comptroller of the Currency, "Historic Tax Credits: Bringing New Life to Older Communities" (Washington D.C.: Office of the Comptroller of the Currency, 2019), 8.

"flip-down" at the end of the compliance period to allow the ownership interests within the tax credit entity to switch. At that point, the money partner can decrease their ownership stake to no less than 5% of the initial ownership breakdown (i.e., a money partner with a 99% stake in the entity can reduce their ownership in the equity to 4.95% total).[118]

In discussions with developers operating in the United States today, one will find that some undertake projects exclusively using historic tax credits or a combination of historic tax credits paired with new market and low-income housing tax credits. Together, the combined tax equity finance makes a sizable contribution to their sources of capital. Others will forgo the incentives (as the prerequisites for the tax credits might be overly restrictive) and will underwrite development opportunities involving adaptive reuse and ground up development in the same way, considering both to be opportunistic investments with necessitating higher capital returns. Other investors may not even be aware that such credits exist or do not understand them. Developers are sometimes averse to claiming credits because of limitations placed on building alterations. Properties that qualify for tax credits must follow the standards outlined in the Secretary of the Interior's Standards and Guidelines for Rehabilitating Historic Buildings. One particularly contentious statute states that "new additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired."[119] This reversibility requirement can limit the design alterations a developer might be willing to take and accordingly can threaten the economic feasibility of a project.

Grant funding: Direct funding can be obtained from various federal and state organizations listed below:

- the Historic Preservation Fund managed by the US Department of the Interior;
- the Economic Development Administration within the US Department of Commerce;
- Community Development Block Grants from the US Department of Housing and Urban Development;
- funds from the US Department of Transportation; and
- initiatives established by various presidential administrations in the last two decades including Save America's Treasures in 1998 and Preserve America in 2003.

Each type of funding comes with specific criteria; in many cases, grants will be given only when the building being rehabilitated or restored is intended for public use.

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[118] Ibid., 9.
[119] Tyler, Tyler, and Ligibel, *Historic Preservation*, 115.

5.2. Local Incentives

States, cities and neighborhoods are competing to grow, make themselves more attractive to investment and to differentiate themselves from one another. Municipalities at every level of government offer incentives to spur the types of development that they favor. While it is true that not every adaptive reuse project requires a form of financial incentive, it would be very difficult to argue that the number of buildings preserved – primarily through adaptive reuse – would be the same in the absence of incentives offered by governments and interested organizations.

A summary and examples of the incentives offered at the local level are described below.

Revolving loan funds: Developers and individual homeowners may be provided access to revolving loan funds that can be set up at the state or local level and be run by either government agencies, nonprofit organizations or lending institutions that offer below-market interest rates. Loans are paid back into a central pool and redistributed for similar rehabilitation projects. Revolving Loan Funds are a critical part of the early success of the National Trust's Main Street program.[120]

Easements: Less common today, easements on property prevent owners from modifying all or a portion of an architecturally significant part of a building in perpetuity. In exchange, a qualified appraiser determines a fair market value for the easement, which the owner can claim as a charitable donation and reduce their income taxes. The easement must be administered constantly by a qualifying 501(c)(3) organization, creating an administrative burden and therefore less frequent application today.

Transfers of development rights: Cities may elect to allow owners of historic properties to transfer their development rights – often air rights - if their site is in a location that has been significantly "upzoned" in preceding years to incentivize owners to keep historic places intact.

Planning relaxations: Cities might offer accelerated planning approvals, reduced parking requirements, relaxation of required setbacks, increased allowable FAR for reuse projects, height, landscaping, screening, reduction of impact fees and mitigation payments, fee waivers and modified code requirements in exchange for the reuse of a building.[121]

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[120] Ibid., 281.
[121] Beth Mattson-Teig, "Partnership for Building Reuse Helps Support Code Change in Chicago," Urbanland (Washington D.C.: Urban Land Institute, June 7, 2019).

Tax abatements: Local governments collect property tax in the United States. To create an economic incentive for private-sector redevelopment of an historic property, a local municipality may offer to delay otherwise-applicable tax impositions until several years after its rehabilitation.

Main Street America: Though not a specific type of incentive in itself, since its launch in 1980, the Main Street America program has worked with almost 2,000 downtown areas in small towns and in districts of larger cities (such as Boston's Chinatown). Created by the National Trust, this program recommends the establishment of locally run organizations – typically nonprofits – and offers tools and educational resources to help foster economic revitalization through historic preservation at the grass roots level. The Trust facilitates all of the incentives listed above (federal, state and local) and reports that since the 1980 launch of the Main Street America initiative through 2018:

- $78.98 billion dollars (private and public) have been reinvested;
- 284,936 buildings have been rehabilitated;
- 640,017 net jobs have been gained; and
- 143,613 businesses have been created in participating towns.[122]

The wide range of local incentives coupled with zoning ordinances to protect historic buildings create a dynamic that seeks to balance goals of the municipality and developer to strike a mutually beneficial development outcome.

6. Incentives in the United Kingdom

The United Kingdom emphasizes historic preservation primarily through planning rather than market driven incentives. While technically any building in the country can receive financial assistance for an historic rehabilitation, typically only buildings that are "listed" will actually qualify for the limited funds available. "Incentives in the United Kingdom typically take the form of grants, low interest rate loans, and supplies made in connection with alterations to listed buildings... are normally zero-rated for VAT purposes."[123] These incentives are most often used to protect the most at risk buildings and rarely to drive development.

[122] The National Main Street Center, "Main Street Impact - Main Street America," Main Street America, 2019, https://www.mainstreet.org/mainstreetimpact.
[123] Mynors, *Listed Buildings, Conservation Areas and Monuments*, 234.

6.1. National Incentives

National incentives to protect the historic environments in the United Kingdom are most often administered and funded by nonprofit organizations with little impact on commercial decisions to undertake for-profit historic redevelopment.

Grants: Grants – the most common form of incentive offered to protect historic rehabilitation in the United Kingdom – can be as little as a £10,000 to repair historic windows or up to several million pounds to restore a building. The Heritage Lottery Fund (HLF), administered by the National Heritage Memorial Fund, was established in 1993 and has been one of "by far the most significant sources of funding for construction projects"[124] The National Lottery was established in the same year and mandated that 16.7% of its revenue is dedicated towards "expenditure on or connected with the national heritage."[125] From its founding to the present, HLF has awarded more than £5 billion to over 20,000 projects in the UK, with an average grant of £200,000 per project.

English Heritage offers grants too, as do equivalent organizations in Wales, Scotland and Northern Ireland. Similar to the Heritage Lottery Fund, English Heritage is predominantly focused on the acquisition of at-risk properties, historic restoration and repair, rather than encouraging new or adaptive reuse. Further, English Heritage – especially in London – stipulates that public access be given to the site and that any future alterations to the site must receive explicit approval from English Heritage in order to receive funds. Planning guides make reference to loans being made by English Heritage; however, authors of such guides suggest that there is little evidence that the loans are regularly offered.[126] Compared to the National Lottery, English Heritage contributes far less money in restoration and rehabilitation. Other private trusts and building preservation trusts make funds available to assist in over 750 projects each year. In addition, the European Union offers cultural heritage funding programs via the European Regional Development Fund primarily to conserve at risk buildings, promote education and enable research.

Low interest loans and revolving funds: Building preservation trusts, such as the National Trust, as registered charities are able to borrow funds at low interest rates typically from the Architectural Heritage Fund and the UK Association of Preservation Trusts to create working capital to assist in historic restoration projects.

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[124] Ibid., 238.
[125] Ibid., 238.
[126] Ibid., 241.

Tax incentives: Compared to the United States, tax incentives to promote historic rehabilitation in the United Kingdom are meager. When properties are assessed in the UK, historic structures are typically rated in the same way as any other property. However, in some cases, rates (property taxes for non-residential buildings) will be reduced to take into account any applicable requirements for substantial repairs and/or to reflect the property's opening to public access. One area of tax leniency concerns the rates attributed to non-occupied buildings. In the U.K., rates are charged on non-occupied, non-residential buildings, except in the case of those buildings that are listed or are subject to a building preservation notice.[127] Additionally, historic residences are not subject to capital gains tax if the building in question is the occupier's principle residence. When historic properties are gifted to charities and heritage organizations such as English Heritage or the National Trust, they too are exempt from paying capital gains and or an inheritance tax if the gift is made upon death of the donor.[128] There is of course an expectation in this case that the building will be opened to the benefit of the public. Listed religious structures also receive special tax incentives.

While national incentives certainly do exist and are advocated for by national preservation and planning policy organizations, more often than not, they encourage restoration and preservation as opposed to rehabilitation and adaptive reuse.

6.2. Local Incentives

Local incentives in the United Kingdom are determined by local authorities which reflect policy guidance passed down from the national government. Available local incentives are described below.

Section 106: Section 106 contributions in the United Kingdom are essentially equivalent to impact fees and mitigation payments in the United States. In exchange for planning permission or listed building consent, local planning authorities will require a developer to fund a variety of public priorities. Examples include road and signalization improvements, contributions to school programs and payments for improving public space. Unlike impact fees, there does not exist a prescribed formula for calculating the size of the section 106 payment, but they are typically in proportion to the scale and expected effect of a new development. Local councils determine the size of a Section 106 payment on the basis of past precedent. While there is no written guidance, planning consultant experts in the UK have indicated that local planning authorities, in their desire to maintain historic properties, will take into consideration the additional cost and repairs to bring historic buildings up to code and will consider these repairs as part of a Section 106 contribution. Given the lack of certainty, wise developers would not underwrite their projects with the expectation that

[127] Ibid., 255.
[128] Ibid., 256.

their Section 106 payment will be lessened, but it may nevertheless be another incentive to undertake historic rehabilitation and adaptive reuse in the UK.

Changes of use: Until the 2010s planning was always required for a change of use of property. These restrictions have now been relaxed somewhat and could further encourage the adaptive reuse of historic buildings to current needs. This relaxation will allow the market to have a far greater influence on whether older buildings will be reused to meet modern needs.

Combining grants with other incentive schemes: As in the United States, conservation projects in the UK, especially in urban areas, can benefit from financial incentives and planning relaxations through government sponsored urban regeneration programs. These projects can be paired with historic grants too.

Grants, low interest loans and revolving funds: Operating in a similar way to the national level, local community development initiatives encourage and offer grants, low interest loans and revolving fund programs to encourage investment in the historic built environment. These funds are typically supplied by local banks and trusts.

Enterprise zones: Enterprise zones share the same goals as the UDC's of the 1980s but are smaller in scale. Spread out across the UK, the 48 enterprise zones today seek to stimulate development by offering grants, tax incentives and simplifying planning processes by providing automatic consents for desired types of development. Also, for a 25-year period, business rates paid by companies operating within the zones are kept by the local authority and enterprise partnership for local reinvestment.

All told, to date, incentives associated with historic preservation have been far more associated with projects intended for the public benefit rather than reuse by market driven developers.

7. Explaining differences in US and UK preservation policy and incentives

Today, the United States and the United Kingdom have different, yet in each case effective, controls and organizational structures in place to protect and celebrate the historic built environment. Their significant differences result largely from 1) each country's preservation history and building inventory, 2) approaches to land use control and the timing of when each policy was introduced, and 3) the influence upon the marketplace of politics and tax policy. The heavily incentivized, government-sponsored efforts to foster historic rehabilitation and adaptive reuse via the for-profit market in the United States are a direct result of those combined factors. Likewise, the synthesis of those same dynamics offers an explanation for the lack of government-led incentives in the United Kingdom.

7.1. Comparing the influence of preservation history and building inventory

The preservation movement in the United States and the United Kingdom originated in response to the same stimuli at roughly the same time. The impact, strength and leadership of early conservation organizations in the UK played a vital role in saving a proportionally larger number of buildings and landscapes than in the United States. While not explored to a great extent in this thesis, historic preservation discourse (i.e. Viollet Le Duc and Alois Riegl) elsewhere in Europe had a great influence, no doubt, on the British conservation movement. This movement was effective in protecting many buildings earlier than in the United States, especially before widespread technological innovations (steel-structured buildings and the automobile) altered the landscape of the built environment. By contrast, the sheer size of the 19th century United States, with its federal system and citizens' desires to protect buildings on patriotic grounds, would lead to more fractured state and local preservation movements, compared with the centralized efforts in the United Kingdom.

The British movements grew in strength, scope and influence at a far greater pace than in the US. British preservationists were able to successfully petition for protective laws in 1882 – almost 25 years earlier than the United States – and in 1895 organized the National Trust more than a half-century prior to its American counterpart. Comparing the relative strength of 19th century preservation efforts in the UK and in the US can be thought-provoking: Imagine how different the US built environment might look today, if 19th century preservation groups had more than local appeal and had prompted the federal government to engage in widespread preservation efforts at an earlier stage.

The impact of the National Trust and the British preservation movement can be attributed to strong leadership by local political elites who "were more nearly a unified ruling class than [their counterparts] in America."[129] Strategically too, the National Trust sought to expand its influence throughout Great Britain by specifically acquiring properties in counties where it did not yet have a presence.[130] The British National Trust would be the model for most heritage preservation trusts in the world, the US included. Today, it owns more than 1% of the property in the United Kingdom, has more than 5.6 million members and invested £148 million in protecting the more than 500 places in its care in 2018.[131]

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[129] Barthel, "Historic Preservation," 99.
[130] Ibid., 100.
[131] National Trust, "Fascinating Facts and Figures," National Trust, 2019, https://www.nationaltrust.org.uk/lists/fascinating-facts-and-figures.

Not established until 1949, the National Trust in the United States would have a different role than its British counterpart. Without extensive land holdings (in fact, only 27 sites) to maintain, the US National Trust's missions have been primarily to bridge government and private conservation efforts, to advocate for historic preservation at every level of government and to facilitate efforts by the private sector and local communities to save places. A nonprofit organization, the National Trust has worked well in America and, true to its mission, has protected numerous buildings from demolition and facilitated historic rehabilitation and adaptive reuse by the private market. If the US National Trust had started fifty years earlier, its impact would have been greater still.

At the turn of the 20th century - when cities in the United States were rapidly growing thanks to exponential immigration - many buildings were demolished to make way for modern, taller, denser structures. Almost all of those destroyed buildings would be considered historic by today's standards as would their replacement buildings, many of which in turn saw demolition thirty to fifty years later.

Simply as a matter of history, the United Kingdom has a far larger built-environment stock than does the United States. Its cities are thousands of years older (the first settlement in London dates to 47 CE), its street patterns date back to medieval and even Roman times and what might be considered historically significant in the United States might be considered merely ordinary in the United Kingdom.

In the United States, homes built before 1950 account for about 17.5% of the total housing stock of almost 120 million residential buildings.[132] Commercial properties built before 1946 represent 15.3% of the total commercial stock in the United States. Of the 5.6 million commercial properties in the US, only 6.5% of the total stock was constructed before 1920.[133] In contrast, in the UK, 20% of the 27 million total homes were built before 1919 and 31% of the 1.8 million non-domestic (commercial) buildings were constructed prior to 1940.[134] Proportionally more buildings that would be deemed historic are still standing in the United Kingdom. When one walks around British market towns and cities, new buildings appear as urban-infill exceptions. The opposite is the case in many cities in the United States.

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[132] Office of Energy Consumption and Efficiency Statistics, "Table HC9.3 Household Demographics of US Homes by Year of Construction, 2015," Data Set, Residential Energy Consumption Survey (RECS) (Washington D.C.: US Energy Information Administration, May 2018), https://www.eia.gov/consumption/commercial/data/2012/bc/cfm/b8.php.
[133] Office of Energy Consumption and Efficiency Statistics, "Table B8, Year Constructed, Number of Buildings, 2012.," Data Set, Commercial Buildings Energy Consumption Survey (CBECS) (Washington D.C.: US Energy Information Administration, May 2016), https://www.eia.gov/consumption/commercial/data/2012/bc/cfm/b8.php.
[134] Department of Energy & Climate Change, "UK National Energy Efficiency Action Plan" (London: Department of Energy & Climate Change, April 2014).

Given the relative age of most structures in the UK, guidelines to be added to "The List" are stricter than in the US. For example, listing guidance in the UK suggests that buildings built between 1840 and 1914 should only be included if they possess "definite quality and character, including the best examples of particular building types." Despite having stricter designation criteria and 4.3 times fewer total buildings, the UK has almost 5 times as many structures on the combined Lists of Wales, Northern Ireland, Scotland and England compared to number of places on the US's National Register. Incorporating US state and city registered places would bring down the comparison, but the relative magnitudes would remain.

The history of early preservation efforts and the relative age of the built environment in the United States and United Kingdom have had marked impacts on government policies regarding historic rehabilitation and adaptive reuse in the 20th century.

7.2. Comparing the influence of land use control

The United States and the United Kingdom established their own forms of land use control roughly twenty-five years apart from one another. These structural differences have greatly impacted the form of the built environment and the degree to which incentives can influence development.

The US introduced widespread zoning in the 1920s, and the UK created its modern-day planning system via the Town and Country Planning Act 1947. While there are some similarities, the basic difference is that in the United States, if a developer adheres to the zoning regulations and ordinances (no matter how restrictive), they will be able to build. By contrast, in the United Kingdom, regardless if a proposed development scheme conforms to the local development plan and respects national planning guidance, local authorities still have the power to decide whether a planning permission and/or listed consent should be granted. In sum, especially in the early days of each form of land use control, the US system was more developer-friendly, while the UK system inclined towards development control.

Zoning in the United States came into vogue in the 1920s after the Supreme Court decision in *Ambler Realty vs. The Village of Euclid*. The court ruled that it is the state's right to dictate where particular types of development could take place and where they could not. Further it was the state that had the power to delegate such authority to its local governments via its state constitution and statutes. Many local governments (though not all, Houston famously has no zoning) by the end of the 1920s adopted zoning to control development. In its simplest form, local governments would divide an area within their jurisdiction into zones and would regulate the land uses (or combinations of land uses) permissible in each zone.

Additional regulations could affect building form by limiting heights, setbacks, lot dimensions, lot coverage, and parking ratios, etc.

It is very difficult to generalize with regard to zoning in the United States. Zoning laws and planning regulations reflect local constituencies, are designed to be amended (often) through ordinances and find expression in documents ranging from just 30 or so to more than 1,000 pages. Ordinances will exclude some uses, include others, encourage planned unit developments (PUD's) and dictate conditional uses (i.e., uses permitted only with approval from a local planning board). Proposals that do not meet zoning stipulations require variances that are intended to be granted only in rare circumstances. Variances are determined by zoning boards often at open hearings where the public can share their views. These boards are often made up of volunteers. Additional review controls are put in place through site-plan reviews (meetings by local planning boards to ensure that general zoning and specific ordinances are being followed), subdivision controls, the aforementioned landmark control boards and in some places design reviews.

States governments involve themselves in planning in a variety of ways. The judicial review of land-use permits is often handled at the state level. In most cases, power is completely delegated to local authorities, while other states have established building codes, compulsory environmental reviews and/or the establishment of strategic state-wide plans and guidelines. Typically, as a condition to state funding, local governments are required to follow such guidelines. The federal government has little direct impact on decision-making at local levels, but has enacted various laws (such as those protecting the environment, coastland and wildlife, and laws concerning energy resources, federal highway lands, and accessibility standards) that affect local land use planning.[135]

Developers in the United States, especially in the mid-20th century, embraced the concept of zoning. Many residents were open to zoning too, as it could protect the physical and social character of their neighborhoods.[136] For developers, it brought relative order to chaotic land markets, and it protected their constitutional rights of land ownership. "Put grandly, it was the means by which their rights as owners and occupiers could be guaranteed."[137] Once zoning rules were put into place and the development industry learned the local rules, it was essentially up to the market to decide the physical forms of structures,

[135] OECD, *The Governance of Land Use: United States*, The Governance of Land Use in OECD Countries, 2017, https://www.oecd-ilibrary.org/content/publication/9789264268609-en.
[136] Philip Booth, *Planning by Consent : The Origins and Nature of British Development Control.*, Planning, History, and the Environment Series (London ; New York : Routledge, 2003., 2003), 7.
[137] Ibid., 7.

buildings and in large part, which buildings should be reused and which buildings would be demolished in favor of new construction.

In the UK by contrast, the Town and Country Planning Act 1947 essentially addresses land's development potential through the government planning consent process. It enables local governments to essentially have top-down control to approve (or not) every structure before it can be built or modified. Earlier planning acts, while designed to promote development, were predominantly focused on the orderly release of lands (previously held by the State and landed aristocracy) to the market. With the 1947 Act, local government created development plans and decided what could and could not be built. The development plans would be subject to frequent change depending on the government party in power. The development industry complained that undue project-risk from planning uncertainty was disrupting the industry and was "too prone to arbitrary decision making and surprising rulings on proposed projects."[138] This control – with, in the background, the strong presence of the preservation movement and an ever-growing number of Listed buildings – would serve as a prime safeguard of historic properties in the United Kingdom, but by the same token would severely hamper new, private, for-profit development in the United Kingdom after World War II.

Parliamentary acts passed in 1967, 1968 and 1974 would establish conservation areas and require approvals for demolition of listed and non-listed building in conservation areas. The introduction of these further controls, typically after a controversial demolition (like the Euston Arch) would place the national government at the center of conservation control, even though specific planning decisions would continue to be made by local authorities. Next, the Listed Buildings and Conservation Areas Act 1990 would mandate that modifications to listed buildings require a specific "listed planning consent". These laws – coupled with preservation-first national planning policies, government circulars and the legal right for the Secretary of State to "call in" any planning application – would solidify government development control as the primary "stick" to disincentivize the destruction of the historic environment in the United Kingdom.

The evolution of land use control in the United States and United Kingdom can make current historic preservation policy in some localities look almost identical in effect, even though established under a different structure. At the national level, US historic preservation protection is much weaker than in the UK This is a function of how the US government is organized. Land use control is a constitutional state right often delegated to the local town or city. There are 36,000 local authorities in the US compared to

[138] Ibid., 1.

421 planning authorities in England.[139][140] Each of the 36,000 local authorities has the right to introduce zoning restrictions that favor the protection of the historic environment or promote unchecked development growth. Through local ordinances, cities in the US can put in place protections that are as strong (if not stronger) than what is directed by UK national policy. Ultimately, as it is the responsibility of each local government to determine its own preservation policy, ongoing protection in the US of the historic built environment will inevitably in some localities be far weaker than in others.

7.3. Comparing the influence of politics and the real estate market

"Throughout most of the twentieth century the British state took a much stronger role than the US government in promoting and regulating development. It constructed new towns, built council hosing, and prohibited private investment in improvements on land unless they received specific planning permission. In the United States the government engaged in a very little direct construction activity, preferring to offer incentives to the private sector…"[141] "During the 1980s development policies in the UK and US converged… In general, the dominant objective in both countries was to use public powers to assist the private sector with a minimum of regulatory intervention."[142]

The modern United States economy is underpinned by a decentralized system of government and fiscal policies that favor supply-side economics. With strong constitutional backing, upheld by the Supreme Court, the free-market economy has shaped the urban environment throughout the 20th century. The modern physical form of the United States looks different from many European countries in part because of the lack of a national development control. The US government has thus used a variety of carrots and sticks, often leveraged through tax policy, to influence decisions made by private individuals.

For decades in the middle of the 20th century, government urban-renewal policy and incentives threatened the historic built environment in the US In an effort to accommodate 52 million additional people (US population growth between 1950 and 1970), national tax law made the demolition of buildings attractive to developers so that larger structures could be built. The 1976 Tax Reform Act reversed that provision. Two years later, with the introduction of the RITC in 1978, the reuse of historic properties and revitalization of neighborhoods through private, for-profit, preservation-led redevelopment would be activated. The RITC program has been an unquestionable success. "Historic preservation succeeded in an area in which the

[139] OECD, *The Governance of Land Use: United States*.
[140] OECD, *The Governance of Land Use: United Kingdom*, The Governance of Land Use in OECD Countries, 2017, https://www.oecd-ilibrary.org/content/publication/9789264268609-en.
[141] Fainstein, *The City Builders: Property, Politics, and Planning in London and New York*, 15.
[142] Ibid., 8.

urban renewal process was failing. It provided a redevelopment strategy that appealed to preservation-minded, higher-income populations."[143] In the last two decades, with the strong increase in demand for the character rich spaces that historic rehabilitation and adaptive reuse can offer, the market has adjusted and the historic environment in the United States has been bolstered.

In the 1980s under Margaret Thatcher, the UK sought to relax government-led development and heavy-handed planning intervention. The government's free market approach to development led to a building-boom in the late 1980s and consequently a massive oversupply of secondary office and industrial space in the 1990s. Thereafter, shifts in demand in the real estate market drove the adaptive reuse of office and industrial buildings to residential spaces.[144] The introduction of Section 106 fees (via the Town and Country Planning Act 1990) significantly fostered private development and generated funds to finance important public improvements and places. Finally, with relaxation of the need for planning consent for specific changes of use in the last ten years, the UK government has signaled an embrace of market-led adaptive reuse.

7.4. Comparing incentive structures in the United States and the United Kingdom

Compared to the United States, the United Kingdom has a weak incentive structure – in part, because it has not needed one. The UK planning system essentially equips local authorities with ample 'sticks' (in the form of planning permissions and listed building consents) to prevent demolition of historic structures. The comparatively vast supply of historic buildings in the UK, their protection by better organized preservation movements at an earlier time, and British approaches to land use control have all contributed to a weaker incentive structure today. Even with the government's embrace of supply-side economics in the 1980s, incentives like those found in the United States do not exist.

The incentives offered in the UK are smaller, weaker and less effective than those in the United States. Grants – predominantly funded by the National Trust and the Heritage Lottery Fund – are limited in availability and come with stringent conditions attached.[145] For this reason, grants and direct incentives are very rarely used by commercial developers in the United Kingdom. Planning policy updates to allow for some changes of use without consent are indeed incentives; they do not, however, eliminate need to obtain planning permissions or listed-building consents.

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[143] Reichl, "Historic Preservation and Progrowth Politics in US Cities," 517.
[144] Kincaid, *Adapting Buildings for Changing Uses*, 18.
[145] Office of the Deputy Prime Minister, "The Role of Historic Buildings in Urban Regeneration," 3.

In the United States, incentives to nurture adaptive reuse and historic rehabilitation are strong. The US national government offers such incentives because 1) it values the built environment as a critical element of US culture and history, 2) it does not have the same development control cudgels that the British government does and 3) it sees tax credits as an effective way to encourage the private sector to protect historic places. State governments embrace tax credits as incentives for two reasons. First, tax credits make more historic rehabilitation projects happen. This brings social benefits to cities and towns. Second, it stimulates additional private investment and deposits more federal funds in state treasuries.

Cities and local governments are aware of the accretive effect of maintaining historic properties and districts. They use ordinances to protect buildings and neighborhoods and, to encourage the private market to invest in historic preservation, offer combinations of incentives (planning relaxation, grants, transfers of development rights, and revolving loan funds, to name just a few).

Together, the incentives are working, and the United States is the better for it.

8. Concluding thoughts

Writing in 1966, the authors of *With Heritage So Rich* considered that European governments set the benchmark for comprehensive historic preservation. One of the essayists stated, "The weight which European governments give to historic preservation has resulted in successful programs for saving, restoring and reconstructing many different types of buildings for viable uses. There is an excellent object lesson in the European achievement in maintaining historic buildings and areas as living parts of communities and as successful economic ventures."[146]

In the two decades after the book's publication and the adoption of the seminal Historic Preservation Act of 1966, the United States would create a distinctive historic preservation policy. The program would marry historic preservation initiatives and legal protections with incentives to induce the private market to undertake rehabilitation and adaptive reuse. This government-backed and market-driven policy is well structured to shape the historic environment in the future.

By no means is the system perfect, however. Critics of historic preservation legal apparatus in the United States suggest that protective ordinances and historic districts prevent the construction of much needed housing. At the same time, they cause undesirable gentrification fueling housing crises further by

[146] US Conference of Mayors, *With Heritage So Rich, 208*.

displacing families of lesser means. These are valid arguments. Historic rehabilitation to date has not made a sizable enough impact in countering a growing need for affordable housing. The tax credit policy itself has critics too. The transactional costs (applications and fees to tax credit brokers and attorneys) of accessing the tax credits are high. This makes it harder for small scale projects to be economically viable, especially in locales with weaker economies. If passed, the "Historic Tax Credit Growth and Opportunity Act of 2019" should support the rehabilitation of smaller buildings by increasing the tax credit to 30% on projects with qualifying expenses less than $3,750,000.

To keep adaptive reuse and historic rehabilitation robust for both the private and the public sector, the US should consider reintroducing the 10% tax credit on all non-residential buildings constructed before 1936. This credit, while smaller, significantly expanded the number of properties that could qualify for the credit by removing the requirement for a building to be on or eligible to be added to the National Register of Historic Places. Next, rehabilitation development would be further championed if the thirteen states that do not currently have state historic tax credit programs adopted them.

Every year, new buildings that were constructed fifty years prior become eligible for historic tax credits. Under the current US system – made stronger with some adjustments - these aging buildings will be given new life by the supply and demand forces that govern the private real estate development market.

Foreign governments, the UK included, would benefit from analyzing the US model in greater detail and from testing it in pilot-program areas to examine its possible wider viability. In 2003 the House of Commons did study the US tax credit system and some Members of Parliament have advocated for its adoption.[147] To date nothing has come to fruition. The author concedes that transferring tax policy is complicated and challenging but recommends – nonetheless - that the UK government examine how the RITC program has benefitted neighborhoods and local economies after 16 additional years since the last study. At a minimum, the author suggests increasing the size and availability of incentives so that the development industry is encouraged to undertake the rehabilitation of a complicated building rather than to demolish it.

The author recognizes that historic preservation apparatuses are strong in the both the United States and the United Kingdom but notes that historic buildings continue to be demolished regularly. For reasons cited in Section 7, the author believes that the United Kingdom has historically been more effective in protecting

[147] Office of the Deputy Prime Minister, "The Role of Historic Buildings in Urban Regeneration," 41.

its historic environment than the United States. That said, the author suggests that the United States, by creating a system that aligns the interests of developers, preservationists and the government, has created a benchmark system currently better equipped to enable the vibrant use, reuse and rehabilitation of historic properties today and for the future.

"The bottom line is, unless preservation makes financial sense, it may not get support from either the public or private sectors."[148]

[148] Tyler, Tyler, and Ligibel, *Historic Preservation*, 237.

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