



central midlands audit partnership

# Allestree Hall & Golf Course – Investigation

Final Audit Report

## Our Vision

To bring about improvements in the control, governance and risk management arrangements of our Partners by providing cost effective, high quality internal audit services.

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## 1 Introduction

### 1.1 Issue

- 1.1.1 At a meeting of the Full Council on 18th January 2023, Councillor Shanker moved a Motion Without Notice under CP42(d) for the matter regarding Allestree Hall to be referred to the Audit & Governance Committee (A&GC) as the appropriate body for the matter to be dealt with.

On 22<sup>nd</sup> March 2023 the A&GC formally requested that the Central Midlands Audit Partnership carry out an investigation into the ongoing sale of Allestree Hall & Golf Course, along with issues concerning English Heritage status and potential criminality of tree removal works alleged to have taken place. A motion was passed for the scope of the investigation to be agreed with Councillor Shanker, Councillor West (A&GC Chair), the Group Auditor and the Head of Internal Audit and for the outcome of the investigation to be reported back to the A&GC in due course.

- 1.1.2 We were requested to investigate and report back to the Council's A&GC on the following areas:

- The Council's engagement with the English Heritage assessment for the golf course to become a Heritage Asset and that completion of the Heritage Impact Assessment followed due process. (Assessment of Heritage Asset & the Heritage Impact Assessment)
- Whether the removal of /damage to trees at Allestree Park constituted a criminal offence. (Removal of /Damage to trees at Allestree Park)
- Was a competitive process carried out for the sale of Allestree Hall & Golf Course and was adequate due diligence undertaken to ensure that the process provided a value for money outcome for the Council. (Sale of Allestree Hall & Golf Course)

### 1.2 Scope of Investigation

- 1.2.1 The investigation focused on identifying the key facts pertaining to these matters and, from the balance of evidence, provided an assessment over the governance arrangements in place and the findings from the outlined objectives.

- 1.2.2 We sought to:

- Retrieve and examine relevant documentation relating to these matters.
- Interview Officers, Members and interested parties, as required, to establish the facts pertaining to these issues.
- Establish and secure the necessary evidence to support our findings.
- Formally report our findings to the A&GC following the investigation.

### 1.3 Distribution and Communication

- 1.3.1 This report has been issued to the Audit & Governance Committee with copies to:

- Paul Simpson, Chief Executive.
- Rachel North, Strategic Director for Place & Deputy Chief Executive.
- Emily Feenan, Director of Corporate Governance, Procurement & Property (Monitoring Officer).

- 1.3.2 This report has been produced to provide the A&GC with a detailed account of our findings. It is intended that this report should be used by the Committee to decide on the most appropriate course of action to take.

- 1.3.3 This report was produced by Susannah Leask, Principal Auditor, Martin Shipley, Group Auditor and Richard Boneham, Head of Internal Audit. Any enquiry concerning the content of this report or associated issues may be made to Martin Shipley, Group Auditor on 01332 643 292 or Susannah Leask, Principal Auditor on 01332 643 356.

## 2 Findings

### 2.1 Introduction

- 2.1.1 The sale of Allestree Hall was agreed by Council Cabinet in September 2019 and Allestree Golf Course was closed in December 2020 following an unsuccessful expressions of interest exercise to identify a new operator for the facility.
- 2.1.2 Issues relating to Allestree Hall, Park and Golf Course were subsequently raised by campaign groups and individuals. Discussion of these matters at meetings of the Council can be summarised as follows:
- At the meeting of the Full Council on 21<sup>st</sup> July 2021 a motion was moved by Councillor Skelton to request that a further time extension was not given to the preferred bidder for Allestree Hall and that Marketing Derby identified suitable organisations who were interested in operating the Hall and Golf Course in an integrated manner or the Golf Course as a separate entity. At the meeting of Council Cabinet on 4<sup>th</sup> August 2021 this motion was declined on the basis that there were not sufficient grounds to overturn its decision of September 2019.
  - On 7<sup>th</sup> September 2021 the Executive Scrutiny Board agreed that a report on the processes involved in determining the future of Allestree Golf Course and Hall be brought to a meeting of the most appropriate committee. On 24<sup>th</sup> January 2022 the Communities Scrutiny Review Board received a briefing on the background and process associated with the closure of Allestree Golf Course.
  - At the meeting of the Full Council on 18<sup>th</sup> January 2023 a motion was moved by Councillor Skelton to request that Council Cabinet and Council officers co-operate with Historic England to undertake the additional research required by Historic England to enable Derby to have the first ever UK golf course with its own designated historic landscape and that Marketing Derby opened discussions and negotiations with organisations that were interested in buying Allestree Hall and Golf Course. This motion was lost.
- 2.1.3 The Central Midlands Audit Partnership was instructed by the A&GC to investigate the issues raised. We met with the following officers, on a fact-finding basis, to identify what information was held in respect to these matters:
- Head of Estates and Property Review.
  - Tree Preservation Order Officer.
  - Community Parks Officer.

### 2.2 Professional Advice

- 2.2.1 We took advice from the Head of Legal Services at Derby City Council with respect to Local Authority requirements regarding the Heritage Impact Assessment.
- The Heritage Impact Assessment must be fit for purpose, robust and sufficiently detailed. Challenge could be brought if it missed material consideration. However, that right to challenge had to be enacted within 3 months of the publication of the Heritage Impact Assessment, otherwise it stands as written.
- 2.2.2 We record that the Council's Tree Preservation Order Officer has received professional legal advice from a Lawyer in the Council's Legal Department in determining whether the tree works undertaken at Allestree Park were allowable under the planning permission granted in 2015.

## 2.3 Assessment of Heritage Asset & the Heritage Impact Assessment

### English Heritage – Golf Course Heritage Asset Assessment

- 2.3.1 Allestree Hall is on Historic England's "National Heritage List for England" (NHLE) as a Grade II\* listed building and is also on Historic England's "Heritage at risk" register. The Ice House at Allestree Hall has a separate Grade II listing.
- 2.3.2 An application was made to Historic England by a third party for the golf course to be included on the Register of Parks and Gardens of Special Historic Interest in England, part of the NHLE.
- 2.3.3 On 12<sup>th</sup> January 2021 Historic England contacted the Council's Head of Parks and Active Living by email to arrange a site visit. The Head of Parks and Active Living replied on the same day to make arrangements for a site visit on 15<sup>th</sup> January 2021.
- 2.3.4 On 29<sup>th</sup> January 2021 an invitation to comment on the Consultation Report prepared by Historic England was issued to the Head of Parks and Active Living. No comments were made.
- 2.3.5 On 18<sup>th</sup> February 2021 Historic England contacted the Council to ask if it retained any plans or documents relating to the golf course, in particular anything that showed its original layout or any subsequent modifications. The request was passed to both the Estates team and Derby Local Studies Library and information obtained in the form of maps, photos and articles was submitted to Historic England on 25<sup>th</sup> February 2021.
- 2.3.6 We have reviewed email correspondence between the Council and Historic England and conclude that officers responded promptly and helpfully to questions asked by Historic England and made themselves available for further discussion.
- 2.3.7 On 29<sup>th</sup> June 2021 Historic England contacted the Head of Parks and Active Living to notify of their decision not to add the golf course to the Register of Parks and Gardens of Special Historic Interest. Although the golf course was recognised as having historic interest it was not recommended for designation, the reason given being:

*"national context:*

*\* research on a national scale is needed to provide a better understanding of its place within the context of the evolution, design and survival of golf courses and to measure its case against comparable courses. It is not known how well the original layouts of other historically significant courses have survived."*

There is however some confusion in the assessment document published on the Historic England website, since the 'countersigning comments' state:

*"Agreed. The golf course at Allestree Park, laid out to designs by Harry Colt 1929 - 1930, has clear historic interest as an example of golf course design from this period by one of the leading designers of the day. The original course design survives remarkably well, and its maturity in its parkland setting allows us to appreciate its position within Colt's oeuvre. It should be added to the Register at Grade II. S Mee 28 April 2021"*

- 2.3.8 It is thus apparent that serious consideration was given to inclusion on the register, however ultimately Historic England deemed this not appropriate given the lack of research nationally. We note that national research has previously been commissioned in this area by Historic England, including in 2017 'Golf Courses as Designed Landscapes of Historic Interest' by the European Institute of Golf Course Architects. It would be reasonable to conclude that any further national research required would, if commissioned, be completed by an organisation such as this.
- 2.3.9 **In Conclusion** – Council officers responded promptly and helpfully to English Heritage regarding the assessment for the Golf Course to be included on the Register of Parks and Gardens of Special Historic Interest. English Heritage concluded that further research on a national scale would be required to determine whether the Golf Course should be included on the Register. English Heritage

has not asked the Council to perform this research and it would be reasonable to expect such research, if commissioned, to be carried out by a recognised authority on golf course architecture.

### Completion of the Heritage Impact Assessment

2.3.10 A Heritage Statement and Heritage Impact Assessment was prepared by Guy Taylor Associates on behalf of the proposed purchaser of Allestree Hall, dated December 2019. This was submitted to the Council as part of the planning application 19/01744/FUL submitted on 12<sup>th</sup> December 2019 and approved by delegated decision on 17<sup>th</sup> December 2020.

2.3.11 The National Planning Policy Framework states:

*“194. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, **including any contribution made by their setting**. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. **As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary.**”*

*“195. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should **take this into account when considering the impact of a proposal on a heritage asset**, to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal.”*

The Council currently has a Local Plan Part 1 (LPP1) which, alongside the remaining ‘saved’ policies from the City of Derby Local Plan Review (2006) provides the city’s development strategy until 2028. LPP1 CP20 sets the broad framework for addressing issues relating to the historic environment and states:

*“5.20.12 In order to enable the Council to make fully informed decisions about development proposals that have the potential to impact upon heritage assets, the Council will require the **submission of a statement of significance and an impact assessment, in line with the requirements of the NPPF**. This information will enable the Council to give appropriate weight to the need to conserve the relevant asset. For example, greater weight will generally be given to the need to preserve statutory listed buildings as opposed to locally listed buildings, based on their relative significance.*

*The level of details to be submitted should be proportionate to the asset’s importance and sufficient to understand the potential impact of the proposals on that significance. **This will normally include a justification statement and detailed drawings which have been prepared by a suitably qualified person or a relevant recognised body.** The submitted details should address the likely **impact upon the heritage asset and any mitigation measures necessary to protect and enhance its significance**. Where there is likely to be harm to a heritage asset, the tests in national policy will be followed. In such circumstances, clear justification should be provided, including details of any public benefits.”*

2.3.12 The Heritage Statement and Heritage Impact Assessment drew on information and analysis within a Heritage Assessment prepared for the Council in January 2019 by Lathams and Cushman & Wakefield, to provide information to prospective purchasers of Allestree Hall. The Heritage Assessment describes the site and its current condition, assesses the heritage significance of the buildings and the park by reference to a set of heritage values as defined in Historic England’s guidance ‘*Conservation Principles, Policies and Guidance*’ and sets out in detail the potential for change and adaption of each element of the site. The December 2019 Heritage Impact Assessment drew heavily on the January 2019 report’s assessment of the significance of heritage assets in terms of the aforementioned values, reproducing these assessments and identifying the impact of the proposed development on each element.

2.3.13 We have reviewed the background of both Guy Taylor Associates and Lathams and conclude that both organisations hold significant expertise and experience in heritage assets and the preparation of heritage statements and heritage impact assessments.

- 2.3.14 Historic Environment Records contain details of local archaeological sites and finds, historic buildings and historic landscapes and are maintained and managed by local authorities. The NPPF requires that the relevant Historic Environment Record is consulted in assessing the significance of any heritage assets affected by a planning application. From a review of the Heritage Statement and Heritage Impact Assessment, together with the January 2019 Heritage Assessment, it is evident that the Derbyshire Historic Environment Records have been consulted and inform the reports.
- 2.3.15 We can confirm that the Heritage Impact Assessment considers the impact of the proposed development on the Hall, the stable block/toilet block, the Ice House and the Park/setting with regard to the heritage values defined in Historic England's guidance "*Conservation Principles, Policies and Guidance*". The development was judged to have no impact or to be beneficial to the significance of all elements of the site. This was with the exception of a slight impact on the Evidential value (value deriving from the potential of a place to yield evidence about past human activity) of each element, relating to below ground archaeology, for which mitigating measures were set out accordingly.
- 2.3.16 Detailed drawings were included within the Heritage Statement and a justification for changes impacting the significance of the Hall was provided as an addendum to the Heritage Impact Assessment.
- 2.3.17 We are not aware from the national or local guidance we have reviewed of any specific requirement for the Council to perform its own Heritage Impact Assessment. It would be reasonable for the Council to place reliance on the Heritage Impact Assessment submitted by the developer, having verified the credentials of the report authors.
- 2.3.18 In this case the Heritage Impact Assessment submitted drew heavily on the Heritage Assessment commissioned by the Council itself and the organisations responsible for both reports held expertise in heritage assets. We further note that Historic England provided pre-application advice to the developer and both Historic England and the Conservation Officer were consulted during the planning approval process.
- 2.3.19 The Heritage Statement and Heritage Impact Assessment does not consider the Park or the Golf Course as heritage assets in their own right. It does however recognise the contribution of the Park/setting to the significance of the Hall and consider the impact of the proposed development on the Park/setting, in line with the NPPF.
- 2.3.20 Designated heritage assets, with the exception of conservation areas and World Heritage Sites, are listed in the NHLE. Historic England guidance '*Local Heritage Listing: Identifying and Conserving Local Heritage*' is however clear that other assets can be considered heritage assets and a local list of these can and should be maintained by local authorities.

The NPPF states that:

***"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."***

LPP1 CP20 concerning the historic environment states:

***"5.20.10 This policy also covers parks and gardens of particular historic interest where special protection is needed to ensure their survival and integrity. The aim is to protect not just the quality of the landscape, but also its relationship to any buildings which are historically linked. There are three nationally registered parks and gardens in Derby; the Arboretum, which was the first public park in the country and is registered as grade II\* and the Nottingham Road and Uttoxeter Road cemeteries which are grade II."***

The Council held a local list of heritage assets. This was approved by Council Cabinet in July 2010 and has not been revised since. Neither the Park nor the Golf Course are included within this record and as such there was no clear requirement for the Council to consider either as heritage assets in their own right when assessing the impact of the planning application.

- 2.3.21 Allestree Park sits within the Derwent Valley Mills World Heritage Site buffer zone. The Derwent Valley Mills World Heritage Site Management Plan 2020-2025 encourages local planning authorities to require a Heritage Impact Assessment to be submitted for development applications within the Derwent Valley Mills World Heritage Site. This is in accordance with the International Council on Monuments and Sites (ICOMOS) 2011 guidance '*Guidance on Heritage Impact Assessments for Cultural World Heritage Properties*'. It is however ambiguous how this applies to locations within the buffer zone.

LPP1 LPA C9 concerning the Derwent Valley Mills World Heritage Site states that the Council will:

*“(c) only approve proposals for development outside the World Heritage Site, including sites within the World Heritage Site buffer zone, if they do not have an adverse effect upon the OUV (Outstanding Universal Value) of the World Heritage Site or its setting, including specific monitored views into and out of the site.”*

The January 2019 Heritage Assessment acknowledges that the site falls fully within the Derwent Valley Mills World Heritage Site Buffer and confirms that there are no monitored views from the World Heritage Site which take in Allestree Hall.

- 2.3.22 **In Conclusion** – concerning the matter of whether the completion of the Heritage Impact Assessment followed due process, we have reviewed the Heritage Statement produced by Latham and Cushman & Wakefield on behalf of the Council, the Heritage Statement and Heritage Impact Assessment prepared by Guy Taylor Associates on behalf of the proposed purchaser, the NPPF and the Local Plan and other guidance and documentation relating to the planning application, and find no concerns with the process followed.

## 2.4 Removal of / Damage to trees at Allestree Park

- 2.4.1 Two complaints were made in February 2023 regarding possible unauthorised works to trees at Allestree Park. These complaints were referred to the Council's Tree Preservation Order Officer. A site visit was undertaken by this officer on 28<sup>th</sup> February 2023 and it was established that removal and pruning of trees had been undertaken by a contractor appointed by Derbyshire Wildlife Trust at the southern and north-eastern borders of the Park, to allow installation of a new fence to restrict the movements of grazing cattle.
- 2.4.2 All trees at Allestree Park are subject to a tree preservation order (TPO 2000 NO 235). An application was made by the Council on 16<sup>th</sup> December 2014 (application ref 12/14/01709) for permission to carry out works in accordance with the Allestree Park Local Nature Reserve Management Plan (2014-2023). This was granted on 3<sup>rd</sup> February 2015 for a period of up to 10 years from the date of the consent, with the conditions:

*“1. The tree work authorised shall be carried out in accordance with the recommendations under Stage 2: Evaluation and Objectives and Stage 3: Prescription, of the Allestree Park LNR Management Plan for a period of up to 10 years from the date of this consent.*

*2. All tree works should be carried out in accordance with the guidance and recommendations detailed within British Standards 3998:2010 'Tree Work - Recommendations'.*

The Allestree Park Local Nature Reserve Management Plan (2014-2023) set out a series of operational objectives and prescriptions, the relevant one here being:

*“Operational Objective 1: Maintain fences and any other structure forming a boundary to the site.*

*Outline prescription 1.2: Maintain boundaries*

*Project: Maintain as necessary”*

- 2.4.3 We have established that the tree works were performed under the Council's Rewilding Project, run as a partnership between the Council and Derbyshire Wildlife Trust (DWT). Three approaches to Rewilding were put to the residents of Derby in a 12-week consultation running from 17<sup>th</sup> January to 11<sup>th</sup> April 2022 and the results of this were presented to Council Cabinet in August 2022. The

'Vision for Community Rewilding Allestree Park' was adopted subject to ongoing consultation and assessment of financial issues; this included the feature:

***"Protecting features of historical importance - such as the strip lynchets near to the Allestree Pond by grazing with livestock, using GPS fences which can focus free ranging cattle into certain areas, reducing the need for physical fencing."***

We understand that a degree of fencing was however required to provide a physical boundary for grazing cattle as a back-up to the GPS systems used.

- 2.4.4 A project team had been established for the Rewilding Project, which met approximately every two months. Cattle already grazed at Allestree Park and meeting minutes over the period confirmed that an extension to cattle grazing at the Park was being discussed from September 2022 onwards as part of the Nature Recovery workstream and that this aspect of the project would progress once funding had been obtained by Derbyshire Wildlife Trust.
- 2.4.5 Although a project team had been established, there was not yet a fully developed and ratified Terms of Reference setting out the governance arrangements for the Rewilding Project or the partnership with Derbyshire Wildlife Trust.
- 2.4.6 The Council's Community Parks Officer was responsible for arrangements for the fencing of grazing cattle. We have established that this officer believed the tree works, which were required to make space for fencing acting as a physical boundary for grazing cattle, constituted maintaining of boundaries under *Operational Objective 1* above and were thus covered by the permission granted on 3<sup>rd</sup> February 2015.
- 2.4.7 Advice obtained by the Council's Tree Preservation Order Officer from the Council's Legal team, however, considered that the works were not covered by the permission granted on 3<sup>rd</sup> February 2015:

***"The specific provision that permits such works to trees regarding boundaries reads **"Maintain fences and any other structure forming a boundary to the site"*****

*If it was the case that the provision read "maintain the boundaries of the site" then that would support the Parks Officers approach/interpretation, however, the provision doesn't refer to maintaining the boundary, but rather refers to maintaining the fences and structures that **form** the boundary. Emphasis on forming, indicating that the provision relates only to the existing fences and structures of the boundary and no other."*

- 2.4.8 Section 210(1) and section 202C(2) of the Town and Country Planning Act 1990 provide that anyone who, in contravention of a Tree Preservation Order cuts down, uproots or wilfully destroys a tree; or tops, lops or wilfully damages a tree in a way that is likely to destroy it; or causes or permits such activities is guilty of an offence. Section 210(2) of the Town and Country Planning Act 1990 provides that anyone found guilty of these offences is liable, if convicted in the magistrates' court, to a fine of up to £20,000. In serious cases a person may be committed for trial in the Crown Court and, if convicted, is liable to an unlimited fine.
- 2.4.9 The Council does not have a formal Tree Protection Enforcement Policy in place. Whilst this is not a requirement it is good practice and the Department for Levelling Up, Housing & Communities (DLUHC) guidance 'Tree Preservation Orders and trees in conservation areas' states that:
- "Local planning authorities should consider publishing tree protection enforcement policies and having clear written procedures to deal with cases. These procedures may require close liaison between tree officers, enforcement officers and legal advisers."***
- 2.4.10 DLUHC guidance 'Tree Preservation Orders and trees in conservation areas' sets out the options available to local planning authorities when faced with what they believe are unauthorised works to protected trees. These are:
- *"do nothing – but only if justified by the particular circumstances;*
  - *negotiate with the owner to remedy the works to the satisfaction of the authority;*

- *consider the option of issuing an informal warning to impress on the tree owner or others suspected of unauthorised works that such work may lead to prosecution;*
- *seek an injunction to stop on-going works and prevent anticipated breaches; or*
- *consider whether the tests for commencing a prosecution are met.”*

The guidance further goes on to set out that “*Negotiation may enable the authority to ensure that remedial works to repair, or reduce the impact of, unauthorised works to a protected tree are carried out. The authority should also take into account the legal duty to replace trees. Prosecutions cannot require remedial works to the tree but will, where appropriate, both punish offenders and deter potential offenders. The authority should consider whether there is a realistic prospect of a conviction and whether it is in the public interest to prosecute. It should also consider whether it is in the public interest to prosecute some or all of the individuals implicated in the offence.*”

- 2.4.11 The Tree Protection Order Officer considered that the negotiation approach was appropriate in this situation given the following factors:
- Misinterpretation of the permitted works.
  - The wider ecological benefits of the re-wilding initiative.
  - The minimal harm to public visual amenity that has resulted from the unauthorised works.
  - The minimal harm to the woodland as a whole.
  - The minimal loss of canopy cover.
  - The fact that if an application had been submitted the tree works would have been approved.
- 2.4.12 The Tree Protection Order Officer has communicated this decision to the complainants and to the Community Parks Officer, who has formally acknowledged that in hindsight the works should have required formal permission.
- 2.4.13 Remedial works were also requested by the Tree Protection Order Officer since some trees had been poorly pruned. This was because the contractor engaged by DWT to complete the works was not appropriately qualified to arboricultural standards.
- 2.4.14 A further requirement for mitigatory planting will be fulfilled by the planting of community orchards on the Park planned under the Rewilding Project. Work to introduce a new fence has now paused subject to ongoing consultation.
- 2.4.15 **In Conclusion** – the Council has taken appropriate Legal advice in determining whether the tree works at Allestree Park were in breach of the Tree Protection Order in place and, having determined that the works were in breach, has acknowledged this and followed an appropriate course of action in line with government guidance.

## 2.5 Sale of Allestree Hall & Golf Course

### Sale of Allestree Hall

- 2.5.1 Cushman & Wakefield were appointed as the Council's Strategic Property Advisor on 3<sup>rd</sup> November 2015 on a 3 year contract with the option to extend for 1 year, following competition under the Homes & Communities Agency Property Panel Framework.
- 2.5.2 Allestree Hall was one of a number of key sites identified in the contract for which the Council would require advice and support in how to take the asset forward and/or arrange their disposal. The scope of the contract included valuations, development appraisals and marketing and agency services.
- 2.5.3 In September 2017 a Development Appraisal report was produced by Cushman & Wakefield. This established the conservation deficit for the Hall, that is the amount by which the cost of repair would exceed its market value. A cost estimate for the restoration of Allestree Hall and Stable Block was prepared, indicating a cost of £2,791,609. A market value for the Hall and Stable Block once developed was estimated. This, once restoration cost, construction costs and other costs & fees

were accounted for, resulted in an estimated negative residual value of -£2.145m, this being the conservation deficit.

- 2.5.4 A Planning Brief and a Heritage Assessment were prepared in January 2019 by Cushman & Wakefield and Lathams to provide information to prospective purchasers. The Planning Brief considered the national and local planning context, set out the heritage significance of the site and considered possible options for reuse of the Hall and immediate grounds. The Heritage Assessment described the site and its current condition, assessed the heritage significance of the buildings and the park by reference to a set of heritage values as defined in Historic England's guidance '*Conservation Principles, Policies and Guidance*', and set out in detail the potential for change and adaption of each element of the site.
- 2.5.5 The Hall was offered for sale by informal tender, on a subject to planning basis, with a closing date of 22<sup>nd</sup> March 2019. A 250 year leasehold was offered subject to full planning and listed building consent, with a virtual freehold being transferred on completion of the scheme.
- 2.5.6 Sales particulars (dated April 2018 and refreshed in January 2019) were prepared by Cushman & Wakefield and marketing decisions were taken by this firm as the sole agent. Particulars stated:
- "The Council is seeking to dispose of the whole. Prospective purchasers are asked to confirm their interest in one of the following options:*
- 1. Option to buy the Hall and outbuildings*
- 2. Combined opportunity to buy Allestree Hall and lease the golf course"*
- No guide price was provided in the sales particulars and the bid pro-forma specified that the Council was not bound to accept the highest or any offer. Offers were to be submitted in a sealed envelope on a bid proforma which required bidders to set out their proposed scheme and plans for financing.
- 2.5.7 Seven offers were received in line with the submission process with a further offer received by email which was considered non-compliant. A '*Review of Offers Report*' dated 29<sup>th</sup> March 2019 was prepared by Cushman & Wakefield. This set out all 8 bids, summarised each proposed scheme and its finance and funding arrangements, commented on the validity of the bid, then provided an analysis of the bid and recommendation as to whether it should be shortlisted. The completed bid proformas and other documents submitted were included within the report. Five bids were recommended for shortlisting.
- 2.5.8 The shortlisted bidders were invited to complete supplementary questions and attend a meeting with Cushman & Wakefield to allow bids to be explored more thoroughly. A '*Recommendation Report*' identifying a preferred bidder was prepared by Cushman and Wakefield dated 16<sup>th</sup> May 2019. Each proposal was discussed in detail within the report and the completed bid proformas, supplementary questions and other documents submitted were provided to the Council as appendices. The analysis by Cushman & Wakefield included consideration of the funding arrangements in place, the financial standing of the bidders and how well developed the bids were. A preferred bidder was recommended to the Council with two further bids recommended as back up options.

## Allestree Hall & Golf Course – Investigation

- 2.5.9 Bids received are summarised in the table below. Having reviewed the supporting documentation, it is our opinion that the recommendations made both for shortlisting and the preferred bidder are appropriate.

	Offer	Nature	Interest in golf course	Shortlisted	Selected
1	400k	Residential/hotel	N	N	N
2	650k	Spa retreat	N	Y	N
3	10k	Office/ residential/ commercial	Y	Y	N (backup)
4	<b>1,150k</b>	<b>Wedding venue</b>	<b>N</b>	<b>Y</b>	<b>Y</b>
5	1k	Community hub	N	Y	N
6	110k	Restaurant/apartments	Y	N	N (backup)
7	Up to 2m	Residential	Y	Y	N
8	400k (non-compliant)	Residential	Y	N	N

- 2.5.10 On 11<sup>th</sup> September 2019 Council Cabinet resolved to dispose of Allestree Hall to the preferred bidder.
- 2.5.11 The Local Government Act 1972 Section 123 allows a council to dispose of land in any manner they wish, subject to the conditions imposed by that section. Relevant conditions are:
- A disposal may not be for a consideration less than the best that can be reasonably obtained (unless with the consent of the Secretary of State).
  - If the land consists of or forms part of an open space there must be advertisement placed of notice of the intention to dispose in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and any objections to the proposed disposal must be considered.
- 2.5.12 There is a general consent in place (The Local Government Act 1972: General Disposal Consent (England) 2003) covering disposal for less than the best that can be reasonably obtained where:
- a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;
    - i) the promotion or improvement of economic well-being;
    - ii) the promotion or improvement of social well-being;
    - iii) the promotion or improvement of environmental well-being; and
  - b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).
- 2.5.13 The Council's intended outcome for selling Allestree Hall was not simply to obtain a capital receipt, but to secure viable and commercially sustainable use of the property given its presence on the Heritage at Risk Register and its prominence within Allestree Park. We consider that this addresses requirement (a).
- 2.5.14 The '*unrestricted value*' referred to in the general consent can be taken to mean the market value. The guidance accompanying the general consent states that "**9. Where an authority has invited tenders and is comparing bids, the unrestricted value is normally the highest bid.**" The highest of the bids received for Allestree Hall was 'up to £2,000,000' and the preferred bid was £1,150,000. Thus a difference of £850,000, falling within the £2,000,000 threshold in requirement (b) of the general consent.
- 2.5.15 With regard to the condition relating to advertisement, we have confirmed that notice of the intention to dispose was placed in the Derby Telegraph on 1<sup>st</sup> and 8<sup>th</sup> September 2021 with a deadline for objections of 15<sup>th</sup> September 2021; no objections were received.

- 2.5.16 There is no prescribed method for disposing of land which the Council is required to follow, however Historic England guidance ‘*The Disposal of Heritage Assets, 2010*’ states that “*Competitive tender is generally to be preferred to sale by auction, since it can provide the opportunity for information to be sought on the tenderers’ proposals for the asset as well as the offer price, and can provide room for some negotiation with the short-listed potential purchasers.*” This was the method chosen by the Council.
- 2.5.17 Planning consent and listed building consent were granted by delegated decision on 17<sup>th</sup> December 2020, in line with the Council’s Scheme of Delegation.
- 2.5.18 Progress of the sale stalled following the Covid-19 pandemic. We understand that the preferred bidder has now withdrawn their successful bid and the Council will now proceed with remarketing the Hall.
- 2.5.19 **In Conclusion** – a competitive process was carried out for the sale of Allestree Hall, adequate due diligence was undertaken and the process provided a value for money outcome for the Council. The Council has complied with legislation covering land disposals and Historic England guidance on the disposal of heritage assets.

### Closure of Allestree Golf Course

- 2.5.20 As the sale of the Hall would affect the operation of the golf course, at the Council Cabinet meeting of 11<sup>th</sup> September 2019 it was resolved that:
- A consultation exercise would be carried out on the closure of the golf course.
  - An Expression of Interest exercise would be run to allow third party organisations to make viable business proposals which offer a sustainable future for the golf course.
  - If no viable proposal is received, that the golf provision ceases and for the course to be decommissioned and absorbed into the existing parkland.
- 2.5.21 The Expression of Interest exercise would result in a property transaction by way of sale of a lease rather than an award of contract, hence the Council’s procurement regulations did not apply.
- 2.5.22 At the same meeting, delegated authority was given to the Strategic Director of Corporate Resources and the Strategic Director of Communities & Place following consultation with the Cabinet Member for Governance & Licensing and the Cabinet Member for Leisure, Culture & Tourism to:
- Agree detailed terms for the disposal of Allestree Hall.
  - Undertake consultation on the proposals for the future operation of the golf course.
  - Undertake the Expression of Interest Exercise for the golf course.
  - Agree and approve the criteria for assessing the viability of any submitted business proposal which offered a sustainable future for the operation of the golf course.
  - Determine whether a viable proposal had been submitted.
  - Agree the closure of Allestree Park golf course if no viable business proposals are submitted.
- 2.5.23 The consultation ran from 16<sup>th</sup> December 2019 to 23<sup>rd</sup> March 2020. This was an online survey with paper versions available at Allestree Golf Course, Allestree Library and the Council House. 805 responses were received (54.3% of which were from regular or occasional users of the golf course) and a summary of the consultation results is as follows:
- Three quarters of consultees (75%) believed that it was important to the local area that Allestree continued to have a golf course.
  - Most people responding to the survey (80.2%) did not mind if it was the Council or other organisations that operated Allestree Golf Course as long as it is of a good standard.
  - 246 participants commented that the golf course should be kept.
  - 96 people commented that the golf course should be removed and returned to parkland.

2.5.24 The report submitted to the 11<sup>th</sup> September 2019 meeting set out the basis on which Expression of Interest proposals should be submitted. We confirmed that these requirements and assessment criteria were clearly documented in the Expressions of Interest Pack, which was made available to prospective operators. A scoring criteria document was also developed in line with the assessment criteria.

2.5.25 There were 3 elements to assessment:

- Bidders must have indicated that:
  - They take an occupational lease of the Golf Course.
  - The operator is to identify, obtain the necessary consents, fund and construct any building or facilities required to support the operation of the golf course.
  - The operator is to be responsible for undertaking full maintenance, management and operation of the golf course and any buildings and all associated costs.
  - The operator will maintain the current level of public access over the course.

If the proposed bid does not contain these elements it is rejected.

- Bids would be scored, using the defined criteria, on:
  - Sustainable business plan (weighting 20%).
  - Financial viability (weighting 60%).
  - Demonstrate experience of managing a complex site (weighting 20%).
- Any bid that:
  - Does not achieve an unweighted score in excess of 75% in the “Demonstrate experience of managing a complex site” section and
  - Does not achieve an overall score of 66.6% or morewill be rejected.

The requirement to gain a score of 75% or more on experience and 66.6% overall is stringent and reflects the Council's desire to ensure that any successful prospective operator would have a viable business proposal offering a sustainable future for the golf course.

2.5.26 Expressions of Interest for the running of the golf course were sought from 16<sup>th</sup> December 2019 with a closing date of 23<sup>rd</sup> March 2020. The opportunity was publicised in the national Leisure Opportunities Magazine, on the Council website, in the golf shop, at the local library and a link was included in the consultation document.

2.5.27 Four Expressions of Interest were received prior to the closing date and these were assessed by the Head of Corporate Property. We have examined the bids and evaluation forms and confirmed that bids were assessed in line with the scoring criteria document. No bids met all the key selection criteria. Two of the bids required council funding and therefore did not meet the requirement that “The operator is to be responsible for undertaking full maintenance, management and operation of the golf course and any buildings and all associated costs”, while two did not demonstrate sufficient experience in managing a complex site.

2.5.28 A joint meeting of Council Cabinet and Corporate Leadership Team (CLT) considered the outcome of the consultation and the expressions of interest exercise on 3<sup>rd</sup> September 2020. On 2<sup>nd</sup> November 2020 a delegated decision record was signed by the Strategic Director of Corporate Resources, the Strategic Director of Communities & Place, the Cabinet Member for Governance and Licensing and the Cabinet Member for Leisure, Culture & Tourism, for the closure of the golf course to take effect on 31<sup>st</sup> December 2020.

2.5.29 A further late expression of interest was received in December 2020. This was discussed at a joint meeting of Council Cabinet and CLT on 14<sup>th</sup> January 2021. As a result of this meeting the decision was taken not to proceed with the proposal or with any future proposals received.

2.5.30 At the meeting of the Full Council on 21<sup>st</sup> July 2021 a motion was moved by Councillor Skelton to request that a further time extension was not given to the preferred bidder for Allestree Hall and that Marketing Derby identifies suitable organisations who are interested in operating the Hall and Golf Course in an integrated manner or the golf course as a separate entity. At the meeting of Council

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Cabinet on 4<sup>th</sup> August 2021 this motion was declined on the basis that there were not sufficient grounds to overturn its decision of September 2019.

- 2.5.31 A complaint was made to the Local Government Ombudsman about the Council's decision to close Allestree Golf Course. The Ombudsman investigated the matter and determined on 31<sup>st</sup> January 2022 not to uphold the complaint, concluding that *"I am satisfied on the evidence I have considered that the Council followed the proper process and considered all relevant facts when reaching its decision. In the absence of administrative fault, there are no grounds for the Ombudsman to question the merits of the decision."*
- 2.5.32 **In Conclusion** – the expression of interest exercise to identify an operator for Allestree Golf Course was a competitive process in which clearly defined criteria were used to evaluate bids. Since no bids met these criteria, the decision to close the golf course was then taken in line with the delegated authority conferred by Council Cabinet.

## 3 Conclusions

### 3.1 Summary of Key Findings

3.1.1 We established the following key points through the course of the investigation:

- In reference to the matter of the Council's engagement with English Heritage in the assessment for the Golf Course to be included on the Register of Parks and Gardens of Special Historic Interest, we found that Council officers responded promptly and helpfully to English Heritage. English Heritage concluded that further research on a national scale would be required to determine whether the Golf Course should be included on the Register. English Heritage has not asked the Council to perform this research and it would be reasonable to expect such research, if commissioned, to be carried out by a recognised authority on golf course architecture and not the Council.
- In reference to the matter of whether the completion of the Heritage Impact Assessment followed due process, we reviewed the Heritage Statement produced by Lathams and Cushman & Wakefield on behalf of the Council, the Heritage Statement and Heritage Impact Assessment prepared by Guy Taylor Associates on behalf of the proposed purchaser, the National Planning Policy Framework, along with the Local Plan and other guidance and documentation relating to the planning application. We found no concerns with the Heritage Impact Assessment, which was in line with the guidance and was produced by appropriately qualified persons.
- In reference to the matter of the removal of /damage to trees at Allestree Park, the Council has taken appropriate Legal advice in determining whether the works were in breach of the Tree Protection Order in place. Having determined that the works were in breach, the Council has acknowledged this and considered the courses of action available to them, being:
  - do nothing – but only if justified by the particular circumstances;
  - *negotiate with the owner* to remedy the works to the satisfaction of the authority;
  - consider the option of issuing an informal warning to impress on the tree owner or others suspected of unauthorised works that such work may lead to prosecution;
  - *seek an injunction* to stop on-going works and prevent anticipated breaches; or
  - consider whether the *tests for commencing a prosecution* are met.

The Council determined to negotiate and remedy the works to its satisfaction. Having reviewed government guidance, we concur that this approach was appropriate in the circumstances.

- In reference to the matter of the sale of Allestree Hall, the evidence we reviewed demonstrated that a competitive process was carried out for the sale of the Hall. We confirm that adequate due diligence was undertaken and that the process provided a value for money outcome for the Council. The Council has further complied with legislation covering land disposals and Historic England guidance on the disposal of heritage assets.
- In reference to the matter of the sale of Allestree Golf Course, we confirm that a competitive process in which clearly defined criteria were used to evaluate bids did take place. Since no bids met these criteria, the decision to close the golf course was subsequently taken in line with the delegated authority conferred by Council Cabinet.

### 3.2 Conclusions

3.2.1 On the matters we were requested to investigate and report back to the Council's A&GC we have concluded the following:

- Council officers suitably engaged with English Heritage, in order for the golf course to become a Heritage Asset, and completion of the Heritage Impact Assessment followed due process. (Assessment of Heritage Asset & the Heritage Impact Assessment)
- The removal of /damage to trees at Allestree Park did constitute a criminal offence. However, the Council have acknowledged the breach and taken appropriate action in line with the

required government guidance to best rectify the situation. (Removal of /Damage to trees at Allestree Park)

- A competitive process was undertaken for the sale of Allestree Hall & Golf Course, along with adequate due diligence and the securing of a value for money outcome for the Council. (Sale of Allestree Hall & Golf Course)

### 3.3 Investigation Recommendations

3.3.1 During the course of this investigation, while evaluating the systems of control in place, we have identified the following control issues and have recommended to the respective departments that control improvements be implemented to address the potential weaknesses identified:

- We found that the ‘*Vision for Community Rewilding Allestree Park*’ was adopted by Council Cabinet on 3<sup>rd</sup> August 2022. Since then, a project team had been established and met regularly. However, there was not yet a fully developed and ratified Terms of Reference, setting out the governance arrangements for the project or the partnership with Derbyshire Wildlife Trust.

Potential Risk	Mitigating Actions
If high profile projects are not operating within the Council's project management framework, there is a risk that project governance and project management may be poor, which could lead to delays, poor decision making and possible financial and reputational damage to the Council.	We recommend that a terms of reference for the Project is developed and ratified as a matter of priority, to ensure appropriate governance arrangements are in place and the project meets the requirements of the Council's project management methodology.

The Responsible Officer has stated that Terms of Reference have now been developed and were approved at the project board meeting on 28<sup>th</sup> July 2023.

- We found that the contractor engaged by Derbyshire Wildlife Trust (DWT) to carry out tree works at Allestree Park was a fencing contractor rather than a tree specialist and the works were not carried out suitably, resulting in additional remedial works being required.

Potential Risk	Mitigating Actions
If the Council does not assure itself that procurement activities carried out by partner organisations are robust, there is a risk that poor value for money may be obtained, leading to financial loss and possible reputational damage.	We recommend that the Council ensures that procurement processes used by Derbyshire Wildlife Trust are considered in partnership governance arrangements and satisfies itself that appropriate method statements and insurances are in place.

The Responsible Officer has stated that a competent agricultural fencing contractor was appointed by the Derbyshire Wildlife Trust to carry out fencing and tree works. DWT used their DWT contractor selection process to ensure suitability including appropriate qualifications and experience. The tree works were however in line with agricultural standards rather than arboricultural standards. This is often subject to much debate in the green spaces sector. This officer also stated that the pace of this element of the project was too quick due to a number of factors and needed to go through a project board for ratification. This has since been addressed through the creation of the Project Board who oversee and agree future project planning and ensure procurement processes are in place to satisfy all Partners in the project.

- We found that the Council did not have a formal Tree Protection Enforcement Policy in place. Whilst this is not a requirement it is good practice and the Department for Levelling Up, Housing & Communities guidance ‘*Tree Preservation Orders and trees in conservation areas*’ states that:  
*“Local planning authorities should consider publishing tree protection enforcement policies and having clear written procedures to deal with cases. These procedures may require close liaison between tree officers, enforcement officers and legal advisers.”*

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Potential Risk	Mitigating Actions
If the Council does not have a Tree Protection Enforcement Policy, there is a risk that enforcement activities may not be consistent, leading to possible reputational damage.	We recommend that consideration is given to documenting a Tree Protection Enforcement Policy and associated procedures.

The Responsible Officer has stated that Planning enforcement is a discretionary action based upon the merits/severity of the case and while there is a duty to investigate there is no requirement to take action. Preparation of a Tree Protection Enforcement Policy will be considered for the work program of the Arboricultural Officer. The current local plan (2017) is being reviewed and, if the Tree Protection Enforcement Policy is to be captured within this overarching document, this would be adopted by the Council in May 2026.

- We found that the Council held a local list of heritage assets (non-designated heritage assets) approved by Council Cabinet in July 2010. The National Planning Policy Framework requires that the effect of a planning application on the significance of non-designated heritage assets should be taken into account in determining an application. Allestree Golf Course does not feature on the Council's local list, which we consider reasonable, at that point in time, due to the previous absence of knowledge regarding the architect of the course. It would however be prudent for the Council to consider whether the mechanisms in place for updating the list are adequate, with reference to the Historic England guidance '*Local Heritage Listing: Identifying and Conserving Local Heritage*' and whether Allestree Golf Course should now feature on this list, or if the rewilding process means this would not now be appropriate.

Potential Risk	Mitigating Actions
If the local list of heritage assets is not up to date, there is a risk that the effect of planning applications on non-designated heritage assets will not be adequately considered, which may lead to reputational damage to the Council.	<p>We recommend that:</p> <ul style="list-style-type: none"> <li>Consideration is given to inclusion of Allestree Golf Course in the local list of heritage assets.</li> <li>The adequacy of processes for updating and reviewing the local list of heritage assets is reviewed and updated accordingly.</li> </ul>

The Responsible Officer has accepted the risk relating to this issue. The local list of heritage assets is a function of the Conservation Heritage Advisory Committee in association with the Conservation Officer. The local list was extensively reviewed several years ago and they are satisfied that that assessment was robust.

## 4 Appendices

### 4.1 Appendix A – Acronyms /Abbreviations

4.1.1 The following acronyms /abbreviations have been used throughout this report:

- **A&GC** – Audit & Governance Committee
- **CLT** – Corporate Leadership Team
- **DLUHC** – Department for Levelling Up, Housing & Communities
- **DWT** – Derbyshire Wildlife Trust
- **ICOMOS** – International Council on Monuments and Sites
- **LPP1** – Local Plan Part 1
- **NHLE** – National Heritage List for England
- **TPO** - Tree Preservation Order
- **Designated heritage asset** – heritage asset listed in the NHLE
- **Non-designated heritage asset** – heritage asset not listed in the NHLE but present on a local list of heritage assets
- **Register of Parks and Gardens of Special Historic Interest** – part of the NHLE

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