

Applications to be Considered

Purpose

- 1.1 Attached at Appendix 1 are the applications requiring consideration by the Committee.

Recommendation(s)

- 2.1 To determine the applications as set out in Appendix 1.

Reason(s)

- 3.1 The applications detailed in Appendix 1 require determination by the Committee under Part D of the Scheme of Delegations within the Council Constitution.

Supporting information

- 4.1 As detailed in Appendix 1, including the implications of the proposals, representations, consultations, summary of policies most relevant and officers recommendations.

Public/stakeholder engagement

- 5.1 None.

Other options

- 6.1 To not consider the applications. This would mean that the Council is unable to determine these applications, which is not a viable option.

Financial and value for money issues

- 7.1 None.

Legal implications

- 8.1 None.

Climate implications

9.1 None.

Other significant implications

10.1 None.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal		
Finance		
Service Director(s)		
Report sponsor	Paul Clarke	26/10/2022
Other(s)	Ian Woodhead	26/10/2022

Background papers:	None
List of appendices:	Appendix 1 – Development Control Report

Planning Control Committee 06/10/2022
Items to be Considered Index

Item No.	Page No.	Application No.	Location	Proposal	Recommendation
7.1	1 - 11	22/00459/FUL	78 Carlton Road Derby	Change of use from dwelling house (Use Class C3) to a six bedroom (eight occupant) house in multiple occupation (Sui Generis Use)	To grant planning permission with conditions.
7.2	12 - 33	21/01718/FUL	Littleover Manor 453 Burton Road Derby	Demolition of existing dwelling. Erection of seven dwelling houses (Use Class C3)	To grant planning permission with conditions.
7.3	34 - 45	22/00674/VAR	Site Of 79 Rykneld Road Littleover Derby	Demolition of existing Retail Building. Erection of a two storey building for use as a Dental Clinic (Use Class D1) at ground floor and Retail (Use Class A1) or Financial and Professional Services (Use Class A2) at first floor level - Variation of conditions 2, 4 and 5 of previously approved planning permission 06/18/00822	To grant planning permission with conditions.
7.4	46 - 57	22/01075/FUL	23 Chaddesden Park Road Derby	Change of use from dwelling house (Use Class C3) to a residential children's home for up to four children (Use Class C2)	To grant planning permission with conditions.
7.5	58 -101	22/00792/FUL	Land At St Peters Churchyard St Peters Churchyard Derby	Use of the land as an outdoor street food market including erection of 12 market stalls, seating area and associated ancillary structures, decking and ramps	To refuse planning permission.
7.6	102 - 131	22/00793/LBA	Land At St Peters Churchyard St Peters Churchyard Derby	Insertion of access into boundary wall	To refuse planning permission.
7.7	132 - 139	22/00861/FUL	38 Prince George Drive Derby	Change of use from Dwelling (Use Class C3) to residential care home (Use Class C2)	To grant planning permission with conditions.

Item No.	Page No.	Application No.	Location	Proposal	Recommendation
7.8	140 - 149	22/00603/FUL	31 Mount Carmel Street Derby	Change of use from dwelling house (Use Class C3) to a seven bedroom (seven occupant) house in multiple occupation (Sui Generis)	To grant planning permission with conditions.

Committee Report Item No: 7.1

Application No: 22/00459/FUL

Type: Full Application

1. Application Details

1.1. Address: 78 Carlton Road, Derby

1.2. Ward: Abbey Ward

1.3. Proposal:

Change of use from dwelling house (Use Class C4) to a six bedroom (eight occupant) house in multiple occupation (Sui Generis Use).

1.4. Further Details:

Members may recall that a decision on this application was deferred from the last meeting to enable a site visit to be completed. The site visit was conducted on 24 August and was attended by members and officers. Members will be updated on details of the site visit at the meeting.

Web-link to application:

<https://eplanning.derby.gov.uk/online-applications/plan/22/00459/FUL>

Brief description

The dwelling at 78 Carlton Road, is a semi-detached property surrounded, predominantly by residential dwellings of a similar size however, varying style, character and design.

Roof alterations are currently being undertaken at the property by way of a hip to gable roof extension, which is permitted development and is not being assessed as part of the current change of use application.

The proposed bedrooms and shared living spaces would be located at ground floor, first floor and second floor levels as follows:

Ground floor

Bedroom 1 – One person bedroom with en-suite – 14 Sq.m

Shared kitchen- 17 Sq.m

Shared hallway- 10 Sq.m

Shared lounge- 19 Sq.m

First floor

Bedroom 2 – One person bedroom with en-suite – 12 Sq.m

Bedroom 3 – One person bedroom with en-suite - 10 Sq.m

Bedroom 4 – One person bedroom with en-suite – 11 Sq.m

Gym-6m²

Shared landing 9m²

Second floor

Bedroom 5 – Double occupancy bedroom with en-suite – 14 Sq.m

Bedroom 6 – Double occupancy bedroom with en-suite – 14 Sq.m

Committee Report Item No: 7.1

Application No: 22/00459/FUL

Type: Full Application

It should be noted that a small HMO of up to 6 people falls under Use Class C4. The HMO proposed would, be for two additional people occupying the property from that currently permitted to form a total of 8 persons, living at the property.

2. Relevant Planning History:

No Planning History

3. Publicity:

Neighbour Notification- 6 Letters

Site Notice

This publicity is in accordance with statutory requirements and the requirements of the Council's adopted Statement of Community Involvement.

4. Representations:

In line with the Data Protection Act and associated legislation this appraisal should not include details, or seek to identify through repeating specific comments, the individuals who have objected, supported or made general comments about the application. Therefore, to maintain anonymity, the relevant planning grounds of objection, support or comment have only been included in broad terms. It is important to note that all comments received have been fully considered as part of the application process and included in the overall 'planning balance' exercise.

Cllr Atwal – I would like to object to this application please & I will attend Planning Committee.

4 Letters of objection

Reasons for objection include:

- Insufficient parking space to the front of the property.
- Highway safety and insufficient manoeuvrability for vehicles and access for emergency vehicles.
- Highway safety- bus route
- Noise and disturbance from construction and number of residents.
- Loss of family homes

5. Consultations:

5.1. Highways Development Control:

According to the application form, the property is an existing 4 bed dwelling.

No off-street parking is proposed; although there are proposals to provide cycle parking to the rear.

Committee Report Item No: 7.1

Application No: 22/00459/FUL

Type: Full Application

Drawing 13A3 Rev 1 states “While there is an abundance of street parking, residents will be encouraged to make use of the lockable bike storage at the rear of the property and use local transport links including the public bus routes. Carlton road is situated directly on the 5/5A bus route with bus stop signs within 2-300 metres in either direction.”

Whilst highway parking should not be considered as available for all occupants, the site is nevertheless in a sustainable location.

By reference to Table A2.4 from “Residential Car Parking Research”, (Queen’s Crown Copyright, 2007), research carried out by the former Department for Communities and Local Government, on car residential ownership and parking demand – which was based on analysis of Census information not generally published in the public domain.

This shows that for a 1 room non-owner occupied flat (which is the best equivalent to a room in a House in Multiple Occupation) that the average car ownership is 0.3 vehicles. As such, for a 6 bedroom HMO this would equate to 2-3 vehicles; a figure which is not dissimilar to that which would be associated with occupation as a four bed family dwelling.

I am advised that “permitted development rights would allow for the use of the building to accommodate 6 people without requiring planning permission under permitted development rights as a House in Multiple Occupation”.

As six room HMOs are considered permitted development. Therefore, there is also an additional argument that the only impact that can be considered material is that of the additional rooms above the permitted limit, which in this case would mean that there would be no additional vehicles associated with the development.

Para 111 of the National Planning Policy Framework states that

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

To be clear, ‘severe’ does not relate to parking, but the consequences of congestion as a result of the traffic effects arising from the development.

Whilst the scheme would potentially increase demand for parking spaces, the Highway Authority considers that it would not be possible to argue that the scheme would lead to ‘unacceptable impacts’ to highway safety or upon the adjacent highway network.

Note To Applicant

The consent granted will result in alterations to a building which need numbering. To ensure that any new addresses are allocated in plenty of time, it is important that the developer or owner should contact traffic.management@derby.gov.uk with the number of the approved planning application and plans clearly showing the site, location in relation to existing land and property, and the placement of front doors or primary means of access

Committee Report Item No: 7.1

Application No: 22/00459/FUL

Type: Full Application

5.2. Resources and Housing (HMO):

This department has reviewed the planning application in accordance with the relevant housing legislation and guidelines which are applied by this department. It does not have any objections to the proposals, but the following should be noted:

It is noted the property is intended to be let to multiple households so it will be classed as an HMO under Section 254 of the Housing Act 2004. As the HMO is intended to be occupied by 5 or more persons a mandatory HMO licence will be required.

In order to obtain a licence it will need to be adequately managed and free of significant hazards under the Housing Health and Safety Rating System (HHSRS). This will include provision and maintenance of fire precautions. Guidance on fire safety in HMOs can be found in the LACORS Housing fire Safety guidance. This department will generally use this guidance when assessing fire safety in residential property.

It will also need to meet the guidelines set out by this Authority for space and amenities in HMOs in the City. The published guidance should be referred to in order to ensure rooms are of an adequate size and there are enough cooking, washing, food storage, food preparation, waste and bathing facilities for the number of people proposed to be housed.

If work is carried out that results in the property failing to meet standards in terms of space, amenities and fire precautions, enforcement action may be taken by the Housing Standards Team. The space and amenity guidance, information about HHSRS and LACORS fire safety guidance can be obtained from the Housing Standards pages of the Derby City Council's website.

Conversion work must be carried out in accordance with current building Regulations. Substantial alterations in residential accommodation which is not carried out to the current standards may later be subject to enforcement under the Housing Act 2004, depending on the circumstances.

6. Relevant Policies:

- 6.1.** The Derby City Local Plan Part 1 - Core Strategy was adopted by the Council on Wednesday 25 January 2017. The Local Plan Part 1 now forms the statutory development plan for the City, alongside the remaining 'saved' policies of the City of Derby Local Plan Review (2006). It provides both the development strategy for the City up to 2028 and the policies which will be used in determining planning applications.

Derby City Local Plan Part 1 - Core Strategy (2017)

CP1(a)	Presumption in Favour of Sustainable Development
CP2	Responding to Climate Change
CP3	Placemaking Principles
CP4	Character and Context
CP6	Housing Delivery
CP23	Delivering a Sustainable Transport Network

Committee Report Item No: 7.1

Application No: 22/00459/FUL

Type: Full Application

Saved CDLPR Policies

GD5	Amenity
H13	Residential Development – General Criteria

The above is a list of the main policies that are relevant. The policies of the Derby City Local Plan Part 1 – Core Strategy can be viewed via the following web link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmantandplanning/planning/localplan/evidencebase/Core-Strategy_ADOPTED_DEC-2016_V3_WEB.pdf

Members should also refer to their copy of the CDLPR for the full version or access the web-link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmantandplanning/planning/localplan/part1/CDLPR_2017.pdf

An interactive Policies Map illustrating how the policies in the Local Plan Part 1 and the City of Derby Local Plan Review affect different parts of the City is also available at – <http://maps.derby.gov.uk/localplan>

Over-arching central government guidance in the NPPF is a material consideration and supersedes earlier guidance outlined in various planning policy guidance notes and planning policy statements.

6.2. Applications involving the provision of housing:

The Local Plan consists of the policies of the DCLP1 and the saved policies of CDLPR. The DCLP1, which sets out the growth strategy for the city, covers the period 2011 to 2028 and was adopted on 25 January 2017. The policies of the local plan have been reviewed in line with Regulation 10a of the Town and Country Planning (Local Planning) (England) Regulations 2017 and paragraph 33 of the NPPF, the provisions of which require Local Plan policies to be reviewed at least every 5 years. The officer led review was endorsed by the Council's Cabinet on 8 December 2021.

The review found that, apart from the housing target elements of policy CP6 (Housing Delivery), the policies of the Local Plan remain consistent with national policies, including the latest updates to the NPPF and can be given weight in decision making.

Policy CP6 sets a housing requirement of 11,000 new homes over the 17 year Plan period (647 dwellings annually). However, in December 2020, Government amended it's 'Standard Method' for calculating Housing Need to include a 35% uplift in the top 20 largest urban areas in England which includes Derby. The standard method housing need calculation for Derby City now stands at 1,255 dwellings a year and this is significantly higher than the CP6 requirement. Therefore, the housing requirement in Policy CP6 is out of date.

A further consequence of the significant increase in housing requirement, brought about by the change to the standard method, is that the Council can no longer demonstrate a 5 year supply of housing land as required by the NPPF (NPPF paragraph 74 (footnote 39) refer). The current supply of deliverable sites is sufficient to provide 3.17 years of dwellings against the annual 1,255 requirement.

For the purposes of decision making, the lack of a demonstrable 5 year housing land supply means that the presumption in favour of sustainable development and the tilted balance set out in the NPPF is invoked (paragraph 11 footnote 8 of the NPPF).

Paragraph 11d of the NPPF requires that where there is no five year supply this means granting planning permission unless –

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

As this proposal involves the provision of housing, the application is being considered in terms of its accordance with NPPF paragraph 11d and other material considerations. This does not mean that the policies of the Local Plan are ignored but that their requirements can be considered, and given weight, where they accord with the policies of the NPPF.

Other material considerations to weigh in the planning balance are that the Council's housing needs have increased significantly and as such the benefits of delivering housing carry greater weight. Also, the degree to which the Council is unable to demonstrate a 5 year supply is material. A housing land supply of 3.17 years is a significant shortfall and therefore very significant weight should also be applied in favour of applications that can contribute to increasing this supply.

The implications of the tilted balance on the officer recommendations are discussed further in the officer appraisal section of this report below.

7. Officer Opinion:

Key Issues:

In this case the following issues are considered to be the main material considerations which are dealt with in detail in this section.

7.1. The proposed use of the site

7.2. Proposed six bedroom (eight occupant) HMO use and its implications to neighbouring residents

7.3. Highway implications

7.4. Objections

7.5. Conclusion

7.1. The proposed use of the site

Policy H13 specifically refers to C1, C2, C3 uses and hostels but can, by extension, be considered as guidance for other residential uses such as HMOs. In this case, the site is in a traditional residential area. A solely residential use of the site is therefore considered acceptable in this location and the proposed use can be supported in land use terms.

The proposal comprises the conversion of the existing residential property to create an eight person HMO. The proposal would marginally increase the variety and amount of housing delivery in accordance with Core Strategy policy CP6. As set out in the policy comments regarding the "tilted balance", the Council's housing needs have increased significantly and as such the benefits of delivering housing carry greater weight. Also, the degree to which the Council is unable to demonstrate a 5 year supply is material. There is currently a significant housing land supply shortfall and therefore very significant weight should be applied in favour of applications that can contribute to increasing this supply.

7.2. Proposed six bedroom (eight occupant) use and its implications to neighbouring residents

In regard to the use as a six bedroom (eight occupant) HMO, a small HMO of up to six people would fall under Use Class C4. Planning permission is not required for a HMO of up to 6 residents. The proposed introduction of 2 additional residents requires permission as a larger HMO of more than 6 occupants is a Sui Generis use. The 2 additional residents would occupy the two double rooms in the roofspace, which are both the largest rooms at 14 sq metres. The property has a large communal kitchen and lounge space on the ground floor and a gym on the first floor, for the use of residents, in addition to the rooms themselves. The amount of residential accommodation for the use of occupants would therefore be generous in scale and floorspace. This proposal would result in two additional people living at the property and on that basis the proposed increase in occupation, is considered to be acceptable in this location and would be difficult to argue against at any future appeal.

As per Derby City Councils Housing Standards, room size standards the minimum room sizes for a single occupancy and double occupancy room in an HMO, where there is other living space available elsewhere, is 8m² and 12m² respectively. Taking this into consideration, I am satisfied that the bedrooms/shared living spaces would exceed these requirements, providing adequate living and bathroom facilities for any future occupants, which has been confirmed by the City Council's Housing Standards team. The proposed layout and size of the rooms is also considered to form a pleasant and secure living environment for the occupants as required by Policy CP3 and saved Policy H13.

In regard to residential amenity, saved Policy GD5 states that "permission will only be granted for development where it provides a satisfactory level of amenity within the site or building itself and provided it would not cause unacceptable harm to the amenity of nearby areas". With this in mind it is considered that the proposed introduction of a more intensive type of residential use, by forming a HMO, would not result in any undue material impact to neighbouring residents within the vicinity of the site, by way of loss of privacy, increased pollution (such as noise), disturbance or resultant parking implications. Although a number of objections have been raised by third parties and a Councillor, the use of the building to be occupied by up to eight occupants would not, in my opinion, be an unreasonably harmful level of use of the proposed building, bearing in mind the size of the property and the context in a relatively high density residential area. Although concerns have been raised in respect of 'clusters' of HMO's in certain areas, I can confirm that according to the

latest mapping information there are no HMO's of six or more people in operation in close proximity to the site. The closest HMO's recorded are at Palmerston Street, Porter Road and Chatsworth Street. It does however need to be noted that these are only licenced HMO's therefore any HMO's operating under Permitted Development Rights are not shown on the map. Taking this into consideration I am satisfied that the proposed use would meet criteria set out in adopted policies CP3, CP4 and CP23 of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies H13 and GD5 of the adopted City of Derby Local Plan Review.

7.3. Highway implications

Although third party objections have been received in regard to the current and future parking in the area, the Highways Officer does not raise objection in respect of the potential additional parking generated by the occupants of the HMO, given the sustainable location of the property, on a bus route and therefore accessible the City Centre. The cycle parking indicated in the rear garden of the property can be secured by a suitable planning condition for clarity.

By reference to Table A2.4 from "Residential Car Parking Research", (Queen's Crown Copyright, 2007), research carried out by the former Department for Communities and Local Government, on car residential ownership and parking demand – which was based on analysis of Census information not generally published in the public domain. This shows that for a one room non-owner occupied flat (which is the best equivalent to a room in a House in Multiple Occupation) that the average car ownership is 0.3 vehicles. As such, for a six bedroom (eight occupant) HMO, this would equate to around 2-3 vehicles; a figure not dissimilar to that which would be anticipated in respect of the normal residential occupancy of the dwelling. As previously indicated, a six bedroom (six occupant) HMO would be considered permitted development, therefore there is also an additional argument that the only impact that can be considered material is that of the additional rooms above the permitted limit. The site does not contain off-street parking provision with residents needing to park any vehicles within the unrestricted on-street parking.

Para 111 of the National Planning Policy Framework states that "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe." To be clear, 'severe' does not relate to parking, but the consequences of congestion as a result of the traffic effects arising from the development. It is the view of the Highway Authority that it would not be possible to argue that the scheme would lead to 'unacceptable impacts' to highway safety. Overall it is considered that the layout meets with the transport objectives of Policy CP23 where it provides for suitable cycle parking facilities on the application site.

7.4. Objections

Four letters of objection and one Councillor objection have been received in response to this application. A number of the objections raised are not considered to be material planning matters therefore cannot be dealt with by the Planning Authority. I am satisfied that all relevant planning matters relating to highway implications,

residential amenity and housing standards have been adequately addressed within the appraisal section of this report.

7.5. Conclusion

Overall it is felt that the proposal is acceptable by way of highway implications, residential amenity and provision of a high quality living environment. Although objections have been received from neighbouring residents I am satisfied that all relevant planning matters have been adequately addressed within this report. The proposal reasonably satisfies the requirements of policies of the Derby City Local Plan: Part 1 and saved policies of the City of Derby Local Plan Review and the over-arching guidance in the National Planning Policy Framework

8. Recommended decision and summary of reasons:

8.1. Recommendation:

To grant planning permission with conditions.

8.2. Summary of reasons:

The proposed increase in the use of the residential property to form a six bedroom (8 person) HIMO would marginally increase the variety and amount of housing delivered in this part of the city and hence the proposal is considered to be acceptable in principle. The proposal meets all the Council's housing standards, regarding room sizes. A satisfactory quality of living accommodation is proposed and the proposed residential use would not cause such an overriding adverse impact on residential amenity or the character of the area to warrant a refusal.

8.3. Conditions:

1. Standard condition (3 year time limit)

Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Standard condition list of approved plans

Reason: For the avoidance of doubt.

3. No part of the development hereby permitted shall be brought into use until the covered cycle parking area on site has been provided. That area shall not thereafter be used for any purpose other than the parking of cycles.

Reason: To promote sustainable travel and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

8.4. Informative Notes:

Highways:

The consent granted will result in alterations to a building which needs naming and renumbering. To ensure that any new addresses are allocated in plenty of time, it is important that the developer or owner should contact:

traffic.management@derby.gov.uk with the number of the approved planning application and plans clearly showing the site layout, location in relation to existing land and property, and the placement of front doors or primary means of access.

Housing Standards:

If the HMO property is occupied by 5 or more persons a mandatory HMO licence will be required:

<https://www.derby.gov.uk/trading-standards-environmental-health/environmental-health/housing-standards/houses-in-multiple-occupation/about/>

If work is carried out that results in the property failing to meet standards in terms of space, amenities and fire precautions, enforcement action may be taken by the Housing Standards Team. The space and amenity guidance, information about HHSRS can be obtained from the Housing Standards pages of the Derby City Council's website.

<https://www.derby.gov.uk/trading-standards-environmental-health/environmental-health/housing-standards/housing-health-safety-rating-system/>

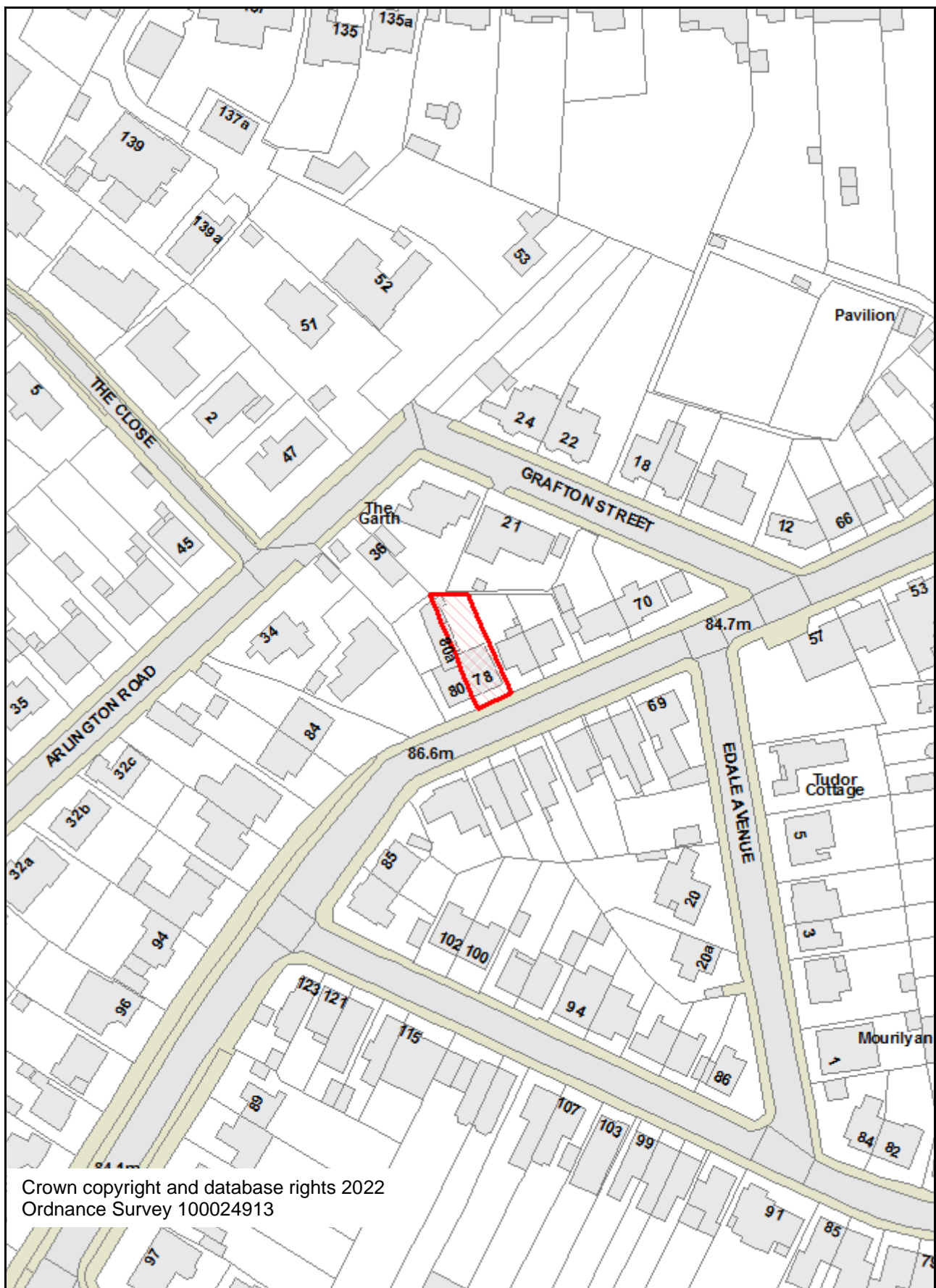
LACORS fire safety guidance

<https://www.cieh.org/media/1244/guidance-on-fire-safety-provisions-for-certain-types-of-existing-housing.pdf>

Conversion work must be carried out in accordance with current building Regulations. Substantial alterations in residential accommodation which is not carried out to the current standards may later be subject to enforcement under the Housing Act 2004, depending on the circumstances.

8.5. Application timescale:

This application expired 17/05/2022 however, has been delayed in order to be heard at Full Planning Committee. An extension of time has been agreed until Monday 18th July.



Committee Report Item No: 7.2

Application No: 21/01718/FUL

Type: Full Application

1. Application Details

1.1. Address: Littleover Manor, 453 Burton Road, Derby

1.2. Ward: Littleover

1.3. Proposal:

Demolition of existing dwelling. Erection of seven dwelling houses (Use Class C3)

1.4. Further Details:

Web-link to application:

<https://eplanning.derby.gov.uk/online-applications/plan/21/01718/FUL>

Brief description

The application is for the demolition of the existing dwelling and erection of seven dwelling houses upon the site.

The area surrounding the site is generally residential in character with pockets of commercial development.

The application site is a rectangular piece of land situated on the southern side of Burton Road. It covers an area of approximately 0.18ha. The site is currently occupied by a large detached dormer bungalow which had previously been utilised as supported housing for up to six disabled residents, however, this use is no longer operated and the building has been disused for a number of years. The site is served by an existing vehicle access from Burton Road, located to the north east of the site. The bungalow is set back approximately 17m from Burton Road, behind a parking and turning area. It is partially screened from the highway by high level boundary treatments, vegetation and a detached garage which had previously been utilised for office purposes, in association with the supported residential use. To the rear of the bungalow is a raised patio and a large mature garden, the majority of which is laid to lawn, however I believe this area has recently been cleared. Land levels across the application site drop considerably from Burton Road towards the properties on Lime Walk. The fall across the site as a whole is approximately 6m. The area surrounding the application site is predominately residential in character. Number 451 Burton Road, located to the north east of the site, is a Georgian-style 2/3 storey building which has been subdivided into apartments. To the rear of this building are a row of modern two-storey houses which front onto Lime Gate Mews, a private drive accessed from Lime Walk. To the southwest of the site is number 455 Burton Road, an individually designed two-storey dwelling dating from the 1970's. The southern site boundary abuts the gardens of two-storey houses along Lime Walk. The trees within the grounds of number 451 and the houses along Lime Gate Mews are covered by a group Tree Preservation Order (Number: 336).

The proposal

Planning permission is sought to demolish the existing bungalow on the site and erect 7 dwellings. The development would be arranged in two 'blocks' of development across the site. Block A would be situated approximately 20m back from the site frontage. It would comprise of a pair of semi-detached and one detached four bedroomed property

Committee Report Item No: 7.2

Application No: 21/01718/FUL

Type: Full Application

with accommodation over two floors to the front elevation and three floors to the rear, (utilising the current land level changes upon the site). The pair of semi-detached and the detached dwelling would be separated by the access road, serving block B to the rear. Each of the properties would be served by two parking spaces to the front, north.

Block B would be sited to the rear of the site (south), approximately 57m from the sites frontage. It would be comprised of two pairs of semi-detached, four bedroomed properties, providing accommodation over three floors, (utilising the loft space within each of these dwellings). Each of the properties would be served by two parking spaces to the front elevations. As previously stated, this block would be accessed via a vehicular access road between dwellings in block A. A turning area would also be located to the front of the parking spaces. There is an existing vehicle access into the site which would be relocated towards the western boundary, central to the site. The application is accompanied by a Design and Access Statement, A Tree Survey, a Bat Survey and a Drainage Scheme.

This application is submitted further to the submission of application /07/12/00915, for demolition of bungalow and erection of 7 dwelling houses, which had been refused at Planning Committee on 1st October 2015. The application was further referred for appeal and subsequently allowed on 26th February 2016 under reference APP/C1055/W/15/3135711 subject to conditions.

The relevant matters addressed as part of this previous site history have been addressed in turn within the appraisal section of this report.

2. Relevant Planning History:

Application No:	07/12/00915	Type:	Full Application
Decision:	Refused:	Date:	01/10/2015
	Allowed at appeal		26/02/2016
Description:	Demolition of bungalow and erection of 7 dwelling houses		

Application No:	19/01165/FUL	Type:	Full Application
Decision:	Approval	Date:	05/12/2019
Description:	Change of use of care home to house in multiple occupation and change of use of outbuilding to apartment, alterations to land levels		

3. Publicity:

- 17 Neighbour Notification Letters
- Site Notice

This publicity is in accordance with statutory requirements and the requirements of the Council's adopted Statement of Community Involvement.

4. Representations:

In line with the Data Protection Act and associated legislation this appraisal should not include details, or seek to identify through repeating specific comments, the individuals who have objected, supported or made general comments about the application. Therefore, to maintain anonymity, the relevant planning grounds of objection, support or comment have only been included in broad terms. It is important to note that all comments received have been fully considered as part of the application process and included in the overall 'planning balance' exercise.

Cllr Emily Lonsdale – I would like to object to it as the access to the proposed properties would add pressure to the already busy Burton Road

17 Objections have been received in respect of the following matters:

- Land drainage & Sewerage: inadequate assessment of flood risk arising from the reduction in ground and vegetation soakaway. Previous plans referenced underground storage tanks but the current plans only reference using the main sewer, which is on Burton Road and higher than the proposed development.
- Boundary fencing
- Highway access
- Parking provision inadequate
- Trees on site
- Bin storage
- Privacy
- Overlooking
- Noise
- Design of dwellings
- Overdevelopment
- Construction time frame
- Construction hours
- Breaches of covenants
- Fear of crime
- Potential loss of trees and natural wildlife habitats.

5. Consultations:

5.1. Highways Development Control:

Further revised comments 30 August to revised plan P02 Rev E:

The internal access road wasn't necessarily a highways concern, however it has been widened to 3.5m in accordance with my advice. Manual for Streets (para 6.7.3) gives advice on minimum access widths for a fire appliance, stating "... the access route could be reduced to 2.75m over short distances..."

Members also asked at pre-agenda if there was/is space to pass within the internal access. There is not. However, there is space at either end for a vehicle to wait, and therefore for vehicles to pass. The incidence of this is likely to be low due to only 4 dwellings being in place at the far end of the site.

This is in itself not a highway issue being internal within the site.

Revised comments received 12 August 2022:

Observations: Following the previous highway observations of 14/06/2022; a revised plan "P02 Rev D" has been submitted.

In highway terms the revised plan utilises the agreed highways access point and retains sufficient space for turning. The basic change in relation to the revision is the internal access road within the site which now bisects proposed dwellings rather than being along one side.

In highway terms, the principle of the development is acceptable, and the revised layout does not materially alter this.

However, informal advice is that a (scaled at) 3m wide internal access road may prove to be too narrow for regular vehicular use, especially for vehicles such as home shopping/removals etc. I would advise that a minimum of 3.5m should ideally be provided.

As this is internal within the site, it is not specifically a highways concern; further this may be too narrow to for ease of access by (for example) a fire tender. The Local Planning Authority may wish to consult further with Derbyshire Fire & Rescue in this respect.

Burton Road (A5250) is subject to a 30mph speed limit and has a "No waiting at any time" (double yellow lines) parking restriction across the site frontage, the site is lower than the adjacent highway. The footway fronting the site is approximately 1.8m wide.

The application drawing shows appropriate 2.4m x 43m visibility splays, correctly drawn and should be drawn to the nearside kerb edge.

The site is served by an existing highway dropped kerb which will need to be lifted and reinstated as full height footway; this can be dealt with by appropriate condition.

A suitable refuse collection point has also been shown within the site boundary near to the highway.

The proposals show the relocation of the site access into the centre of the frontage. This will entail the relocation of a lamp column (LC34133) and is covered within the Notes to Applicant at the end of this response.

Committee Report Item No: 7.2

Application No: 21/01718/FUL

Type: Full Application

Given the location of the site, it will be necessary to condition that a Construction/Demolition Management Plan be provided. Such a plan shall consider (but not be limited to), measures to prevent contamination of the highways (wheel washing, sweeping etc), parking for materials deliveries, parking for construction personnel and operatives, delivery times and the routing of vehicles associated with the operations. This will be dealt with by condition.

The application shows a 5.0m wide highway access; given that Burton Road is a Classified Road (A5250); together with the number of dwellings proposed, the highway dropped kerb should be 10 dropped kerbs (9.2m) wide.

Recommendation:

The Highway Authority has No Objections to the proposals, subject to the following suggested conditions:

Condition 1:

No development shall commence unless or until a Construction Management Plan has been first submitted to and approved in writing by the Local Planning Authority. Such a plan shall consider (but not be limited to), measures to prevent contamination of the highways (wheel washing, sweeping etc), parking for materials deliveries, parking for construction personnel and operatives, delivery times and the routing of vehicles associated with the operations. The construction works shall thereafter be carried out in accordance with the approved plan.

Reason: To maintain the free flow of traffic and pedestrians along the highway and in the interests of highway safety

Condition 2:

No part of the development hereby permitted shall be brought into use until the visibility splays of 2.4m x 43m are provided in accordance with details to be first submitted and approved in writing by the Local Planning Authority. The area within the visibility splays referred to in this Condition shall thereafter be kept free of all obstructions, structures or erections exceeding 0.9 metres in height.

Reason: In the interests of highway safety.

Condition 3:

No part of the development hereby permitted shall be brought into use until all drives and any parking or turning areas are surfaced in a hard-bound material (not loose gravel) for a minimum of 10 metres behind the Highway boundary. The surfaced drives and any parking or turning areas shall then be maintained in such hard bound material for the life of the development.

Reason: To reduce the possibility of deleterious material being deposited on the public highway (loose stones etc).

Condition 4:

No part of the development hereby permitted shall be brought into use until a dropped vehicular footway crossing is available for use and constructed in accordance with the Highway Authority specification to the satisfaction of the Local Planning Authority.
Reason: To protect the structural integrity of the highway and to allow for future maintenance.

Committee Report Item No: 7.2

Application No: 21/01718/FUL

Type: Full Application

Condition 5:

No part of the development hereby permitted shall be brought into use until the existing site access that has been made redundant as a consequence of this consent is permanently closed and the access crossing reinstated as footway to the specification of the Highway Authority.

Reason: To protect the structural integrity of the highway and to allow for future maintenance.

Condition 6:

No part of the development hereby permitted shall be brought into use until the parking and turning areas are provided, with the parking bays clearly delineated in accordance with the approved plans. The parking and turning areas shall not be used for any purpose other than parking and turning of vehicles.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibilities of the proposed development leading to on-street parking in the area

Condition 7:

No gates shall be erected at the access to the development from the public highway.

Reason: To maintain the free flow of traffic and pedestrians along the highway and in the interests of highway safety

Original comments 23 December 2021:

Observations:

These observations are primarily made on the basis of the following submitted information.

Drawing P02 Rev A.

Planning Statement

Burton Road is subject to a "No waiting at any time" (double yellow lines) parking restriction across the site frontage, the site is lower than the adjacent highways. The footway fronting the site is approximately 1.8m wide.

The application drawing shows 2.4m x 43m visibility splays, although these are incorrectly drawn and should be drawn to the nearside kerb edge, not to an offset. Nevertheless it does appear that these are achievable.

The site is served by an existing highway dropped kerb which will need to be lifted and reinstated as full height footway; this can be dealt with by appropriate condition.

Whilst in principle the Highway Authority is supportive of the redevelopment of the site; the layout submitted (14 parking spaces serving 7 units) does not take account the likelihood of servicing of the site; space should be provided such that vehicles such as (for example) those associated with home shopping deliveries can enter the site and have sufficient space to be able to turn such that they can exit and enter the highways in a forward gear. There appears to be no space for this within the submitted layout.

The applicant should therefore provide a revised plan showing provision of a suitable turning area/s together with vehicle tracking to show that space to turn is achievable.

Committee Report Item No: 7.2

Application No: 21/01718/FUL

Type: Full Application

No provision appears to have been made for refuse collection associated with the development; the applicant is reminded of BS 5906: 2005 which provides guidance and recommendations on good practice for refuse collection. The standard advises on dealing with typical weekly waste and recommends that the distance over which containers are transported by collectors should not normally exceed 15 m for two-wheeled containers, and 10 m for four-wheeled containers.

Whilst transporting containers within the site is a matter for the occupiers; a suitable refuse collection point should be provided within the curtilage (and within the distances set out), but not within the access visibility splays; and should be shown on the revised plan.

The proposals show the relocation of the site access into the centre of the frontage. This may entail the relocation of a lamp column (LC34133), but this is not shown on the plan; in order to establish whether the proposals will have an impact upon the column; the applicant should add this highway feature to the drawing.

Given the location of the site, it will be necessary to condition that a Construction/Demolition Management Plan be provided. Such a plan shall consider (but not be limited to), measures to prevent contamination of the highways (wheel washing, sweeping etc), parking for materials deliveries, parking for construction personnel and operatives, delivery times and the routing of vehicles associated with the operations. Whilst this can be required by condition, the applicant may wish to consider a suitable submission at application stage.

The application shows a 5.0m wide highway access; given that Burton Road is a Classified Road (A5250); together with the number of dwellings proposed, the highway dropped kerb should be *10 dropped kerbs (9.2m) wide*.

Para 112e of the National Planning Policy Framework states that developments should “be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.” The LPA may therefore wish to require that the developer make provision for the charging of an appropriate number of vehicles associated with the proposed development

5.2. Highways (Land Drainage):

This site has no flooding of any sort. There is, however, the question of volume and quality control of the run-off from the site. The applicant should consider the use of permeable paving, rain gardens, tree pits, etc. It will be necessary to reduce the flow to 2l/s if infiltration is not possible.

5.3. Natural Environment (Tree Officer):

Comments received 3 March 2022:

The site is adjacent to an area type TPO (No.336) and a group type TPO which protects 6 Lime trees within TPO No. 37. No tree survey and supporting documents have been provided to support the application.

Additional tree information submitted April 2022. Revised comments awaited and will be reported orally.

5.4. Derbyshire Wildlife Trust:**Revised comments received 15 July 2022:**

In our previous consultation response we advised that further bat survey information was required prior to the determination of the application. We have now had the opportunity to review a Bat Emergence and Activity Surveys report prepared by Tim Smith dated June 2022 which presents the results of two bat emergence surveys carried out during May and June 2022 in accordance with current best practice guidance. No bats were observed emerging from the house during the surveys.

Overall, we advise that the assessment that has been carried out for bats meets guidance within Circular 06/2005 and, as such, sufficient information regarding these protected species has now been submitted to enable the Local Planning Authority to reach an informed decision in accordance with the guidelines and to discharge its duty in respect of the requirements of The Regulations 2019. In summary, no evidence of roosting bats was found and as such, we advise that bats should not present a constraint to the proposed development. The proposed development does however provide opportunities to enhance biodiversity in line with the objectives of the National Planning Policy Framework and policy CP19 Biodiversity of the Derby City Local Plan through the incorporation of bat and swift bricks within the new dwellings. We therefore recommend the following planning condition;

“Prior to any construction above foundations level, a scheme of biodiversity enhancement shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include, as a minimum, the incorporation of integrated (inbuilt) features within the new buildings for roosting bats and nesting swifts. The enhancement scheme shall be implemented in accordance with the agreed details as construction proceeds and completed prior to the first occupation of the development.”

6. Policies:**6.1. Relevant Policies:**

The Derby City Local Plan Part 1 - Core Strategy was adopted by the Council on Wednesday 25 January 2017. The Local Plan Part 1 now forms the statutory development plan for the City, alongside the remaining ‘saved’ policies of the City of Derby Local Plan Review (2006). It provides both the development strategy for the City up to 2028 and the policies which will be used in determining planning applications.

Derby City Local Plan Part 1 - Core Strategy (2017)

CP1 (a)	Presumption in Favour of Sustainable Development
CP2	Responding to Climate Change
CP3	Placemaking Principles
CP4	Character and Context
CP6	Housing Delivery
CP16	Green Infrastructure
CP19	Biodiversity
CP23	Delivering a Sustainable Transport Network
MH1	Making it Happen

Committee Report Item No: 7.2

Application No: 21/01718/FUL

Type: Full Application

Saved CDLPR Policies

GD5	Amenity
H13	Residential Development – General Criteria
E17	Landscaping Schemes
E24	Community Safety
T10	Access for Disabled People

The above is a list of the main policies that are relevant. The policies of the Derby City Local Plan Part 1 – Core Strategy can be viewed via the following web link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmantandplanning/planning/localplan/evidencebase/Core-Strategy_ADOPTED_DEC-2016_V3_WEB.pdf

Members should also refer to their copy of the CDLPR for the full version or access the web-link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmantandplanning/planning/localplan/part1/CDLPR_2017.pdf

An interactive Policies Map illustrating how the policies in the Local Plan Part 1 and the City of Derby Local Plan Review affect different parts of the City is also available at – <http://maps.derby.gov.uk/localplan>

Over-arching central government guidance in the NPPF is a material consideration and supersedes earlier guidance outlined in various planning policy guidance notes and planning policy statements.

6.2. Applications involving the provision of housing:

The Local Plan consists of the policies of the DCLP1 and the saved policies of CDLPR. The DCLP1, which sets out the growth strategy for the city, covers the period 2011 to 2028 and was adopted on 25 January 2017. The policies of the local plan have been reviewed in line with Regulation 10a of the Town and Country Planning (Local Planning) (England) Regulations 2017 and paragraph 33 of the NPPF, the provisions of which require Local Plan policies to be reviewed at least every 5 years. The officer led review was endorsed by the Council's Cabinet on 8 December 2021.

The review found that, apart from the housing target elements of policy CP6 (Housing Delivery), the policies of the Local Plan remain consistent with national policies, including the latest updates to the NPPF and can be given weight in decision making.

Policy CP6 sets a housing requirement of 11,000 new homes over the 17 year Plan period (647 dwellings annually). However, in December 2020, Government amended it's 'Standard Method' for calculating Housing Need to include a 35% uplift in the top 20 largest urban areas in England which includes Derby. The standard method housing need calculation for Derby City now stands at 1,255 dwellings a year and this is significantly higher than the CP6 requirement. Therefore, the housing requirement in Policy CP6 is out of date.

A further consequence of the significant increase in housing requirement, brought about by the change to the standard method, is that the Council can no longer demonstrate a 5 year supply of housing land as required by the NPPF (NPPF paragraph 74 (footnote

Committee Report Item No: 7.2

Application No: 21/01718/FUL

Type: Full Application

39) refer). The current supply of deliverable sites is sufficient to provide 3.17 years of dwellings against the annual 1,255 requirement.

For the purposes of decision making, the lack of a demonstrable 5 year housing land supply means that the presumption in favour of sustainable development and the tilted balance set out in the NPPF is invoked (paragraph 11 footnote 8 of the NPPF).

Paragraph 11d of the NPPF requires that where there is no five year supply this means granting planning permission unless –

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

As this proposal involves the provision of housing, the application is being considered in terms of its accordance with NPPF paragraph 11d and other material considerations. This does not mean that the policies of the Local Plan are ignored but that their requirements can be considered, and given weight, where they accord with the policies of the NPPF.

Other material considerations to weigh in the planning balance are that the Council's housing needs have increased significantly and as such the benefits of delivering housing carry greater weight. Also, the degree to which the Council is unable to demonstrate a 5 year supply is material. A housing land supply of 3.17 years is a significant shortfall and therefore very significant weight should also be applied in favour of applications that can contribute to increasing this supply.

The implications of the tilted balance on the officer recommendations are discussed further in the officer appraisal section of this report below.

7. Officer Opinion:

Key Issues:

In this case the following issues are considered to be the main material considerations which are dealt with in detail in this section.

7.1. Principle of development

7.2. Design, visual amenity and layout

7.3. Residential amenity

7.4. Highway and Transport planning impacts

7.5. Land drainage

7.6. Biodiversity

7.7. Trees

7.8. Conclusion

7.1. Principle of development

The principle of residential development on the site is acceptable and has been established through previous permissions for change of use and redevelopment of the site for the provision of new housing. The proposal would boost the supply of housing through the creation of six additional homes. The application site is located within an existing residential area which is well served by public transport and situated close to shops and other amenities, in view of this the site is considered to be a suitable and sustainable location for new residential development within the City. There are no concerns with the demolition of the existing bungalow which is considered to be of insufficient architectural merit to warrant its retention.

As stated above, this application is submitted further to the approval, at appeal, for the erection of seven dwellings upon the site (ref:DER/07/12/00915). This application was approved in 2015 on appeal, however a number of the policy principles remain unchanged. The Planning Inspectorate concluded at the time that “there is a presumption in favour of sustainable development. The site is previously developed land located in a highly sustainable area and, having regard to the Framework, it would be suitable for the kind and scale of development. The immediate vicinity includes schools, health facilities, and local amenities such as shops. It is accessible by public transport with good links in and out of the town centre, and the bus stops are within walking distances. Such a location would meet with the Government’s objectives of locating new housing in sustainable areas so that people are less dependent upon private transport to get around”.

With this in mind, the development of the site for housing, in principle seems to be consistent with policy as it would provide much needed new homes with a net gain of six new dwellings. Since the approval of the previous scheme, Policy CP6 has been deemed to be ‘out of date’ therefore the lack of a demonstrable 5 year housing land supply means that the presumption in favour of development and the tilted balance set out in the NPPF is invoked. However, it is essential that at a more detailed level, the proposal would need to meet other objectives of national and local policy in order to provide a sustainable form of development. These include considering climate change related matters, providing suitable and satisfactory living accommodation and conditions, consideration of residential amenity, ensuring safe and proper highway access and parking and considering design and character.

7.2. Design, visual amenity and layout

Policies CP3 (Placemaking Principles) and CP4 (Character and Context) both seek to achieve high quality, well designed places and the policy requirements include considering optimising density, providing good standards of privacy and security, providing well connected spaces and delivering well integrated vehicle and cycle parking.

In terms of design and placemaking, the revised NPPF is relevant and the changes, further emphasise the importance of good design. The Framework also introduces a requirement to provide beautiful homes and places. Revised paragraph 126 states that "The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve".

Policy CP3 seeks that proposals make efficient use of land, are well integrated into their setting and provide safety and security. Generally, the density of the proposals would appear to make an efficient use of the site.

With this in mind it is acknowledged that there are a mix of existing residential properties in the locality, including the apartments adjacent to the site. In respect of visual amenity I am satisfied that the introduction of two storey, semi-detached properties and detached dwelling upon the site would be visually acceptable within the existing street scene of Burton Road. Block A would occupy a similar position within the site to the existing bungalow, which is considered to be acceptable given the varied building line along this side of Burton Road. The erection of appropriate boundary treatment along the site frontage would be controlled through condition, as would the provision of suitable landscaping to screen the proposed parking/turning area to the sites frontage.

The two blocks of development have a fairly simple design. It is accepted that there is a variety of building types and architectural designs within close proximity of the site therefore the gable ended dwellings proposed would be appropriately placed within the Burton Road street scene. The overall building heights of block A would be approximately 8.8m. Whilst this block would provide three storeys of accommodation at the rear, the fall in land levels within this area of the site mean the dwellings would be two-storeys when viewed from Burton Road. Although larger in scale than the existing bungalow on the site, taking into consideration the fall of the land away from Burton Road and the lowered land levels proposed, I am satisfied that the development would not appear unduly prominent when viewed from the highway. The scale of the properties would be comparable with surrounding buildings and the development on the site frontage would be significantly lower than the tallest element of the neighbouring apartment building at 451 Burton Road. As a result of the existing vegetation, including trees and surrounding built development the dwellings within block B, located to the rear of the site, would be well screened from public views and surrounding street scene. In view of this it would be difficult to argue that this element of the proposed development would have a significant adverse effect upon the visual amenities of the locality as a result of its backland position. The parking area to the front elevations of the properties would be well screened and the provision of some landscaping and suitable surfacing can be controlled through condition. Furthermore, it must be noted that a parking dominated frontage design had previously been approved as part of the previous scheme. Overall, it is considered that the proposed development would be acceptable in terms of its siting, scale and design and would not detract from the overall character of the surrounding area. Taking this into consideration I am satisfied that the proposal meets criteria set out in adopted policies CP3 and CP4 of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies GD5 and H13 of the adopted City of Derby Local Plan Review.

7.3. Residential amenity

Objections have been raised in respect of a possible overbearing effect and massing of the proposed dwellings in respect of existing properties surrounding the application site. Reference is also made to loss of sunlight and daylight. In my opinion, the siting, massing and height of the proposed dwellings would cause no material issues of massing or overshadowing of adjacent neighbouring properties surrounding the site.

Regard has been given to the elevated position of the site compared with neighbours, on Lime Gate Mews. Whilst there would be some massing impact upon the garden areas of properties within Lime Gate Mews to the east and south of the site, the depth of their gardens is such that this impact would not be significantly harmful. The impact upon no.455 Burton Road is also considered to be tolerable, given the degree of separation. Nevertheless, I recommend finished floor levels should be conditioned for the avoidance of doubt.

In regard to overlooking of the surrounding properties I am satisfied that all side windows to the proposed dwellings would serve bathroom/ensuites therefore I raise no objections to the siting of these windows. Furthermore garden depths and distances between properties both upon the site and adjoining the site would be sufficient to avoid any material overlooking implications. Overall the proposal is considered to be acceptable in terms of the distances and relationship between properties and the positioning of windows.

Objections have been raised in respect of a loss of amenity arising from vehicle movements on and surrounding the application site however, I am satisfied that the access and parking layout proposed would not result in the undue disturbance to neighbours. It is in any case proposed to condition boundary treatments.

The proposed development would provide approximately 25m between the rear elevations of the dwellings in Block A and the front elevations of Block B and would also allow for rear garden depths of approximately 9m to the boundary with properties along Lime Walk to the rear of the site. These distances are considered to be sufficient to ensure there are no significant adverse implications through overlooking between the proposed dwellings.

Whilst the siting of Block A at the front of the site would just cut into the 45 degree angle take from the ground floor habitable room within the front elevation of the apartment within no. 451 Burton Road, it should be noted that the existing bungalow already had an impact upon light entering this window. In view of this, I consider the relationship between the proposed detached dwelling on the frontage and the apartments within no. 451 Burton Road to be tolerable.

Regard must also be had for the previous approval for 7 dwellinghouses, allowed on appeal (ref:DER/07/12/00915), which was of a comparable scale, form and layout to the current proposal. The relationships with neighbouring properties are not dissimilar to that approved scheme.

Overall the development would reasonably comply with the requirements of policies H13 and GD5 in respect of neighbour amenity. I am also satisfied that the proposal would create an acceptable living environment for future occupiers in terms of both the internal and external spaces provided. Taking this into consideration I am satisfied that the proposal meets criteria set out in adopted policies CP3 and CP4 of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies GD5 and H13 of the adopted City of Derby Local Plan Review.

7.4. Highway and Transport Planning Implications

Third party objections have been raised in regard to the level of parking provision to be provided upon the site, however further to consultation with Highways colleagues, I am satisfied that the level of parking provision is sufficient for a scheme of this size.

In respect of the highway implications of the revised layout, the Highways Officer is satisfied that the proposed layout would include sufficient turning space, therefore drivers would exit in a forward gear providing safe and suitable access to the site and the on-site car parking spaces for each dwelling would be consistent with guidelines. A revised layout plan has recently been submitted, Rev E, to address Highway Officer's comments about the width of the internal access road. This plan has widened the access to 3.5 metres to allow delivery and emergency vehicles to pass more easily. A number of highway related conditions and informative notes have been recommended, which are to be included as appropriate

The conclusion from the Planning Inspectorate in relation to the allowed decision for residential development from 2015, states that "the site is located in a highly sustainable area given its proximity to wide range of local amenities such as shops, health and educational facilities. I find that future occupiers of the new dwellings would be within reasonable walking distance to local facilities and services thus reducing their need to rely on the private car to meet their day-to-day needs". Furthermore they go on to state "I have seen no cogent evidence whatsoever to the effect that the proposed number of dwellings would place considerable additional pressure on the local highway network, parking amenity in the area or compromise the safety of children accessing schools.....I consider that the location of the new access and its use in connection with seven dwellings would not adversely affect the free-flow of traffic along Burton Road". Although the appeal decision was issued a number of years ago, I consider these comments to be relevant in respect of this latest scheme. I therefore conclude that the site is located within a sustainable location, adequately served by a number of transport options.

Taking this into consideration I am satisfied that the proposal meets criteria set out in adopted policy CP23 of the Derby City Local Plan Part 1: (Core Strategy) and the saved policy H13 of the adopted City of Derby Local Plan Review.

7.5. Land drainage and climate change

Policy CP2 (Responding to Climate Change) requires that development is in sustainable locations and is designed and constructed in a sustainable manner. The application site is in a generally residential area and the location is generally sustainable. There is good access to local shops at the nearby Littleover District Centre and a good/frequent bus route to the city centre along Burton Road. It is relevant that the Council has declared a 'Climate Emergency' and so the requirements of Policy CP2 are particularly important.

The policy also deals with drainage and flooding matters. A number of third-party objections and concerns have been raised in respect of past drainage and flooding matters.

My Land Drainage colleagues have commented that there is no drainage information for this site and there is no flooding shown on the EA's maps or on the IUD flooding

Committee Report Item No: 7.2

Application No: 21/01718/FUL

Type: Full Application

information. They have concluded that the only item of concern is the requirement for suitable surface water drainage, therefore a suitably worded condition has been recommended in order to ensure appropriate and acceptable sustainable drainage methods are utilised. Provided this condition is adhered to I am satisfied that the development would meet with the criteria outline within Policy CP2 of the City of Derby Local Plan Part 1.

7.6. Biodiversity

Insufficient ecological information had been submitted as part of the initial application. Subsequently officers advised that in order to accord with current guidance, the buildings (to be demolished) need to be subject to at least one bat emergence/re-entry survey between May and August to demonstrate the presence or otherwise of roosting bats and to inform appropriate mitigation, if required. A Bat Emergence and Activity Surveys report, dated June 2022 which presents the results of two bat emergence surveys carried out during May and June 2022, has been submitted. No bats were observed emerging from the house during the surveys. Derbyshire Wildlife Trust are satisfied that that sufficient information regarding these protected species has now been submitted. No evidence of roosting bats was found and as such, they advise that bats should not present a constraint to the proposed development. The proposed development does however provide opportunities to enhance biodiversity in line with the objectives of the National Planning Policy Framework and policy CP19 Biodiversity of the Derby City Local Plan – Part 1 through the incorporation of bat and swift bricks within the new dwellings therefore a suitable condition shall be included as appropriate. Taking this into consideration I am satisfied that the proposal meets criteria set

7.7. Trees

The proposal would result in the loss of trees on the application site (14). However these trees are not protected and do not offer sufficient visual amenity value within the surrounding streetscene to warrant a Tree Preservation Order being made. In view of this it is considered that refusal of the application on the grounds of the loss of these trees would be difficult to sustain. Trees on the adjacent property at 451 Burton Road, are protected by Tree Preservation Orders, including 7 Lime trees. One of the Lime trees is at the front of the site and overhangs the application site, fronting Burton Road. The applicant has submitted an Arboricultural Impact Assessment and Tree Protection Plan, in response to Tree Officer's comments, which assesses the health and amenity value of the trees and the impact of the development on visually significant trees, including the protected trees located within the garden of no. 451 Burton Road. In particular the reports highlight the visually important Lime tree situated close to the north-eastern corner of the site within the front garden area of no. 451 Burton Road, but advises that if due care is taken to avoid disturbance or damage to the roots in this area the development should not have a detrimental impact on the health of the tree. Subject to tree protection measures being put in place, which can be secured through a condition, it is considered that the development can be carried out without causing harm to the protected trees, particularly those on the site frontage at no. 451 Burton Road. It should also be noted that the approved scheme, allowed on appeal, also required removal of all the on-site trees and had similar impacts on the adjacent protected trees.

Submission of a full tree protection plan and arboricultural method statement for the retained TPO trees, should be therefore conditioned. Accordingly the proposed development is considered to reasonably comply with policy CP16 of the Derby City Local Plan Part 1.

7.8. Conclusion

Overall it is felt that the proposed residential development is acceptable by way of size, form, character and design, highway safety and residential amenity will not be unreasonably affected. It would deliver new housing in a sustainable location in the city. There are also no adverse impacts on biodiversity, trees and flood risk, subject to recommended conditions. Although objections have been raised by neighbouring residents I am satisfied all relevant planning matters have been addressed within the Officer's report. The proposal reasonably satisfies the requirements of saved policies of the Derby City Local Plan: Part 1 and saved policies of the City of Derby Local Plan Review and the over-arching guidance in the National Planning Policy Framework.

8. Recommended decision and summary of reasons:

8.1. Recommendation:

To grant planning permission with conditions.

8.2. Summary of reasons:

The proposed residential development is acceptable by way of size, form, character and design, highway safety and residential amenity will not be unreasonably affected. It would deliver new housing in a sustainable location in the city. There are also no adverse impacts on biodiversity, trees and flood risk, subject to recommended conditions.

8.3. Conditions:

General:

1. Standard time limit condition.

Reason: As required by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Standard approved plans and details condition.

Reason: For the avoidance of doubt and to define the bounds of this decision.

Pre commencement:

3. Notwithstanding the details of any external materials that may have been submitted with the application, details of all external materials shall be submitted to and be approved in writing by the Local Planning Authority before development is carried out above foundation level. Any materials that may be agreed shall be used in the implementation of the development unless otherwise agreed in writing with the Local Planning Authority.

Reason: To ensure a satisfactory external appearance of the development in the interests of visual amenity and to accord with the adopted policies of the

Committee Report Item No: 7.2

Application No: 21/01718/FUL

Type: Full Application

Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision.

4. Detailed plans showing the design, location and materials to be used on all boundary walls/fences/screen walls and other means of enclosure shall be submitted to and approved in writing by the Local Planning Authority development shall be carried out in accordance with such detailed plans.

Reason: In the interests of visual and residential amenity and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision.

5. A landscaping scheme indicating the types and position of trees and shrubs and treatment of paved and other areas shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard and enhance the visual amenities of the area and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision.

6. The landscaping scheme submitted pursuant to Condition 5 above shall be carried out within 12 months of the completion of the development or the first planting season whichever is the sooner, and any trees or plants which, within a period of five years from the date of such landscaping works, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

Reason: To safeguard and enhance the visual amenities of the area and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision.

7. No development shall commence unless or until a Construction Management Plan has been first submitted to and approved in writing by the Local Planning Authority. Such a plan shall consider (but not be limited to), measures to prevent contamination of the highways (wheel washing, sweeping etc), parking for materials deliveries, parking for construction personnel and operatives, delivery times and the routing of vehicles associated with the operations. The construction works shall thereafter be carried out in accordance with the approved plan

Reason: To maintain the free flow of traffic and pedestrians along the highway and in the interests of highway safety and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision.

8. No development shall take place until a surface water drainage scheme has been submitted and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority.

Committee Report Item No: 7.2

Application No: 21/01718/FUL

Type: Full Application

Reason: In order to minimise the likelihood of drainage system exceedance and consequent flood risk off site and to ensure reasonable provision for drainage maintenance is given in the development and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

9. Prior to any construction above foundations level, a scheme of biodiversity enhancement shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include, as a minimum, the incorporation of integrated (inbuilt) features within the new buildings for roosting bats and nesting swifts. The enhancement scheme shall be implemented in accordance with the agreed details as construction proceeds and completed prior to the first occupation of the development.

Reason: To protect wildlife on and adjoining the site during the course of construction works in order to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

10. Prior to commencement of the development, an Arboricultural Method Statement (including TPP) shall be submitted to and agreed in writing by the Local Planning Authority, demonstrating full protection for trees on land adjacent to the application site. The method statement must include details of protective fencing to be in place before and during construction works and the date of construction of such protection and of its completion and details of foundations. 'No dig' solutions are to be implemented in the root protection area of trees on adjacent land and during the period of construction works all trees, hedgerows and other vegetation on adjoining land shall be protected in accordance with BS:5837:2012 ("Trees in relation to design, demolition and construction").

Reason: To protect trees and other vegetation on and adjoining the site during the course of construction works in order to preserve the character and amenity of the area and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

Pre-occupation:

11. No part of the development hereby permitted shall be brought into use until the visibility splays of 2.4m x 43m are provided in accordance with details to be first submitted and approved in writing by the Local Planning Authority. The area within the visibility splays referred to in this Condition shall thereafter be kept free of all obstructions, structures or erections exceeding 0.9 metres in height.

Reason: In the interests of highway safety and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision.

Committee Report Item No: 7.2

Application No: 21/01718/FUL

Type: Full Application

-
- 12.** No part of the development hereby permitted shall be brought into use until all drives and any parking or turning areas are surfaced in a hard-bound material (not loose gravel) for a minimum of 10 metres behind the Highway boundary. The surfaced drives and any parking or turning areas shall then be maintained in such hard bound material for the life of the development.

Reason: To reduce the possibility of deleterious material being deposited on the public highway (loose stones etc) and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision.

- 13.** No part of the development hereby permitted shall be brought into use until a dropped vehicular footway crossing is available for use and constructed in accordance with the Highway Authority specification to the satisfaction of the Local Planning Authority.

Reason: To protect the structural integrity of the highway and to allow for future maintenance and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision.

- 14.** No part of the development hereby permitted shall be brought into use until the existing site access that has been made redundant as a consequence of this permission is permanently closed and the access crossing reinstated as footway to the specification of the Highway Authority.

Reason: To protect the structural integrity of the highway and to allow for future maintenance and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision.

- 15.** No part of the development hereby permitted shall be brought into use until the parking and turning areas are provided, with the parking bays clearly delineated in accordance with the approved plans. The parking and turning areas shall not be used for any purpose other than parking and turning of vehicles.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibilities of the proposed development leading to on-street parking in the area and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision.

- 16.** Before occupation of any of the dwellings, cycle parking storage shall be provided on the site, in accordance with details first submitted to and approved in writing by Local Planning Authority.

Reason: To ensure provision for cycling and promote sustainable transport and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision.

Committee Report Item No: 7.2

Application No: 21/01718/FUL

Type: Full Application

-
17. Before development is carried out above foundation level, a scheme of solar PV panels for the south facing roof slopes of dwellinghouses on the development, which are suitable for such installation shall be submitted to and agreed in writing by the Local Planning Authority.

Reason: In interests of reducing carbon emissions and providing sustainable development and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision.

Management:

18. No gates shall be erected at the access to the development from the public highway.

Reason: To maintain the free flow of traffic and pedestrians along the highway and in the interests of highway safety and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision.

8.2. Informative Notes:

Highways:

N1. The Advanced Payments Code in the Highways Act 1980 applies and under section 219 of the Act payment will be required from the owner of the land fronting a private street on which a new building is to be erected. The developer should contact the Highway Authority with regard to compliance with the Code. Correspondence with the Highway Authority should be addressed to:

HighwaysDevelopmentControl@derby.gov.uk

N2. The development makes it necessary to alter/improve a vehicular crossing over a footway of the public highway. These works shall be constructed to the satisfaction of the Highway Authority. You are, therefore, required to contact StreetPride at Derby City Council to apply for a vehicle access under Section 184 of the Highways Act 1980 (as amended) to arrange for these works to be carried out. Visit <https://www.derby.gov.uk/transport-and-streets/roads-highways-pavements/vehicle-access-kerbs/> or contact customerservices@derby.gov.uk or tel 0333 200 6981.

N3. The development makes it necessary to relocate a lamp column in the public highway. In these circumstances, it is the responsibility of the Developer to identify the asset number and exact location; all works shall be carried out at cost to the Developer, including design compliance, and shall be to the satisfaction of the Highway Authority. Therefore, you are required to contact our Street Lighting team, at Derby City Council, to make the necessary application for these works to be carried out. You can contact them via email at engineering@derby.gov.uk

N4. The minor access reinstatement works referred to in Condition 5 above involve work on the highway and as such require the consent of the City Council. Visit <https://www.derby.gov.uk/transport-and-streets/roads-highways-pavements/vehicle-access-kerbs/> or contact customerservices@derby.gov.uk or tel 0333 200 6981

Committee Report Item No: 7.2

Application No: 21/01718/FUL

Type: Full Application

N5. It is an offence under S148 and S151 of the Highways Act 1980 to deposit mud on the public highway. The applicant/developer must take all necessary action to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's/developer's responsibility to ensure that all reasonable steps (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

N6. External Lighting to private developments.

Any artificial external lighting to the development shall be in accordance with industry guidance and best practice, having due care and consideration to either remove the introduction or to minimise the impact of artificial light on the environment, climate, and ecology.

The applicant/developer should focus on the lighting aspects of the development, including purpose, design, assessment, and all future maintenance considerations. "The right light, in the right place, at the right time, with the right controls". Consideration of energy management must be at the forefront of any design and installation, including a clear asset management plan which focuses on how the installation is to be tested and maintained once installed.

The following suite of documents are published within the industry as a means of guidance for designers.

- Institution of Lighting Professionals Guidance Note 01/20: 2020 Guidance notes for the reduction of obtrusive light
- Institution of Lighting Professionals Guidance Note 5/17: 2017 Using LED's Domestic exterior lighting: getting it right!

N7. The consent granted will result in the construction of new buildings which need numbering. To ensure that any new addresses are allocated in plenty of time, it is important that the developer or owner should contact traffic.management@derby.gov.uk with the number of the approved planning application and plans clearly showing plot numbers, location in relation to existing land and property, and the placement of front doors or primary means of access on each plot.

N8. Burton Road is a "permit street" under the New Roads and Streetworks Act. This means that construction works along Burton Road are subject to separate authorisation by the Council's Streetworks Manager.

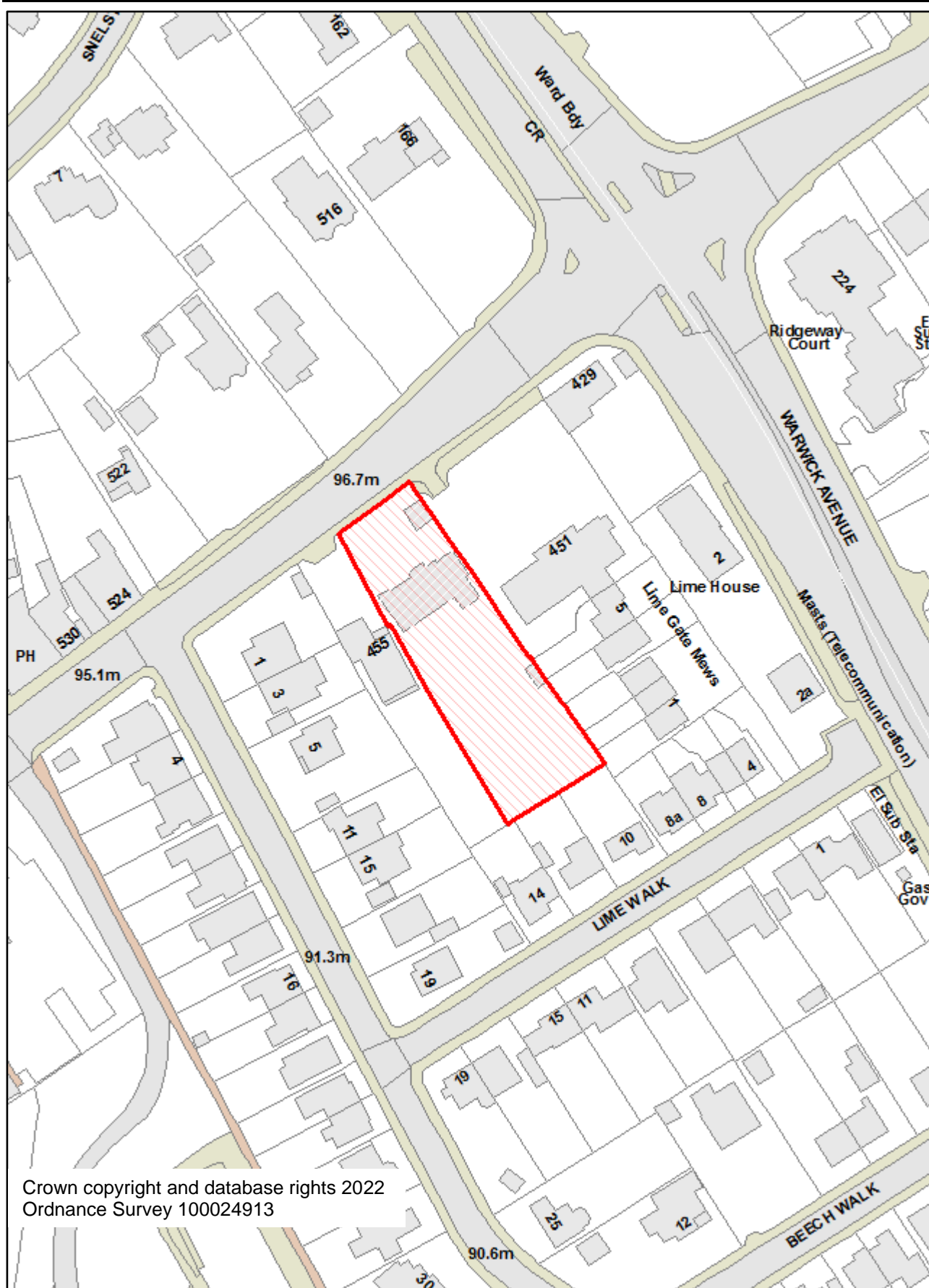
In practice, this means that such works are likely to be subject to controls in respect of working hours and appropriate traffic management; contact roadworks@derby.gov.uk for additional information.

8.3. Application timescale:

The target date for determination of the application was the 3 February 2022 and an extension of time was agreed to 18 July 2022. A further extension of time will be agreed with the applicant.

Application No: 21/01718/FUL

Type: Full Application



Committee Report Item No: 7.3

Application No: 22/00674/VAR

Type: Variation of Condition

1. Application Details

1.1. Address: 79 Rykneld Road, Littleover

1.2. Ward: Littleover

1.3. Proposal:

Variation of conditions 2 (approved plans), 4 (operating hours) and 5 (parking provision) of previously approved planning permission ref: 06/18/00822, which approved the demolition of the previous Retail Building and the Erection of a two-storey building for use as a Dental Clinic and Retail / Financial and Professional Services uses.

1.4. Further Details:

Web-link to application:

<https://eplanning.derby.gov.uk/online-applications/plan/22/00674/VAR>

The Site and Surrounding

The application site comprises the site of a former convenience store on the corner of Rykneld Road and Haven Baulk Lane. Permission was granted to demolish the store and to erect a 2-storey building, housing a ground floor dentist and a first floor retail/service use.

The approved layout showed 11 parking spaces, positioned on both road frontages, and a further 3 parking spaces adjoining the west site boundary. Cycle parking was shown to be provided on the Rykneld Road frontage, behind the parking spaces.

This permission has been implemented and the dentist use is operational. The site is tight up to the boundary with the 2 adjoining dwellings. The surrounding area is primarily residential. Rykneld Road is a main arterial road, giving access to the A38 further south. To the east of Rykneld Road is the Nuffield hospital and a care home.

The proposal

The layout, as implemented, now includes a ground floor extension in the southwest corner. This prevents any car parking along the west site boundary, as shown on the approved plans. The parking layout, as implemented, has only 7 spaces laid out and no cycle parking.

This application seeks to vary three Conditions imposed on the previous permission. The proposal relates to the variation of Condition 2 (approved plans), Condition 4 (operating hours), to allow revised opening hours; and Condition 5 (parking provision), to allow for a revised parking layout.

The applicant has now confirmed that the proposed opening hours of the dentist are between 9.00am-5.00pm, Monday to Saturday. The proposed layout now shows a ground floor extension in the southwest corner, and no car parking along the west site boundary. The proposed parking layout shows 11 parking spaces, with dropped kerbs on both road frontages and cycle parking as per the approved scheme.

Committee Report Item No: 7.3

Application No: 22/00674/VAR

Type: Variation of Condition

2. Relevant Planning History:

Application No:	06/18/00822	Type:	Full Application
Decision:	Granted Conditionally	Date:	30.07.2018
Description:	Demolition of Existing Retail Building. Erection of a Two Storey Building for Use as a Dental Clinic (Use Class D1) at Ground Floor And Retail (Use Class A1) or Financial And Professional Services (Use Class A2) at First Floor Level		

- Condition 4 states: The dental clinic hereby approved shall only be open to patients during the following hours:
 - 8.30 - 19.30, Monday and Tuesday;
 - 8.30 - 17.30, Wednesday and Thursday;
 - 8.30 - 14.30, Fridays
 - and not at all at weekends or on public holidays.
 - The first floor use shall only be open to customers between 8.30-19.30 daily, unless otherwise agreed in writing by the local planning authority.
- Condition 5 states: No part of the development hereby permitted shall be brought into use until the parking areas are provided in accordance with the approved plan 2028.004. The parking areas shall not be used for any purpose other than parking of vehicles.

Application No:	04/18/00557	Type:	Full Application
Decision:	Granted Conditionally	Date:	05.06.2018
Description:	Change of use from retail (use class A1) to dental clinic (use class D1) including installation of new windows		

3. Publicity:

- 2 Neighbour Notification Letters
- Site Notice

This publicity is in accordance with statutory requirements and the requirements of the Council's adopted Statement of Community Involvement.

4. Representations:

In line with the Data Protection Act and associated legislation this appraisal should not include details, or seek to identify through repeating specific comments, the individuals who have objected, supported or made general comments about the application. Therefore, to maintain anonymity, the relevant planning grounds of objection, support or comment have only been included in broad terms. It is important to note that all comments received have been fully considered as part of the application process and included in the overall 'planning balance' exercise.

No third party objections received. However, Cllrs Care and Lonsdale both requested that, due to local interest, the application should be referred to Planning Control Committee.

5. Consultations:

5.1. Highways Development Control:

Condition 4 reads

"The dental clinic hereby approved shall only be open to patients during the following hours: 8.30 - 19.30, Monday and Tuesday; 8.30 - 17.30, Wednesday and Thursday; 8.30 -14.30, Fridays and not at all at weekends or on public holidays. The first floor use shall only be open to customers between 8.30-19.30 daily, unless otherwise agreed in writing by the local planning authority."

The submitted application form states that "Opening hours have been revised"; but no information appears to have been provided to advise what the revised opening hours are; and therefore the need for the varied condition.

Nevertheless the hours of operation of the site are unlikely to be of significant concern to the Highway Authority.

Condition 5 reads

"No part of the development hereby permitted shall be brought into use until the parking areas are provided in accordance with the approved plan 2028.004. The parking areas shall not be used for any purpose other than parking of vehicles."

These observations are primarily made on the basis of details shown on submitted plans 2028.004 Rev A and 2028.006 Rev A.

A site visit has ascertained that this layout is not "as constructed"; it is therefore assumed that the applicant intends to reconstruct to comply with the submitted drawings.

By comparing these drawings with the approved historic plan (2028.004) it appears that the building has not been constructed in line with the approved details, this has resulted in the loss of three (marked for staff) parking spaces.

Further, it is also apparent that whilst the development is currently being operated with a different parking layout than is shown on the plans. It is also clear that some of the spaces shown (and constructed) are too small to be of practical use and lead to

Committee Report Item No: 7.3

Application No: 22/00674/VAR

Type: Variation of Condition

vehicles overhanging the highway footway. In respect of new development this would not normally be supported.

This notwithstanding, in this case the principle has been established with respect to the plans approved for historic application, which could therefore be legitimately implemented (albeit that the applicant developer would need to demolish and reconstruct some of the development).

The site visit also indicated that some patients/visitors appear to be parking on the adjacent highway (Haven Baulk Lane in particular – but at the time of the Case Officer visit there was also parking on Rykneld Road); whilst there are no parking restrictions in the vicinity of the site, parking so close to the junction could be considered to be creating a hazard.

Further, there are no pedestrian crossing facilities on Rykneld Road in close proximity, lack of parking means that patients/customers are also parking on the opposite side of Rykneld Road and are having to cross the busy road to visit the premises. This is considered to be increasing the risk to pedestrians at this point.

The Council's Parking Standards – as set out in the Derby City Local Plan, Part 1 – Core Strategy (Appendix C) advises that for “surgeries and clinics” that there should be 1 space per medical staff member and two spaces per consulting room. As there are 4 consulting rooms it is assumed that there will be 8 medical staff (one dentist and one dental nurse per consulting room) – this equates to 16 parking spaces.

In respect of A2 use, the same standards advise that there should be 1 space per 35sqm, the upper floor approved follows much the same layout as the ground floor, and I estimate this has a ‘footprint’ of (say) 240sqm; which equates to 6-7 parking spaces.

Making a total number of spaces required to (say) 22 spaces.

The plans show 11 off-street parking spaces (as previously mentioned some are too small for practical use); giving a shortfall of a minimum of 11 off-street parking spaces.

The Highway Authority considers therefore that inadequate levels of parking have been (and will be) provided to serve the development.

I am aware of complaints having been received in respect of highway parking associated with the development along Haven Baulk Lane at the junction with Rykneld Road; as previously stated, such parking close to the junction can be hazardous.

Should the Local Planning Authority be minded to approve the application, the Highway Authority considers that it would therefore be appropriate for the developer to fund the provision of a suitable Traffic Regulation Order to control highway parking adjacent to the junction. The standard fee for such provision would be £7,000.

Nevertheless, the only material difference between the historic and current proposals appears to be the loss of the (three) staff parking spaces to the rear of the development; spaces which may not in practice have been accessible; by reference to the parking standards calculation, this would equate to one consulting room (two members of staff plus 2 spaces).

It is suggested therefore that should the Local Planning Authority be minded to approve the application, that the development be restricted to three consulting rooms, not four.

Committee Report Item No: 7.3

Application No: 22/00674/VAR

Type: Variation of Condition

I do note proposals to create dropped footway crossings along the appropriate site frontages of Rykneld Road and Haven Baulk Lane. Should the variation be approved these works should be completed accordingly.

The Local Planning Authority should also note that the site appears to also currently operating in breach of conditions 6 and 8.

Recommendation.

Should the Local Planning Authority be minded to approve the application to vary Condition 5; the Highway Authority recommends that:-

1. The use of the site ceases until the approved parking layout has been implemented in accordance with details shown on drawing 2028.004 Rev A.
2. The use of the site be restricted to a maximum of three consulting rooms
3. The applicant funds the provision of a suitable Traffic Regulation Order to protect the highway junction of Rykneld Road and Haven Baulk Lane.

All in the interests of highway safety.

Notes To Applicant

N1. The development makes it necessary to improve vehicular crossings over a footway of the public highway. These works shall be constructed to the satisfaction of the Highway Authority. You are, therefore, required to contact StreetPride at Derby City Council to apply for a vehicle access under Section 184 of the Highways Act 1980 (as amended) to arrange for these works to be carried out. Visit <https://www.derby.gov.uk/transport-and-streets/roads-highways-pavements/vehicle-access-kerbs/> or contact customerservices@derby.gov.uk or tel 0333 200 6981.

N2. Traffic Regulation Orders – The proposal relies on the introduction of a new traffic regulation order (TRO). It should be noted that the TRO process is not certain as it is subject to a formal consultation process, including public consultation, and the Council must give proper consideration to any valid objections that are raised. You proceed are required to fund all costs associated with the new TROs that is to be implemented.

The applicant should in the first instance contact traffic.management@derby.gov.uk to commence the process.

6. Policies:

6.1. Relevant Policies

The Derby City Local Plan Part 1 - Core Strategy was adopted by the Council on Wednesday 25 January 2017. The Local Plan Part 1 now forms the statutory development plan for the City, alongside the remaining 'saved' policies of the City of Derby Local Plan Review (2006). It provides both the development strategy for the City up to 2028 and the policies which will be used in determining planning applications.

Derby City Local Plan Part 1 - Core Strategy (2017)

CP1a	Presumption in Favour of Sustainable Development
CP2	Responding to Climate Change

Committee Report Item No: 7.3

Application No: 22/00674/VAR

Type: Variation of Condition

CP13	Retail and Leisure Outside of Defined Centres
CP21	Community Facilities
CP3	Placemaking Principles
CP4	Character and Context
CP23	Delivering a Sustainable Transport Network

Saved CDLPR Policies

T10	Access for Disabled People
GD5	Amenity

The above is a list of the main policies that are relevant. The policies of the Derby City Local Plan Part 1 – Core Strategy can be viewed via the following web link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmantandplanning/planning/localplan/evidencebase/Core-Strategy_ADOPTED_DEC-2016_V3_WEB.pdf

Members should also refer to their copy of the CDLPR for the full version or access the web-link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmantandplanning/planning/localplan/part1/CDLPR_2017.pdf

An interactive Policies Map illustrating how the policies in the Local Plan Part 1 and the City of Derby Local Plan Review affect different parts of the City is also available at – <http://maps.derby.gov.uk/localplan>

Over-arching central government guidance in the NPPF is a material consideration and supersedes earlier guidance outlined in various planning policy guidance notes and planning policy statements.

6.2. Non-housing applications:

The Local Plan consists of the policies of the DCLP1 and the saved policies of CDLPR. The DCLP1, which sets out the growth strategy for the city, covers the period 2011 to 2028 and was adopted on 25 January 2017. The policies of the local plan were reviewed in December 2021 in line with Regulation 10a of the Town and Country Planning (Local Planning) (England) Regulations 2017 and paragraph 33 of the NPPF, the provisions of which require Local Plan policies to be reviewed at least every 5 years. The officer led review, endorsed by the Council's Cabinet on 8 December 2021, indicated that all of the policies relevant to the consideration of this application are still up to date and carry weight in the decision-making process as they remain consistent with the NPPF and there have been no changes in local circumstances that render any of the policies out of date. The application is therefore being considered in terms of its accordance with the policies of the Local Plan and any other material considerations, including the National Planning Policy Framework.

7. Officer Opinion:

Key Issues:

In this case the following issues are considered to be the main material considerations which are dealt with in detail in this section.

7.1. The principle of the development

7.2. Highway Safety

7.3. Other amenity issues

7.1. The principle of the development

The proposal was considered to be acceptable in principle, and permission ref: 18/00822 was approved.

Core Strategy Policy CP21 deals with health uses and seeks to have a choice of travel options and ideally to be located within existing centres. The site is relatively close to a Neighbourhood Centre and has the potential for linked trips. The site is on a main road with good public transport links. The clinic proposal was considered to be in accordance with Policy.

Any use of the site would be limited by its scale, accessibility, parking proposals and impact on neighbours. It was considered that the proposal would not vary in use from a more typical arrangement of a ground floor retail use, with a service use above. Particularly, it was considered that the proposed uses would not have a cumulative detrimental impact on the vitality or viability of any nearby centres.

7.2. Highway Safety

The Highway Authority note that the development is currently being operated with a different parking layout than is shown on the approved plans. It is also clear that some of the constructed spaces are too small to be of practical use and lead to vehicles overhanging the highway footway. In respect of new development, this would not normally be supported.

However, in this case, the principle of the development has been established through the historic permission, such that mitigating measures must be considered to alleviate the current unsafe parking arrangements and traffic congestion near to the road junction.

Consequently, the Highway Authority recommends that the approved parking layout should be implemented, the use of the site should be restricted to a maximum of three consulting rooms and that the applicant funds the provision of a suitable Traffic Regulation Order to protect the highway junction of Rykneld Road and Haven Baulk Lane.

The applicant agrees with the highways officer's recommendations. The applicant has a contractor waiting to start on the parking bays, dropped kerbs and footpath. The client is also only running 3 surgeries at the current time, and this will continue. The applicant is content to instigate the necessary TRO.

Committee Report Item No: 7.3

Application No: 22/00674/VAR

Type: Variation of Condition

Subject to the implementation of the above matters, in the circumstances, it is considered that the best possible highway safety solution will be achieved.

It is appreciated that there are on-going highway safety problems and that the Highways Officer is recommending the closure of the site until these are resolved. However, it is not considered that imposing such a Condition would be reasonable. In the circumstances, Conditions are recommended with what is considered to be a reasonable implementation time of 6 months.

7.3. Other amenity issues

The extension of opening times to include Saturday use is likely to have some impact on residential amenities. However, the former convenience store was open 7 days a week and probably had no planning restrictions over opening hours. The proposed 9-5 opening hours are unlikely to have any overriding impact on residential amenity. No enforcement complaints or objections to the application have been raised on these grounds.

The visual impact of the small ground floor extension on the adjoining neighbours also needs to be considered, with a greater degree of enclosure and some marginal additional overshadowing on no. 182 Havenbault Lane. The rear garden faces south and is already overshadowed by a large fruit tree within the garden. The change in levels and intervening garage give significant separation to no. 81 Rykneld Road. On balance it is not considered that the neighbour's amenities would be adversely affected. Overall, it is considered that the proposal would not have any additional overriding adverse impact on residential amenity.

8. Recommended decision and summary of reasons:

8.1. Recommendation:

To grant planning permission with conditions.

8.2. Summary of reasons:

The proposal was considered to be acceptable in principle, and permission ref: 18/00822 was approved. In policy terms, it is not considered that the proposed uses would have a detrimental impact on the vitality or viability of any nearby centres. Subject to the implementation of the recommended parking and operational measures, in the circumstances, it is considered that the best possible highway safety solution will be achieved. Overall, it is considered that the proposal would not have any additional overriding adverse impact on residential amenity.

The recommended Conditions have been re-numbered and re-ordered to meet the requirements of the current decision notice format, as follows:

- Condition 2 (approved plans) remains unaltered.
- Condition 4 (operating hours) of previously approved permission ref: 06/18/00822 has been replaced by proposed Condition 7.

Committee Report Item No: 7.3

Application No: 22/00674/VAR

Type: Variation of Condition

- Condition 5 (parking provision) of previously approved permission ref: 06/18/00822 has been replaced by proposed Condition 3.

8.3. Conditions:

General Conditions

1. The development hereby permitted shall be begun before the expiry of three years from the date of this permission.

Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development must conform in all aspects with the plans and details shown in the application as listed below. (It is very important to note that, in order for this decision to be lawfully implemented, all approved plans and details must be adhered to and any other condition(s) attached to this decision must be formally discharged, by separate Discharge of Condition applications, in accordance with the relevant timeframe).

Reason: For the avoidance of doubt and to define the bounds of this decision.

Plan Type:	Plan Ref – Rev:	Date received:
Location Plan	2028.006 rev A	26.4.2022
Layout Plan	2028.004 rev A	26.4.2022
Proposed Floorplans	2028.003 rev A	26.4.2022
Proposed Elevations	2028.002 rev A	26.4.2022

Management Conditions

3. Within 6 months of the date of this permission, the parking areas shall be provided in accordance with the approved plan 2028.006 rev A. The parking areas shall be surfaced in a hard bound material (not loose gravel) for a minimum of 5 metres behind the Highway boundary and with provision to prevent the discharge of surface water from the parking areas to the public highway. The parking areas shall then be maintained in such a manner for the life of the development. The parking areas shall not thereafter be used for any purpose other than parking of vehicles.

Reason: To ensure that adequate and satisfactory off-street parking provision is made to reduce the possibilities of the proposed development leading to on-street parking in the area and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

4. Within 6 months of the date of this permission, provision shall be made within the application site for parking of cycles in accordance with details submitted to and approved in writing by the Local Planning Authority. The cycle stands shall be located near to the main entrance to the development, be covered and that area shall not thereafter be used for any purpose other than the parking of cycles.

Committee Report Item No: 7.3

Application No: 22/00674/VAR

Type: Variation of Condition

Reason: To promote sustainable travel and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

5. Within 6 months of the date of this permission a scheme of local traffic management measures shall be implemented and thereafter retained. The measures shall include the making of a suitable Traffic Regulation Order, to protect the highway junction of Rykneld Road and Haven Baulk Lane.

Reason: In the interests of highway safety and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

6. Notwithstanding the provisions of the Town & Country Planning Use Classes Order 1987 (as amended) and any relevant succeeding legislation, the use of the premises hereby approved shall be for:

- Ground Floor - a dental clinic only and not for any other purpose, including other uses falling within Use Class D1.
- First Floor - a single operator using the whole of the first floor for purposes falling within Use Classes E(a) and E(c) only.

The dental clinic shall only operate a maximum of three surgeries at any one time. The first floor shall not be subdivided and used by more than one operator without the approval of a planning application.

Reason: To enable the Local Planning Authority to exercise control in the interests of the amenities of nearby residents and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

7. The dental clinic hereby approved shall only be open to patients during the following daily hours:

- 09:00 to 17:00 Monday to Saturday
- and not at all on Sundays or on public holidays.
- The first-floor use shall only be open to customers between 8.30-19.30 daily, unless otherwise agreed in writing by the local planning authority.

Reason: To safeguard residential amenity and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

8.4. Informative Notes

1. The development makes it necessary to improve vehicular crossings over a footway of the public highway. These works shall be constructed to the satisfaction of the Highway Authority. You are, therefore, required to contact StreetPride at Derby City Council to apply for a vehicle access under Section 184 of the Highways Act 1980 (as amended) to arrange for these works to be carried

Committee Report Item No: 7.3

Application No: 22/00674/VAR

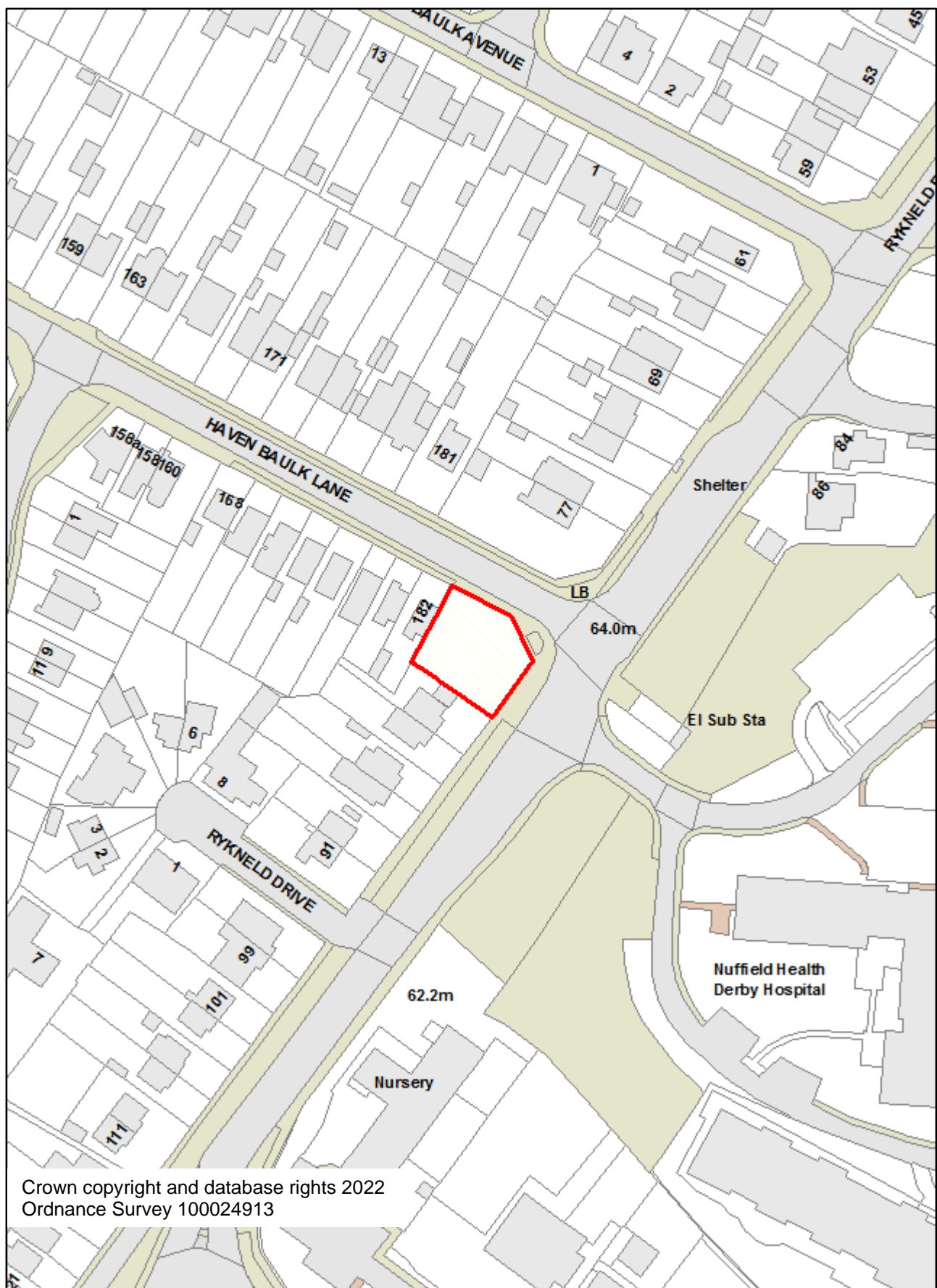
Type: Variation of Condition

out. Visit <https://www.derby.gov.uk/transport-and-streets/roads-highways-pavements/vehicle-access-kerbs/> or contact customerservices@derby.gov.uk or tel 0333 200 6981.

2. Traffic Regulation Orders – The proposal relies on the introduction of a new traffic regulation order (TRO). It should be noted that the TRO process is not certain as it is subject to a formal consultation process, including public consultation, and the Council must give proper consideration to any valid objections that are raised. You proceed are required to fund all costs associated with the new TROs that is to be implemented. The applicant should in the first instance contact traffic.management@derby.gov.uk to commence the process.

8.5. Application timescale:

The application expired on 12/7/2022. Further to negotiations, an extension of time has been requested. The application has been called into Committee by Cllrs Care and Lonsdale.



Committee Report Item No: 7.4

Application No: 22/01075/FUL

Type: Full Application

1. Application Details

1.1. Address: 23 Chaddesden Park Road, Derby

1.2. Ward: Derwent

1.3. Proposal:

Change of use from dwelling house (Use Class C3) to a residential children's home for up to four children (Use Class C2)

1.4. Further Details:

Web-link to application:

<https://eplanning.derby.gov.uk/online-applications/plan/22/01075/FUL>

Brief description

This property is a mature detached dwelling house, with the gable-fronted elevation facing the street. To the front is a mixture of hard surfacing for vehicle parking and a small garden area. To the rear in a long garden with trees along the boundary with dwellings on Durham Avenue.

The property has benefited from previous extensions and currently has two sitting rooms on the ground floor together with a large kitchen/ diner/ snug and utility room and downstairs cloakroom.

On the first floor are five bedrooms and two bathrooms.

2. Relevant Planning History:

Application No:	22/00896/CLP	Type:	Certificate of Lawful Development
Decision:	Withdrawn	Date:	04.07.2022
Description:	Change of Use of dwelling house (Use Class C3(a)) to Use Class C3(b) (residential children's home)		

Application No:	19/00989/FUL	Type:	Full Application
Decision:	Approval	Date:	15.11.2019
Description:	Two storey rear and single storey front extensions to dwelling house (porch, kitchen/dining area, W.C., living space and two bedrooms) and installation of a new first floor window to the side elevation		

Application No:	12/97/01453	Type:	Full Application
Decision:	Granted	Date:	09.01.1998
Description:	Extensions To Dwelling House (Kitchen, Utility Room, Bedroom and Bathroom)		

3. Publicity:

- 4 Neighbour Notification Letters
- Site Notice

This publicity is in accordance with statutory requirements and the requirements of the Council's adopted Statement of Community Involvement.

4. Representations:

In line with the Data Protection Act and associated legislation this appraisal should not include details, or seek to identify through repeating specific comments, the individuals who have objected, supported or made general comments about the application. Therefore, to maintain anonymity, the relevant planning grounds of objection, support or comment have only been included in broad terms. It is important to note that all comments received have been fully considered as part of the application process and included in the overall 'planning balance' exercise.

1 Petition with 109 Signatures stating, 'We the undersigned are concerned citizens who urge the people in authority to act now to stop the change of use from a dwelling house to a residential children's home/ young adults rehabilitation centre'.

12 Responses have been, received all objecting to the proposal. Concerns raised relate to:

- Heavy traffic on Chaddesden Park Road which will be made worse by the development due to staff/ visitor movements.
- Increased parking problems due to insufficient parking provision within the site.
- Proposal will lead to increased parking on highway verge.
- Bus-stop close by making manoeuvring more difficult.
- Intensification of vehicle use should have required a transport statement to be submitted.
- Anxiety created for existing residents over fears of anti-social behaviour of children resident in home.
- Previously operated home in the area resulted in many incidences where the Police were called. The same will result from this use.
- Peer pressure from children in home with behaviour problems influencing local children towards bad behaviour.
- Additional pressure on existing local resources such as police, fire service etc.
- The local demographic is made up of mostly older residents which makes it an unsuitable area for children to be housed.
- The cost of this type of home to the Local Authority is very high.
- The applicant is profiteering from such homes as this site will be just one of several the applicant owns.

-
- The current care system doesn't work and should be reviewed.
 - Derby City Council Local Plan policies are out of date therefore the decision should be made on the National Planning Policy Framework (NPPF) only.
 - The NPPF states – 'planning policies and decisions should aim to ensure that developments create safe and accessible environments where crime and disorder and the fear of crime do not undermine quality of life or community cohesion'.
 - No demonstration of 'need' has been submitted with application.
 - A 'family home' is removed from the supply when the Council already cannot meet its housing needs.
 - The room sizes are too small.
 - There is a restrictive covenant on the property preventing commercial use at the dwelling.

5. Consultations:

5.1. Highways Development Control:

Observations:

These observations are primarily based upon the following submitted information:

- Application Form.
- Planning Statement
- Drawing ~ Existing Floorplan
- Drawing ~ Proposed Floorplan

In highway terms, the proposals will change the use of a 5 bedroom residential dwelling, to a six bedroom residential children's home, housing four children and with two staff on the premises.

A site visit has established that there are two off-street parking spaces within the curtilage; the application form states that 3 are available, with further works, this could be improved to park three vehicles, this will be covered by condition but will also involve the widening of the existing dropped vehicular crossing.

There are bus stops nearby the site (one immediately adjacent), and the Local Planning Authority may wish to also consider the provision of a measure of cycle parking for the use of staff/ visitors to the premises.

The Highway Authority view is that in respect of vehicular trips, the proposed use would not necessarily be dissimilar to that which would be anticipated in respect of a purely residential use of the property; and the provision of an additional off-street parking space would also be seen as being of benefit.

Para 111 of the National Planning Policy Framework states that:

'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.'

Committee Report Item No: 7.4

Application No: 22/01075/FUL

Type: Full Application

To be clear, 'severe' also does not relate to highway parking, but the consequences of congestion as a result of the traffic effects arising from the development.

It is the view of the Highway Authority that it would not be possible to argue that the proposals will not lead to 'unacceptable impacts' to highway safety.

Recommendation:

The Highway Authority has No Objection to the proposals, subject to the following suggested conditions:-

Condition 1:

The development hereby permitted shall not be brought into use until off-road parking has been provided for three off-road parking spaces have been provided; in accordance with details to be first submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibilities of the proposed development leading to on-street parking in the area.

Condition 2:

No part of the development hereby permitted shall be brought into use until a widened vehicular footway crossing is available for use and constructed in accordance with the Highway Authority specification to the satisfaction of the Local Planning Authority.

Reason: To protect the structural integrity of the highway and to allow for future maintenance

Notes To Applicant

N1. The development makes it necessary to alter/improve a vehicular crossing over a footway/verge of the public highway. These works shall be constructed to the satisfaction of the Highway Authority. You are, therefore, required to contact StreetPride at Derby City Council to apply for a vehicle access under Section 184 of the Highways Act 1980 (as amended) to arrange for these works to be carried out. Visit <https://www.derby.gov.uk/transport-and-streets/roads-highways-pavements/vehicle-access-kerbs/> or contact customerservices@derby.gov.uk or tel 0333 200 6981.

5.2. Land Drainage and Flood Defence:

The surface water flood map shows a risk of flooding up to 300 mm for high (>3.33% AEP) risk and a depth of 300 mm to 900 mm for medium (3.33% to 1% AEP) and low (1% to 0.1%) risk floods.

There is no change in the flood risk, but it is recommended that, if possible, the building should be flood proofed, possibly using flood proof doors and high level sockets, etc. Refer to:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7730/flood_performance.pdf.

There is no increase in the impermeable area of the site but although it is not mandatory it would be desirable to reduce the run-off. The installation of rain gardens would be ideal.

Committee Report Item No: 7.4

Application No: 22/01075/FUL

Type: Full Application

6. Policies:

6.1. Relevant Policies:

The Derby City Local Plan Part 1 - Core Strategy was adopted by the Council on Wednesday 25 January 2017. The Local Plan Part 1 now forms the statutory development plan for the City, alongside the remaining 'saved' policies of the City of Derby Local Plan Review (2006). It provides both the development strategy for the City up to 2028 and the policies which will be used in determining planning applications.

Derby City Local Plan Part 1 - Core Strategy (2017)

CP1a	Presumption in favour of sustainable development
CP2	Responding to Climate Change
CP3	Placemaking Principles
CP4	Character and Context
CP6	Housing Delivery
CP21	Community Facilities
CP23	Delivering a Sustainable Transport Network

Saved CDLPR Policies

GD5	Amenity
H13	Residential Development (General Criteria)
E24	Community Safety

The above is a list of the main policies that are relevant. The policies of the Derby City Local Plan Part 1 – Core Strategy can be viewed via the following web link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmentandplanning/planning/localplan/evidencebase/Core-Strategy_ADOPTED_DEC-2016_V3_WEB.pdf

Members should also refer to their copy of the CDLPR for the full version or access the web-link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmentandplanning/planning/localplan/part1/CDLPR_2017.pdf

An interactive Policies Map illustrating how the policies in the Local Plan Part 1 and the City of Derby Local Plan Review affect different parts of the City is also available at – <http://maps.derby.gov.uk/localplan>

Over-arching central government guidance in the NPPF is a material consideration and supersedes earlier guidance outlined in various planning policy guidance notes and planning policy statements.

6.2. Non-housing applications:

The Local Plan consists of the policies of the DCLP1 and the saved policies of CDLPR. The DCLP1, which sets out the growth strategy for the city, covers the period 2011 to 2028 and was adopted on 25 January 2017. The policies of the local plan were reviewed in December 2021 in line with Regulation 10a of the Town and Country Planning (Local Planning) (England) Regulations 2017 and paragraph 33 of the NPPF, the provisions of which require Local Plan policies to be reviewed at least every 5

years. The officer led review, endorsed by the Council's Cabinet on 8 December 2021, indicated that all of the policies relevant to the consideration of this application are still up to date and carry weight in the decision-making process as they remain consistent with the NPPF and there have been no changes in local circumstances that render any of the policies out of date. The application is therefore being considered in terms of its accordance with the policies of the Local Plan and any other material considerations, including the National Planning Policy Framework.

7. Officer Opinion:

Key Issues:

In this case the following issues are considered to be the main material considerations which are dealt with in detail in this section.

7.1. Background

7.2. Main issues

7.3. Third party concerns

7.4. Assessment and conclusions

7.1. Background

The application seeks permission to change of use of a dwelling house (Use Class C3) to a small care facility for children up to 18 years of age. (Use Class C2).

A maximum of four children would reside at the home, looked after by a team of carers who will work on a regular shift pattern. Typically, there will be four staff present in the daytime and two staff during the night.

The day shift would work between 8.00am and 11.00pm and would include a site manager. Children would be cared for on a medium to long term basis and would attend school etc. in the usual manner.

The care home would be managed by a professional company and subject to inspection and monitored by Ofsted. Supporting documents indicate that the home is intended to replicate the environment in a traditional family dwelling house as much as possible.

This application arises following the withdrawal of an earlier submission for a Certificate of Proposed Lawful Use or Development. As part of that application process the case officer advised that whilst there are some circumstances where such a proposed use may *not* result in a material change in use/ activity requiring an application for planning permission, this case, though finely balanced, did require assessment through the submission of a formal application for planning permission due to the combined number of residents and carers.

7.2. Main issues

The Use

This site is not specifically allocated in the Local Plan. There are no in principle objections to the proposed use of the dwelling as a care home for children, subject to

assessments regarding the living environment created for future occupiers and the impact on the amenity of nearby residents.

The property is located in a residential area and when considering the impact of the proposal on neighbouring occupiers and the local environment it is important to consider the fall-back position. In this case this position includes:

1. The continued use of the property as a dwelling house under Use Class C3. This Use Class addresses use as a dwelling house, as a principal or secondary residence. The classifications were updated in 2010 aligning the definitions of usage C3(a) (single household) and C4 (House in Multiple Occupation) with those in the [Housing Act 2004](#). This Class is formed of 3 parts:
 - a. C3(a): those living together as a single household as defined by the [Housing Act 2004](#), what could be construed as a family.
 - b. C3(b): up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems.
 - c. C3(c): allows for groups of people (up to six) living together as a single household. This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger.
2. The potential conversion of the property to a House in Multiple Occupation (HMO) for no more than 6 people, as a permitted change to Use Class C4. Members will be aware that such a use can accommodate between 3 and 6 unrelated residents as a HMO where they share basic amenities such as kitchen or bathrooms and use it as their only (or main) residence.

The proposed use would generate daily movements from the site, by pedestrians and vehicle users, and a level of general disturbance created by occupiers within the property and its curtilage. In terms of the impact of the proposed use on neighbouring occupiers and the immediate area it is my view that the uses listed above could, potentially, be lawfully operated from this property and create similar impacts in terms of general disturbance and highways movements. It would be very difficult, in my opinion and judgment, to predict that the proposed use would be injurious to local residential amenities above and beyond what could otherwise be lawfully carried out from this property. All uses will have some degree of impact but as decision makers we have to consider whether that impact is within reasonable tolerances. In this case it is a controlled residential use within a residential area and the proposal is not dissimilar to the composition of a family. In my opinion and judgment, to refuse permission on residential amenity grounds could not be successfully defended at any appeal.

Highways impact

No objection has been raised by the Highways team to the proposed use. It is noted that the site is located on a main bus route to and from the city centre - bus stops are almost outside the property and on the opposite side of the road - together with the availability of wider bus routes for staff close by on Nottingham Road. By the use of

appropriate planning conditions to ensure completion of provision before the proposed home comes in to use, three parking spaces for vehicles providing off street parking for staff could be created together with the provision of bicycle parking for staff.

The use of such conditions would ensure parking spaces are of adequate size and can be safely accessed. Cycle parking too can be controlled to ensure a covered secure stand can be provided.

The Highways team consider that that in respect of vehicular trips the proposed use would not necessarily be dissimilar to that which would be anticipated at a purely residential property.

Flood issues

No change in flood risk is generated by this proposal. However, given the wider area does fall within a Flood Zone 2 on the City Council Strategic Flood Risk Assessment it would be wise to flood proof the building. An advisory note to this effect together with other measures to assist with the management of rainwater run-off can be included on any decision notice to that effect.

7.3. Third Party concerns

This application has generated a large number of responses which can be grouped under several topic areas.

Parking problems/ traffic generation

Concerns relate to the level of activity the use will generate with staff and visitors, inadequate parking provision and the wider impact on an already busy road. As part of the application process the specialist views of colleagues in Highways Development Control have been sought and, subject to safeguarding conditions, there are no over-riding objections on trip generation or parking grounds. Therefore, in line with DCLP1 Policy CP23, the proposal is acceptable.

The Use

Concerns are expressed that the proposed home would be occupied by children with behavioural problems which would lead to social problems in the wider area and would impact on the residential amenities of nearby residents, as a result of the anxiety created. In my opinion and judgment there may be some behavioural issues with some of the children but, in this case, the children would be cared for around the clock and there are separate controls in place to manage the use during the life of its operation.

The provision of 'care' in this type of small commercially run facility and the cost of this to the Council. The issue of the business model employed in this case is not a planning consideration and the overall cost of such to the Council is beyond the remit of the Local Planning Authority.

7.4. Assessment and conclusions

This proposal relates to the change of use of a dwelling house to an alternative form of residential use. Chaddesden Park Road and the surrounding area is residential in character and an established mature neighbourhood with the amenities expected in such a location – schools, recreation grounds, shops, public transport etc.

The site has no specific allocation in the DCLP1 and there are no 'in principle' concerns with the proposed change of use, with no policies to control the number or type of care facilities provided.

The operation and standards of management of care homes such as this is covered by other legislation and does not fall within the planning remit. The facilities would be inspected and controlled by Ofsted, and I understand the home must be registered in accordance with the Care Standards Act 2000.

Saved Policy GD5 of the CDLPR (Amenity) states that planning permission will only be granted for development where it provides a satisfactory level of amenity within the site or building itself and provided it would not cause unacceptable harm to the amenity of nearby areas. New development should not seriously detract from the amenity of nearby land, property, or the occupants of these. The point at which new development will unacceptably affect nearby areas will depend on the nature of the activity proposed and the nature of the surrounding area. In my opinion and judgment the proposed use would not create a level of activity and impact upon immediate neighbours and the wider area to warrant the refusal of permission in line with saved Policy GD5.

Multiple third party objections have been received which raise similar concerns relating to increased activity at the property, problems with parking and problems arising from the type of residents occupying the property. The property is not being extended and the maximum number of resident children will be four supported by staff on site, with two sleeping over at any one time. Unlike an unrestricted single household which could lawfully operate under Use Class C3, this use can be controlled by a maximum occupancy condition which would, in my opinion and judgment, meet the tests for planning conditions. Indeed the proposed level of occupation is no different to what might be expected in a five bedroomed family house and is not considered to be excessive. Such a residential property may well contain a family with two parents with cars and older children with their own vehicles all coming and going at different times of the day, plus receiving visitors and deliveries etc.

The provision of adequate parking for vehicles and bicycles at the premises is referenced in the Highway Officer comments. No objections have been raised to the proposal and a condition to limit the number of children resident and members of staff, together with a further condition requiring parking provision to be created before the use come into operation, can be used to preserve the amenity of neighbours, and ensure the proposals accord with broad aims of DCLP1 Policy CP23.

Saved Policy E24 considers community safety issues. Crime and the fear of crime and anti-social behaviour are material planning considerations however there is no *evidence* submitted which suggests that this home will result in an increase of such in the area. Whilst the supporting statement indicates the home will care for children with additional problems and needs it does not follow that this would lead to increased crime or anti-social behaviour. These matters are all for the carers who run the home and as this is to be a registered and formally inspected care facility any failures in this respect would be addressed by Ofsted and not the Planning regulations.

The application has generated a variety of concerns and objections, and these have been summarised in the report. As members will be aware the application has to be

determined in accordance with the Development Plan when considered as a whole and the various policies of the adopted CDLPR and DCLP1 have been included in the report. I am satisfied that, on balance, the proposal is a reasonable scale and form of development in a residential area and recommend accordingly.

8. Recommended decision and summary of reasons:

8.1. Recommendation:

To grant planning permission with conditions.

8.2. Summary of reasons:

The principle of the proposed residential care use is acceptable, and the proposal is considered to be acceptable in terms of highway safety and impacts on residential amenity, subject to compliance with the conditions. The proposal is deemed to comply with the relevant policies in the adopted Local Plan and the advice contained within the NPPF.

8.3. Conditions:

1. Standard time limit condition.

Reason: As required by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Standard approved plans and details condition.

Reason: For the avoidance of doubt and to define the bounds of this decision.

3. Condition requiring the provision of three on-site parking spaces before the use is occupied.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibilities of the proposed development leading to on-street parking in the area and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

4. Condition requiring the provision of secure on-site cycle parking spaces before the use is occupied.

Reason: To promote sustainable travel and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

5. Condition controlling the scale of the use and the number of children and staff to be accommodated at the property at any time.

Reason: To enable the Local Planning Authority to maintain control over the proposed use and to safeguard the amenities of the surrounding area and

Committee Report Item No: 7.4

Application No: 22/01075/FUL

Type: Full Application

to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

8.4. Informative Notes:

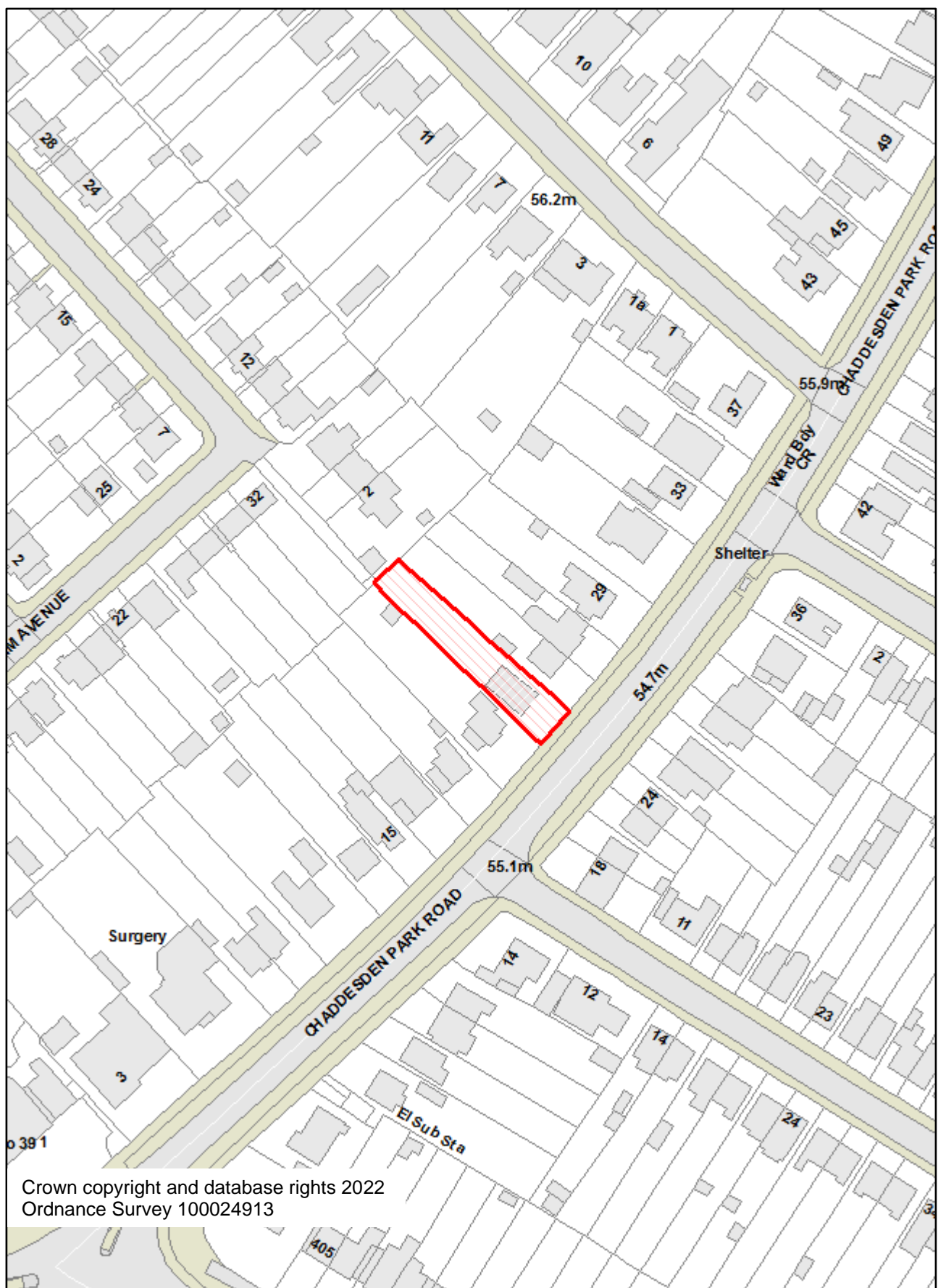
The development makes it necessary to alter/improve a vehicular crossing over a footway/verge of the public highway. These works shall be constructed to the satisfaction of the Highway Authority. You are, therefore, required to contact StreetPride at Derby City Council to apply for a vehicle access under Section 184 of the Highways Act 1980 (as amended) to arrange for these works to be carried out. Visit <https://www.derby.gov.uk/transport-and-streets/roads-highways-pavements/vehicle-access-kerbs/> or contact customerservices@derby.gov.uk or tel 0333 200 6981.

There is no change in the flood risk, but it is recommended that, if possible, the building should be flood proofed, possibly using flood proof doors and high level sockets, etc. Refer to:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7730/flood_performance.pdf. There is no increase in the impermeable area of the site but although it is not mandatory it would be desirable to reduce the run-off. The installation of rain gardens would be ideal.

8.5. Application timescale:

An extension of time to accommodate the necessary committee meeting has been sought.



Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

1. Application Details

1.1. Address: Land at St Peters Churchyard, St Peters Churchyard, Derby

1.2. Ward: Arboretum

1.3. Proposal:

Use of the land as an outdoor street food market including erection of 12 market stalls, seating area and associated ancillary structures, decking and ramps

1.4. Further Details:

Web-link to application:

<https://eplanning.derby.gov.uk/online-applications/PLAN/22/00792/ful>

Brief description

This full planning application seeks permission to use land on St Peters Churchyard as an outdoor street food market including the erection of 12 market stalls, seating area and associated ancillary structures, decking and ramps.

This application is accompanied by a Listed Building application, 22/00793/LBA - the application is yet to be determined at the time of drafting this report, but the officer recommendation is unfavourable at this time. This application seeks permission for the insertion of an access into the Listed Boundary Wall. As a material consideration, the sites planning history should be given full regard.

Full details of the previous refusals on this site are provided within this report, including the dismissal of an appeal for the re-development of this site.

The application site is located within the Green Lane Conservation Area and within the direct setting of the Grade II* The Old Grammar School, St Peters Churchyard, and the Grade II County Court St Peters Churchyard. The Grade II Former Hippodrome Theatre and Grade II 45 St Peters Street are in the wider setting of the application site at either end of St Peters Churchyard.

The application site is located within the City Centre and is surrounded by various uses including officers, residential, commercial, community uses, and retail are all typical with this City Centre location.

The application site is an area of elevated land on St Peters Churchyard which is bounded by the Grade II* Listed Wall which runs along the northern side along of the St Peters Churchyard frontage. To the east is the Grade II* Grammar School, to the west a vehicular access and to the south St Peters House, which is a residential block.

There are a number of protected trees along the site's frontage, protected under TPO no.20. This TPO covers four London Planes, a Sycamore, Hornbeam and Lucombe Oak. It is noted that the TPO also covers Weeping Ash which along with a small group of trees (mostly Holly) has been illegally felled. Other vegetation on the site would also be protected by the site's location within the Conservation Area.

The application site provides open un-developed space, vegetation and amenity within this area which contributes to the verdant value of the street scene, the character and appearance Conservation Area and the setting of neighbouring listed

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

assets and it is felt that the green space contributes to the overall historical significance of the City Centre. Furthermore, historic maps indicate that the land was used as an outside area to serve the Church and Sunday school on St Peter's Churchyard. The site is marked as a graveyard in the OS map dated 1883.

The site has therefore always had an open in character with no development taking place given the contextual relationship it has with the Grade II* Church.

The application seeks permission to change the use of the application site to create an outdoor street food market. The street food market would be facilitated by the erection of 12 market stalls, the formation of a seating area along with ancillary structures including decking and ramps. The market would be accessed via an access in the Grade II* Listed Wall, in close proximity to the boundary shared with the Grade II* Grammar School. The proposed access itself will be considered under 22/00793/LBA which, if this application is refused, would provide no access for the proposed use.

Access into the site would be through the insertion of steps and a platform lift that are set into the site. The market would be set around a large seating area which would be centrally located within the application site, the 12 market stalls would be set around the seating area and accessed by a walkway. The market stalls would be serviced to the rear by a series of closed walkways. A bin store is proposed within the service area and a Site Office and WCs are also included to the south-west of the seating area. Small areas of landscaping will be retained along the eastern boundary, in the south-western corner and along the frontage. Although the majority of the site will be re-surfaced. Two trees are proposed along the site frontage; one to replace the felled tree. Cycle parking is also proposed in close proximity to the site entrance.

A typical market stall would have a serving hatch to the front with a signage zone. The stalls would be finished in dark grey timber cladding with an oak fascia and posts along with a green mono pitch roof. The stalls would measure approximately 3.5 metres by 2.5 metres with a maximum height of 2.7 metres declining to approximately 2.04 metres at the rear.

The application is accompanied by a suite of documents and plans that have been duly consulted upon. Further information has also been provided during the life of the application which relates to noise/odour, trees, heritage matters, public benefits, and archaeology. Further consultations have taken place and all responses received are reproduced within this report.

2. Relevant Planning History:

Application No:	22/00793/LBA	Type:	Listed Building Consent
Decision:	Pending	Date:	
Description:	Insertion of access into boundary wall		
Application No:	21/01174/LBA	Type:	Listed Building Consent - Alterations
Decision:	Refused	Date:	10/09/2021
Description:	Partial demolition of boundary wall		

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

Reasons for Refusal

- 1. In the opinion of the Local Planning Authority, the partial demolition of the boundary wall, insertion of steps, railings, gates and associated works, would have a negative and harmful impact on the significance of the Grade II* St Peter's Church and surrounding designated heritage assets including the Grade II* Old Grammar School, the Grade II County Court St Peters Churchyard and the wider Conservation Area. The harm created is considered to be substantial harm and a clear and convincing justification for the works has not been provided in support of the proposed works. Accordingly, the proposal is contrary to sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Policy CP20 of the Derby City Local Plan - Part 1 (Core Strategy), saved Policies E18 and E19 of the adopted City of Derby Local Plan Review*

Application No:	21/01173/FUL	Type:	Full Planning Application
Decision:	Refused	Date:	15/09/2021
Description:	Use of the land as an outdoor food, drink and artisan traders venue including erection of kiosk buildings and entrance gates		

Reasons for Refusal

- 1. In the opinion of the Local Planning Authority the proposal would have a negative and harmful impact on the significance of the Grade II* St Peter's Church and surrounding designated heritage assets - including the Grade II* Old Grammar School, the Grade II County Court St Peters Churchyard and the wider Conservation Area. The harm created is considered to be "less than substantial harm" and not considered to be outweighed by the public benefits arising from the proposal. Accordingly, the proposal is contrary to sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, policy CP20 of the Derby City Local Plan - Part 1: Core Strategy, saved policies E18 and E19 of the adopted City of Derby Local Plan Review and the overarching guidance in the National Planning Policy Framework (2021) in relation to heritage assets.*
- 2. In the opinion of the Local Planning Authority the proposal fails to adequately assess the loss and change of use of this important component of open green space. The Council's Open Space Study identifies that there is currently an under provision of open space within the City Centre and policy CP17 of the Derby City Local Plan - Part 1: Core Strategy only permits development, that would result in the loss or change of use of open green space, where certain circumstances are met. This application does not meet these circumstances. The proposal is, therefore, unacceptable on these grounds and contrary to policy CP17 of the Derby City Local Plan - Part 1: Core Strategy.*
- 3. In the opinion of the Local Planning Authority the proposal, by virtue of the functional design and layout of the individual units, does not respect the historic character of the area or the important protected trees on site. The layout of the proposal appears cluttered and would have a detrimental impact on protected trees which would compromise their long-term protection. The external materials, colour finish and appearance of the proposed kiosks fail to have regard to the natural environment and the wider historic setting. Accordingly, the proposal is contrary to saved policies GD5 and E12 of the adopted City of Derby Local Plan Review and*

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

policies CP2, CP3, CP4, CP16, CP17, CP19 and CP20 of the Derby City Local Plan - Part 1: Core Strategy.

Application No:	02/18/00269	Type:	Full Planning Application
Decision:	Refused	Date:	23/05/2018
Description:	Erection Of 14 Apartments (Use Class C3) And Associated Works		

Application Documents

<https://docs.derby.gov.uk/padocumentserver/index.html?caseref=02/18/00269>

Appeal Decision –

<https://docs.derby.gov.uk/padocumentserver/DownloadDocument.aspx?docid=138513379>

Application No:	10/16/01291	Type:	Full Planning Application
Decision:	Refused	Date:	02/03/2017
Description:	Erection Of Five Storey 65 Bedroom Student Accommodation		

Application documents -

<https://docs.derby.gov.uk/padocumentserver/index.html?caseref=10/16/01291>

Application No:	10/98/01247	Type:	Works to a tree with a TPO
Decision:	Granted Conditionally	Date:	16/11/1998
Description:	Deadwood Lucombe Oak, 4 Planes, Formatively Prune Weeping Ash & Crown Raise & Cut Back Branches Adj To Gable End Of Hornbeam On Trees Protected By T.P.O (St Peters Churchyard 1982 No.20)		

Application No:	10/91/01333	Type:	Works to a tree with a TPO
Decision:	Granted	Date:	01/05/1992
Description:	Pruning Of 9 Trees Covered By Tree Preservation Order		

Application No:	10/82/01141	Type:	Works to a tree with a TPO
Decision:	Granted Conditionally	Date:	21/12/1982
Description:	Pruning Of Trees Covered By Tree Preservation Order		

3. Publicity:

- Neighbour Notification Letter sent to 34 properties surrounding the application site
- Site Notice
- Statutory Press Advert

This publicity is in accordance with statutory requirements and the requirements of the Council's adopted Statement of Community Involvement.

4. Representations:

In line with the Data Protection Act and associated legislation this appraisal should not include details, or seek to identify through repeating specific comments, the individuals who have objected, supported or made general comments about the application. Therefore, to maintain anonymity, the relevant planning grounds of objection, support or comment have only been included in broad terms. It is important to note that all comments received have been fully considered as part of the application process and included in the overall 'planning balance' exercise.

The application has attracted three letters of representation two in support from Marketing Derby and one in objection from a City Resident:

Marketing Derby (01/07/2022)

This letter is written to reiterate the support of Marketing Derby for the proposed Change of Use of Land at St Peters Churchyard. This letter is in addition to our original letter submitted 05 August 2021.

Marketing Derby is the Queen's Award-winning Investment Promotion Agency for Derby and Derbyshire, supported by our 325+ Bondholders.

This city centre 'green public realm' has been neglected, misused, and shut off to public use for in excess of 15 years.

The new plan for the site actively reinvigorates and encourages public use, making it a destination place and a safe place to dwell again.

While there is an appreciation of the historical significance of the site, the proposed use only serves to enhance and promote the heritage. The proposed use also works with the existing land, including the protected treescape.

The site will be developed utilising sustainable practices such as using reclaimed materials, rainwater harvesting, and recycled landscaping products. In addition, the site endeavours to promote eco-friendly practices for the traders; minimising waste and utilising compostable packaging.

Burton Abbey Development's proposal delivers substantial benefits for an area of the city that is challenged, both economically and socially.

The proposed development fits with the ambition of Derby City Council in regenerating underused parts of the city and to diversify the daytime and night time economies.

Marketing Derby is very supportive of the proposals to change the use of the Land at St Peters Churchyard, Derby. Please accept this letter as confirmation of our ongoing support for this project and the economic benefits that the project will provide.

Marketing Derby (16/09/2022)

We are writing to strongly support this application which proposes to develop an outdoor food, drink, and artisan traders' venue on a piece of land that has laid waste in the heart of our city for decades.

Committee Report Item No: 7.5

Application No: 22/00792/FUL

**Type: Full Planning
Application**

The original application was submitted in July 2021 and planning refused in an Officers Report in September 2021. Following subsequent conversations, and appointment of local heritage experts Lathams, an amended application was submitted which we understand was also due to be refused by Officers Report.

We welcome the fact that the application will now be brought before committee in October.

We are aware that others - not least representatives from the Conservation Area Advisory Committee, St Peter's Quarter Business Improvement District and Lathams - have all fully supported the revised application. Before submitting this letter we recently made a site visit with the applicant – Burton Abbey Developments - to better understand the vision and benefits planned on this important cross-city thoroughfare.

Marketing Derby wrote in support of the original application on 5th August 2021 and our view then - that the proposed development can only contribute to the vibrancy of the city centre - has been reinforced by our visit and the continued decline of the area in question.

Furthermore, we now believe that the development does not only have a city vibrancy and economic benefit but will also significantly improve the green space and heritage asset of the area (which sadly, like so much city centre heritage, has been allowed to decline in plain sight and desperately needs investment).

It's our view that the relationship between heritage and investment is symbiotic and St Peter's Churchyard is a perfect example of this - the heritage attracts the investment, and the investment benefits the heritage.

The Officers Report describes the site as 'an important green space that positively contributes to character and appearance, a wall that is imposing and monumental'. Historic England wrote that the development 'would be visually intrusive, compromise the setting and result in a harm'.

Both descriptions are untrue, and the writers cannot have visited the site.

Far from positively contributing to the area, the space is unkempt and overgrown and has been for decades. The wall is uncared for and falling apart and furthermore, the whole area is sealed off by an imposing fence drilled into the aforementioned wall.

The Development Control Performance Quarter 1 report (dated 8th September 2022) states that 'the team has a 'can do' attitude, where we seek to achieve a permission rather than refuse a scheme'.

Sadly, this is not the experience of the applicant in this case.

The Derby City Council Ambition 2022 - Towards a New Vision for Derby City Centre - is explicit in its desire for 'transformational change', 'greater diversification of the range of uses in the city centre', to tackle the 'general feel of decline' and 'create an experience that makes you want to return'.

We thoroughly support this ambition but the applicant - a SME local investor of the exact type Derby needs - has been subjected to an astonishing range of apparent blocks intended to refuse the application and so stop the investment, with its associated jobs and vibrancy - a long way from 'can do' and the words in the Ambition document are in danger of remaining exactly that, words.

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

There is a disconnect between ambition and reality which needs addressing and we therefore urge members of the committee to exercise their instinct and knowledge to approve the application and, in so doing, give a signal that Derby is serious about repurposing the city centre and is truly open for business.

Objector

Category A Trees of high quality with an estimated remaining life expectancy of at least 40 years Trees that are particularly good examples of their species, especially if rare or unusual; or those that are essential components of groups or formal or semi formal arboricultural features (e.g. the dominant and/or principal trees within an avenue)

There's the issue of tree root compression and water run-off, all of which will be detrimental to the trees.

If this application was to be successful then the stall holders would invariably complain about shading from the trees, dampness, moss and slippery decking not to mention leaf fall and before long they would be pushing to have the trees crown lifted or reduced etc etc. This is not rocket science and then we would suffer a further loss of the trees within this inner city sanctuary.

In addition, does the City really need this outdoor food venue? There are plenty of empty shops and other areas already developed that could provide this.

Surely there's a conflict of interests with using Religious Church grounds for such a project?

I am also opposed to the 'ancient' stone wall being altered or 'touched'

I therefore oppose the application.

5. Consultations:

5.1. Highways Development Control:

Observations:

This planning application is located on the south side of St Peter's Churchyard (Street) midway between Green Lane to the west and St Peter's Street to the east. The site consists of 138 sqm of private undeveloped land consisting of several mature trees and is currently inaccessible to the public.

Former applications to develop the site have been refused: - 21/01173/FUL and 21/01174/LBA (refer to Design and Access Statement pages 20 - 21). However, the grounds for refusal were not based on the effects that the developments would have had on the traffic and transport network.

The proposed planning application will fall under the category of E (b) by becoming an area selling food and drink consisting of 12 market stalls set back from the boundary with a seating area for up to 100 people, along with the associated ancillary structures. It is indicated that the premises opening hours will be between 11:00 and 23:00 hours every day including weekends.

A Victorian stone wall separates the site from the public highway/St Peter's Churchyard (street) and acts as a retaining wall for the ground on the proposed

Committee Report Item No: 7.5

Application No: 22/00792/FUL

**Type: Full Planning
Application**

development which is approximately 1m above. To facilitate pedestrian access to the site a new opening will be created through the Victorian boundary stone wall facing the public highway (dwg 1202 and dwg 3200) to the Northeast of the development. Behind this will be a series of steps and a platform lift to gain access to the premises as well as a provision for the safe storage of bicycles - it is not indicated in the application how many bicycles will be able to park. This will involve removing a section of the retaining wall and excavation of the raised ground behind it.

As indicated on dwg 1202 the waste storage area is planned to be approximately 24m away from the public highway however the Management Plan (page 2) in the application indicates discussions with DCC Waste Management have concluded that waste bins can be brought onto the street and collected at an agreed day/time between 6-10am. Waste generation will be minimised by composting food waste.

On St Peters Churchyard there is no waiting at any time in the pedestrian zone and disabled badge holders are restricted to three hours parking on the public road. On the Green Lane pay and display parking is permitted for up to 2 hours. The proposed hours of business will not clash with the time early in the morning often used by local business for deliveries.

As a result of the development there will be no parking spaces removed or added and no change to vehicle access, roads and rights of way. No incursions onto the public footway or highway will arise as a result of the proposed development.

The planning proposal will be in accordance with, and favourable towards Derby City Local Core Strategy Policies relating to traffic and transportation and assist in the rejuvenation of the Deby City Centre. The location is sustainable and highly accessible, being well served by public transport and cycle links, nearby pay and display parking as well as general pedestrian access to shops, services and amenities, all within the city centre.

Recommendation:

The Highway Authority has no objections to this proposal subject to the conditions outlined below:

Condition 1:

No part of the development hereby permitted shall be brought into use until the area of development is constructed with provision to prevent the discharge of surface water from the development onto the public highway in accordance with details first submitted to and approved in writing by the Local Planning Authority. The provision to prevent the discharge of surface water to the public highway shall then be retained for the life of the development.

Reason:

To ensure surface water from the site is not deposited on the public highway causing a danger to highway users.

Condition 2:

The new gates on the street frontage shall open inwards only and shall be provided in accordance with details which have been first submitted to and approved in writing by the LPA prior to their installation. The approved gates shall then be retained for

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

the life of the development.

Reason:

In the interest of highway safety.

Notes to applicants:

The developer should note that the proposed works will take place in an area covered by permit parking restrictions, which may necessitate the purchase of temporary permits for vehicles associated with the construction works. The developer should therefore contact businessdev@derby.gov.uk in order to make arrangements for the purchase of temporary permits as appropriate.

The developer should note that if any vehicles/equipment are to be located on the highway footway; a minimum 1.2m unencumbered footway width is to be retained for pedestrian access (1.55m preferable) (or 2.0m in areas of high pedestrian activity).

It is an offence under S148 and S151 of the Highways Act 1980 to deposit mud on the public highway. The applicant/developer must take all necessary action to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's/developer's responsibility to ensure that all reasonable steps (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

No part of the proposed building/wall or its foundations, fixtures and fittings shall project forward of the highway boundary

5.2. Conservation and Heritage Advisory Committee:

No objections

5.3. Historic England (13/06/2022):

Thank you for your letters of 18 May 2022 regarding the above applications for listed building consent and planning permission. On the basis of the information available to date, we offer the following advice to assist your authority in determining the applications.

Historic England Advice

Significance

The Church of St Peter, including the attached boundary walls is listed grade II* in recognition of its more than special architectural and historic interest, placing it within the top 8% of listed structures in the country. It is a multi-phased medieval parish church which sits in a prominent position on the corner of St Peter's Street and St

Peters Churchyard. The west tower with its battlemented parapet and pinnacles dates is a prominent landmark from St. Peter's Churchyard. The chancel was restored in 1851-53 by G G Place and the remainder in 1859 by G E Street, subsequent alterations were undertaken in 1865 and 1898. The attached church hall was added in 1970. The church is located within the Green Lane and St Peters Street Conservation Area.

The church is an important key landmark building within this part of the conservation area and forms the nucleus of an early part of the medieval expansion of Derby. By

Committee Report Item No: 7.5

Application No: 22/00792/FUL

**Type: Full Planning
Application**

the C17 there were a number of important buildings surrounding the church and within the churchyard including with the former Old Grammar School located to the southwest which dates from the late C16 and the Green Man Inn built in 1671. Both of these buildings are listed grade II* in light of their more than special interest and they make an important contribution to the character and appearance of the conservation area.

Historic mapping indicates that the associated churchyard extended beyond its current boundary and embraced the application site. Consequently, the site constitutes an important remnant of the historic churchyard. The C19 boundary wall denotes the boundary of the churchyard and forms part of the listed church. It runs along St Peters Street and extends along the road known as St Peters Churchyard for approximately 80 metres. Historic photographs from the late C19 show the wall in its original condition. The steep saddleback coping has a series of ramps that follow the rising land. Whilst some later openings have been introduced, the churchyard wall remains an imposing feature and an important part of the setting of St Peters Church and the Grammar School.

The grassed open space behind the stone wall makes an important contribution to the character and appearance of the conservation area. It contains several mature trees which are prominent within the townscape. Consequently, the application site is a key open space within the conservation area.

In summary, the application site makes a significant contribution to the setting of St Peters Church and the Old Grammar School listed buildings and the character and appearance of the Green Lane and St Peters Street Conservation Area, both aesthetically, as a green open space with mature trees and through its former historic association as a churchyard/ amenity space. The site facilitates important views of the listed buildings from the west.

The importance of St Peter Church, the surrounding heritage assets, and the application site within the conservation area is highlighted in your authority's own Conservation Area Appraisal and Management Plan (January 2013)

Impact

We have previously provided advice in relation to proposals at this site most recently in relation to the proposed erection of 14 kiosks, a site office, WC and bin stores and associated works to the boundary wall (Ref- 20/01174/LBA and 21/01173/FUL). In our letter of 11th August 2021, we raised concerns in relation to the applications. We understand the applications were subsequently refused by your authority.

The current scheme includes a building containing a continuous run of kiosks, a site office and bin stores with associated landscaping. It is also proposed to remove part of the listed boundary wall in order to form a new entrance with steps and a disabled lift to provide access. The proposed kiosks are to be clad in timber with green roofs.

We have consistently advised with regard to previous proposals on this site that, this land, forms a green open space that makes an important contribution to both the settings of nearby highly graded listed buildings and the character and appearance of the conservation area. Whilst the kiosks have been re-arranged into linked blocks surrounding an open core, the proposal would fundamentally alter the character and appearance of this green open space. The impact on the Old Grammar School,

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

which would be fronted by a continuous row of kiosks, would be particularly harmful. Views from both within the site and from the adjacent street (St Peters Churchyard) towards the Grade II* listed former school would be substantially obscured by the proposed kiosks. This is clear from the submitted street elevation.

The associated Listed Building Application proposes alterations to the boundary wall.

In our view, the current proposals in relation to the wall are more modest and less harmful than the previous scheme. However, any harm caused would require clear and convincing justification and should be considered as part of the overall scheme.

The submitted layout plan does not indicate the spread of the existing tree canopies. The proposed kiosks are sited close to existing trees. Your authority should therefore consider the potential impact of the proposed scheme on the nearby trees.

Overall, the proposed development would transform the character of this green open space. The proposal would also erode the setting of the highly graded St Peter's Church and Old Grammar School and would have an adverse impact on the character and appearance of the Green Lane and St Peters Street Conservation Area.

The site lies within an area of high archaeological potential as previously advised. We recommend the archaeological potential of the site should be assessed with the benefit of advice from Steve Baker the County Council Archaeologist

Legislation, Policy and context

As the proposal affects the setting of listed buildings and the conservation area the statutory requirement to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses (section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act, 1990) and to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area (s.72, 1990 Act) must be taken into account by your authority when determining this application.

The NPPF is clear in the requirement to take account of the desirability of sustaining and enhancing the significance of heritage assets and the desirability of new development making a positive contribution to local character and distinctiveness. (paragraph 197 NPPF).

Significance can be harmed or lost through development within a heritage asset's setting and any harm or loss to significance 'should require clear and convincing justification' (paragraph 200, NPPF). In determining the application your authority will need to consider whether any public benefits associated with the scheme outweigh the harm caused by the impact of the proposed new development (paragraph 202, NPPF). Further useful guidance is contained within Historic Environment Good Practice Advice Note: The Setting of Heritage Assets (GPA 3) Position Overall the proposed development would be visually intrusive and would compromise the setting of the highly graded St Peter's Church and Old Grammar School, resulting in a harm to the significance that these highly graded listed buildings derive from their settings. The proposal would also have an adverse impact on the character and appearance of the Green Lane and St Peters Street Conservation Area for the reasons outlined above. We draw your authority's attention to page 97 of your Conservation Area

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

Management Plan (2013) which identifies the site as an important open space and goes on to state - The appraisal identifies one significant open space - St. Peter's Churchyard. This includes the current churchyard, the historic churchyard which lies to the north of St. Peter's House, and the streets and alleys on either side of the church. Planning permission should not be granted for any development within the important open space or that is detrimental to the setting of St. Peter's Church and churchyard. Historic England has previously supported the view that this is an important open space within the conservation area and that development of this site is therefore unacceptable in principle. Our view remains unchanged in this regard.

Recommendation

Historic England has concerns regarding the applications on heritage grounds as outlined above. We consider the applications do not meet the requirements of the NPPF 2021, in particular paragraphs 200 and 202 and your Authority's own Conservation Management Plan (2013) as outlined above.

In determining these applications you should bear in mind the statutory duty of section 66(1) and 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a listed buildings or their setting or any features of special architectural or historic interest which they possess and pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation areas. Your authority should take these representations into account in determining the application. If you propose to determine the application in its current form, please inform us of the date of the committee and send us a copy of your report at the earliest opportunity.

Historic England (13/09/2022)

Thank you for your letters of 12 September 2022 regarding further information on the above applications for listed building consent and planning permission. On the basis of this information, we offer the following advice to assist your authority in determining the applications.

Historic England Advice

We have been consulted on additional information which includes a further indicative cross-section. We have no further comments to offer in this regard and refer to back to our previous advice contained within our letter of 13th June 2022 which remains unchanged.

Position

Overall the proposed development would be visually intrusive and would compromise the setting of the highly graded St Peter's Church and Old Grammar School, resulting in a harm to the significance that these highly graded listed buildings derive from their settings. The proposal would also have an adverse impact on the character and appearance of the Green Lane and St Peters Street Conservation Area for the reasons outlined above.

We draw your authority's attention to page 97 of your Conservation Area Management Plan (2013) which identifies the site as an important open space and goes on to state

The appraisal identifies one significant open space - St. Peter's Churchyard. This

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

includes the current churchyard, the historic churchyard which lies to the north of St. Peter's House, and the streets and alleys on either side of the church. Planning permission should not be granted for any development within the important open space or that is detrimental to the setting of St. Peter's Church and churchyard.

Historic England has previously supported the view that this is an important open space within the conservation area and that development of this site is therefore unacceptable in principle. Our view remains unchanged in this regard.

Recommendation

Historic England has concerns regarding the applications on heritage grounds as outlined in our letter dated 13th June 2022. We refer you back to this advice and recommend you also seek further guidance from your in-house conservation officer.

We consider the applications do not meet the requirements of the NPPF 2021, in particular paragraphs 200 and 202 and your Authority's own Conservation Management Plan (2013) as outlined above.

In determining these applications you should bear in mind the statutory duty of section 66(1) and 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a listed buildings or their setting or any features of special architectural or historic interest which they possess and pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation areas.

Your authority should take these representations into account in determining the application. If you propose to determine the application in its current form, please inform us of the date of the committee and send us a copy of your report at the earliest opportunity.

5.4. Development Control Archaeologist (06/06/2022):

Thank you for consulting on this application. I note that we have advised on this site on previous applications. On each occasion, because of the archaeological sensitivity of the site, we have recommended pre-determination archaeological evaluation.

The current proposal is for Use of the land as an outdoor street food market including erection of 12 market stalls, seating area and associated ancillary structures, decking and ramps this would include partial demolition of the grade II* listed boundary wall.

The current proposal re-submits the heritage appraisal compiled in 2021 and adds a Heritage Impact Assessment supplement dated May 2022. None of these documents overtly consider the below ground impacts of development on the site caused by any intrusive works, the changes in levels on the site, the extent of intrusive impacts to provide services etc. The 2021 Heritage Impact Assessment submission identified, quoting Local Plan Policy E21,

'There is also a requirement for an archaeological evaluation to be submitted as part of a planning application within the Archaeological Alert Areas.' (p11) and that the site itself comprised 'a remarkably ancient parcel of ground, being traceable to the Abbey of Darley and, it would seem, to the park surrounding Babington Hall' (p33)

A Written Scheme of Investigation for archaeological works has been submitted with the application. This WSI has not been seen previously by this office and its title page

Committee Report Item No: 7.5

Application No: 22/00792/FUL

**Type: Full Planning
Application**

and inside title page seem to be at odds; one claiming a WSI for a Watching Brief, the other for an archaeological evaluation.

It is unclear within the submission where the major intrusive impacts would be outside the footprint of the entrance to the development and that though the ground is to be levelled up slightly, the impacts of both the planting scheme, landscaping and the siting of below ground infrastructure lighting/power/drainage etc. and, in the same vein the impact of 'screw piles' on any buried archaeology has similarly not been assessed.

As we have advised previously in terms of below ground archaeological remains, there would be a high potential for remains of early medieval, high medieval and post-medieval date to survive within the site, and these could potentially include burials. This is on the basis that the church is of 11th century origin, but with pre-conquest antecedents, and that its church yard is likely to have contracted through time. Thus the development area has the potential to contain human and possibly structural remains.

Previously we have expressed general concerns about the change of use and feel that the ground preparation involved in wall removal, construction of access, land regrading, land scaping and provision of below ground services will have an impact on any buried archaeology. It is almost certain that there will be archaeology on the site, but as to what type of archaeology, is largely a known unknown.

Paragraph 194 of NPPF requires that where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation. Further, Local Plan Policy E21 requires an archaeological evaluation to be submitted as part of a planning application within Archaeological Alert Areas.

I advise therefore that the application at present does not meet the requirements of NPPF para 194 or Local Plan Policy E21 in relation to below-ground archaeological remains. In order to establish significance the applicant should submit the results of archaeological field evaluation of the site (trial trenching), carried out to by a professional archaeological organisation, with proven professional experience in working in urban archaeology in historic cities. This should be in accordance with a Project Design/Written Scheme of Investigation that has been compiled in consultation with this office.

Development Control Archaeologist (21/09/2022):

Thank you for reconsulting on this planning application.

The proposal site is within the historic medieval core of Derby as defined by the City Council's Archaeological Alert Area (Local Plan Saved Policies). The site is adjacent to the Grade II* Listed St Peter's Church, dating from the 12th century onward (although generally considered to be one of the six Derby churches mentioned in the Domesday Book), and to the Grade II* Listed Old Grammar School, dating from the 16th century. The site is also close to the site of Babington Hall (Derbyshire HER 32005) a late medieval hall demolished in the 18th or early 19th century. There is a high level of potential on the site for archaeological remains of the medieval period,

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

including burials associated with St Peter's and settlement evidence associated with the medieval town.

NPPF para 194 requires that the significance of heritage assets (including below-ground archaeological assets) be established as part of the planning application process. Local Plan Policy E21 requires an archaeological evaluation to be submitted as part of a planning application within the Archaeological Alert Areas. This information has not at present been provided by the applicant despite previous advice going back to August 2021 (21/01174/LBA).

I note the comments provided by the applicant in relation to potential build-up of ground levels within the proposal site. Given the archaeological sensitivity of the location these assertions need to be ground-truthed and understood at the point of determination, as per local plan policy and national planning policy. This should be achieved through a targeted scheme of archaeological evaluation to establish potential within the ground footprint of the proposed development (primarily focusing on the area of impact associated with the access point), with the results submitted as part of the planning application.

The applicant's archaeological consultant has this week agreed a Written Scheme of Investigation for pre-determination archaeological evaluation with ourselves. It should be noted that this is not the proposal for watching brief forming part of the application documents currently hosted online.

In line with previous comments, and with NPPF para 194 and Local Plan Policy E21 I object to the application as currently presented, because there is insufficient evidence to establish archaeological significance and impact.

This objection could be overcome by delivery of the scheme of archaeological evaluation as per the WSI agreed this week, and submission of the results in support of the planning application.

5.5. Built Environment (22/07/2022):

Designated Heritage Assets affected - The land on St Peter's Churchyard, to which this application relates, is located within the Green Lane and St Peter's Conservation Area - an area of architectural and historic interest. It is located adjacent to grade II* listed St Peter's

Church and walls, which was founded in the 12th century, and the grade II* listed 16th century former Old Grammar School. The late nineteenth century stone boundary retaining wall fronting St Peter's Churchyard is considered curtilage listed and an important structure, it also contributes positively to the conservation area and to the setting of nearby listed buildings. To the northern side of St Peter's Churchyard, opposite the application site, is grade II listed County Court which overlooks the street and area. There is also the Green Man Inn off St Peter's Street which is grade II* listed building, to the south, and 45 St Peter's Street which is grade II to the east of St Peter's Street. The site and wall are also located within the Green Lane and St Peter's Conservation Area - an area of architectural and historic interest. These are designated heritage assets in National Planning Policy Framework terms (2021).

Committee Report Item No: 7.5

Application No: 22/00792/FUL

**Type: Full Planning
Application**

Impact of proposals on Heritage Assets and comments –

The area of land is an important piece of green space which has prominent mature trees upon it and is bounded to the north by the important nineteenth century retaining stone wall. It is within the Green Lane and St Peter's Conservation Area and the area positively contributes to the conservation area's character and appearance as an area of undeveloped green space within this part of the city centre. The space also contributes to the setting of nearby grade II* listed buildings, St Peter's Church and The Old Grammar School. There are key views of St Peter's Church, its landmark tower, the stone boundary walls and area - including one looking east along St Peter's Churchyard. To the northern side of St Peter's Churchyard, opposite the application site, is grade II listed County Court which overlooks the area and street. The trees are very important within the conservation area and to the street scene. The retaining boundary stone wall is imposing and monumental in scale and encloses this area in addition to the north, east and south of the Church. There is an accompanying listed building application (22/00793/LBA) for works to provide a 1.8m access through the wall.

There have been applications for residential development refused within this area and an appeal for one of these dismissed recently in 2019 (please see DER/02/18/00269 and APP/C1055/W/18/3215151).

The planning inspector's appeal decision is clear on the importance of this area of land, its open character and contribution to the setting of highly graded listed buildings of high heritage significance. Applications 21/01173/FUL for use of the land as an outdoor, drink, artisan traders' venue including kiosk buildings and entrance piers and 21/01174/LBA for partial demolition of a larger part of the boundary wall were also refused.

The proposal is to use the land as an outdoor street food market including erection of 12 market stalls, seating area for up to 100 people and associated ancillary structures, decking and ramps as well as, new entrance through the stone wall with gates, railings, access steps and access lift. The kiosks are temporary shed like structures of timber clad walls with green roofs. The D&AS highlights that all units are to be constructed in a reversible way built to protect tree roots.

There is a difference in levels on the site and the stone wall along St Peter's Churchyard is a retaining wall. The new kiosk structures, although single storey, will be in an elevated position above street level. The new access removes a stretch of 1.8m of late nineteenth century stone listed retaining wall which is part of an important heritage asset and historic fabric and further erodes this strong feature within the conservation and street scene. As well as the loss of fabric there is an amount of excavation to create the steps and access lift (I note my archaeological colleagues have been consulted). There are also new railings being reinstated to the top of the wall and two timber gates.

This proposal is contrary to the Green Lane and St Peter's Conservation Area Appraisal Management Plan which identifies St Peter's Churchyard as the significant open undeveloped space within the conservation area which contributes positively to its character and appearance. It states that planning permission should not be granted for any development within an area of important open space or that is detrimental to the setting of St Peter's Church and churchyard. This is a rare piece of

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

open green undeveloped space within the Green Lane and St Peter's Churchyard and one of only a handful within the city centre.

This proposal is contrary to the outcome of the recent planning appeal and does develop and clutter this important piece of green undeveloped space.

The proposal develops most of the area with structures, concrete paving, artificial grass, fibre grid and composite decking and removes most of the grassed area. The structures when viewed from the street along St Peter's Churchyard due to their number and mass are likely to appear as one mass although they are individual structures. Important views along St Peter's Churchyard to the Old Grammar School are likely to be obscured. Proposals will change its character and appearance when viewed from the street and negatively impact the setting of a number of the nearby listed buildings.

The reinstatement of lost decoration to the top of the railings and repairs to the wall are benefits of the proposals.

However, the proposal creates an access through the listed wall within the conservation area which will be harmful, due to the loss of historic fabric and the erosion of the continuous wall within the street scene. The proposal develops important undeveloped green space within the conservation area. It would also be harmful therefore to the setting of the nearby listed buildings and to the conservation area. As an area of architectural and historic merit the proposal is harmful and does not preserve or enhance the character or appearance of the conservation area.

Policies –

The Planning (Listed Buildings and Conservation Areas) Act 1990 section 66 and 72 as regards the statutory duties regarding listed buildings and conservation areas is relevant here. Policies E18 and E19 of the saved Local Plan Review (2006), CP20 of the Local Plan - core strategy (2017) and the formally Adopted Green Lane and St Peter's Conservation Area Appraisal Management Plan are relevant. Section 16 on Conserving and enhancing the historic environment of the NPPF is relevant in particular, para 189, 194, 199, 200 and 202.

There is harm caused to the designated heritage assets and as regards to heritage policies in the National Planning Policy Framework this proposal's level of harm (classed as *less than substantial harm*) it is considered to be under para 202. '...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' (NPPF, Para 202). This means that where there is this level of harm, this harm should be weighed against the public benefits of the proposal. This weighing is undertaken by the Development Management Case Officer.

Recommendation:

Object to proposal on basis of negative impact on designated heritage assets.

As there is harm level of harm, in accordance with the NPPF paragraph 202, this harm should be weighed against the public benefits of the proposal. This weighing is undertaken by the Development Management Case Officer.

Committee Report Item No: 7.5

Application No: 22/00792/FUL

**Type: Full Planning
Application**

Built Environment (21/09/2022):

No additional comments to those made 22-07-22 in relation to further information supplied.

5.6. Natural Environment (Tree Officer):

- Tree Survey and AMS
- Proposed Landscaping Plan
- Tree Plan

Observations:

The submission of the tree survey and AMS is welcomed. The Tree Survey and AMS also includes an AIA.

The tree survey has identified all existing trees and their constraints. I am satisfied that the tree survey has categorised the trees correctly. It is noted that on the Tree Survey Plan RPAs are shown as circles with the tree trunk at the centre of the circle. This is not a true representation of likely root morphology. Existing physical constraints will have modified the RPAs and the whole site must be considered as the RPA. The AIA has taken this into consideration, and I am pleased that the AIA considers that the whole plot is within the RPA.

The four London Planes, Sycamore, Hornbeam and Lucombe Oak are protected by TPO No. 20. It is noted that a TPO'd Weeping Ash (also protected by TPO No.20) and a small group of trees consisting of mostly Holly were removed by the applicant without permission.

The small group was protected by virtue of being located within a Conservation Area. Ground investigations were also carried out within the RPA.

A previous application proposed the new hard surface to be constructed upon a cellular confinement system. Due to the amount of hard surface to be installed this was thought not to be appropriate and I did support the proposed use of a cellular confinement system. The current application proposes to install the new hard surface upon a steel grid supported on screw piles. The AMS details how the suspended surface would be installed which includes positioning of ground screws and the use of an air spade to establish root morphology at the ground screw locations (all under arboricultural supervision. The ground screws are proposed to be installed using a rig running on rubberized tracks and where appropriate to be run on temporary ground protection (20mm wooden boards). The weight of the rig has not been specified and it is therefore not clear if the ground protection is adequate. Ground protection must be appropriate to the potential load so as to not cause any damage to the RPA.

The proposed use of physical protection to tree trunks is noted and is appropriate.

The proposed entrance into the site is shown in the north east corner of the site. This would require some regrading. This is mentioned within the AMS where it states that regrading will be done using hand tools and under arboricultural supervision. It is very unlikely that significant roots of retained trees would be encountered. If approved the final AMS must be amended to detail what they will do if they were to encounter roots of trees that have been retained.

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

Conclusion

The proposed use of a suspended hard surface on ground screws would in theory have a minimal impact on the trees, however no details have been provided of the proposed ground screws and suspended floor and whether it would be of sufficient strength to support the proposed kiosks and infrastructure. As the ground screw element and suspended floor element is key to the proposed development its omission is rather remiss and I am of the opinion that it should not be left to condition. The Tree Plan shows full extent of the proposed suspended floor area however I would like to see cross sections showing suspended floor installation and existing ground levels.

If you are minded to grant permission before suspended floor details have been provided then it must be conditioned that a final AMS and landscape plan are supplied and approved prior to development.

There is also the issue that trees have been removed illegally. Whilst the proposed landscaping does appear to mitigate the tree removals the fact remains that protected trees were removed without permission and I am not comfortable supporting an application that has removed protected trees to facilitate a potential development.

Glossary:

- o AIA: Arboricultural Impact Assessment
- o AMS: Arboricultural Method Statement
- o CEZ: Construction Exclusion Zone
- o RPA: Root Protection Area
- o TCP: Tree Constraints Plan
- o TPP: Tree Protection Plan

Natural Environment (Tree Officer) (22/09/2022)

Following the submission of the Groundscrew System and Installation document I am satisfied that the final specification and installation of the groundscrew and suspended decking system could be conditioned. If you are minded to grant permission it must be conditioned that a final AMS and landscape plan are supplied and approved prior to development (including preparation of the site).

The Stonemasons Method of Works does not make adequate provision for compliance with the AMS. The AMS must include the Stonemason operations.

The AMS can be transferred to 22/00793/LBA.

The final AMS must be in accordance with BS5837 and include but not restricted to the following:

- Final TPP.
- Installation of tree protection measures.
- Installation of temporary ground protection.
- Removal and repair of masonry.

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

-
- Installation of the proposed groundscrew and decking system and surfacing – materials, design constraints and implications for levels.
 - Preparatory works for new landscaping.
 - Auditable system of Arboricultural site monitoring, including a specific site events requiring input or supervision.
 - Provision for landscaping.
 - A list of contact details for the relevant parties.

A final landscape schedule and plan must be conditioned to be supplied and approved prior to completion of the development. The landscape schedule and plan must tie in with the AMS. The following must be supplied:

- 1) a scaled plan showing all existing vegetation and landscape features to be retained and trees and plants to be planted;
- 2) location, type and materials to be used for hard landscaping including specifications, where applicable for:
 - a) tree pit design
 - b) use within tree Root Protection Areas (RPAs);
 - c) a schedule detailing sizes and numbers/densities of all proposed trees/plants;
 - d) specifications for operations associated with plant establishment and maintenance that are compliant with best practise

The issue still remains that trees have been removed illegally. Whilst the proposed landscaping does appear to mitigate the tree removals the fact remains that protected trees were removed without permission and I am not comfortable supporting an application that has removed protected trees to facilitate a potential development without permission. Whether we would have allowed the Weeping Ash and Holly to be removed in order to facilitate the development is a hard one to call as we do not have an up to date assessment of the trees before they were removed.

I note that 6 months has lapsed since the trees were removed without permission; the TPO guidance states '*authorities may bring an action within 6 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor's knowledge.*' Taking this into account we cannot prosecute for the illegal removal of trees however we can and must insist that replacement trees are planted. The proposed landscape plan makes provision for replacement trees. The replacement trees will be protected by the TPO/Conservation Area legislation however the TPO will need to be modified to reflect the change in species. If permission is refused replacement trees must still be planted.

5.7. Environmental Health – Noise and Odour (23/06/2022):

I have reviewed the application information and I would offer the following comments in relation to Noise implications for the development as follows.

1. This is an application for a new outdoor street food market operating between 11:00-23:00 Monday-Sundays including bank holidays. Outdoor seating for up

Committee Report Item No: 7.5

Application No: 22/00792/FUL

**Type: Full Planning
Application**

to 100 people is proposed as part of the application.

2. Whilst we have no objections in principle to the development due to the city centre location, there are a number of residential properties in close proximity. A development of this nature has the potential to impact on the amenity of the area and we are aware that there are already high noise levels in the area.
3. In addition, as the proposals are also for street food, odour can be a significant issue.
4. Neither noise or odour have been identified by the applicant as potential issues and no supporting information or assessments have been provided with the application.
5. If planning permission is likely to be granted, we would request that suitable conditions be attached requiring noise and odour assessments to be carried out prior to the development commencing so that appropriate mitigation measures can be implemented as part of the overall design and operation. It is likely that the most effective mitigation will be provided through good management control due to the outdoor nature of the proposals so we would welcome submissions of odour and noise management plans.
6. We would also request that the opening hours are limited via condition to those currently requested to minimise the impact on the local community.

I have no other comments to make on the application regarding noise or odour at this time

Environmental Health – Noise and Odour (21/09/2022):

1. Further to comments submitted by this Department on 23rd June 2022 I note the submission of a letter in support of the application entitled '*Environmental Health Noise & Odour*' (the document is unreferenced, undated and no author details are supplied).
2. I can offer the following comments on the document.
3. Rather than supply any detailed assessment of noise or odour, the letter provides a brief outline of the proposed operations. The letter suggests this is because "*we have had no previous request for such information during 2 planning application processes, and have limited timeframe to provide a full detailed assessment*".
4. The letter is factually incorrect in this regard. A recommendation for a detailed noise assessment was made by Officers from this Department both in response to the 2021 application (ref: 21/01173/FUL) and also in our comments of June this year, the latter of which being a period of 3 months until submission of the letter, providing ample time for such an assessment.
5. In terms of the details provided, hours of operation are stated as 10am- 5pm, 7 days a week.

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

-
6. The letter highlights that no professional advice has been sought to consider potential noise and odour impacts and this is only intended following the granting of planning permission.
 7. Whilst an assessment prior to determination would have been preferred, this position concurs with the recommendations already put forward by this Department in June to attach a condition requiring such assessment.
 8. The noise and odour management measures provided in the letter will also need to be subject to amendment once appropriate professionals have been employed.
 9. Consequently, the recommendations of this Department remain unchanged, namely:
 1. *If planning permission is likely to be granted, we would request that suitable conditions be attached requiring noise and odour assessments to be carried out prior to the development commencing so that appropriate mitigation measures can be implemented as part of the overall design and operation. It is likely that the most effective mitigation will be provided through good management control due to the outdoor nature of the proposals so we would welcome submissions of odour and noise management plans.*
 2. *We would also request that the opening hours are limited via condition to those currently requested to minimise the impact on the local community.*

I have no other comments to make on the application regarding noise or odour at this time.

5.8. Derbyshire Constabulary – Designing Out Crime Officer:

Thank you for referring this application for our attention.

It's encouraging to note that the supporting design and access statement sets out improving safety and security as a development principle, but for me the narrative relies too heavily upon the benefits of improved site usage bringing capable guardianship, which of course it will during the day, but not when the site is vacated.

The applicant's management plan outlines that it is not possible to fence the front face of the site from unwanted visitors because of heritage and aesthetic values. Probably as a consequence of this approach there is a reliance on security systems and off-site management to combat any continuing anti-social use of the area, which will need to be fleshed out and compliment rather than replace any physical control of access.

In my view the following points regarding enclosure and security need to be resolved

Site access

How can the retained front boundary wall be treated adequately to offer at least some semblance of a defensible frontage whilst not disturbing its special nature?

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

Does the added finial in its proposed form present more of a health and safety hazard rather than secured boundary for those wishing to attempt to scale the retained wall with its stepped features on the external face?

Might the fleur-de-lys topping be extended upwards to offer a stronger deterrent at the site edge. I realise that the walls changing levels are challenging in that respect.

How will the two road frontage access gates contribute toward site edge security?

It seems that the single existing gate to the western edge is to be replaced but no detail is provided. Any replacement I expect would be more sympathetic to the setting, but also be more secure by removing the cross sections featuring within the current gate.

The new main entrance opening, and double gates are shown on street illustrations but the final design isn't set out. Illustrations appear to show a solid construction.

This is a key area as most of the remaining site frontage could be protected with planting and secondary levels whilst the main access point and side boundary next to Sally Montagues site can't.

There needs to be a specific consideration of site boundaries around this area, where there would be open access beyond the double entry gates.

How might a secondary line of protection supplement the site edge boundary.

I approximate that the difference in levels between the excavated site front landscaped area/main entrance and the raised platform is just over 1.5m.

I would expect that a combination of this change in height combined an appropriately specified balustrade set on the raised platform edge, and some deep defensive planting around the platform edge could provide a mutually acceptable defensible second boundary behind the road edge treatment.

The existing welded mesh fencing has been effective in restricting access from the road edge, but it is not impenetrable, and has been breached above the retaining wall between the site and Sally Montagues parking area. However, it's clear that the rough growth behind this breach has not been passed through, illustrating the value of defensive soft landscaping.

Internal boundaries

Most of the inner site is secured with a close boarded fence and gating. What height will this be? I'd suggest 2m.

The under-croft access between unit 2 and the site office will need to be secured from the front when the site is not in use.

Security management

The site lighting, video surveillance, intruder detection and response to incidents on site will need to be documented and agreed, I expect set as conditions of any approved scheme.

5.9. Derbyshire Wildlife Trust:

With reference to the above application, I am responding as the Biodiversity Planning Officer responsible for work relating to the Service Level Agreement, which the

Committee Report Item No: 7.5

Application No: 22/00792/FUL

**Type: Full Planning
Application**

Council and the Trust have signed. The following comments are aimed at providing accurate and up to date information on the nature conservation issues associated with the proposed development.

Response

We have reviewed the Landscape Plan, Arboricultural Reports and our Biological Records Database. From this information we consider that the proposed outdoor street food market is unlikely to have an adverse ecological impact, and as such, no further environmental details are considered necessary. We support the proposed planting set out within the Landscape Plan and the arboricultural reports and recommend that these details are followed in full.

It is hoped that the information provided is helpful to the Council. If you require any further information or wish to discuss any of the comments made, please do not hesitate to contact me.

6. Relevant Policies:

6.1. Relevant Policies:

The Derby City Local Plan Part 1 - Core Strategy was adopted by the Council on Wednesday 25 January 2017. The Local Plan Part 1 now forms the statutory development plan for the City, alongside the remaining 'saved' policies of the City of Derby Local Plan Review (2006). It provides both the development strategy for the City up to 2028 and the policies which will be used in determining planning applications.

Derby City Local Plan Part 1 - Core Strategy (2017)

CP1a	Presumption in Favour of Sustainable Development
CP2	Responding to Climate Change
CP3	Placemaking Principles
CP4	Character and Context
CP12	Centres
CP15	Food, Drink and the Evening Economy
CP16	Green Infrastructure
CP17	Public Open Space
CP19	Biodiversity
CP20	Historic Environment
CP23	Delivering a Sustainable Transport Network
AC1	City Centre Strategy
AC2	Delivering a City Centre Renaissance
AC4	City Centre Transport and Accessibility

Saved CDLPR Policies

GD5	Amenity
E18	Conservation Areas
E19	Listed Buildings and Buildings of Local Importance
E21	Archaeology
E24	Community Safety

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

The above is a list of the main policies that are relevant. The policies of the Derby City Local Plan Part 1 – Core Strategy can be viewed via the following web link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmentandplanning/planning/localplan/evidencebase/Core-Strategy_ADOPTED_DEC-2016_V3_WEB.pdf

Members should also refer to their copy of the CDLPR for the full version or access the web-link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmentandplanning/planning/localplan/part1/CDLPR_2017.pdf

An interactive Policies Map illustrating how the policies in the Local Plan Part 1 and the City of Derby Local Plan Review affect different parts of the City is also available at – <http://maps.derby.gov.uk/localplan>

Over-arching central government guidance in the NPPF is a material consideration and supersedes earlier guidance outlined in various planning policy guidance notes and planning policy statements.

6.2. Non-housing applications:

The Local Plan (consisting of the policies of the DCLP1 and the saved policies of CDLPR) covers the period 2011 to 2028 and was adopted on 25 January 2017. The policies of the local plan were reviewed in December 2021 in line with Regulation 10a of the Town and Country Planning (Local Planning) (England) Regulations 2017 and paragraph 33 of the NPPF, the provisions of which require Local Plan policies to be reviewed at least every 5 years. The officer led review, endorsed by the Council's Cabinet on 8 December 2021, indicated that all of the policies relevant to the consideration of this application are still up to date and carry weight in the decision making process as they remain consistent with the NPPF and there have been no changes in local circumstances that render any of the policies out of date. The application is therefore being considered in terms of its accordance with the policies of the Local Plan and any other material considerations, including the National Planning Policy Framework.

6.3. Policy Context:

The site of the proposal is within the CBD, the Core Area and St Peters Quarter. It is in a Conservation Area, an Archaeological Alert Area and is adjacent to a Listed Building.

The site is to be considered as Amenity Greenspace and so an open space assessment should be undertaken as required by CP17. The policy only allows for the loss or change of use of green space where:

1. *an assessment has been undertaken which has clearly shown the public green space, buildings or land to be surplus to requirements; or*
2. *the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

3. *the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss; or*
4. *the development will be ancillary and in scale to the public green space, sport or recreation facility and complement the use or character of the space.*

The Open Space Assessment split the City into 5 areas, the site falling in the Central Analysis Area where there is only 1.41ha per 1,000 people compared to the Local Plan standard of 3.8ha per 1,000 people. Accessibility of a site is also taken into account in the assessment of provision.

Using the inner ring road as a barrier, Cathedral Green is the only substantial area of open space in the City Centre. Therefore, the application site makes up for a shortfall of both Amenity Greenspace and other types of open space.

Using the Stepped Approach analysis tool, a relatively high score is obtained, indicating that the site should not be lost. Even if the site would not be improved by a modest investment a score is obtained that shows that further consideration needs to be given on the impact of local provision.

Information provided as part of the application refers to tipping and antisocial behaviour on the site, neither of these are a suitable reason to justify the loss of any open space.

The open space assessment indicates a substantial deficit in the analysis area and across the City Centre suggesting that the area should not be lost. However, if permission is granted, the applicant will have to consider the requirement to provide Biodiversity Net Gain.

CP15 supports proposals for food and drink uses which;

- (a) *help to improve and diversify the City's evening and night-time economy, helping to create a mix that meets the needs of all Derby residents and visitors*
- (b) *have a positive impact on the vitality and viability of defined centres. Concentrations of bars, hot food takeaways or other similar uses which could have a detrimental effect on community safety and/or on the character, role and function of a defined centre will be resisted*
- (c) *support both the day-time and evening/night-time economies whilst not undermining the role of primary shopping areas*
- (d) *do not unacceptably impact on neighbouring uses in terms of noise, traffic and disturbance or prejudice the development of land identified for alternative uses.*

The Core Area is the focal point for non-food retailing in the City Centre and key to its vibrancy with the St Peters Quarter reflecting a diverse range of shopping and other complementary uses. Subject to you being satisfied that the food and drink uses are able to meet the requirements of CP15, the proposed uses are in line with the intentions of CP15, AC1 and AC2.

The proposal would give rise to a loss of public green space in an area of deficit and there has not been any assessment in accordance with CP17.

If adequate justification was given regarding the loss of open space, the proposal would be in line with the intentions of CP15, AC1 and AC2.

7. Officer Opinion:

Key Issues:

In this case the following issues are considered to be the main material considerations which are dealt with in detail in this section.

7.1. The Application and its Benefits

7.2. Principle of Development

7.3. Heritage Impact

7.4. Design and Street Scene

7.5. Residential Amenity

7.6. Trees and Biodiversity

7.7. Highways

7.8. Planning Balance

7.1. The Application and its Benefits

The application is accompanied by a suite of information which details the proposal and associated benefits, from the applicant's perspective. The applicant has been afforded the opportunity to provide further information during the life of the application to address consutee comments.

The proposed street market would generate activity along St Peters Churchyard and with that would have positive impact on the economy through the increasing of footfall. Although, this is not quantified within the submission.

Similarly, the proposal would create employment opportunities however this, again, is not quantified within the submission.

The use of the vacant site which is prominently located within the city is also highlighted as a benefit within the submission highlighting that the proposal would ensure long term management of the site, increase planting, ensure protection of the protected trees. Whilst this is true the management of the site, protection of the trees would lie with the landowner regardless of whether the proposal is granted or not. The landowner has a responsibility to maintain the site.

At this point it should be highlighted that when the St Peters House conversion from the office to residential use was considered by the Council the land forming part of this application was in the ownership of St Peters House and provided outdoor amenity space for its residents. It is therefore assumed that the application site has been since purchased, and purchased without securing access, either pedestrian or vehicle.

In addition, historic street view images show that the land was maintained and accessible via St Peters House. It is only in more recent years, October 2020 according to the online images, where the land has not been maintained and has been separated from the curtilage of St Peters House removing any access.

Committee Report Item No: 7.5

Application No: 22/00792/FUL

**Type: Full Planning
Application**

Therefore, it can only be concluded that recent neglect of the site has created the current poor visual state of the site and historic imaging show no fly tipping or extensive security fencing.

There are also some inconsistencies within the application in respect of the proposed opening hours, the application form states opening hours of 11:00 – 23:00 whereas the supplementary noise information states opening hours are expected to be 10:00 – 17:00. I also note the comments of the Council's Environmental Health Officer who would expect hours to be restricted to 10:00 – 17:00.

There would be commercial benefits arising from the proposal, although they would not be without impact, harm and disbenefit. It is also difficult to quantify benefits without the assistance of the applicant who knows the Business Case of their proposal. Therefore, the benefits of the proposal will need to be considered in general terms.

In general terms, the proposal would attribute to the regeneration of the City Centre and its post covid recovery, aligning with the thrust of the Council's *"Towards a New Vision for Derby City Centre Ambition – 2022"* (Ambition Document) which has recently been out for consultation.

The Ambition Document aims at starting the conversation around how the city centre is developed and confidence is given to investors, external funders and local businesses as well as the City's Residents. It is important to note that the Ambition Document currently has limited weight in the determination of planning application and the starting point remains national and local planning policy.

As a theme the Ambition Document highlights the importance of a diverse cultural offer and how this would create significant opportunities to diversify the city centre and increase vibrancy. There is also an acknowledgement that there is a need to strengthen visitor and tourism economy.

The Ambition Document also confirms that stakeholders share the view that the city centre doesn't have enough green open space which has a negative impact on the perception of the public realm and general environment. The Environment Act 2021 places significant new requirements on local authorities to ensure new development results in an overall increase in biodiversity.

A further common theme raised by stakeholders is that we do not value our built heritage enough or sufficiently recognise it is an economic asset in its own right. The Ambition Document also recognises the statutory duty the Council has to protect and enhance its historic environment and does so through the planning process and at times there is a direct conflict with the aspirations for attracting new development in and around the city centre. The Council, through the preparation of the vision and delivery documents which are underpinned by the Ambition Document will explore these themes and how they harmoniously assist in the delivery of the regenerated city centre.

The applicant, Burton Abbey Developments, has provided a summary of the benefits arising from the proposed development in their letter dated, 6th September 2022. These are provided and considered in detail within Section 7.3 of this report and the letter can be read on the planning application webpage.

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

There is no doubt that the introduction of a street market in the city centre would have economic benefits. However, whether this is the right location for such is a very subjective question.

7.2. Principle of Development

The application site is considered to be amenity greenspace and therefore its use and loss should be assessed as required under policy CP17. No such assessment has been carried out and does not form part of the applicant's submission.

Failure to provide such an assessment means that the decision maker cannot assess and/or determine whether the loss of this open space is acceptable. It is noted that the open space and its prominently sited and protected vegetation provide valuable amenity to the area, street scene and setting of adjacent designated heritage assets. There is an under provision of open space within the immediate area and whilst the site is subject to anti-social behaviour and fly tipping these do not justify its loss

Within the submitted Design and Access Statement the applicant states that policy CP17 is not relevant as "Site is within private ownership and is not a public green space therefore Policy CP17 of the Derby City Local Plan does not apply." The applicant considers that the proposal would meet the provisions of policy CP17 as "The proposal does however offer opportunity to address the under provision of open space within the City Centre,

- The proposal seeks to increase the provision of accessible, high quality open spaces within City Centre
- The proposed stall layout preserves openness of the site and creates new, activated, publicly accessible open space to the middle of the site.
- The development consists of temporary structures which are reversible
- The development is set back from established building line."

The proposal therefore fails to satisfy an initial policy test and cannot be considered as an acceptable form of development and is in conflict with policy CP17. Furthermore, I consider that the proposal has not fully addressed the previous reason for refusal and there is an in principle policy objection to the development of the site.

Furthermore, it is noted that Annex 2 of the National Planning Policy Frameworks provides the following definition for open space:

"Open space: All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity."

The applicant has been given the opportunity to provide an assessment of the loss of the open space however they have declined stating:

"Open Space Assessment Policy CP17 Public Green Space of the Derby Local Plan (Part 1) Core Strategy is not surprisingly concerned with Public Green Space. There is no overt mention within the policy of an open space assessment being required for changes to private, non-publicly accessible unused or fallow land."

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

The site is not public green space and will not become public green space. It will become accessible to the public but will be controlled and will remain private.

We do not believe that the suggested open space assessment is required by Policy CP17 and even if such an assessment was provided it would demonstrate clear benefits (ie provision of public access and amenity, improved visual amenity (removal of fence as identified as harmful within the City Centre Conservation Area Appraisal and screening of the visually intrusive Prosperity House), improved management of protected trees and new supplementary planting)."

This does not alter the planning policy position and as a direct result of the application not being accompanied by an open space assessment the proposal fails to comply with policy CP17. I also note the decision of the Planning Inspectorate when considering the appeal for residential development on this site, who did not bring into question the council's opinion that this site is open space.

7.3. Heritage Impact

The full comments of Historic England, the Conservation and Heritage Advisory Committee, the County Archaeologist and the Council's Built Environment Officer are set out within this report.

The application site is viewed in the context and setting of the following designated heritage assets:

- Green Lane and St Peter's Conservation Area
- Grade II* St Peters Church
- Grade II* The Old Grammar School, St Peters Churchyard
- Grade II County Court, St Peters Churchyard
- Grade II 45 St Peters Street
- Grade II The Former Hippodrome Theatre, Green Lane

A series of protected trees are located behind the wall that provide a positive amenity contribution to the setting of the aforementioned heritage assets. As does the open, un-developed character and appearance of the application site itself. Other buildings in the context of the area would be considered non-designated heritage assets including the former Wesleyan Chapel.

The application is accompanied by a Heritage Impact Assessment (HIA) and a Heritage Impact Assessment Supplement (HIAS). The submitted assessments confirm that the application site is located within the context of the aforementioned heritage assets. The HIA and HIAS, provide details of the listed status of nearby designated heritage assets, the historical context and background of the City, outline the relevant policy position, historical mapping and the history of the application site and St Peters Church along with details of the site today. The assessments conclude with the overall Heritage Impact Assessment and provide their conclusion of the impact of the proposals on designated and non-designated heritage assets.

Committee Report Item No: 7.5

Application No: 22/00792/FUL

**Type: Full Planning
Application**

The application seeks to create an outdoor street market with 12 stalls and ancillary facilities including toilets, office accommodation and seating. The street market would be accessed via an entrance within the Grade II* Listed wall. The Listed wall is a prominent feature within St Peters Churchyard and the Green Lane and St Peters Conservation Area. The design of the wall and its monumental nature of the structure reflects that of the Church and Grammar School. Furthermore, the boundary wall provides a boundary to the elevated application site along with providing protection to the protected trees which also positively contribute to the setting of the conservation area and designated assets.

It is noted that the access to the site is to be determined under application 22/00793/LBA. Whilst the officer recommendation is an unfavourable one it is acknowledged that the access would be more sympathetic in appearance than the access previously refused under 21/01174/LBA.

In considering the application decision makers must engage Sections 66(1) 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 which highlights the statutory duty to require the authority to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Section 72 (1) is the statutory duty regarding conservation areas and that special attention is paid to the desirability of preserving or enhancing the character or appearance of that area.

The proposal must also be considered under the Local Plan – Part 1 (DCLP1) policies and those saved Local Plan Review (CDLPR) policies which are still relevant.

DCLP1 policy CP20 seeks to protect and enhance the city's historic environment, including listed buildings and Conservation Areas. CP20(c) requires development proposals which impact on the city's heritage assets to be of the highest design quality to preserve and enhance their special character and significance through appropriate siting, alignment, use of materials, mass and scale.

Saved CDLPR policies E18 and E19 for the preservation and enhancement of Conservation Areas and buildings of historic importance continue to complement the new policy CP20.

Under saved CDLPR policy E19 proposals should not have a detrimental impact on the special architectural and historic interest of listed buildings or their setting.

In term of general design principles, DCLP1 policies CP2, CP3 and CP4 are relevant and saved policy GD5 of the adopted CDLPR is also applicable. These are policies which seek a sustainable and high-quality form of development, which respects the character and context of its location. There is a general requirement to ensure an appropriate design, form, scale and massing of development which relates positively to its surroundings. CP2 in particular seeks to ensure that development is sustainable in terms of its location, design and construction. Saved policy GD5 is intended to protect the overall amenity of occupiers of nearby properties from unacceptable harm.

When considering the impact of a proposed development on the significance of a designated heritage asset (such as a Listed Building or Conservation Area) paragraph 197 of the NPPF states that, in determining applications, local planning

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

authorities should take account of:

- a) *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- b) *the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
- c) *the desirability of new development making a positive contribution to local character and distinctiveness.*

Paragraphs 200 - 202 of the NPPF state that:

"Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

- a) *grade II listed buildings, or grade II registered parks or gardens, should be exceptional;*
- b) *assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional⁶⁸.*

201. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- a) *the nature of the heritage asset prevents all reasonable uses of the site; and*
- b) *no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and*
- c) *conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and*
- d) *the harm or loss is outweighed by the benefit of bringing the site back into use.*

202. 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."

The application has attracted strong objections from Historic England and the Council's Built Environment Officer. The County Archaeologist also considers that the application does not meet the requirements of paragraph 194 of the National Planning Policy Framework and Local Plan Policy E21.

Historic England have duly considered the proposal stating... *"We have consistently advised with regard to previous proposals on this site that, this land, forms a green open space that makes an important contribution to both the settings of nearby highly graded listed buildings and the character and appearance of the conservation area. Whilst the kiosks have been re-arranged into linked blocks surrounding an open core, the proposal would fundamentally alter the character and appearance of this green*

Committee Report Item No: 7.5

Application No: 22/00792/FUL

**Type: Full Planning
Application**

open space. The impact on the Old Grammar School, which would be fronted by a continuous row of kiosks, would be particularly harmful. Views from both within the site and from the adjacent street (St Peters Churchyard) towards the Grade II listed former school would be substantially obscured by the proposed kiosks. This is clear from the submitted street elevation." Concluding that "Overall, the proposed development would transform the character of this green open space. The proposal would also erode the setting of the highly graded St Peter's Church and Old Grammar School and would have an adverse impact on the character and appearance of the Green Lane and St Peters Street Conservation Area."*

The submission of further information by the applicant has not lead to Historic England considering this site any differently, they remain of the opinion that the proposal does not meet the requirements of the NPPF 2021 (paragraphs 200 and 202) and the Council's own Conservation Management Plan (2013) which states:

...."The appraisal identifies one significant open space - St. Peter's Churchyard. This includes the current churchyard, the historic churchyard which lies to the north of St.Peter's House, and the streets and alleys on either side of the church. Planning permission should not be granted for any development within the important open space or that is detrimental to the setting of St. Peter's Church and churchyard."

The County Archaeologist remains of the opinion that the site is archaeology sensitive and they have recommended pre-determination archaeology evaluation. They consider that *"The current proposal re-submits the heritage appraisal compiled in 2021 and adds a Heritage Impact Assessment supplement dated May 2022. None of these documents overtly consider the below ground impacts of development on the site caused by any intrusive works, the changes in levels on the site, the extent of intrusive impacts to provide services etc. The 2021 Heritage Impact Assessment submission identified, quoting Local Plan Policy E21,'There is also a requirement for an archaeological evaluation to be submitted as part of a planning application within the Archaeological Alert Areas.' (p11) and that the site itself comprised 'a remarkably ancient parcel of ground, being traceable to the Abbey of Darley and, it would seem, to the park surrounding Babington Hall' (p33)".*

The applicant has submitted as WSI however this document is slightly confused as to whether it is a WSI for a Watching Brief or an Archaeological Evaluation as the title pages sit at odds with each other. The site has high potential for archaeological remains of the medieval period which could include burials, human remains, and evidence associated with the medieval town. Without pre-determination archaeological evaluation any impacts on archaeology cannot be assessed. As such the county Archaeologist considered the proposal does not meet the requirements of NPPF Paragraph 194 and local plan policy E21.

The statement from the applicants Archaeology Consultant has been reviewed by the County Archaeologist whose comments are set out within this report. The submitted statement acknowledges the archaeological potential of the site stating "This site has archaeological potential. Having seen no recorded disturbance since at least the 17th century, if not the 13th century or earlier, the possibility for early medieval remains is reasonable." However, they also consider that land levels across the site has been changed in the 20th Century and therefore the site is not pristine and the proposal is

Committee Report Item No: 7.5

Application No: 22/00792/FUL

**Type: Full Planning
Application**

unlikely to have an impact on below ground archaeology as a result of the ground level being raised. Whilst the County Archaeologist acknowledges their position planning policy is clear given the archaeological sensitivity of the location these assertions need to be ground-truthed and understood at the point of determination and therefore the proposal remains to conflict with NPPF para 194 and saved policy E21.

The Council's Built Environment Officer, similar to Historic England has when considering any applications on this site has retained the opinion that the area of land is an "important piece of open undeveloped green space." *"This proposal is contrary to the Green Lane and St Peter's Conservation Area Appraisal Management Plan which identifies St Peter's Churchyard as the significant open undeveloped space within the conservation area which contributes positively to its character and appearance. It states that planning permission should not be granted for any development within an area of important open space or that is detrimental to the setting of St Peter's Church and churchyard. This is a rare piece of open green undeveloped space within the Green Lane and St Peter's Churchyard and one of only a handful within the city centre.*

This proposal is contrary to the outcome of the recent planning appeal and does develop and clutter this important piece of green undeveloped space. The proposal develops most of the area with structures, concrete paving, artificial grass, fibre grid and composite decking and removes most of the grassed area. The structures when viewed from the street along St Peter's Churchyard due to their number and mass are likely to appear as one mass although they are individual structures. Important views along St Peter's Churchyard to the Old Grammar School are likely to be obscured. Proposals will change its character and appearance when viewed from the street and negatively impact the setting of a number of the nearby listed buildings."

Overall, the Council's Built Environment Officer concludes *"The proposal develops important undeveloped green space within the conservation area. It would also be harmful therefore to the setting of the nearby listed buildings and to the conservation area. As an area of architectural and historic merit the proposal is harmful and does not preserve or enhance the character or appearance of the conservation area."*

It is also noted that the Council's Built Environment Officer has not changed their recommendation and consideration of the application given the submission of the additional information.

The applicant within the Design and Access Statement, page 20, set outs how the current proposal has, in their opinion adequately addressed, the previous reasons for refusal.

21/01173/FUL Reason for Refusal 1	Steps to resolution/New Proposal
In the opinion of the Local Planning Authority the proposal would have a negative and harmful impact on the significance of the Grade II* St Peter's Church and surrounding designated	<i>Re-use of the site offers an opportunity to enhance the setting of the statutory listed elements and curtilage listings. The proposal includes the following enhancements:</i> <ul style="list-style-type: none">• <i>Re-instatement of historic fleur de lys</i>

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

<p>heritage assets - including the Grade II* Old Grammar School, the Grade II County Court St Peters Churchyard and the wider Conservation Area. The harm created is considered to be "less than substantial harm" and not considered to be outweighed by the public benefits arising from the proposal. Accordingly, the proposal is contrary to sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, policy CP20 of the Derby City Local Plan - Part 1: Core Strategy, saved policies E18 and E19 of the adopted City of Derby Local Plan Review and the overarching guidance in the National Planning Policy Framework (2021) in relation to heritage assets.</p>	<p><i>cast iron spikes to the top of stone wall</i></p> <ul style="list-style-type: none">• <i>Removal of existing harmful steel mesh fence</i>• <i>The layout and design of the proposal are considerate of the surrounding heritage assets and seek to minimise any impact on setting and fabric, without compromising future use.</i>• <i>The development consists of temporary structures which are reversible</i> <p><i>Public benefits include:</i></p> <ul style="list-style-type: none">• <i>The proposals will offer a sustainable long term use for the site that will bring vibrancy to the immediate area and support City's regenerative aspirations, it will also have a positive impact on daytime and night-time economies of the wider area</i>• <i>The proposals will bring new activity to St Peter's Churchyard (Street) and the site, this will help to eliminate anti-social behaviour that the area continues to experience</i>• <i>The proposals will accommodate new, activated open space which will contribute to the provision of publicly accessible, high quality open spaces within the City Centre.</i>• <i>Partially screen harmful elements of Prosperity House</i>
--	--

The letter of support from Marketing Derby considers that *"While there is an appreciation of the historical significance of the site, the proposed use only serves to enhance and promote the heritage. The proposed use also works with the existing land, including the protected treescape."*

In light of the above, the public benefits arising from proposed development are considered, by the applicant to be:

- *Re-instatement of historic fleur de lys cast iron spikes to the top of stone wall*
- *Removal of existing harmful steel mesh fence*
- *The layout and design of the proposal are considerate of the surrounding heritage assets and seek to minimise any impact on setting and fabric, without compromising future use.*

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

-
- *The development consists of temporary structures which are reversible*
 - *The proposals will offer a sustainable long-term use for the site that will bring vibrancy to the immediate area and support City's regenerative aspirations, it will also have a positive impact on daytime and night-time economies of the wider area*
 - *The proposals will bring new activity to St Peter's Churchyard (Street) and the site, this will help to eliminate anti-social behaviour that the area continues to experience*
 - *The proposals will accommodate new, activated open space which will contribute to the provision of publicly accessible, high quality open spaces within the City Centre.*
 - *Partially screen harmful elements of Prosperity House.*

The applicant has also expanded the benefits from their perspective in their dated 6th September 2022:

- *Bringing back into use the "forgotten 'Wasteland':*
- *£300K, expected, invested to bring the project forward. The proposal is ready to launch upon the grant of permission:*
- *Planting will create a 'green oasis:*
- *The site is currently overgrown attracting unwanted visitors and flytipping. These opportunities will be removed with this proposal.*
- *Creation of 50 jobs related to Food and Drinks Traders, Management etc.*
- *Economic Activity "Job creation, Business Growth, New Small Business Start-Ups, Boosting current local small Businesses, Secondary Business and Supply Chain Activities, Attracting New Development in the City, Increased Footfall and Consumer spend, Increased tax and local Government Income."*
- *Increased footfall*
- *New development and public use tend to push away Crime and Anti-Social Behaviour;*
- *Improved relationship working with Marketing Derby, St Peters Quarter BID, Down to Earth, St Peters Church and neighbours;*
- *Sustainable credentials including rainwater harvesting, green roofs, compostable packaging.*

In my opinion consideration must be given to the following when balancing the public benefits:

- *the reinstatement of the fleur de lys can only be considered a benefit if the subsequent Listed Building application is granted.*
- *the layout and design of the proposal and its impacts is subjective. The introduction of any development on this site would have an impact on the setting of designated heritage assets.*

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

-
- whilst the stalls can be considered temporary in nature they would have to be fixed to the ground, a matter raised by the County Archaeologist, and therefore, there would be elements of the proposal that would not be considered temporary in nature. The covering over of the majority of the site would also have an impact on the current vegetation.
 - whilst the removal of potential anti-social behaviour opportunities would be a benefit to the local area there are other services such as the police that would have ultimate control over anti-social behaviour and its associated impacts. Furthermore, the Designing out Crime Officer has indicated that *"It's encouraging to note that the supporting design and access statement sets out improving safety and security as a development principle, but for me the narrative relies too heavily upon the benefits of improved site usage bringing capable guardianship, which of course it will during the day, but not when the site is vacated."* This would be limited by the opening hours of 10:00 – 17:00 meaning the majority of the evening the site would not be occupied.
 - when considering the street scene it is also unclear how much screening the proposal would have offer to St Peters House/Prosperity House which is already largely screened by the existing trees and established vegetation from street scene level.
 - the land is not forgotten wasteland it is an important piece of open space that directly and positively affects the setting of significant heritage assets. The current state of the land is the responsibility of the landowner. The Conservation Area Management Plan (2013) identifies the importance of this open space and states:
"The appraisal identifies one significant open space - St. Peter's Churchyard. This includes the current churchyard, the historic churchyard which lies to the north of St. Peter's House, and the streets and alleys on either side of the church. Planning permission should not be granted for any development within the important open"
 - The economical investment is clearly a benefit but it is unclear how this would be invested. The wide-ranging economic benefits are acknowledged but it is not clear the direct impact this would have on the City.
 - The area is already a 'green oasis' with vegetation being protected by Tree Preservation Orders and the siting of the land within the Conservation Area. There is also an expectation that the land owner keeps their land in a good state of repair to ensure it doesn't become untidy and vegetation is well maintained.
 - The views on anti-social behaviour are mixed with some concerns still being raised about anti-social behaviour as part of the Street Market use.
 - Sustainable credentials are highly welcomed however the site is currently undeveloped and a green space not requiring any water attenuation or sustainable drainage.

As a result of the negative comments from Historic England and the Council's Built

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

Environment Officer, along with the clear policy position set out within the NPPF, I conclude that the proposal would result in harm to the aforementioned heritage assets. That harm would be considered to be less than substantial in policy test terms.

Therefore, in line with local and national planning policy the proposal is considered to be inappropriate development that fails to preserve or enhance the character and appearance of the Green Lane and St Peters Conservation Area and would be harmful to the setting of nearby listed buildings.

Whilst there are public benefits arising from the proposal it is my opinion that these do not outweigh the harm associated with the proposal.

It is important to note that a recent Inspector's appeal decision gave due consideration to the importance and significance of the application sites role stating that..."*Although the open space would not be lost in its entirety, the degree of erosion would have a harmful effect, albeit to a limited degree, on the historic, functional relationship between it and the relevant listed buildings and, hence, on their settings...*"

Whilst this appeal related to a dismissed housing scheme on the same site it highlights the function the site plays in preserving the character and appearance of the surrounding heritage assets and their settings. The importance of the open space and the role it plays is also expanded in the Council's adopted Green Lane and St Peters Conservation Area Management Plan (2013).

Furthermore, the Council, under 21/01173/FUL, considered a similar proposal for the erection of an Artisan Market would not, whilst offering similar public benefits, outweigh the negative impacts of the proposal and the strong objections from Heritage Consultees. As such, the Council's consideration of development on this site and the consultation comments of others have remained consistent.

7.4. Design and Street Scene

There are a number of in principle and fundamental concerns that relate to the impact development of this site would have on heritage assets and to some extent the protected trees that will be discussed in Section 7.5 of this report. The previous application on this site which sought the erection of a similar outdoor market, albeit with different design, layout etc. was refused on design grounds amongst other reasons. In seeking to address the previous reasons for refusal the following is included within the Design and Access Statement, page 20:

Reason for Refusal (21/01173/FUL) no. 3	Applicant Comments
<i>In the opinion of the Local Planning Authority the proposal, by virtue of the functional design and layout of the individual units, does not respect the historic character of the area or the important protected trees on site. The layout of the proposal appears cluttered</i>	<ul style="list-style-type: none">• <i>Proposed stalls are set back from the street and historic boundary wall to minimise visual impact. Layout of the stalls preserves the openness of the site and creates an activated courtyard.</i>• <i>Proposed stalls are set on slabs above the ground level and therefore</i>

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

and would have a detrimental impact on protected trees which would compromise their long-term protection.

The external materials, colour finish and appearance of the proposed kiosks fail to have regard to the natural environment and the wider historic setting.

Accordingly, the proposal is contrary to saved policies GD5 and E12 of the adopted City of Derby Local Plan Review policies CP2, CP3, CP4, CP16, CP17, CP19 and CP20 of the Derby City Local Plan - Part 1: Core Strategy

eliminating any impact on root protection zones. Strategies for mitigating any impacts to the existing trees and root protection zones are set out within the Tree Survey and Arboricultural Assessment.

• The scale, design and materials of the proposed stalls are sympathetic to the surrounding heritage assets and natural environment. Proposal promotes sustainable practices, including using reclaimed materials, green roofs and recycled landscaping products.

Whilst I acknowledge that the proposal has sought to address the previous reason for refusal(s); in my opinion, the proposal would still erode the open and un-developed character and appearance of the site within the street scene and would remove a valuable area of un-developed and open space.

It is noted that the stalls are set back within the site and would accommodate green roofs which is welcomed. However, the introduction of any structures on this site would erode its open character.

The stalls are set back from the sites St Peters Churchyard frontage. However, when considering the proposal as a whole the stalls are elevated on a platform structure, which is accessed by either ramps/steps, which would further elevate their appearance. The platform would also erode the natural appearance of the site, resulting in the removal of further vegetation and leaving most of the site visually hard surfaced. Although, it is appreciated the use of the platform has been proposed to reduce the impact on root protection areas of the trees.

In terms of the proposed sustainable credentials, whilst these are welcomed the site is currently undeveloped and is therefore a greenfield not requiring any water attenuation or sustainable drainage.

I therefore, remain, of the opinion that the proposal, despite some positive changes to the layout, design and materials along with the introduction of sustainable building methods would simply erode the open character of the site and be harmful to the setting of heritage assets. The proposal therefore does not, amongst others, comply with DCLP1 policies CP3, CP4 and GD5.

7.5. Residential Amenity

The application site is located within the city centre where such uses would be considered as acceptable. However, there are a number of residential properties in close proximity to the application site and therefore it would be reasonable to consider the impacts of both noise and odour.

The application is accompanied by an Environmental Health Noise and Odour

statement which makes a number of general statements with limited evidence/justification. The statement also indicates that no such request for a noise and odour assessment has been made, when previous consultation responses from Environmental Health colleagues have made this request. That being said, colleagues have taken a pragmatic approach and agreed this matter can be dealt with by condition; along with restricting the hours of operation, given the close proximity of residential units, should be limited.

7.6. Trees and Biodiversity

The application site accommodates a number of trees that are covered by TPO no. 20 including 4 London Planes, Sycamore, Hornbeam and Lucombe Oak. The Council's Tree Officer agrees with the categorisation of the tree within the submitted information. That being said there are concerns that the root protection areas (RPA's) are incorrectly shown as they are shown as circles with a tree trunk centrally located however this is not a true representation of root morphology. Furthermore, existing site constraints will have modified the RPA's and therefore the whole site must be considered as the RPA. The Arboricultural Impact Assessment identifies the whole site as an RPA which is welcomed.

In addition to the protected trees there was a small group of trees consisting mainly of Holly, that was protected by virtue of its siting within the Conservation Area. Although, it is noted that this has been removed without permission. Furthermore, a protected tree, a Weeping Willow, has been removed without permission. Whilst we now cannot enforce against the removal of these trees the Council can require suitable replacement.

This application proposes to install a new hard surface upon a steel grid supported on screw piles. The Arboricultural Method Statement provides details of how the surface will be suspended and supported but fails to give details of the rig, its weight etc. and therefore it cannot be determined whether the 20mm wooden boards which would provide ground protection are sufficient or not. Sufficient ground protection must be provided to ensure that there is no damage caused to the RPA's. The physical protection to the tree trunks is noted and appropriate.

Following the submission of the Groundscrew System and Installation document the Council's Tree Officer considers that the final specifications and installation of the groundscrew and suspended decking system could be conditioned along with other details as the Arboricultural Method Statement and landscaping plan.

However there does remain the issue that a tree had illegally been removed from this site; within the vicinity of the proposed access. The Council's Tree Officer remains of the opinion that "Whilst the proposed landscaping does appear to mitigate the tree removals the fact remains that protected trees were removed without permission and I am not comfortable supporting an application that has removed protected trees to facilitate a potential development without permission. Whether we would have allowed the Weeping Ash and Holly to be removed in order to facilitate the development is a hard one to call as we do not have an up to date assessment of the trees before they were removed".

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

The current proposal has made positive advances to proposing a more acceptable design solution and the application no longer lacks details for the protection of the root protection areas. Despite this I still remain concerned about the long term protection of the trees given the illegal removal of a tree and the potential future pressure on canopy pruning as a result of the Street Market. Although, I would not consider this to warrant a reason for refusal.

Within the Design and Access Statement the agent considers that they have addressed the previous reason for refusal no. 3, as details below:

Reason for Refusal no. 3	Agent/Applicant comments
<p>In the opinion of the Local Planning Authority the proposal, by virtue of the functional design and layout of the individual units, does not respect the historic character of the area or the important protected trees on site. The layout of the proposal appears cluttered and would have a detrimental impact on protected trees which would compromise their long-term protection.</p> <p>The external materials, colour finish and appearance of the proposed kiosks fail to have regard to the natural environment and the wider historic setting.</p> <p>Accordingly, the proposal is contrary to saved policies GD5 and E12 of the adopted City of Derby Local Plan Review policies CP2, CP3, CP4, CP16, CP17, CP19 and CP20 of the Derby City Local Plan - Part 1: Core Strategy</p>	<ul style="list-style-type: none">Proposed stalls are set back from the street and historic boundary wall to minimise visual impact. Layout of the stalls preserves the openness of the site and creates an activated courtyard.Proposed stalls are set on slabs above the ground level and therefore eliminating any impact on root protection zones. Strategies for mitigating any impacts to the existing trees and root protection zones are set out within the Tree Survey and Arboricultural Assessment.The scale, design and materials of the proposed stalls are sympathetic to the surrounding heritage assets and natural environment. Proposal promotes sustainable practices, including using reclaimed materials, green roofs and recycled landscaping products.

It is noted that Derbyshire Wildlife Trust offer no objection to the proposal.

7.7. Highways

The application provides cycle parking although it is not clear if this is secure and it doesn't appear covered. The application is located within a sustainable location and therefore broadly complies with DCLP1 policy CP23. Matters raised by Highways Colleagues can be satisfactorily addressed by condition.

7.8. Planning Balance

The proposed Street Food Market and associated works would in the opinion of some improve the area. As, the introduction of a new use on this site would improve economic activity and therefore assist the city centre's post Covid recovery.

Committee Report Item No: 7.5

Application No: 22/00792/FUL

**Type: Full Planning
Application**

Heritage consultees, Historic England and the Council's Built Environment Officer, remain of the opinion that the development of this site would erode the un-developed and open space and the setting of the heritage assets including the Grade II* St Peters Church, and would not preserve or enhance the character and appearance of the Green Lane and St Peter's Conservation Area. The proposal, despite some improvements made on previous proposal including amendments to design, layout and appearance, would remain visually intrusive and would be harmful to the setting of the Old Grammar School and St Peter's Church.

In addition, the removal of the amenity greenspace has not been assessed and its overall loss would fail to comply with the NPPF and local plan policies, in particular DCLP1 policy CP17.

I have considered the proposal and acknowledge the improvements made on previous proposals and there is clearly a need to positively regenerate the city centre wherever possible, particularly following the detrimental impacts of covid. The Local Planning Authority is involved in a large number of strategically important schemes and projects to deliver success for the city centre and this is reflected in the number of positive decisions issued. Members will be aware that the vast majority of development proposals are granted planning permission and my officers are involved in various Project Teams and pre-application discussions about significant investment proposals across the city. Our "can do" attitude is, as always, at the fore.

However, this does not mean that we should accept all forms of development and commercial opportunities.

The proposal would erode an area of valuable un-developed open space which forms part of the historic core of the city and has been such for a very long period of time. The positive aspects of the development have been acknowledged but where development has a harmful impact on the setting of highly graded heritage assets it is important that, as decisions makers, that level of harm is given *considerable* weight in the planning balance.

That position has been established in case law and, in this particular case, specialist consultees agree that the level of harm is not outweighed by public benefits and, therefore, permission should be refused in line with local and national policy. The development is simply not in the right place.

8. Recommended decision and summary of reasons:

8.1. Recommendation:

To refuse planning permission

8.2. Reasons for Refusal:

1. In the opinion of the Local Planning Authority the proposal would have a negative and harmful impact on the significance of the Grade II* curtilage listed wall and the Grade II* St Peter's Church and surrounding designated heritage assets - including the Grade II* Old Grammar School, the Grade II County Court and Green Lane and St Peters Conservation Area. The harm created is considered to be "less than substantial harm" and not considered to be outweighed by the public benefits arising from the proposal. Accordingly, the

Committee Report Item No: 7.5

Application No: 22/00792/FUL

Type: Full Planning Application

proposal is contrary to sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, policy CP20 of the Derby City Local Plan - Part 1: Core Strategy, saved policies E18 and E19 of the adopted City of Derby Local Plan Review, Council's Green Lane and St Peter's Conservation Area Management Plan (2013) and the overarching guidance in the National Planning Policy Framework (2021) in relation to heritage assets.

2. In the opinion of the Local Planning Authority the proposal fails to adequately assess the loss and change of use of this important component of un-developed and open green space that provides visual amenity space within the context of St Peter's Churchyard. The Council's Open Space Study identifies that there is currently an under provision of open space within the City Centre and policy CP17 of the Derby City Local Plan - Part 1: Core Strategy only permits development that would result in the loss or change of use of open green space, where certain circumstances are met. This application does not meet these circumstances. The proposal is, therefore, contrary to policy CP17 of the Derby City Local Plan - Part 1: Core Strategy.

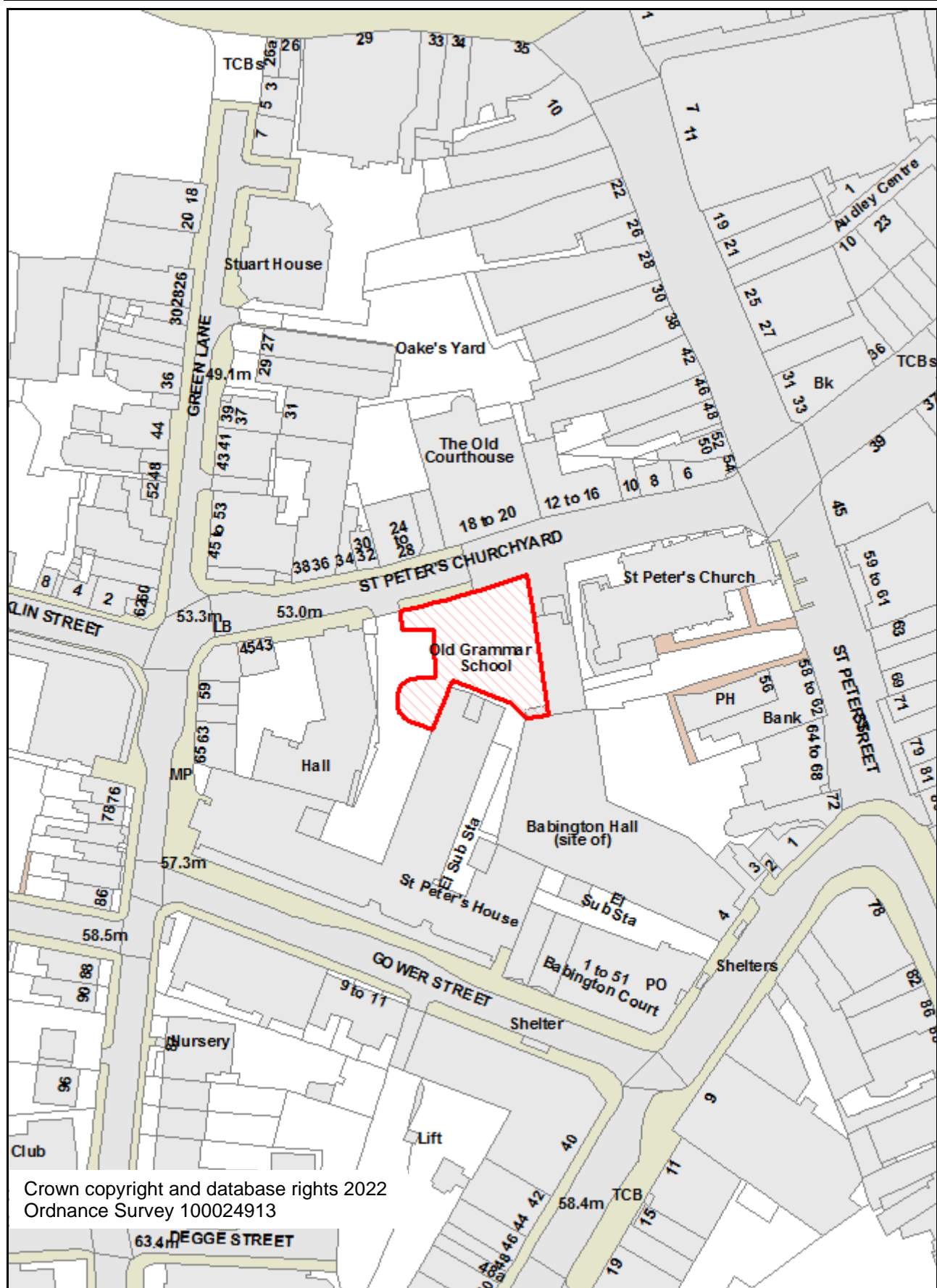
Refusal Plans:

Plan Type:	Plan Ref – Rev:
Site plans	1000 Rev S3 02
Cross Section	4200 Rev S3 02
Elevations	3201 Rev S3 04
Location Plan	Rev C01
Other	3100 Rev S3 02
Other	Heritage Impact Assessment - Maxwell Craven
Other	Heritage Impact Assessment Supplement - Lathams
Other	Method of Works
Other	Written Scheme of Investigation - Watching Brief
Other	Design and Access Statement
Other	Tree Survey and Arboricultural Method Statement
Land Levels	3841
Hard Landscaping	1500 Revision S3 01
Roof Plan	1501 Revision S3
Elevations	3200 Revision S3 03
Planning Layout	1202 Revision S3 05
General	Tree Protection Plan Revision B
Other	6000 Revision S3 01

8.3. Application timescale:

Extension Date: 30.08.2022 Agreed

Extension Date: 14.10.2022 Agreed



Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

1. Application Details

1.1. Address: Land at St Peters Churchyard, St Peters Churchyard, Derby

1.2. Ward: Arboretum

1.3. Proposal:
Insertion of access into boundary wall

1.4. Further Details:

Web-link to application:

<https://eplanning.derby.gov.uk/online-applications/PLAN/22/00793/LBA>

Brief description

This Listed Building Consent application seeks permission to insert an access into and through this Grade II* Listed Wall that fronts St Peters Churchyard. The Church of St Peter, including the attached wall, forming part of this application is Grade II* Listed and has been listed since 20th June 1952 with an amendment to the listing 18th August 1999.

The application site is also located within the Green Lane and St Peter's Conservation Area and within direct setting of the Grade II* The Old Grammar School, and the Grade II County Court both located upon St Peters Churchyard. The Grade II Hippodrome and Grade II 45 St Peters Street are in the wider setting of the application site at either end of St Peters Churchyard. The application site is located within the City Centre and provides an area of open space which accommodates a series of protected trees.

The application is accompanied by a full planning application, under code no. 22/00792/FUL, which seeks permission to change the use of the adjoining land to an outdoor street food market including the erection of 12 market stalls, seating area and associated ancillary structures, decking and ramps. The application is accompanied by a suite of documents that provide further details of the proposals and their impacts.

This Listed Building Consent is accompanied by a Heritage Impact Assessment, Heritage Impact Supplement 2022 along with a method of works, written scheme of investigation, Arboricultural Impact Assessment and Topographical Survey. Further detail has also been submitted during the life of the application which considers the Listed Status of the wall and whether the wall is in fact Listed.

The proposed opening would be located to eastern side of the application site, in close proximity to the boundary shared with the former Grammar School. The proposed opening would be 1.8 metres wide. The fleur de leys wrought iron spikes would be re-instated along the wall.

During the life of the application, the agent states in their email dated 22nd June 2022 that they do not consider the wall to be Grade II* Listed and that the assumptions made by Historic England in regard to significance and harm are incorrect; *"It could be argued that due to ownership at the time of enhanced listing and the separate listing of the Grammar school (which physically separates the application site from the Church & attached walls) that the wall facing the application*

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

site is not a curtilage listing associated with the Church. Our view is that application should be determined on the basis that the wall is a curtilage structure but which has heritage significance of a Grade II listed structure."

The agent concludes and recommends the following:

Conclusions

- *The wall is not listed in its own right or as part of the listing covering the **St Peter's Church and Attached Walls**.*
- *Given the date of construction of the wall, and despite subsequent changes in ownership and extensive damage, it could be considered a curtilage structure.*

Recommendations

- *Given that the wall has fallen within a separate curtilage to the Church for over half a century and recognising that it has been physically detached from the Church by approximately 12m for around 40 years it should be listed in its own right. This will help to avoid continued ambiguity regarding its designation.*
- *The late C19th date of the wall fronting the application site along with multiple C20th interventions indicate that this should be listed Grade II.*
- *The application should be determined on the basis that the wall is a curtilage structure but which has heritage significance of a Grade II listed structure.*

The agents also submitted a timeline:

Date	Event	Relevance	Reference
1538	Dissolution of Darley Abbey	Sir Thomas Babbington of Dethick acquires the application site and adjacent land.	
1555	Land granted to the Corporation	Part of the site for the Grammar School granted to the Corporation.	
1584	Additional land sold	Additional land sold allows for Grammar School to be built	
1604	Grammar School (Grade II*) built		
1861 - 1863	Site sold to Liversage Charity	Grammar School and application site sold	
1868 - 69	'Attached' walls (St Peter's St) constructed	New wall 'attached' to the north side of the Church built at the same time with fencing located to the west end of the Church, the Grammar School and the application site.	Heritage Impact Assessment (Maxwell Craven, 2022) p 23, p24).
1878 - 79	St Peters Churchyard (Street) formed	Application site boundary with St Peter's Churchyard at this time was defined by fencing. Application site levels altered at	Heritage Impact Assessment (Maxwell Craven, 2022) p 24).

Committee Report Item No: 7.6**Application No: 22/00793/LBA****Type: Listed Building
Consent**

		<i>this point.</i>	
1883	<i>Application Site Use</i>	<i>The OS incorrectly (and uniquely) refers to the application site as a Graveyard.</i>	<i>OS 1883 10ft – 1 mile</i>
1886	<i>Boundary Treatment</i>	<i>Fencing shown separating the application site from St Peter's Churchyard (Street).</i>	<i>Heritage Impact Assessment (Maxwell Craven, 2022) p 24).</i>
1892	<i>Site sold to the Diocese</i>	<i>Application site sold to the Diocese (not the Parish) and probably intended for use as a graveyard but never used for this purpose.</i>	
1896	<i>St Peter's Churchyard (Street) widened</i>	<i>The 'detached' section of the wall dates from the street widening. The 'attached' section of wall pre-dates the widening (ie built 1868-69). Application site levels altered at this point.</i>	<i>OS 1:25000. Heritage Impact Assessment (Maxwell Craven, 2022) p 16, p17, p26, p28).</i>
1896	<i>Application site landscaped</i>	<i>Area landscaped as a public garden associated with the Parochial Hall (former Grammar School)</i>	
1948 (July)	<i>Curtilage Listing Status</i>	<i>Section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990) says that the listed building also includes any ancillary object or structure within the curtilage of the building, which forms part of the land and has done so since before 1st July 1948.</i>	<i>Planning (Listed Buildings and Conservation Areas) Act 1990</i>
1956	<i>Single storey northern extension to the Methodist Chapel</i>	<i>Context erosion</i>	
1952 (June)	<i>St Peter's Church and attached walls – Listed Grade II*</i>	<i>St Peter's Churchyard and attached walls first listed</i>	<i>List Entry: 1229224</i>
1952 (June)	<i>Old Grammar School – Listed Grade II*</i>	<i>Formerly listed as St Peter's Parochial Hall – the curtilage of the Old Grammar School separates the application site from the Church and its attached wall.</i>	<i>List Entry: 1279098</i>
1970	<i>Diocese sell Application Site</i>	<i>Application site and Former Grammar School (Parochial Hall)</i>	

Committee Report Item No: 7.6**Application No: 22/00793/LBA****Type: Listed Building
Consent**

		<i>sold at the time of building the Parish Rooms.</i>	
1970	<i>Application site use</i>	<i>Application site ceases to be a public open space at point of disposal</i>	
1970 - 1971	<i>Western section of wall demolished</i>	<i>3m section of the Wall adjacent to the Methodist Chapel is demolished (Evidence of listed building consent?)</i>	
1970 - 1973	<i>Prosperity House constructed</i>	<i>Application site levels altered at this point. Context and setting erosion</i>	
1972	<i>Western Parish Rooms extension (Harmful) built to St Peters Church (Grade II*)</i>	<i>2 No vehicular gateways through 'wall' introduced to the north of the extension. The wall associated with the application site becomes 'detached' from the St Peter's Churchyard wall at this point. Context and setting erosion</i>	<i>The Buildings of England, Derbyshire (Pevsner) p312</i>
1977	<i>Old Grammar School – Listed Grade II* - List description amended</i>	<i>At the date of the listing review the application site had been in separate ownership from the Church for 7 years.</i>	<i>List Entry: 1279098</i>
1982	<i>Northern extension to former Grammar School (Harmful)</i>	<i>Section of wall to the north of the extension lost in order to provide off street car parking. Fragments of wall masonry survive adjacent to the application site. Eastern end of the wall associated with the application site damaged during the demolition of the wall associated with the Former Grammar School. Gatepost relocated. The distance between the application site wall and the St Churchyard 'attached' walls is increased to over 12m at this point. (Evidence of listed building consent?) Context and setting erosion.</i>	<i>The Buildings of England, Derbyshire (Pevsner) p322</i>
1988	<i>First Floor northern extension to the Methodist Chapel</i>	<i>Context erosion.</i>	
1990	<i>Curtilage Listing Status</i>	<i>S1 (5A) (a) and (b) of the Planning (Listed Buildings and Conservation Areas) Act 1990</i>	<i>Planning (Listed Buildings and Conservation</i>

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

		<i>allows a listing to state definitively whether attached or curtilage structures are protected; and/or to exclude from listed building consent objects that are fixed to a listed building. The amended and expanded 1999 list description is explicit regarding the attached / adjoining / enclosing walls (ie not the wall associated with the application site)</i>	Areas) Act 1990
1999 (Aug)	<i>St Peter's Church and attached walls - List description amended</i>	<i>Extract from list description addressing the attached walls: <u>Adjoining</u> boundary walls, C19, <u>enclose the north and east sides</u>. Ashlar, with chamfered plinth and gabled coping topped with roll mould. East side has a pair of square gate piers, topped with octagonal squat pinnacles. <u>North side has plain openings, late C19.</u></i> <i>The application site wall does not adjoin the Church, is not attached to it and does not enclose it. The plain openings described are in the section of wall adjoining/attached to the Church. At the date of the listing review the application site had been is separate ownership from the Church for almost 30 years.</i>	List Entry: 1229224

During the life of the application the applicant and their agent has submitted further information which includes: a statement from their archaeological consultant and a covering letter from the agent which considers the main points of the application and re-affirms the benefits arising from the proposal which are considered to be:

- Fabric repairs to masonry
- Removal of the harmful wire fence
- Reinstatement of lost features (i.e. the Fleur de Lys capping)

In addition, a letter from the applicant has also been submitted which provides further information about the proposal, their business and the benefits, from their perspective. All consultees have been re-consulted following the submission of the above.

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

2. Relevant Planning History:

Application No:	22/00792/FUL	Type:	Full Planning Application
Decision:	Pending	Date:	
Description:	Use of the land as an outdoor street food market including erection of 12 market stalls, seating area and associated ancillary structures, decking and ramps		
Application No:	21/01174/LBA	Type:	Listed Building Consent - Alterations
Decision:	Refused	Date:	10/09/2021
Description:	Partial demolition of boundary wall		

Reasons for Refusal

- 1. In the opinion of the Local Planning Authority, the partial demolition of the boundary wall, insertion of steps, railings, gates and associated works, would have a negative and harmful impact on the significance of the Grade II* St Peter's Church and surrounding designated heritage assets including the Grade II* Old Grammar School, the Grade II County Court St Peters Churchyard and the wider Conservation Area. The harm created is considered to be substantial harm and a clear and convincing justification for the works has not been provided in support of the proposed works. Accordingly, the proposal is contrary to sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Policy CP20 of the Derby City Local Plan - Part 1 (Core Strategy), saved Policies E18 and E19 of the adopted City of Derby Local Plan Review*

Application No:	21/01173/FUL	Type:	Full Planning Application
Decision:	Refused	Date:	15/09/2021
Description:	Use of the land as an outdoor food, drink and artisan traders venue including erection of kiosk buildings and entrance gates		

Reasons for Refusal

- 1. In the opinion of the Local Planning Authority the proposal would have a negative and harmful impact on the significance of the Grade II* St Peter's Church and surrounding designated heritage assets - including the Grade II* Old Grammar School, the Grade II County Court St Peters Churchyard and the wider Conservation Area. The harm created is considered to be "less than substantial harm" and not considered to be outweighed by the public benefits arising from the proposal. Accordingly, the proposal is contrary to sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, policy CP20 of the Derby City Local Plan - Part 1: Core Strategy, saved policies E18 and E19 of the adopted City of Derby Local Plan Review and the overarching guidance in the National Planning Policy Framework (2021) in relation to heritage assets.*
- 2. In the opinion of the Local Planning Authority the proposal fails to adequately assess the loss and change of use of this important component of open green space. The Council's Open Space Study identifies that there is currently an under provision of open space within the City Centre and policy CP17 of the Derby City Local Plan - Part 1: Core Strategy only permits development, that would result in the loss or*

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

change of use of open green space, where certain circumstances are met. This application does not meet these circumstances. The proposal is, therefore, unacceptable on these grounds and contrary to policy CP17 of the Derby City Local Plan - Part 1: Core Strategy.

3. In the opinion of the Local Planning Authority the proposal, by virtue of the functional design and layout of the individual units, does not respect the historic character of the area or the important protected trees on site. The layout of the proposal appears cluttered and would have a detrimental impact on protected trees which would compromise their long-term protection. The external materials, colour finish and appearance of the proposed kiosks fail to have regard to the natural environment and the wider historic setting. Accordingly, the proposal is contrary to saved policies GD5 and E12 of the adopted City of Derby Local Plan Review and policies CP2, CP3, CP4, CP16, CP17, CP19 and CP20 of the Derby City Local Plan - Part 1: Core Strategy.

Application No:	02/18/00269	Type:	Full Planning Application
Decision:	Refused	Date:	23/05/2018
Description:	Erection Of 14 Apartments (Use Class C3) And Associated Works		

Application Documents

<https://docs.derby.gov.uk/padocumentserver/index.html?caseref=02/18/00269>

Appeal Decision –

<https://docs.derby.gov.uk/padocumentserver/DownloadDocument.aspx?docid=138513379>

Application No:	10/16/01291	Type:	Full Planning Application
Decision:	Refused	Date:	02/03/2017
Description:	Erection Of Five Storey 65 Bedroom Student Accommodation		

Application documents -

<https://docs.derby.gov.uk/padocumentserver/index.html?caseref=10/16/01291>

Application No:	10/98/01247	Type:	Works to a tree with a TPO
Decision:	Granted Conditionally	Date:	16/11/1998
Description:	Deadwood Lucombe Oak, 4 Planes, Formatively Prune Weeping Ash & Crown Raise & Cut Back Branches Adj To Gable End Of Hornbeam On Trees Protected By T.P.O (St Peters Churchyard 1982 No.20)		

Application No:	10/91/01333	Type:	Works to a tree with a TPO
Decision:	Granted	Date:	01/05/1992
Description:	Pruning Of 9 Trees Covered By Tree Preservation Order		

Application No:	10/82/01141	Type:	Works to a tree with a TPO
Decision:	Granted Conditionally	Date:	21/12/1982
Description:	Pruning Of Trees Covered By Tree Preservation Order		

3. Publicity:

- Site Notice
- Statutory Press Advert

This publicity is in accordance with statutory requirements and the requirements of the Council's adopted Statement of Community Involvement.

4. Representations:

In line with the Data Protection Act and associated legislation this appraisal should not include details, or seek to identify through repeating specific comments, the individuals who have objected, supported or made general comments about the application. Therefore, to maintain anonymity, the relevant planning grounds of objection, support or comment have only been included in broad terms. It is important to note that all comments received have been fully considered as part of the application process and included in the overall 'planning balance' exercise.

The application has attracted three letters of representation one of objection and two of support, from Marketing Derby. The letters are summarised as follows:

Objection Letter

The tree survey indicates that all the site trees are:

Category A Trees of high quality with an estimated remaining life expectancy of at least 40 years Trees that are particularly good examples of their species, especially if rare or unusual; or those that are essential components of groups or formal or semi formal arboricultural features (e.g. the dominant and/or principal trees within an avenue)

There's the issue of tree root compression and water run-off, all of which will be detrimental to the trees.

If this application was to be successful then the stall holders would invariably complain about shading from the trees, dampness, moss and slippery decking not to mention leaf fall and before long they would be pushing to have the trees crown lifted or reduced etc. This is not rocket science and then we would suffer a further loss of the trees within this inner city sanctuary.

In addition, does the City really need this outdoor food venue? There are plenty of empty shops and other areas already developed that could provide this.

Surely there's a conflict of interests with using Religious Church grounds for such a project?

I am also opposed to the 'ancient' stone wall being altered or 'touched'

I therefore oppose the application.

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

Marketing Derby (1st July 2022)

This letter is written to reiterate the support of Marketing Derby for the proposed Change of Use of Land at St Peters Churchyard. This letter is in addition to our original letter submitted 05 August 2021.

Marketing Derby is the Queen's Award-winning Investment Promotion Agency for Derby and Derbyshire, supported by our 325+ Bondholders.

This city centre 'green public realm' has been neglected, misused and shut off to public use for in excess of 15 years.

The new plans for the site actively reinvigorates and encourages public use, making it a destination place and a safe place to dwell again.

While there is an appreciation of the historical significance of the site, the proposed use only serves to enhance and promote the heritage. The proposed use also works with the existing land, including the protected treescape.

The site will be developed utilising sustainable practices such as using reclaimed materials, rainwater harvesting, and recycled landscaping products. In addition, the site endeavours to promote ecofriendly practices for the traders; minimising waste and utilising compostable packaging.

Burton Abbey Development's proposal delivers substantial benefits for an area of the city that is challenged, both economically and socially.

The proposed development fits with the ambition of Derby City Council in regenerating underused parts of the city and to diversify the daytime and nighttime economies.

Marketing Derby is very supportive of the proposals to change the use of the Land at St Peters Churchyard, Derby. Please accept this letter as confirmation of our ongoing support for this project and the economic benefits that the project will provide.

Marketing Derby (16th September 2022)

We are writing to strongly support this application which proposes to develop an outdoor food, drink and artisan traders' venue on a piece of land that has laid waste in the heart of our city for decades.

The original application was submitted in July 2021 and planning refused in an Officers Report in September 2021. Following subsequent conversations, and appointment of local heritage experts Lathams, an amended application was submitted which we understand was also due to be refused by Officers Report.

We welcome the fact that the application will now be brought before committee in October.

We are aware that others - not least representatives from the Conservation Area Advisory Committee, St Peter's Quarter Business Improvement District and Lathams - have all fully supported the revised application. Before submitting this letter we recently made a site visit with the applicant – Burton Abbey Developments - to better understand the vision and benefits planned on this important cross-city thoroughfare.

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

Marketing Derby wrote in support of the original application on 5th August 2021 and our view then - that the proposed development can only contribute to the vibrancy of the city centre - has been reinforced by our visit and the continued decline of the area in question.

Furthermore, we now believe that the development does not only have a city vibrancy and economic benefit but will also significantly improve the green space and heritage asset of the area (which sadly, like so much city centre heritage, has been allowed to decline in plain sight and desperately needs investment).

It's our view that the relationship between heritage and investment is symbiotic and St Peter's Churchyard is a perfect example of this - the heritage attracts the investment, and the investment benefits the heritage.

The Officers Report describes the site as 'an important green space that positively contributes to character and appearance, a wall that is imposing and monumental'. Historic England wrote that the development 'would be visually intrusive, compromise the setting and result in a harm'.

Both descriptions are untrue, and the writers cannot have visited the site.

Fra from positively contributing to the area, the space is unkempt and overgrown and has been for decades. The wall is uncared for and falling apart and furthermore, the whole area is sealed off by an imposing fence drilled into the aforementioned wall.

The Development Control Performance Quarter 1 report (dated 8th September 2022) states that 'the team has a 'can do' attitude, where we seek to achieve a permission rather than refuse a scheme'.

Sadly, this is not the experience of the applicant in this case.

The Derby City Council Ambition 2022 - Towards a New Vision for Derby City Centre - is explicit in its desire for 'transformational change', 'greater diversification of the range of uses in the city centre', to tackle the 'general feel of decline' and 'create an experience that makes you want to return'.

We thoroughly support this ambition but the applicant - a SME local investor of the exact type Derby needs - has been subjected to an astonishing range of apparent blocks intended to refuse the application and so stop the investment, with its associated jobs and vibrancy - a long way from 'can do' and the words in the Ambition document are in danger of remaining exactly that, words.

There is a disconnect between ambition and reality which needs addressing and we therefore urge members of the committee to exercise their instinct and knowledge to approve the application and, in so doing, give a signal that Derby is serious about repurposing the city centre and is truly open for business.

5. Consultations:

5.1. Legal Services Division:

I have been asked to give a view on the listing status of a boundary wall which is subject to consideration in the above referred applications. The boundary wall in question is a decorative stone wall that separates the application site from St Peter's Churchyard. My assessment is as follows:

- Having reviewed the information provided I conclude that the boundary wall of the application site is protected pursuant to the listing of St Peters Church. This view I note is consistent with the conclusions and views previously expressed by Heritage England on this and previous applications, the Council's heritage officer, and also notably by the planning inspector in the appeal dated 22 January 2019 (ref APP/C1055/W/18/3215151). I would however stress that whilst my ultimate conclusion is consistent with those parties, I have not seen or had the benefit of seeing the evidence or rational on which those parties reached their conclusions as a comparison to my own assessment. I would also note the Inspectors words relating to his conclusion, namely; "the evidence before me partly indicates the stone wall fronting the appeal site is included within the listing." which suggests the evidence put to him on the point may have been limited.
- The applicant's agent suggests there is an argument that the wall is not curtilage listed, an argument which appears to be based on the case that the application site is no longer part of the curtilage. In support they have provided a useful chronology, which is largely based on the very informative heritage statement produced by Maxwell Craven. The agent however hasn't expanded or provided any detailed explanation in support of their suggestion.
- Whilst the agent may be correct, in that if listed today, or at the time of the current application and assessed based on this position, the application site is unlikely to be considered as part of the curtilage of St Peter's, that approach fails to appreciate that buildings and structures on site meeting the criteria of s1(5) of the Act continue to be protected irrespective of subsequent changes to the curtilage of the principle building in terms of ownership, use or otherwise.
- Protection to the structure is obtained at the time of listing, the criteria to be met is whether it is at that time part of the curtilage, whether it has been so since prior to 1 July 1948 and whether it was at the time ancillary or subordinate to the main building.
- In addition to the date of listing, the initial key questions are: (i) has it ever been curtilage, (ii) when did it become so, (iii) was the it (i.e. the structure) ancillary/subordinate to the main listed building and (iv) if has ceased to be so when did it cease.
- The key date on the curtilage would appear to be 1892 at which time the church acquired both the former grammar school building and the application site. Whilst the land may have previously belonged to church at some earlier stage it is unclear what the use of the land was in terms of its operation with the church or whether it ever prior to 1892 formed part of the curtilage of the church. That previous history however has little bearing to substantive matter in question,

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

although I do note that the 1883 OS plan describes the land as a graveyard which is suggestive of its use connected to the church even prior to its formal acquisition.

- It is not unreasonable to conclude that the acquisition of the grammar school in 1892 was to serve the church, as after acquisition it was put to use as a Sunday School and as a parochial parish hall, and ancillary uses connected to the church which appear to have continued until it was sold off in 1970.
- The reason for acquiring the application site is uncertain. Maxwell Craven suggests it may have been for use as a graveyard, but that with the opening of the municipal cemetery says there is no evidence of it ever was so used. I note comments from HE suggesting it was so used but without providing any evidence to support that claim, and whilst the County Archaeologist doesn't rebut that claim he doesn't lend any support to such. I do note from the record of CAAC that a member of CAAC claims to have seen some gravestones on the site and of greater weight the land is described as a graveyard on OS plans (existing post 1892), which could be indicative of intention if not actual use. It is notable that this land was purchased at the same time as the old Grammar School, so given the conclusion above of the intention of acquiring the former grammar school for use ancillary with the church it's not unreasonable to assume that in purchasing this site there was a similar intent, namely, acquiring both sites at the same time as an effective extension of the church, albeit for slightly different purposes. Whilst the relevant wall according to Maxwell Craven was constructed later (c.1896) than the walls attaching to St Peters (c.1869) the fact that the boundary surrounding the site matches the decorative stone boundary to that of the church would also give a perception of the site being part of the same, a perception supported by the land being within the church's ownership. It is also not unreasonable to suspect that this perception continued until the land and former grammar school was sold in the 1970's, if not even beyond that date.
- The applicant's agent points out in the chronology that acquisition of both the Grammar School and the application site was by the Diocese and not the Parish, given however the use or intended use appears to be subordinate or ancillary to serving the church, I don't see this as a significant issue.
- Accordingly it is not unreasonable to conclude that the application site became part of the curtilage of the church in 1892, effecting being land, ancillary and subordinate to St Peters Church, the boundary of which was defined by the walls, and continuing as such up to and beyond the time when St Peters Church was listed in June 1952.
- Accordingly the walls of the application site would be protected by that listing by virtue of s1(5) of the Act and continue to retain that protection, irrespective of subsequent changes in ownership or use of the application site.
- Finally the amendments to the list description made in August 1999 would not affect the protection pursuant to s1(5) of the Act afforded to the walls.

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

5.2. Conservation Area Advisory Committee:

No objection.

5.3. Built Environment (22/07/2022):

Designated Heritage Assets affected –

The late nineteenth century wall along the south side of St Peter's Churchyard to which this application relates is being classed as being curtilage listed to adjacent grade II* listed St Peter's Church and attached walls, which was founded in the 12th century. Also adjacent is the grade II* listed 16th century former Old Grammar School and to the north, opposite the application site, is grade II listed County Court which overlooks St Peter's Churchyard. There is also the Green Man Inn off St Peter's Street which is grade II* listed building, to the south, and 45 St Peter's Street which is grade II to the east of St Peter's Street. The site and wall are also located within the Green Lane and St Peter's Conservation Area - an area of architectural and historic interest. These are designated heritage assets in National Planning Policy Framework terms (2021).

Impact of proposals on Heritage Assets and comments – The area of land on St Peter's Churchyard to the south of the late nineteenth century stone wall is an important piece of green un-developed space which has prominent mature trees upon it. The retaining boundary stone wall is imposing and monumental in scale and encloses this area. There are also walls which match the detailed design of this to the north, east and south of the Church. The wall also contributes to the setting of the highly graded grade II* and II listed buildings nearby; St Peter's Church, The Old Grammar School and County Court which overlook the area and St Peter's Churchyard. There are key views of St Peter's Church landmark tower and stone boundary walls including one looking east along St Peter's Churchyard.

The area of land is currently surrounded by walls and fences and there is gated access, adjacent to the pier, to the west of the wall on St Peter's Churchyard. This proposal is to provide a new 1.8m wide entrance through the stone wall to the land behind to use as an outdoor street food market including erection of 12 market stalls, seating area and associated ancillary structures, decking and ramps. Comments on the development of this land is being considered under a separate consultation (22/00792/FUL).

The repairs to the wall and reinstatement of lost fleur-de-lis decoration to the top of the wall is a benefit of the proposals. However, the proposal to create an access through the wall will be harmful, due to the loss of historic fabric and the further breaking up and erosion of this imposing continuous wall. It would also be harmful therefore to the setting of the nearby listed buildings as well as to the conservation area and street scene.

Policies –

The Planning (listed building and conservation areas) Act 1990 section 66 as regards the statutory duties regarding listed buildings is relevant here. As is E19 of the saved Local Plan Review (2006) and CP20 of the Local Plan – core strategy (2017). Adopted Green Lane and St Peter's Conservation Area Appraisal Management Plan is also relevant.

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

Section 16 on Conserving and enhancing the historic environment of the NPPF is relevant, para 189, 194, 199, 200 and 202. There is harm caused to the designated heritage assets and as regards to heritage policies in the National Planning Policy Framework this proposal's level of harm (classed as less than substantial harm) it is considered to be under para 202. '...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' (NPPF, Para 202). This means that where there is this level of harm, this harm should be weighed against the public benefits of the proposal. This weighing is undertaken by the Development Management Case Officer.

Recommendation: Strong concern about harmful impact of proposals on the important boundary wall as a designated heritage asset.

Where there is this a level of harm, this harm should be weighed against the public benefits of the proposal. This weighing is undertaken by the Development Management Case Officer (NPPF, Para 202).

Built Environment Officer (21/09/2022)

No additional comments to those made 22-07-2022 in relation to further information supplied.

5.4. Development Control Archaeologist (06/006/2022)

Thank you for consulting on this application. I note that we have advised on this site on previous applications. On each occasion, because of the archaeological sensitivity of the site, we have recommended pre-determination archaeological evaluation.

The current proposal is for Use of the land as an outdoor street food market including erection of 12 market stalls, seating area and associated ancillary structures, decking and ramps this would include partial demolition of the grade II* listed boundary wall to form a pedestrian and wheelchair access to the site.

The current proposal re-submits the heritage appraisal compiled in 2021 for a previous application and adds a Heritage Impact Assessment supplement dated May 2022. None of these documents overtly consider the below ground impacts of development on the site caused by any intrusive works of any kind even in the light of there being makeup on site. The 2021 Heritage Impact Assessment submission identified, quoting Local Plan Policy E21

'There is also a requirement for an archaeological evaluation to be submitted as part of a planning application within the Archaeological Alert Areas.' (p11) and that the site itself comprised 'a remarkably ancient parcel of ground, being traceable to the Abbey of Darley and, it would seem, to the park surrounding Babington Hall' (p33)

A Written Scheme of Investigation for archaeological works has been submitted with the application. This WSI has not been seen previously by this office and its title page and inside title page seem to be at odds; one claiming a WSI for a Watching Brief, the other for an archaeological evaluation.

It is unclear within the submission where the major intrusive impacts would be

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

outside the footprint of the entrance to the development and that though the ground is to be levelled up slightly, the impacts of both the planting scheme, landscaping and the siting of below ground infrastructure lighting/power/drainage etc. are not assessed.

As we have advised previously in terms of below ground archaeological remains, there would be a high potential for remains of medieval and post-medieval date to survive within the site, and these could potentially include burials. This is on the basis that the church is of 11th century origin, but with pre-conquest antecedents, and that its church yard is likely to have contracted through time. Thus, the development area has the potential to contain human, and other remains.

Previously we have expressed general concerns about the change of use and feel that the ground preparation involved in wall removal and the construction of access will have an impact on any buried archaeology. In the same vein the impact of 'screw piles' on any buried archaeology has not been assessed nor the specific impacts of any associated groundworks or emplacement of services.

Paragraph 194 of NPPF requires that. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

Further, Local Plan Policy E21 requires an archaeological evaluation to be submitted as part of a planning application within Archaeological Alert Areas.

I advise therefore that the application at present does not meet the requirements of NPPF para 194 or Local Plan Policy E21 in relation to below-ground archaeological remains. In order to establish significance, the applicant should submit the results of archaeological field evaluation of the site (trial trenching), carried out to by a professional archaeological organisation. This should be in accordance with a Project Design/Written Scheme of Investigation that has been compiled in prior consultation with this office.

Development Control Archaeologist (21/09/2022)

The proposal site is within the historic medieval core of Derby as defined by the City Council's Archaeological Alert Area (Local Plan Saved Policies). The site is adjacent to the Grade II* Listed St Peter's Church, dating from the 12th century onward (although generally considered to be one of the six Derby churches mentioned in the Domesday Book), and to the Grade II* Listed Old Grammar School, dating from the 16th century. The site is also close to the site of Babington Hall (Derbyshire HER 32005) a late medieval hall demolished in the 18th or early 19th century. There is a high level of potential on the site for archaeological remains of the medieval period, including burials associated with St Peter's and settlement evidence associated with the medieval town.

NPPF para 194 requires that the significance of heritage assets (including below-ground archaeological assets) be established as part of the planning application process. Local Plan Policy E21 requires an archaeological evaluation to be submitted as part of a planning application within the Archaeological Alert Areas. This information has not at present been provided by the applicant despite previous

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

advice going back to August 2021 (21/01174/LBA).

I note the comments provided by the applicant in relation to potential build-up of ground levels within the proposal site. Given the archaeological sensitivity of the location these assertions need to be ground-truthed and understood at the point of determination, as per local plan policy and national planning policy. This should be achieved through a targeted scheme of archaeological evaluation to establish potential within the ground footprint of the proposed development (primarily focusing on the area of impact associated with the access point), with the results submitted as part of the planning application.

The applicant's archaeological consultant has this week agreed a Written Scheme of Investigation for pre-determination archaeological evaluation with ourselves. It should be noted that this is not the proposal for watching brief forming part of the application documents currently hosted online.

In line with previous comments, and with NPPF para 194 and Local Plan Policy E21 I object to the application as currently presented, because there is insufficient evidence to establish archaeological significance and impact.

This objection could be overcome by delivery of the scheme of archaeological evaluation as per the WSI agreed this week, and submission of the results in support of the planning application.

5.5. Historic England (13/06/2022)

Significance

The Church of St Peter, including the attached boundary walls is listed grade II* in recognition of its more than special architectural and historic interest, placing it within the top 8% of listed structures in the country. It is a multi-phased medieval parish church which sits in a prominent position on the corner of St Peter's Street and St Peters Churchyard. The west tower with its battlemented parapet and pinnacles dates is a prominent landmark from St. Peter's Churchyard. The chancel was restored in 1851-53 by G G Place and the remainder in 1859 by G E Street, subsequent alterations were undertaken in 1865 and 1898. The attached church hall was added in 1970. The church is located within the Green Lane and St Peters Street Conservation Area.

The church is an important key landmark building within this part of the conservation area and forms the nucleus of an early part of the medieval expansion of Derby. By the C17 there were a number of important buildings surrounding the Church and within the churchyard including with the former Old Grammar School located to the southwest which dates from the late C16 and the Green Man Inn built in 1671. Both of these buildings are listed grade II* in light of their more than special interest and they make an important contribution to the character and appearance of the conservation area.

Historic mapping indicates that the associated churchyard extended beyond its current boundary and embraced the application site. Consequently, the site constitutes an important remnant of the historic churchyard. The C19 boundary wall denotes the boundary of the churchyard and forms part of the listed church. It runs along St Peters Street and extends along the road known as St Peters Churchyard

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

for approximately 80 metres. Historic photographs from the late C19 show the wall in its original condition. The steep saddleback coping has a series of ramps that follow the rising land. Whilst some later openings have been introduced, the churchyard wall remains an imposing feature and an important part of the setting of St Peters Church and the Grammar School.

The grassed open space behind the stone wall makes an important contribution to the character and appearance of the conservation area. It contains several mature trees which are prominent within the townscape. Consequently, the application site is a key open space within the conservation area.

In summary, the application site makes a significant contribution to the setting of St Peters Church and the Old Grammar School listed buildings and the character and appearance of the Green Lane and St Peters Street Conservation Area, both

aesthetically, as a green open space with mature trees and through its former historic association as a churchyard/ amenity space. The site facilitates important views of the listed buildings from the west.

The importance of St Peter Church, the surrounding heritage assets, and the application site within the conservation area is highlighted in your authority's own Conservation Area Appraisal and Management Plan (January 2013)

Impact

We have previously provided advice in relation to proposals at this site most recently in relation to the proposed erection of 14 kiosks, a site office, WC and bin stores and associated works to the boundary wall (Ref- 20/01174/LBA and 21/01173/FUL). In our letter of 11th August 2021, we raised concerns in relation to the applications. We understand the applications were subsequently refused by your authority

The current scheme includes a building containing a continuous run of kiosks, a site office and bin stores with associated landscaping. It is also proposed to remove part of the listed boundary wall in order to form a new entrance with steps and a disabled lift to provide access. The proposed kiosks are to be clad in timber with green roofs.

We have consistently advised with regard to previous proposals on this site that, this land, forms a green open space that makes an important contribution to both the settings of nearby highly graded listed buildings and the character and appearance of the conservation area. Whilst the kiosks have been re-arranged into linked blocks surrounding an open core, the proposal would fundamentally alter the character and appearance of this green open space. The impact on the Old Grammar School, which would be fronted by a continuous row of kiosks, would be particularly harmful. Views from both within the site and from the adjacent street (St Peters Churchyard) towards the Grade II* listed former school would be substantially obscured by the proposed kiosks. This is clear from the submitted street elevation. The associated Listed Building Application proposes alterations to the boundary wall. In our view, the current proposals in relation to the wall are more modest and less harmful than the previous scheme. However, any harm caused would require clear and convincing justification and should be considered as part of the overall scheme. The submitted layout plan does not indicate the spread of the existing tree canopies. The proposed kiosks are sited close to existing trees. Your authority should therefore consider the

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

potential impact of the proposed scheme on the nearby trees.

Overall, the proposed development would transform the character of this green open space. The proposal would also erode the setting of the highly graded St Peter's Church and Old Grammar School and would have an adverse impact on the character and appearance of the Green Lane and St Peters Street Conservation Area.

The site lies within an area of high archaeological potential as previously advised. We recommend the archaeological potential of the site should be assessed with the benefit of advice from Steve Baker the County Council Archaeologist.

Legislation, Policy and context

As the proposal affects the setting of listed buildings and the conservation area the statutory requirement to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses (section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act, 1990) and to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area (s.72, 1990 Act) must be taken into account by your authority when determining this application.

The NPPF is clear in the requirement to take account of the desirability of sustaining and enhancing the significance of heritage assets and the desirability of new development making a positive contribution to local character and distinctiveness (paragraph 197 NPPF).

Significance can be harmed or lost through development within a heritage asset's setting and any harm or loss to significance 'should require clear and convincing justification' (paragraph 200, NPPF).

In determining the application your authority will need to consider whether any public benefits associated with the scheme outweigh the harm caused by the impact of the proposed new development (paragraph 202, NPPF)

Further useful guidance is contained within Historic Environment Good Practice Advice Note: The Setting of Heritage Assets (GPA 3)

Position

Overall, the proposed development would be visually intrusive and would compromise the setting of the highly graded St Peter's Church and Old Grammar School, resulting in a harm to the significance that these highly graded listed buildings derive from their settings. The proposal would also have an adverse impact on the character and appearance of the Green Land and St Peters Street Conservation Area for the reasons outlined above.

We draw your authority's attention to page 97 of your Conservation Area Management Plan (2013) which identifies the site as an important open space and goes on to state. The appraisal identifies one significant open space - St. Peter's Churchyard. This includes the current churchyard, the historic churchyard which lies to the north of St. Peter's House, and the streets and alleys on either side of the church. Planning permission should not be granted for any development within the

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

important open space or that is detrimental to the setting of St. Peter's Church and churchyard.

Historic England has previously supported the view that this is an important open space within the conservation area and that development of this site is therefore unacceptable in principle. Our view remains unchanged in this regard.

Recommendation

Historic England has concerns regarding the applications on heritage grounds as outlined above.

We consider the applications do not meet the requirements of the NPPF 2021, in particular paragraphs 200 and 202 and your Authority's own Conservation Management Plan (2013) as outlined above.

In determining this applications, you should bear in mind the statutory duty of section 66(1) and 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a listed buildings or their setting or any features of special architectural or historic interest which they possess and pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation areas.

Your authority should take these representations into account in determining the application. If you propose to determine the application in its current form, please inform us of the date of the committee and send us a copy of your report at the earliest opportunity.

Historic England Advice (13/09/2022)

We have been consulted on additional information which includes a further indicative cross-section. We have no further comments to offer in this regard and refer to back to our previous advice contained within our letter of 13th June 2022 which remains unchanged.

Position

Overall the proposed development would be visually intrusive and would compromise the setting of the highly graded St Peter's Church and Old Grammar School, resulting in a harm to the significance that these highly graded listed buildings derive from their settings. The proposal would also have an adverse impact on the character and appearance of the Green Land and St Peters Street Conservation Area for the reasons outlined above.

We draw your authority's attention to page 97 of your Conservation Area Management Plan (2013) which identifies the site as an important open space and goes on to state.

The appraisal identifies one significant open space - St. Peter's Churchyard. This includes the current churchyard, the historic churchyard which lies to the north of St. Peter's House, and the streets and alleys on either side of the church. Planning permission should not be granted for any development within the important open space or that is detrimental to the setting of St. Peter's Church and churchyard.

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

Historic England has previously supported the view that this is an important open space within the conservation area and that development of this site is therefore unacceptable in principle. Our view remains unchanged in this regard.

Recommendation

Historic England has concerns regarding the applications on heritage grounds as outlined in our letter dated 13th June 2022. We refer you back to this advice and recommend you also seek further guidance from your in-house conservation officer.

We consider the applications do not meet the requirements of the NPPF 2021, in particular paragraphs 200 and 202 and your Authority's own Conservation Management Plan (2013) as outlined above.

In determining this application you should bear in mind the statutory duty of section 66(1) and 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a listed buildings or their setting or any features of special architectural or historic interest which they possess and pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation areas.

Your authority should take these representations into account in determining the application. If you propose to determine the application in its current form, please inform us of the date of the committee and send us a copy of your report at the earliest opportunity.

6. Relevant Policies:

6.1. Relevant Policies:

The Derby City Local Plan Part 1 - Core Strategy was adopted by the Council on Wednesday 25 January 2017. The Local Plan Part 1 now forms the statutory development plan for the City, alongside the remaining 'saved' policies of the City of Derby Local Plan Review (2006). It provides both the development strategy for the City up to 2028 and the policies which will be used in determining planning applications.

Derby City Local Plan Part 1 - Core Strategy (2017)

CP20 Historic Environment

Saved CDLPR Policies

GD5 Amenity
E18 Conservation Areas
E19 Listed Buildings and Buildings of Local Importance
E21 Archaeology

The above is a list of the main policies that are relevant. The policies of the Derby City Local Plan Part 1 – Core Strategy can be viewed via the following web link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/enviromentandplanning/planning/localplan/evidencebase/Core-Strategy_ADOPTED_DEC-2016_V3_WEB.pdf

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

Members should also refer to their copy of the CDLPR for the full version or access the web-link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmentandplanning/planning/localplan/part1/CDLPR_2017.pdf

An interactive Policies Map illustrating how the policies in the Local Plan Part 1 and the City of Derby Local Plan Review affect different parts of the City is also available at – <http://maps.derby.gov.uk/localplan>

Over-arching central government guidance in the NPPF is a material consideration and supersedes earlier guidance outlined in various planning policy guidance notes and planning policy statements.

6.2. Non-housing applications:

The Local Plan consists of the policies of the DCLP1 and the saved policies of CDLPR. The DCLP1, which sets out the growth strategy for the city, covers the period 2011 to 2028 and was adopted on 25 January 2017. The policies of the local plan were reviewed in December 2021 in line with Regulation 10a of the Town and Country Planning (Local Planning) (England) Regulations 2017 and paragraph 33 of the NPPF, the provisions of which require Local Plan policies to be reviewed at least every 5 years. The officer led review, endorsed by the Council's Cabinet on 8 December 2021, indicated that all of the policies relevant to the consideration of this application are still up to date and carry weight in the decision-making process as they remain consistent with the NPPF and there have been no changes in local circumstances that render any of the policies out of date. The application is therefore being considered in terms of its accordance with the policies of the Local Plan and any other material considerations, including the National Planning Policy Framework.

7. Officer Opinion:

Key Issues:

In this case the following issues are considered to be the main material considerations which are dealt with in detail in this section.

7.1. Status of the Listed Wall

7.2. Whether the proposal would preserve the special character or historic interest of the designated heritage assets including the Grade II* Church of St Peters

7.3. Site History

7.4. Summary

7.1 Status of the Listed Wall

Taking account of the advice provided by the Council's Solicitor and the Council's Built Environment Officer, as set out earlier within this report, contrary to the agent's contention, the wall is considered to have formed part of the curtilage of St Peter's Church at the time of its listing and by virtue of Section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to be protected as part of that Grade II*

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

listing. The wall has therefore been assessed on the basis of that status in line with the advice on significance and harm from Heritage England in their letter of 13 June 2022.

During the life of the application the applicant has provided subsequent information an extract of which is provided below, the Latham's letter dated 9th September 2022:

We would however make the following comments:

- *It is accepted by all parties that the wall was previous incorrectly considered part of the Grade II* listing for St Peter's Church.*
- *We are happy to consider the wall a curtilage listed structure. Curtilage listing does not imply any heritage significance but identifies a structure as falling within the boundary of a listed structure. We accept that regardless of the arcane issues associated with curtilage listing that wall has its own clear heritage value. For this reason, we suggested within the Heritage Impact Assessment that separate listing be applied to the wall (Grade II).*
- *It follows that the accepted reduced status of the wall will affect the significance of the any heritage impacts.*
- *The enhancements to the wall must be acknowledged and considered when determining the application. These include:*
 - *Fabric repairs to masonry*
 - *Removal of the harmful wire fence*
 - *Reinstatement of lost features (ie the Fleur de Lys capping)*

These additional comments do not alter the approach or advice from officer's. Whilst, as appears to be suggested in the first of those bullet points, correct that the wall itself does not specifically form part of the listing description, the wall by virtue of its listing under the said section 1(5) is part of a Grade II* listed structure and should in relation to this application be considered according to that status, and whilst there will inevitably be differences in importance between the different features of a protected building, it is both wrong and misleading to suggest that the wall should be regarded as anything other than part of a Grade II* listed structure and assessed accordingly.

7.2. Whether the proposal would preserve the special character or historic interest of the designated heritage assets including the Grade II* Church of St Peters

The full comments of Historic England, The Conservation and Heritage Advisory Committee, County Archaeologist and the Council's Built Environment Officer are set out within this report. Following the submission of additional information further consultations have taken place and subsequent comments are set out within this report.

This application relates to the stone wall fronting onto St Peters Churchyard and is considered to be a curtilage structure within the Grade II* listing of the Church of St Peters which sits prominently at the junction of St Peters Street and St Peters Churchyard, to the east of the application site. for the comprehensive reasons above

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

the wall is considered form part of the listing. The wall clearly has a design, appearance and characteristics of the other church boundary walls and provides a boundary to land that is historically identified as being in use by the Church at the time of listing.

The application site and wall are also viewed in the context and setting of the following designated heritage assets:

- Green Lane and St Peter's Conservation Area
- Grade II* The Old Grammar School, St Peters Churchyard
- Grade II County Court, St Peters Churchyard
- Grade II 45 St Peters Street
- Grade II The Hippodrome, Green Lane

A series of protected trees are located behind the wall that provide a positive amenity contribution to the setting of the aforementioned heritage assets.

The application is accompanied by a Heritage Impact Assessment (HIA), compiled by Maxwell Craven. The submitted assessment confirms that the wall forms part of the Grade II* St Peters Churchyard listing. The HIA, provides details of the listing, the historical context and background of the City, outlines the relevant policy position, historical mapping background and the history of the application site and St Peters Church along with details of the site, as seen today. The assessment concludes with an overarching Heritage Impact Assessment.

This HIA is also supplemented by a Heritage Impact Supplement 2022, compiled by Latham's which in part considers the same topic areas as the Maxwell Craven HIA.

The application seeks to remove a section of the Grade II* wall to allow an access into the open space behind. The formation of the actual access to the open space does not form part of this application but is considered under 22/00792/FUL a full planning application for the change of use of the land along with the erection of market stalls, seating, ancillary structures, decking and ramps. It is noted that the applicant has submitted the same information in respect of the Listed Building Consent Application and Full Planning Application.

In considering the application decision makers must engage Section 66(1) and Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 which highlights the statutory duty to require the authority to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Section 72 (1) is regarding the statutory duty regarding conservation areas and that special attention is paid to the desirability of preserving or enhancing the character or appearance of that area.

The proposal must also be considered under the Local Plan – Part 1 (DCLP) policies and those saved Local Plan Review (CDLPR) policies which are still relevant.

The Local Plan – Part 1 policy CP20 seeks to protect and enhance the city's historic environment, including listed buildings and Conservation Areas. CP20(c) requires development proposals which impact on the city's heritage assets to be of the highest design quality to preserve and enhance their special character and significance

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

through appropriate siting, alignment, use of materials, mass and scale.

Saved CDLPR policies E18 and E19 for the preservation and enhancement of Conservation Areas and buildings of historic importance continue to complement the new policy CP20.

Under saved CDLPR policy E19 proposals should not have a detrimental impact on the special architectural and historic interest of listed buildings or their setting.

In term of general design principles, Local Plan – Part 1 policies CP2, CP3 and CP4 are relevant and saved policy GD5 of the adopted CDLPR is also applicable. These are policies which seek a sustainable and high-quality form of development, which respects the character and context of its location. There is a general requirement to ensure an appropriate design, form, scale and massing of development which relates positively to its surroundings. CP2 in particular seeks to ensure that development is sustainable in terms of its location, design and construction. Saved policy GD5 is intended to protect the overall amenity of occupiers of nearby properties from unacceptable harm.

When considering the impact of a proposed development on the significance of a designated heritage asset (such as a Listed Building or Conservation Area) paragraph 197 of the NPPF states that, in determining applications, local planning authorities should take account of:

- a) *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- b) *the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
- c) *the desirability of new development making a positive contribution to local character and distinctiveness.*

Paragraph 200 of the NPPF states that "Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

The submitted Latham's Heritage Impact Supplement (HIS) provides the Statement of Justification within its conclusion however it is noted that the access is for the project as a whole and not specific to the Listed Building works alone. The listed building application proposals, therefore, have a very limited justification in that it will allow access to the proposed development on the site behind.

The HIA states *"The heritage reasons for refusal for the previous scheme for the site as described within applications; 21/01174/LBA & 21/01173/FUL have been considered and addressed by this application. Changes to the wall are now; minimal, sympathetically designed and obtrusive alien features have been omitted. Furthermore, repairs to fabric and reinstatement of lost features are now included within the scheme. The location of development is set back from the building line and the retention of the openness of the centre of the site result in minimal visual impacts upon settings as well as positive screening of existing harmful features"*

Historic England have duly considered the proposals and consider that *"The associated Listed Building Application proposes alterations to the boundary wall. In*

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

our view, the current proposals in relation to the wall are more modest and less harmful than the previous scheme. However, any harm caused would require clear and convincing justification and should be considered as part of the overall scheme."

Similarly, Historic England have considered the whole project in their consultation response. It is also noted that the submission of the further information from the applicant has not addressed the initial concerns raised by Historic England

The Conservation and Heritage Advisory Committee have not objected to the proposal.

The comprehensive comments of the Council's Built Environment Officer are set out within this report and consider the Listed Building Consent on its own merits. The Built Environment Officer states *"The retaining boundary stone wall is imposing and monumental in scale and encloses this area. There are also walls which match the detailed design of this to the north, east and south of the Church. The wall also contributes to the setting of the highly graded grade II* and II listed buildings nearby; St Peter's Church, The Old Grammar School and County Court which overlook the area and St Peter's Churchyard. There are key views of St Peter's Church landmark tower and stone boundary walls including one looking east along St Peter's Churchyard."* Further stating *"The repairs to the wall and reinstatement of lost fleur-de-lis decoration to the top of the wall is a benefit of the proposals. However, the proposal to create an access through the wall will be harmful, due to the loss of historic fabric and the further breaking up and erosion of this imposing continuous wall. It would also be harmful therefore to the setting of the nearby listed buildings as well as to the conservation area and street scene."*

Despite the reinstatement of the historic fabric of the wall the Officer has "Strong concern about harmful impact of proposals on the important boundary wall as a designated heritage asset."

The submission of the subsequent information has not led to the submission of any further comments from the Built Environment Officer and consequentially has not led to a different recommendation. Their recommendation remains that of concern that historic fabric will be lost.

A letter of support has been submitted by Marketing Derby however this relates, largely, to the change of use aspect of the proposal.

In my opinion, whilst the accompanying application (22/00792/FUL) provides support for the proposal, I do not consider this to be clear or convincing justification, required under para 200, NPPF (2021) and therefore does not justify the harm that the insertion of the access to the wall would create.

In making this recommendation the public benefits are considered to be:

- *Fabric repairs to masonry*
- *Removal of the harmful wire fence*
- *Reinstatement of lost features (ie the Fleur de Lys capping)*

Whilst not explicitly related to the Listed Building Consent consideration must be given to the public benefits arising from the associated Street Food Market - that the access would facilitate. Given the interlinking of these two proposal and the pending

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

application it would be pragmatic to consider them holistically rather than as standalone proposals given they are intrinsically linked.

As a result of the conclusively negative comments from Historic England and the Council's Built Environment Officer along with the clear policy position set out within the NPPF I conclude that the proposal would result in harm to a Grade II* designated heritage asset that would not be outweighed by the public benefits of the proposal. The proposal is not considered to be of wholly exceptional merit to overcome this position.

The Street Food Market could have a range of economic and social benefits including those associated with increasing footfall within the immediate area. However, due consideration must be given to the fact that a similar proposal has been previously refused and the current proposal has not been submitted by Consultees and is also recommended for refusal. Therefore, any public benefits associated with Street Food Market as given very limited, if any weight, as the Street Food Market is not a supported proposal and has little prospect of implementation.

That being said, if Members come to a different conclusion and consider that the public benefits associated with the Street Market outweigh the harm created then the associated benefits of the change of use proposal are considered to be, as taken from the Applicants letter dated 6th September 2022:

- *Bringing back into use the "forgotten 'Wasteland':*
- *£300K, expected, invested to bring the project forward. The proposal is ready to launch upon the grant of permission:*
- *Planting will create a 'green oasis:*
- *The site is currently overgrown attracting unwanted visitors and flytipping. These opportunities will be removed with this proposal.*
- *Creation of 50 jobs related to Food and Drinks Traders, Management etc.*
- *Economic Activity "Job creation, Business Growth, New Small Business Start-Ups, Boosting current local small Businesses, Secondary Business and Supply Chain Activities, Attracting New Development in the City, Increased Footfall and Consumer spend, Increased tax and local Government Income."*
- *Increased footfall*
- *New development and public use tend to push away Crime and Anti-Social Behaviour;*
- *Improved relationship working with Marketing Derby, St Peters Quarter BID, Down to Earth, St Peters Church and neighbours;*
- *Sustainable credentials including rainwater harvesting, green roofs, compostable packaging.*

Of course, the above are from the applicants perspective and they may not necessarily be direct benefits and as such the decision makers should bear in mind the following:

- The land is not forgotten wasteland it is an important piece of open space that

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

directly and positively affects the setting of significant heritage assets. The Conservation Area Management Plan (2013) identifies the importance of this open space and states:

“The appraisal identifies one significant open space - St. Peter’s Churchyard. This includes the current churchyard, the historic churchyard which lies to the north of St.Peter’s House, and the streets and alleys on either side of the church. Planning permission should not be granted for any development within the important open”

- The economical investment is clearly a benefit but it is unclear how this is invested direct spend, infrastructure etc. The wide-ranging economic benefits are acknowledged but it is not clear the direct impact this would have on the City.
- The area is already a ‘green oasis’ with vegetation being protected by Tree Preservation Orders and the siting of the land within the Conservation Area. There is also an expectation that the land owner keeps there land in a good state of repair to ensure it doesn’t become untidy and vegetation is well maintained.
- *The views on anti-social behaviour are mixed with some concerns still being raised about anti-social behaviour as part of the Street Market use.*
- Sustainable credentials are highly welcomed however the site is currently undeveloped and is therefore a greenfield not requiring any water attenuation or sustainable drainage.

Clearly, the repairs to the fabric of the wall and reinstatement of the lost features would be welcomed. However, it is not necessary for an access to be inserted into the wall for these works to take place.

It is also noted that an access to open space is in existence, and it is not clear if the applicant has explored the re-use of this access. Although, the location of a protected tree in close proximity to the entrance may inhibit its reinstatement. However, this has not been evidenced within the submission nor has it been explored.

7.3. Site History

The full site history of the application site is set out within this report. In making this decision regard has been given to the previously refused application 21.01174/LBA which sought to *"Partial demolition of boundary wall"*.

This application was refused for the following reason,

"In the opinion of the Local Planning Authority, the partial demolition of the boundary wall, insertion of steps, railings, gates and associated works, would have a negative and harmful impact on the significance of the Grade II St Peter's Church and surrounding designated heritage assets including the Grade II* Old Grammar School, the Grade II County Court St Peters Churchyard and the wider Conservation Area. The harm created is considered to be substantial harm and a clear and convincing justification for the works has not been provided in support of the proposed works. Accordingly, the*

Committee Report Item No: 7.6

Application No: 22/00793/LBA

**Type: Listed Building
Consent**

proposal is contrary to sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Policy CP20 of the Derby City Local Plan - Part 1 (Core Strategy), saved Policies E18 and E19 of the adopted City of Derby Local Plan Review and the over-arching guidance in the NPPF (2021) in relation to heritage assets."

It is acknowledged that the proposal forming part of this application is more sympathetic to the setting of the aforementioned designated heritage assets. However, the current proposal would still result in harm to the Grade II* listed asset and therefore has not addressed the former reason for refusal.

7.4. Summary

Therefore, inline with the local and national planning policy the proposal is considered to be inappropriate development that fails to preserve and or protect the character and appearance of the Grade II* Church of St Peters, Green Lane Conservation Area and would be wholly inappropriate development that would be harmful to the setting and significance of nearby designated heritage assets. The insertion of an access into the listed wall would have alter the appearance of the wall, creating harm to the wall and the Grade II* St Peters Church.

The positive aspect of securing a optimum viable use for the adjoining open space will be considered in the determination of the accompanying planning application, 22/00792/FUL and whilst there will be public benefits arising from the outdoor street food market this does not benefit from a planning permission and therefore, in my opinion, very little weight can be given to the public benefits associated with that use and thus access created as part of this Listed Building Application. Therefore, given the level of objection from heritage consultees and the associated harm caused, it is considered that the benefits do not outweigh the harm.

8. Recommended decision and summary of reasons:

8.1. Recommendation:

To refuse planning permission

8.2. Reason:

In the opinion of the Local Planning Authority, the insertion of access into boundary wall on land at St Peters Churchyard, would have a negative and harmful impact on the significance of the Grade II* Church of St Peters curtilage listed wall and Green Lane and St Peter's Conservation Area. There is also a negative harmful impact on the setting of other nearby designated heritage assets including Grade II* The Old Grammar School and Grade II County Court St Peters Churchyard. The creation of the access would alter the curtilage listed wall, the harm created is considered to be less than substantial harm and a convincing justification for the works has not been provided in support of the proposed works. Furthermore, the public benefits arising from the proposal (1) the removal of alien features and (2) the reinstatement of historic fabric to the wall do not outweigh the harmful impact upon the designated heritage assets. Accordingly, the proposal is contrary to Policy CP20 of the Derby

Committee Report Item No: 7.6**Application No: 22/00793/LBA****Type: Listed Building
Consent**

City Local Plan - Part 1 (Core Strategy) and saved Policies E18 and E19 of the City of Derby Local Plan Review and the over-arching guidance in the National Planning Policy Framework (2021) in relation to heritage assets and the Planning (Listed building and Conservation Areas) Act 1990

Reason: Refusal Plans:

Plan Type:	Plan Ref – Rev:
Site plans	1000 Rev S3 02
Cross Section	4200 Rev S3 02
Elevations	3201 Rev S3 04
Location Plan	Rev C01
Other	3100 Rev S3 02
Other	Heritage Impact Assessment - Maxwell Craven
Other	Heritage Impact Assessment Supplement - Lathams
Other	Method of Works
Other	Written Scheme of Investigation - Watching Brief

8.3. Application timescale:

Extension Date: 30.08.2022 Agreed

Extension Date: 14.10.2022

Application No: 22/00793/LBA

Crown copyright and database rights 2022
Ordnance Survey 100024913

Committee Report Item No: 7.7

Application No: 22/00861/FUL

Type: Full Application

1. Application Details

1.1. Address: 38 Prince George Drive, Kingsway, Derby

1.2. Ward: Littleover

1.3. Proposal:

Change of use from dwelling (Use Class C3) to residential care home (Use Class 22C2)

1.4. Further Details:

Web-link to application:

<https://eplanning.derby.gov.uk/online-applications/PLAN/22/00861/FUL>

Brief description

The site

The application site is located on the east side of Prince George Drive in Manor Kingsway. It is a corner plot with an integral single garage to the side and a walled curtilage boundary adjacent to the public highway. A driveway is located to the right hand of the dwelling with off street parking space for 2 vehicles (including the garage). The property contains 3 floor levels, containing a kitchen/diner at ground floor, then 2 bedrooms and a bathroom at both first floor and second floor level. To the rear the external usable amenity space measures approximately 7.5m by 5m, excluding a shed structure which exists to the rear of the garage.

The immediate surrounding locality is entirely residential with a mix of detached, semi-detached and small groups of terraced properties. The site is part of the Manor Kingsway estate which is newly built and planned in its layout and design. Land levels are generally flat and rectangular shaped grassed/vegetated parcels of land run parallel to the highway. These are drainage attenuation features bordered with low level post and rail means of enclosure.

Proposal

Full planning permission is sought for the change of use of the existing dwelling into a residential care home (Use Class C2) for up to 3 children. The application is accompanied by a supporting statement which explains that the property would be used as a small residential care home for up to three children (children under 16 years old). The property would be used as their permanent residency, replicating a family home environment as much as possible. Up to two care workers would be required at the home at any given time during the day, including overnight, ensuring 24/7 care at all times.

It is understood that for approximately 2-3months the dwelling has been used as a children's care home and through planning enforcement measures the applicant submitted this planning application to retain the use.

2. Relevant Planning History:

No relevant planning history

3. Publicity:

- Neighbour Notification Letters sent to adjoining properties
- Site Notice

This publicity is in accordance with statutory requirements and the requirements of the Council's adopted Statement of Community Involvement.

4. Representations:

In line with the Data Protection Act and associated legislation this appraisal should not include details, or seek to identify through repeating specific comments, the individuals who have objected, supported or made general comments about the application. Therefore, to maintain anonymity, the relevant planning grounds of objection, support or comment have only been included in broad terms. It is important to note that all comments received have been fully considered as part of the application process and included in the overall 'planning balance' exercise.

In total 26 objections, have been received following the consultations undertaken on the application. The material planning issues raised in the objection letters are summarised below

- The property was being used as a care home in January 2022
- Frequent trespassing
- Trust in the company being transparent in who they are or what they do
- No parking provision for additional visitors, causing blocked driveways and on street parking
- No.38 is not very private and close to neighbouring properties. Staff lights and blinds open creates disturbance
- Items thrown over boundary wall causing damage to property
- Residents will suffer adverse noise and anti-social behaviour which will undoubtedly happen given passed records of these young people's behaviour
- Placing children in decent residential areas not the answer
- Attracts undesirables
- Property was previously occupied as a care home for a short period of time and there were acts of anti-social behaviour in the area with the children being poorly supervised by carers leading to threats made to residents and the Police having to be called
- I also understand that if this application is successful there are plans to apply for another one further down the development.
- Don't believe a childrens home would be right for the street
- The access road outside the property was constantly being used as a parking spot. It is not for parking, it was blocking the access road for other cars and

emergency vehicles, and the people who were employed there on different shifts were constantly blocking in the person in the neighbouring property.

- Occupants have brought anti-social behaviour to the locality
- Numerous staff change overs
- Many families and young children live here
- One carer for three young men?
- The exterior grounds look a mess and unkempt
- The noise levels were also not in keeping within the neighbourhood coming from this property.

Regardless of how this children's home is administrated there are going to be problems

- We already have a number of issues on the estate, mostly related to Nottingham Housing Association, police being called on a regular basis

5. Consultations:

5.1. Highways Development Control:

This application is for the change of use from a dwelling to a residential care home. The proposal states there will be no more than 5 people in total in the property. This includes one daytime carer and one night-time carer. So, this is two full-time staff members and three children.

A site visit shows that there are provisions for possibly up to two small vehicles on the front drive, one behind the other. The application did state 3 car parking spaces, however I believe the frontage is one of the entrances/exits for the access road leading to several properties.

Prince George Drive is Permit holders (18) parking only area Mon ' Sat 8am ' 6pm.

This road is unadopted highway and therefore not maintained by Derby City Council and remains the responsibility under the developer concerned.

Assuming that there are two staff on duty at any time; the operational use of the site/dwelling would not be dissimilar to that which would be expected for a regular residential dwelling.

Para 111 of the National Planning Policy Framework states that 'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.'

The Highway Authority does not consider that it could be argued that the proposed change of use would have an unacceptable impact upon highway safety or a severe impact upon the adjacent highway network.

Committee Report Item No: 7.7

Application No: 22/00861/FUL

Type: Full Application

5.2. Police Liaison Officer:

There are no concerns relating to this area, consequently there are no objections to the application.

6. Relevant Policies:

6.1. Relevant Policies:

The Derby City Local Plan Part 1 - Core Strategy was adopted by the Council on Wednesday 25 January 2017. The Local Plan Part 1 now forms the statutory development plan for the City, alongside the remaining 'saved' policies of the City of Derby Local Plan Review (2006). It provides both the development strategy for the City up to 2028 and the policies which will be used in determining planning applications.

Derby City Local Plan Part 1 - Core Strategy (2017)

CP3	Placemaking Principles
CP4	Character and Context
CP6	Housing Delivery
CP21	Community Facilities
CP23	Delivering a Sustainable Transport Network

Saved CDLPR Policies

GD5	Amenity
H13	Residential Development – General criteria
E24	Community Safety

The above is a list of the main policies that are relevant. The policies of the Derby City Local Plan Part 1 – Core Strategy can be viewed via the following web link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmantandplanning/planning/localplan/evidencebase/Core-Strategy_ADOPTED_DEC-2016_V3_WEB.pdf

Members should also refer to their copy of the CDLPR for the full version or access the web-link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmantandplanning/planning/localplan/part1/CDLPR_2017.pdf

An interactive Policies Map illustrating how the policies in the Local Plan Part 1 and the City of Derby Local Plan Review affect different parts of the City is also available at – <http://maps.derby.gov.uk/localplan>

Over-arching central government guidance in the NPPF is a material consideration and supersedes earlier guidance outlined in various planning policy guidance notes and planning policy statements.

6.2. Non-housing applications:

The Local Plan (consisting of the policies of the DCLP1 and the saved policies of CDLPR) covers the period 2011 to 2028 and was adopted on 25 January 2017. The policies of the local plan were reviewed in December 2021 in line with Regulation 10a

of the Town and Country Planning (Local Planning) (England) Regulations 2017 and paragraph 33 of the NPPF, the provisions of which require Local Plan policies to be reviewed at least every 5 years. The officer led review, endorsed by the Council's Cabinet on 8 December 2021, indicated that all of the policies relevant to the consideration of this application are still up to date and carry weight in the decision making process as they remain consistent with the NPPF and there have been no changes in local circumstances that render any of the policies out of date. The application is therefore being considered in terms of its accordance with the policies of the Local Plan and any other material considerations, including the National Planning Policy Framework.

7. Officer Opinion:

Key Issues:

In this case the following issues are considered to be the main material considerations which are dealt with in detail in this section.

7.1. The Principle of Development

7.2. Residential Amenity Implications

7.3. Highway Impacts

7.4. Conclusion

7.1. The Principle of Development

The proposal consists of a change of use to an alternative form of residential accommodation within an existing residential area of Manor Kingsway. The site of the proposal is not allocated for any particular use in the Local Plan – Part 1 and in land use policy terms there are no 'in principle' concerns with the proposed change of use. There are no specific policies which restrict the overall number of care homes that can or should be provided within the City at a certain time, and separate legislation would ensure that the wider needs of the occupants can be met. The application site is in a sustainable location so that future occupiers would have good access to services and public transport links in the area. Overall, the principle of the proposed use in this location is considered to be acceptable.

7.2. Residential Amenity Implications

Saved policy GD5 (Amenity) of the CDLPR states that "Planning permission will only be granted for development where it provides a satisfactory level of amenity within the site or building itself and provided it would not cause unacceptable harm to the amenity of nearby areas. In considering harm, the Council will consider the following: a. Loss of privacy; b. Overbearing (massing) effect; c. Loss of sunlight and daylight; d. Noise, vibration, smells, fumes, smoke, soot, ash, dust or grit; e. Air, water, noise and light pollution; f. Hazardous substances and industrial processes; g. Traffic generation, access and car parking".

The proposal states there will be no more than 5 people in total in the property. This includes one daytime carer and one night-time carer. So, this is two fulltime staff members and three children. Numerous objections have been received by nearby

properties raising concerns relating to general noise and disturbance impacts including from comings and goings to and from the property.

Concerns have also been raised which relate to anti-social/criminal behaviour and specific 'incidents' from occupants of the application property, prior to the submission of this planning application. The children's care home is proposed to have one member of staff at the property at any given time and, again, separate legislation would ensure that the wider needs of the occupants are/can be met and ensure the care facility is a suitable location for individual placements. The Police Liaison Officer has also commented on this matter and confirmed that the police have no concerns relating to this area, of the city and consequently no objections are raised in respect to anti-social activity.

Whilst community safety is a material planning matter, it is considered that the use of the building as a small-scale care home would not exacerbate community safety issues in the area. Moreover, as the proposed number of bedrooms at the property would remain unaltered, there would be no substantive intensification of use, rather a minor difference in activity to that which may be anticipated in the normal residential use of a house. It is likely that the house and its curtilage would retain the look and character of neighbouring houses; that of a normal residential dwelling.

The use and associated activity, including comings and goings of care workers would be unlikely to cause a greater level of disturbance or amenity harm than could be expected by a C3 use of this large 4 bedroom family home. Young people and children could reside in any typical residential dwelling and it is considered that the proposal is not likely to result in any additional anti-social behaviour than what could be generated by the existing residential dwelling.

On balance, it is considered that the general noise and disturbance impacts would not be above and beyond what could be achieved at a residential dwelling and the proposal is not considered to result in significant impacts upon surrounding residential amenity that would warrant refusal of planning permission. Subject to the suggested condition, it is considered that the proposal would comply with saved policies H13 and GD5 of the CDLPR

7.3. Highway Impacts

The Highway Officer considers that in highway terms, the levels of occupancy associated with the proposed care home are not considered dissimilar to those which could legitimately be accommodated by the current residential use of the dwelling. Para 109 of the National Planning Framework Policy states that 'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.' However, 'severe' does not relate to parking, but the consequences of congestion as a result of the traffic effects arising from the development.

I note from the Highway Offer comments, raise no concerns about the access and parking provision, for the proposed use of the dwelling house. Assuming that that there are two staff on duty at any time; the operational use of the site/dwelling would not be dissimilar to that which would be expected for a regular residential dwelling, which

could have two parents, each with a vehicle. It would therefore not be possible to argue that the proposed use would lead to 'unacceptable impacts' to highway safety.

7.4. Conclusion

The principle of development is acceptable. No external alterations are proposed as a result of the proposed use of the dwelling house. The proposal is considered to be acceptable in terms of highway safety. On balance, the proposed change of use is not considered to result in significantly detrimental impacts on neighbouring amenity. There are no other relevant material planning considerations that indicate planning permission should not be granted. The proposal is deemed to comply with the relevant policies in the adopted Local Plan and the advice contained within the NPPF. It is therefore recommended that the application be granted permission, subject to the suggested conditions.

8. Recommended decision and summary of reasons:

8.1. Recommendation:

To grant planning permission with conditions.

8.2. Summary of reasons:

The principle of the use of the dwelling house as a small children's care home, is acceptable in this location. No external alterations are proposed as a result of the development. The proposal is considered to be acceptable in terms of highway safety and would not result in significantly detrimental impacts on neighbouring amenity. There are no other relevant material planning considerations that indicate planning permission should not be granted.

8.1. Conditions:

1. Standard 3 year time limit condition

Reason: As required by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004

2. Standard approved plans condition

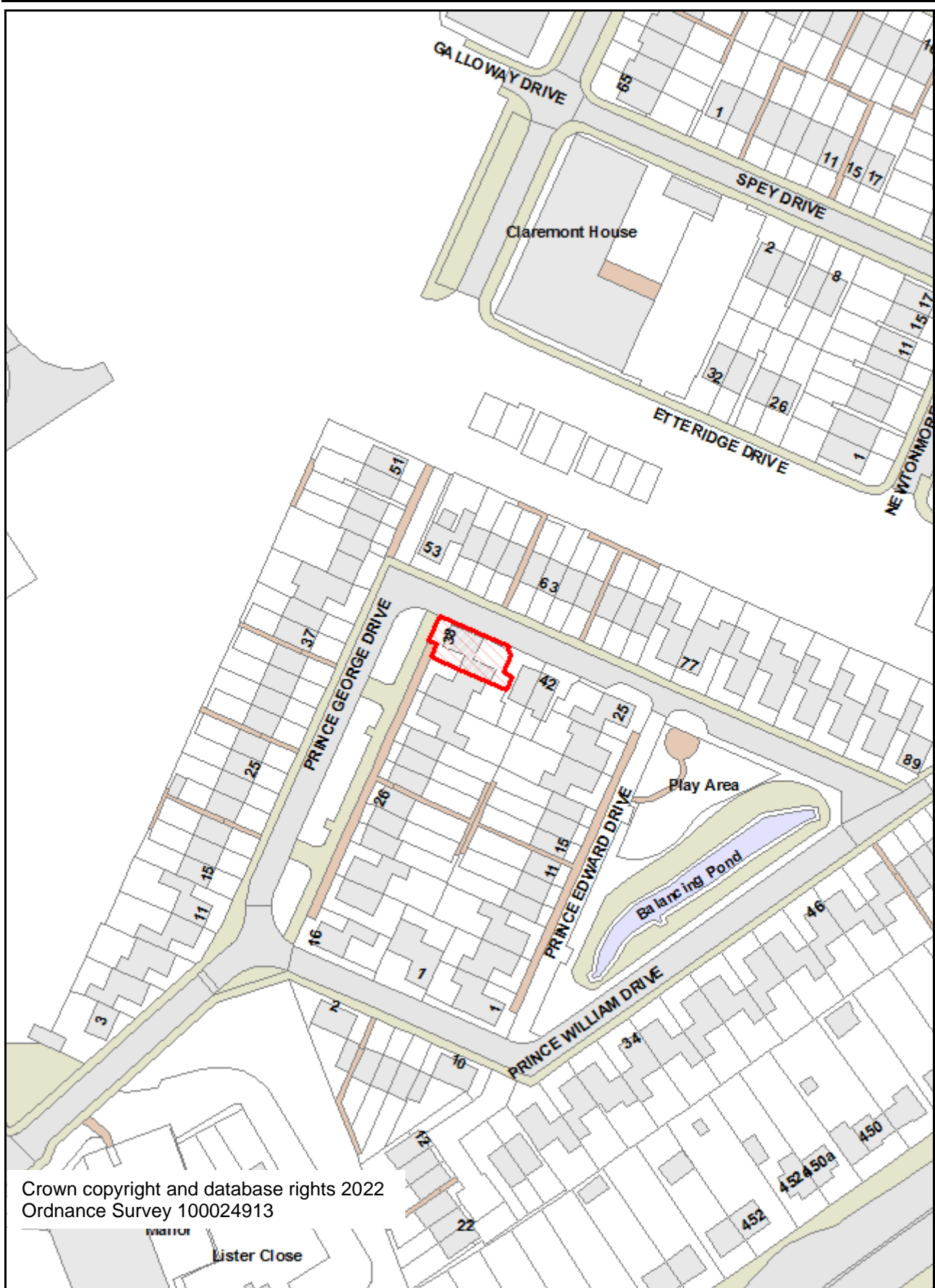
Reason: Standard approved plans condition Amended Drawing No. 221-09.02 (Amended red line showing correct location of off-street car parking spaces owned by the applicant).

3. Condition restricting the use of the property as a children's residential care home (Use Class C2) for occupation by three children, with staffing arrangement as specified within the supporting statement

Reason: To enable the local planning authority to maintain control over the proposed use, to safeguard the amenities of the surrounding area.

8.3. Application timescale:

An extension of time has been agreed on the application until 12 October 2022 to allow the application to be considered by the Planning Control Committee.



1. Application Details

1.1. Address: 31 Mount Carmel Street, Derby

1.2. Ward: Arboretum

1.3. Proposal:

Change of use from dwelling (Use Class C3) to a seven bedroom (seven occupant) house in multiple occupation

1.4. Further Details:

Web-link to application:

[https://eplanning.derby.gov.uk/online-applications/PLAN/\(22/00603/FUL\)](https://eplanning.derby.gov.uk/online-applications/PLAN/(22/00603/FUL))

Brief description

Site

The application property is sited to the west side of Mount Carmel Street in Arboretum, which is a cul-de-sac road. It is a 2 storey Victorian era dwelling with a basement, ground, first and second floor levels, with 3 bedrooms shown on the existing floor plans. There is a 15m by 7m sized rear garden and a small frontage between the public highway and principal elevation. No-off street parking exists. The immediate surrounding locality is entirely residential. There are three other licenced Houses in Multiple Occupation(HIMO) along Mount Carmel Street, according to Housing Standards map records.

Proposal

Full planning permission is sought for the change of use from a dwelling (Use Class C3) to a seven bedroom (seven occupant) house in multiple occupation. The submitted floor plan shows two self-contained rooms upon the ground floor with a communal area to the rear, plus external cycle store. At first floor there would be three self contained rooms and two bedrooms at second floor level, with additional storage.

2. Relevant Planning History:

No relevant planning history

3. Publicity:

- Neighbour Notification Letter – 14 letters
- Site Notice

This publicity is in accordance with statutory requirements and the requirements of the Council's adopted Statement of Community Involvement.

4. Representations:

In line with the Data Protection Act and associated legislation this appraisal should not include details, or seek to identify through repeating specific comments, the individuals who have objected, supported or made general comments about the application. Therefore, to maintain anonymity, the relevant planning grounds of objection, support or comment have only been included in broad terms. It is important to note that all comments received have been fully considered as part of the application process and included in the overall 'planning balance' exercise.

A total of 17 objections have been received and the main points raised include:

- Vehicles are double parked along street
- the street is used for parking by nearby school and church
- other HMO properties on the street
- this application is potentially therefore adding seven cars to a street that does not have the space to accommodate them
- there is no way to enforce that tenants do not own their own cars
- the property should remain a family home
- the parking issues will also affect the ability of the emergency services to access the street safely and effectively.
- should be a concentration of no more than 20 percent of HiMOs in a 100 metre radius as this causes noise pollution and damage to the area, car parking issues
- the existing number of multi occupier buildings also leads to problems with waste on the street and in front gardens and overflowing bins
- parking at the cul-de-sac turning circle creates vehicle manoeuvring difficulty
- the increase in HMO is affecting the quality of our lovely community
- additional noise and nuisance
- living next door to a HIMO, problems are: noise all night, rubbish, rats, unemptied bins, landlords not cleaning/ maintaining properties, residents urinating in the garden because the toilets are occupied, fights and disputes, fires, drug dealing and growing and motorbikes kept in the back yards.

5. Consultations:

5.1. Highways Development Control:

The site is located within a sustainable location, with easy access to city centre shops, amenities, and public transport opportunities. This is also close to the Normanton Road amenities. This road currently has no parking restrictions.

Committee Report Item No: 7.8

Application No: 22/00603/FUL

Type: Full Application

This application is to change this dwelling into a seven bedroom in multiple occupation. The property has a small frontage closed off from the footway, where you gain access to the front door and side gate. Close to the side gate is the stored bins.

The documents submitted on plan 159382165 show that provision of cycle parking has been made to the rear of the property and that the bins will remain stored at the side of the property for easy access to all residents. With there being 7 occupants, more bins maybe required.

There are no significant implications to the public highway, therefore the Highway Authority has no objections to this application subject to the condition below:

Condition 1: No part of the development hereby permitted shall be brought into use until the cycle parking layout as indicated on drawing 159382165 has been provided. That area shall not thereafter be used for any purpose other than the parking of cycles. Reason: To promote sustainable travel.

5.2. Resources and Housing (HIMO):

Thank you for consulting Housing Standards on the above application. I can confirm we have no objection to the proposals. The proposed development appears to meet Derby City Councils Housing Standards Teams standards for space and amenities, reference:

<https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/housing/amenities-and-space-guidance-for-hmos-2019.pdf>

Regard shall also be had to the LACoRS Fire Safety Guide, which Housing Standards refer to regarding fire safety precautions in rented property:

<https://www.cieh.org/media/1244/guidance-on-fire-safety-provisions-for-certain-types-of-existing-housing.pdf>

6. Relevant Policies:

6.1. Relevant Policies:

The Derby City Local Plan Part 1 - Core Strategy was adopted by the Council on Wednesday 25 January 2017. The Local Plan Part 1 now forms the statutory development plan for the City, alongside the remaining 'saved' policies of the City of Derby Local Plan Review (2006). It provides both the development strategy for the City up to 2028 and the policies which will be used in determining planning applications.

Derby City Local Plan Part 1 - Core Strategy (2017)

CP3	Placemaking Principle
CP4	Character and Context
CP6	Housing Delivery
CP23	Delivering a Sustainable Transport Network

Saved CDLPR Policies

GD5	Amenity
H13	Residential Development - General Criteria

The above is a list of the main policies that are relevant. The policies of the Derby City Local Plan Part 1 – Core Strategy can be viewed via the following web link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmentandplanning/planning/localplan/evidencebase/Core-Strategy_ADOPTED_DEC-2016_V3_WEB.pdf

Members should also refer to their copy of the CDLPR for the full version or access the web-link:

https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmentandplanning/planning/localplan/part1/CDLPR_2017.pdf

An interactive Policies Map illustrating how the policies in the Local Plan Part 1 and the City of Derby Local Plan Review affect different parts of the City is also available at – <http://maps.derby.gov.uk/localplan>

Over-arching central government guidance in the NPPF is a material consideration and supersedes earlier guidance outlined in various planning policy guidance notes and planning policy statements.

6.2. Applications involving the provision of housing:

The Local Plan (consisting of the policies of the DCLP1 and the saved policies of the CDLPR) covers the period 2011 to 2028 and was adopted on 25 January 2017. The policies of the local plan have been reviewed in line with Regulation 10a of the Town and Country Planning (Local Planning) (England) Regulations 2017 and paragraph 33 of the NPPF, the provisions of which require Local Plan policies to be reviewed at least every 5 years. The officer led review was endorsed by the Council's Cabinet on 8 December 2021.

The review found that, apart from the housing target elements of policy CP6 (Housing Delivery), the policies of the Local Plan remain consistent with national policies, including the latest updates to the NPPF and can be given weight in decision making.

Policy CP6 sets a housing requirement of 11,000 new homes over the 17 year Plan period (647 dwellings annually). However, in December 2020, Government amended it's 'Standard Method' for calculating Housing Need to include a 35% uplift in the top 20 largest urban areas in England which includes Derby. The standard method housing need calculation for Derby City now stands at 1,255 dwellings a year and this is significantly higher than the CP6 requirement. Therefore, the housing requirement in Policy CP6 is out of date.

A further consequence of the significant increase in housing requirement, brought about by the change to the standard method, is that the Council can no longer demonstrate a 5 year supply of housing land as required by the NPPF (NPPF paragraph 74 (footnote 39) refer). The current supply of deliverable sites is sufficient to provide 3.17 years of dwellings against the annual 1,255 requirement.

For the purposes of decision making, the lack of a demonstrable 5 year housing land supply means that the presumption in favour of development and the tilted balance set out in the NPPF is invoked (paragraph 11 footnote 8 of the NPPF).

Paragraph 11d of the NPPF requires that where there is no 5 year supply this means granting planning permission unless –

- i. The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

As this proposal involves the provision of housing, the application is being considered in terms of its accordance with NPPF paragraph 11d and other material considerations. This does not mean that the policies of the Local Plan are ignored but that their requirements can be considered, and given weight, where they accord with the policies of the NPPF.

Other material considerations to weigh in the planning balance are that the Council's housing needs have increased significantly and as such the benefits of delivering housing carry greater weight. Also, the degree to which the Council is unable to demonstrate a 5 year supply is material. A housing land supply of 3.17 years is a significant shortfall and therefore very significant weight should also be applied in favour of applications that can contribute to increasing this supply.

The implications of the tilted balance on the officer recommendations are discussed further in the officer appraisal section of this report below.

7. Officer Opinion:

Key Issues:

In this case the following issues are considered to be the main material considerations which are dealt with in detail in this section.

7.1. Principle of Development

7.2. Impact on the character of the surrounding area

7.3. Residential amenity implications

7.4. Highways/parking issues

7.1. Principle of development

The application site is not allocated for any particular use in the Core Strategy. However, Policy CP6 states that the Council will continue to encourage the re-use of under-utilised or vacant properties for residential uses. Saved Local Plan Policy H13, which requires proposals to have a quality living environment, specifically refers to Use Classes C1, C2, C3 and hostels but can, by extension, be considered as guidance for other residential uses such as HMOs. The proposal will increase the variety and amount of housing delivery in accordance with Core Strategy policy CP6. There are no planning policy objections to the proposal. Subject to an assessment of the quality of the proposed living environment (as required by Local Plan Policy H13) and the effect that the intensification of use may have on the amenity of the

surrounding area (as required by Policy GD5), the proposal is considered to be acceptable in principle.

The proposal will marginally increase the variety and amount of housing delivery in accordance with Core Strategy policy CP6. As set out in the policy comments regarding the "tilted balance", the Council's housing needs have increased significantly and as such the benefits of delivering housing carry greater weight. Also, the degree to which the Council is unable to demonstrate a 5 year supply is material. There is currently a significant housing land supply shortfall and therefore very significant weight should also be applied in favour of applications that can contribute to increasing this supply. The proposed conversion into 7 residential units would marginally increase the variety and amount of housing delivery, hence the proposal is considered to be acceptable in principle.

7.2. Impact on the character of the surrounding area

The proposed HMO use would represent a limited impact on the established character of Mount Carmel Street, which comprises mainly terraced and semi-detached dwelling houses. Yet there are three other existing licenced HMOs in Mount Carmel Street at No's 17, 18 and 21. These are on identified on Housing Standard's mapping system and they are the only others in the street. Immediately next door at No.33, this house has been converted to 5 flats. Taken cumulatively, the presence of a forth HIMO within Mount Carmel Street would not result in an over-concentration or substantive change to the residential character of the street given there are more than 50 dwellings that make Mount Carmel Street. Moreover, the house itself would not change in visual terms and would appear still as a semi-detached property in a residential location and overall, it would remain in a residential use.

As HIMO's are occupied by unrelated individuals, comings and goings associated with them are generally greater than a family dwelling, and whether by car or on foot such activity can generate noise and disturbance. However, I am not persuaded that in this case the noise and disturbance that would be created by the scheme would be appreciably greater than would be the case if the dwelling were occupied by a large family or if it were used as a 6 person HMO. In this instance an important consideration is that the property could be used lawfully, as a 6-person HIMO. As such, any judgement on the impact on the character of the area must be confined to how much extra impact one additional occupier would make. A 6 person HIMO would be considered the fallback position in this instance and could be introduced without planning permission.

7.3. Residential amenity implications

The proposed conversion shows seven residential units, each with en-suite bathrooms. The plan drawings show a communal room at ground floor, some 16.5sqm in size, which would provide satisfactory communal facilities and access to the rear garden. The rear garden would provide an adequate amount of outside amenity space, together with space for cycle storage. All the bedrooms have decent sized windows and achieve the national minimum size floor space standards and no objections have been raised by Housing Standards to the living accommodation to be

provided. It is therefore considered that the proposed conversion will provide an appropriate standard of living accommodation for future occupants.

The most likely amenity concern arises from the potential internal noise nuisance and general activity upon the application site, as a result of the introduction of the HIMO in this street. Those properties adjoining the application site, No.33 and 29 Mount Carmel Street may experience some additional noise disturbance, but it is difficult to conclude the potential disturbance would be significantly adverse in amenity terms. Instead, the potential level of harm caused could also result from the existing 3-bedroom house that could lawfully accommodate either a large family or a 6-person HIMO, with potentially similar levels of noise and living activity.

Overall, it is considered that the proposed intensification of residential use would not have any overriding adverse impact on residential amenity. The dwelling could operate lawfully as a 6- person HIMO under permitted development rights.

It is considered that one additional person would not have any overriding additional impact on neighbour's amenities. It is considered that the proposal would not result in unacceptable harm to the living conditions of nearby residents as a result of the intensification in the use of the building. Accordingly, there would be no conflict with saved Policies H13 and GD5 which seeks to ensure that new developments do not cause unacceptable harm to the amenity of nearby areas.

7.4. Highways / parking issues

Mount Carmel Street is an unrestricted adopted road and the large majority of residents here do not benefit from off-street parking provision. Consequently, the demands for on-street parking along both sides of the highway are generally high, with some variance of parking demand across evening and weekends. As previously stated, the application site has no provision for off-street parking.

Although a number of objections have been received in regard to parking in the area, the City Councils Highways Officer does not raise objection in respect of the potential additional parking generated by the occupants of the HIMO, given the sustainable location of the property, within close proximity to bus routes and the City Centre. The cycle parking indicated shall be secured by a suitable planning condition for clarity.

By reference to Table A2.4 from "Residential Car Parking Research", (Queen's Crown Copyright, 2007), research carried out by the former Department for Communities and Local Government, on car residential ownership and parking demand – which was based on analysis of Census information not generally published in the public domain, it shows that for a 1 room non-owner occupied flat (which is the best equivalent to a room in a House in Multiple Occupation) that the average car ownership is 0.3 vehicles. As such, for a seven bedroom HMO, this would equate to around 2-3 vehicles; a figure not dissimilar to that which would be anticipated in respect of the normal residential occupancy of the dwelling. As previously indicated, a six bedroom HMO would be considered permitted development, therefore there is also an additional argument that the only impact that can be considered material is that of the additional rooms above the permitted limit. The site does not contain off-street parking provision with residents needing to park any vehicles within the unrestricted on-street parking.



**Delegated decisions made between
between 01/08/2022 and 31/08/2022**



Application No:	Application Type	Location	Proposal	Decision	Decision Date
05/18/00660	Compliance/Discharge of Condition	The First Church Of Christ Scientist Friary Street Derby	Internal And External Alterations In Association With The Change Of Use From Place Of Worship (Use Class D2) To Restaurant (Use Class A3) Including An Extension And Alterations To The South West And South East Elevations Of The Building - Discharge Of Condition Nos 3, 4, 5, 6 And 7 Of Previously Approved Permission DER/09/16/01104	Discharge of Conditions Complete	09/08/2022
06/18/00828	Compliance/Discharge of Condition	Long Mill And West Mill Darley Abbey Mills Darley Abbey Derby DE22	Demolition Of Loading Bay, Two Storey Stairwell Extension To Former `Mechanics Shop` Together With Repairs To Mills - Discharge Of Conditions 3 & 6 Of Previously Approved Application Code No. DER/03/14/00318	Discharge of Conditions Complete	09/08/2022
07/18/01087	Compliance/Discharge of Condition	45-53 Green Lane Derby	Change Of Use From Amusement Centre/Nightclub To Retail (Use Class A1) At Basement And Ground Floor Level, Theatre (Sui Generis Use) At First And Second Floor Level And Cafe (Use Class A3) And Gallery (Use Class D1) In The Existing Side Extension To The Building. Alterations To The Elevations To Include The Installation Of Replacement Windows , Reinstatement Of Window Openings, Towers And Pinnacles - Discharge Of Condition No 4 Of Previously Approved Permission DER/11/16/01319	Discharge of Conditions Complete	17/08/2022
10/18/01531	Compliance/Discharge of Condition	Land At Severn Trent Water Plc Derby Sewage Treatment Works Megaloughton Lane Spondon Derby	Erection Of Anaerobic Digestion Facility - Discharge Of Condition 5 Of Previously Approved Permission DER/06/16/00795	Discharge of Conditions Complete	05/08/2022

12/17/01666	Compliance/Discharge of Condition	Land Off Mansfield Road Breadsall Derby	Erection Of 250 Dwellings And Formation Of Highways, Public Open Space, Drainage Attenuation Area And Landscaping - Approval Of Reserved Matters Under Previously Approved Outline Permission Code No. DER/04/15/00449 - Discharge Of Conditions 11 Of Previously Approved Permission DER/03/17/00283	Discharge of Conditions Complete	04/08/2022
19/00500/DISC	Compliance/Discharge of Condition	Part Of Proto-fireproof Buildings Darley Abbey Mills Haslams Lane Derby DE22 1DZ	Alterations in association with the change of use from offices (Use Class B1) to cafe (Use Class A3) to include the removal of internal stud partition wall and catering fittings, installation of a new stud wall, alterations to form kitchen area and toilets and installation of external signage - discharge of conditions 3, 4, 5 and 6 of previously approved permission DER/06/18/00993	Discharge of Conditions Complete	17/08/2022
19/00830/DISC	Compliance/Discharge of Condition	Land At Hackwood Farm Radbourne Lane Derby	Erection of a Primary School and associated infrastructure and landscaping pursuant to conditons 1(A) and (B) on previously approved application Code No. DER/06/15//00847 - discharge of conditions 4, 7 and 11 of previously approved permission DER/06/18/00999	Discharge of Conditions Complete	10/08/2022
20/00263/DISC	Compliance/Discharge of Condition	43 Iron Gate Derby DE1 3FT	Roof repairs including repair and reinstatement of lead flashing, re-bedding of mortar joints, application of a roof coating and replacement of uPVC window at rear with timber window - Discharge of condition 3 of previously approved application 19/00611/LBA	Discharge of Conditions Complete	17/08/2022
20/00737/DISC	Compliance/Discharge of Condition	Land North Of Onslow Road And East Of Station Road Mickleover Derby	Erection of 203 dwellings (Use Class C3) with associated infrastructure, open space and landscaping - discharge of condition nos 3, 7, 9, 10, 11, 12, 13, 16, 17, 19 and 20 of previously approved permission 19/00763	Discharge of Conditions Complete	04/08/2022
20/00978/LBA	Listed Building Consent - Alterations	4 New Road Derby DE22 1DR	Installation of replacement front door and two first floor windows	Approval	26/08/2022

20/01004/DISC	Compliance/Discharge of Condition	Site Of Former Derbyshire Royal Infirmary London Road Derby DE1 2QY	Erection of 796 dwellings comprising 773 dwellings and apartments, conversion of Wilderslowe House into 10 apartments conversion of nos 123-129A Osmaston Road into 12 apartments, alteration and refurbishment of The Lodge together with conversion and extension of the 'Pepper pot' buildings into a cafe, exhibition/meeting space, and gym/fitness facilities. Relocation of the listed Queen Victoria statue, together with formation of vehicular access, public open space, landscaping and associated engineering works - discharge of condition 26 of previously approved permission 18/01677	Discharge of Conditions Complete	17/08/2022
20/01407/FUL	Full Application	2 Snelston Crescent Derby DE23 6BL	Single storey front extension with balcony above and two storey rear extensions to dwelling house with loft conversion (ground floor living space and sun room, first floor en-suites and bedroom with bedrooms, bathroom and office in the loft space)	Approval	18/08/2022
21/00863/DISC	Compliance/Discharge of Condition	150 Burton Road Derby DE1 1TN	Re-instatement and alterations of windows, installation of new gates and infilling of opening to Burton Road - Discharge of condition 3 of planning permission 20/00921/FUL 4 x Window and Door detail drawings.	Discharge of Conditions Complete	11/08/2022
21/01188/DISC	Compliance/Discharge of Condition	Land To North Side Parcel Terrace Derby DE1 1LY	Erection of 2 no. units (Use Class B1(c), B2 & B8 (with ancillary Trade Counter Use), formation of car parking area and associated infrastructure - Discharge of condition 10 in respect of Units B3, B4 & B5 of planning permission 18/01840/FUL	Discharge of Conditions Complete	10/08/2022
21/01252/FUL	Full Application	Land At Osmaston Road Derby (adjacent To Ladbrokes)	Installation of a street hub	Approval	24/08/2022
21/01256/ADV	Advertisement Consent	Land At Kingsway Derby	Display of two internally illuminated digital display screens	Approval	24/08/2022

(adjacent To Cannock Court)

21/01264/ADV	Advertisement Consent	Land At London Road Derby (adjacent To The Co-Operative Food)	Display of two internally illuminated digital display screens	Approval	24/08/2022
21/01265/ADV	Advertisement Consent	Land At East Street Derby (adjacent To Phone Planet)	Display of two internally illuminated digital display screens	Approval	26/08/2022
21/01594/FUL	Full Application	Telecommunications Mast Adjacent Tesco Express Derby Road Chellaston Derby DE73 5SA	Erection of a replacement 20m high monopole with ancillary development	Application Withdrawn	05/08/2022
21/01617/FUL	Full Application	4 Victoria Street Derby DE1 1EQ	Change of use of part first, second and third floors from offices (Use Class E) to three apartments (Use Class C3)	Finally disposed of	31/08/2022
21/01618/LBA	Listed Building Consent - Alterations	4 Victoria Street Derby DE1 1EQ	Internal alterations in association with change of use of part first, second and third floors from offices (Use Class E) to three apartments (Use Class C3)	Finally disposed of	31/08/2022
21/01626/FUL	Full Application	Land At Former Rolls Royce Works Cotton Lane Derby	Erection of 60 flats (Use Class C3), site layout and all associated ground works	Approval	04/08/2022
21/01657/DISC	Compliance/Discharge of Condition	Murray Park Community School Murray Road Derby DE3 9LL	Formation of a floodlit artificial grass multi-use games area - Discharge of conditions 3, 4, 5, 6, 7 and 8 of previously approved planning application No. 21/00835/FUL	Discharge of Conditions Complete	16/08/2022
21/01703/DISC	Compliance/Discharge of Condition	Vacant Land Uttoxeter New Road/Talbot Street Derby (Access Off Uttoxeter New Road)	Erection of Foodstore (Use Class E) with access, car parking, landscaping and associated works - Discharge of condition 12 of planning permission 20/01247/FUL	Discharge of Conditions Complete	09/08/2022
21/01777/DISC	Compliance/Discharge of Condition	Land Adj To The Old Hall Burton Road Derby	Erection of 14 dwellings with access, parking, layout, landscaping and associated ground works - Discharge of condition nos 8, 9, 10,	Discharge of Conditions Complete	10/08/2022

DE23 6EH

11 and 12 of previously approved permission
21/00064/FUL

21/01790/FUL	Full Application	185 Pear Tree Crescent Derby DE23 8RR	Raising of the roof height and installation of front dormers to form an additional storey	Approval	17/08/2022
21/01818/OUT	Outline Application	Land At The Rear Of 139 Baker Street Derby DE24 8SE	Erection of a dwelling house (Use Class C3)	Approval	17/08/2022
21/01862/DISC	Compliance/Discharge of Condition	Former Showcase Cinemas Foresters Park Centre Sinfin Lane Derby DE23 8AG	Demolition of existing Cinema and separate restaurant buildings. Erection of building for motor dealership, including MOT Testing facility and external area for storage and display of vehicles - Discharge of condition 7 of planning permission 21/00844/FUL	Discharge of Conditions Complete	12/08/2022
21/01871/DISC	Compliance/Discharge of Condition	Woodlands 8A Park Grove Derby DE22 1HD	Conversion of garage with extension to form annex for dependent relative - Discharge of conditions 3 and 6 of planning permission 02/14/00270	Discharge of Conditions Complete	02/08/2022
21/01943/FUL	Full Application	76 Trowels Lane Derby DE22 3LT	Extensions and alterations to outbuilding to form dependent relative accommodation	Approval	10/08/2022
21/01954/DISC	Compliance/Discharge of Condition	Murray Park Community School Murray Road Derby DE3 9LL	Formation of a floodlit artificial grass multi-use games area - Discharge of conditions 3 and 7 of previously approved permission 21/00835	Discharge of Conditions Complete	30/08/2022
21/02118/FUL	Full Application	152A Manor Road Littleover Derby DE23 6BT	Demolition of former bungalow at 152A Manor Road and the erection of a 2-storey building, comprising a Garage with Office above, ancillary to the Existing Property at 152 Manor Road	Approval	10/08/2022
21/02189/FUL	Full Application	52 Haven Baulk Avenue Derby DE23 4BJ	Demolition of garage, raising of the roof height and extensions to dwelling house to form two additional bedrooms and formation of canopy with balcony over to rear	Approval	18/08/2022

22/00018/DISC	Compliance/Discharge of Condition	Land To The South Of Victory Road Victory Park Derby DE24 8ZF	Erection three units (Use Classes B1(b), B1(c), B2 and B8) together with access, car parking, landscaping and associated works - Discharge of conditions 4, 5, 6, 7, 8 and 10 in respect of unit 13 of planning permission 19/00220/FUL	Discharge of Conditions Complete	11/08/2022
22/00040/DISC	Compliance/Discharge of Condition	Site Of Former 574 - 576 Burton Road Derby DE23 6FL	Erection of a two/three storey 63 bed care home (Use Class C2) - Discharge of condition 12 of planning permission 20/00170/FUL	Discharge of Conditions Complete	12/08/2022
22/00061/FUL	Full Application	1 Oxford Street Derby DE1 2TE	Change of use from retail unit (Use Class E) to flexible use of Use Class E and/or hot food take away/laundrette/betting/loan shop (Sui Generis Uses). External alterations to include installation of replacement windows, a new door and extraction flue	Approval	04/08/2022
22/00183/FUL	Full Application	16 Blagreaves Lane Derby DE23 1BU	Provision of hard surface for car parking and formation of a vehicular access	Approval	18/08/2022
22/00230/FUL	Full Application	1 Fiskerton Way Derby DE21 2HQ	Erection of a boundary fence. (Retrospective Application)	Approval	10/08/2022
22/00283/FUL	Full Application	77 Uttoxeter Old Road Derby DE1 1NG	Single storey side/rear extension to dwelling house (living space)	Approval	04/08/2022
22/00309/TPO	Works to a tree with a TPO	Endwood Victor Avenue Derby DE22 1AN	Felling of a Silver Birch tree and reduction of branches and removal of one branch from a Beech tree protected by Tree Preservation Order 259	Approval	05/08/2022
22/00330/FUL	Full Application	Land At The Side Of 198 Blagreaves Lane Derby DE23 1PU (access From Blagreaves Avenue)	Erection of a dwelling house (Use Class C3) and associated ground works	Approval	05/08/2022
22/00345/VAR	Variation of Condition	Land At Holmleigh Way Chellaston Derby	Residential Development -157 dwellings (38 within Derby City Boundary and 119 within South Derbyshire Boundary) and associated	Application Withdrawn	02/08/2022

			infrastructure, landscaping, pumping station and Public Open Space - Variation of condition 4 of previously approved planning permissions Code Nos. 08/13/00941, 01/17/00049 and 03/18/00391 to amend the location of the play area		
22/00376/FUL	Full Application	3 Ruskin Road Derby DE1 3EU	Proposed alterations and extensions to dwelling including dormer additions to front and rear, gable feature and glazed panels to West elevation, an external car port canopy and glass link	Approval	04/08/2022
22/00456/FUL	Local Council Own Development Reg 3	2 Millom Place Derby DE21 4DY	Two storey side and single storey front extensions to dwelling house (lobby, three bedrooms, bathroom, utility and W.C.)	Approval	10/08/2022
22/00472/FUL	Full Application	Kedleston Road Post Office 123 Kedleston Road Derby DE22 1FS	Installation of an ATM - retrospective application	Approval	10/08/2022
22/00473/ADV	Advertisement Consent	Kedleston Road Post Office 123 Kedleston Road Derby DE22 1FS	Display of two non-illuminated ATM signs - retrospective application	Approval	10/08/2022
22/00476/FUL	Full Application	Chellaston Post Office 5 Derby Road Chellaston Derby DE73 5SA	Installation of an ATM - retrospective application	Approval	10/08/2022
22/00477/ADV	Advertisement Consent	Chellaston Post Office 5 Derby Road Chellaston Derby DE73 5SA	Display of two non-illuminated ATM signs - retrospective application	Approval	10/08/2022
22/00480/FUL	Full Application	86 Locko Road Derby DE21 7AQ	First floor and single storey extensions to dwelling house (link corridor, drying area and enlargement of bedroom) alterations to	Approval	05/08/2022

			existing annexe roof, boundary treatments and enlargement of vehicular access		
22/00550/FUL	Full Application	1 Constable Drive Derby DE23 6EP	Erection of outbuilding (double garage, office/garden room with storage above)	Approval	08/08/2022
22/00569/FUL	Full Application	1 Hermitage Court Derby DE21 2LG	Two storey and single storey side and rear extensions to dwelling house (living space and bedroom)	Approval	23/08/2022
22/00585/FUL	Full Application	38 Buxton Drive Derby DE3 9JR	Single storey rear extension to dwelling house (utility and kitchen/diner)	Approval	16/08/2022
22/00610/DISC	Compliance/Discharge of Condition	Rear Gardens Of 136 - 148 Swarkestone Road Chellaston Derby DE73 1UD	Demolition of 146 and 148 Swarkestone Road and Erection of 15 Dwelling Houses - Variation of condition 2 of planning permission Code No. 03/12/00359 to substitute the house types for plots 10-16 and amend the site layout - Discharge of conditions 4, 6, 7, 9, 11, 13, 15 and 17 of planning permission 21/01161/VAR	Discharge of Conditions Complete	30/08/2022
22/00626/FUL	Full Application	7 Elton Road Derby DE24 8ED	Single storey rear extension to dwelling house ground floor bedroom and shower room	Approval	05/08/2022
22/00627/FUL	Full Application	119 Matlock Road Derby DE21 4QE	Single storey side extension to dwelling house (bedroom)	Approval	25/08/2022
22/00644/FUL	Full Application	52 Merchant Street Derby DE22 3AQ	Single storey side and rear extensions to dwelling house (lounge and dining area) and installation of a dormer to the rear elevation and rooflights to front elevation	Approval	12/08/2022
22/00650/FUL	Full Application	9 Yew Tree Close Derby DE24 0PZ	Installation of a new roof to the existing single storey side projection	Approval	10/08/2022
22/00657/FUL	Full Application	121 Chaddesden Lane Derby DE21 6LL	Demolition of garage and car port. Single storey side and rear extensions to dwelling house (garage, utility, shower room, bedroom	Approval	10/08/2022

			and enlargement of kitchen)		
22/00661/FUL	Full Application	28 Wheeldon Avenue Derby DE22 1HN	Single storey rear extension to dwelling house (kitchen) and installation of a glazed canopy to the side elevation	Approval	02/08/2022
22/00683/PNRIA	Prior Approval - Shop / Bank to Resi	1C Welbeck Grove Derby DE22 2LS	Change of use from offices (Use Class E) to dwelling (Use Class C3)	Approval	26/08/2022
22/00690/FUL	Full Application	29 Bennett Street Derby DE24 9BE	Two storey rear and single storey front/side and rear extensions to dwelling house (porch, sitting/dining area, shower room and enlargement of bedroom)	Approval	18/08/2022
22/00698/FUL	Full Application	215 Upper Dale Road Derby DE23 8BS	Change of use from dwelling house (Use Class C3) to cafe (Use Class E) with flat above (Use Class C3) including installation of a shop front	Approval	16/08/2022
22/00716/FUL	Full Application	9 Woodsorrel Drive Derby DE21 2UF	First floor rear extension to dwelling house (en-suite)	Approval	10/08/2022
22/00730/VAR	Variation of Condition	Vacant Land Uttoxeter New Road/Talbot Street Derby (Access Off Uttoxeter New Road)	Erection of Foodstore (Use Class E) with access, car parking, landscaping and associated works - Variation of condition 2 of previously approved planning permission Code No. 20/01247/FUL to amend the landscaping scheme	Approval	19/08/2022
22/00767/FUL	Full Application	14 Meerbrook Close Derby DE21 2BE	Two storey side and single storey front extensions to dwelling house (porch, garage, utility, W.C., bedroom and en-suite)	Approval	17/08/2022
22/00776/FUL	Full Application	14 Pendlebury Drive Derby DE3 9SS	Three storey side and single storey front extensions to dwelling house (garage, cinema room, bathroom, kitchen/dining/living space, bedroom and en-suite)	Refused	12/08/2022
22/00780/FUL	Full Application	19 Newbridge Crescent Derby DE24 9FR	Single storey rear extension to dwelling (living space) and installation of render	Approval	04/08/2022
22/00797/LBA	Listed Building Consent -	The Pearson Building	Removal of upper section of the existing	Approval	16/08/2022

	Alterations	King Street Derby DE1 3EE	external fire escape stair to the rear elevation, modification of existing external door opening at second floor level to form window to match adjacent windows, removal of internal fire glazing to five first floor windows and replacement roof finish to the remaining section of staircase.		
22/00804/TPO	Works to a tree with a TPO	7 Thatch Close Derby DE22 1EA	Crown reduction by 1m and removal of branches within 2m of garage of Beech and Sycamore trees protected by Tree Preservation Order No. 154	Approval	05/08/2022
22/00808/RES	Reserved Matters	34 Hill Cross Avenue Derby DE23 1FW	Demolition of bungalow. Residential development (two dwellings) - approval of reserved matters of appearance, access, landscaping, layout and scale under outline permission Code no. 19/00755/OUT	Approval	16/08/2022
22/00818/FUL	Full Application	2 Stevenson Place Derby DE23 3EX	Single storey rear and side extension to dwelling house (living room, study and cloakroom) and formation of patio with retaining wall	Approval	05/08/2022
22/00819/ADV	Advertisement Consent	Highway Verge Adjacent To Markeaton Park Allotments Kedleston Road Derby	Display of two free standing event advertising boards	Approval	05/08/2022
22/00820/ADV	Advertisement Consent	Land Station Approach/Siddals Road Derby	Display of two free standing event advertising boards	Approval	05/08/2022
22/00823/FUL	Full Application	2 Charingworth Road Derby DE21 2QD	Single storey side and rear extension to dwelling house (sitting room, utility and shower room)	Approval	10/08/2022
22/00846/FUL	Full Application	Pavement Adjacent 30 And 38 St Peters Street Derby	Installation of a multifunctional Communication Hub including defibrillator	Refused	02/08/2022
22/00847/ADV	Advertisement Consent	Pavement Adjacent 30 And 38 St Peters Street Derby	Installation of digital display screen to rear of Communication Hub unit to show static illuminated content	Refused	04/08/2022

22/00860/FUL	Full Application	30 Westgreen Avenue Derby DE24 9AP	Single storey rear and side extensions to dwelling house (kitchen, dining room and bedroom)	Approval	02/08/2022
22/00869/FUL	Full Application	201 Rykneld Road Derby DE23 4DL	Retention of single storey front and rear extensions to dwelling house (enlargement of hall/living room/guest room, laundry room and kitchen) and formation of room within the roofspace	Approval	04/08/2022
22/00872/FUL	Full Application	Special Offer Supplies Stores Road Derby DE21 4BD	Installation of three portable cabins, storage shed, loading dock and extension to warehouse building - Retrospective application	Approval	17/08/2022
22/00875/FUL	Full Application	153 Western Road Mickleover Derby DE3 9GS	Erection of outbuilding (garage)	Application Withdrawn	02/08/2022
22/00876/NONM	Non-Material Amendment	20 Duffield Road Derby DE1 3BB	Re-building of the external boundary wall. Non-Material Amendment to previously approved Application 21/01299/FUL	Approval	10/08/2022
22/00883/FUL	Full Application	38 - 40 St Peters Street Derby DE1 1SH	Installation of a new shopfront	Approval	05/08/2022
22/00884/ADV	Advertisement Consent	38 - 40 St Peters Street Derby DE1 1SH	Display of one illuminated fascia sign and one non illuminated projecting sign	Approval	02/08/2022
22/00888/FUL	Full Application	22 Wade Drive Derby DE3 9BS	Single storey rear extension to dwelling house (lounge area and enlargement of kitchen)	Approval	01/08/2022
22/00895/FUL	Full Application	43 Farley Road Derby DE23 6BW	Sub-division of existing dwellinghouse to create 3 new flats with extensions and alterations (kitchen, bedroom and stairwell with elevator).	Approval	16/08/2022
22/00900/FUL	Full Application	16 Lockwood Road	Single storey front extension to dwelling	Approval	17/08/2022

		Derby DE22 2JD	house (porch, w.c, and enlargement of lounge/dining room and workshop) including alterations to form pitched roof on workshop		
22/00903/FUL	Full Application	15 Carlton Road Derby DE23 6HB	Single storey rear and two storey side/rear extension to dwelling house (enlargement of kitchen/diner, bedroom and ensuite)	Approval	04/08/2022
22/00913/TPO	Works to a tree with a TPO	Petrol Filling Station Tesco Express 483 Nottingham Road Derby DE21 6NA	Felling of a Horse Chestnut tree protected by Tree Preservation Order no. 214	Refused	03/08/2022
22/00918/FUL	Full Application	12 Muirfield Drive Derby DE3 9YA	Change of use and alterations to ground floor of domestic garage to form one studio apartment (Use Class C3)	Refused	05/08/2022
22/00919/ADV	Advertisement Consent	1 - 7 Abbey Street Derby DE22 3SJ	Display of 4 illuminated fascia signs and a painted mural	Approval	02/08/2022
22/00920/CLP	Lawful Development Certificate -Proposed	3 Harpur Avenue Derby DE23 3EJ	Single storey rear extension to dwelling house (enlargement of kitchen/dining area)	Approval	02/08/2022
22/00921/FUL	Full Application	12 Chevin Road Derby DE1 3EX	Installation of six solar panels to the front elevation	Refused	17/08/2022
22/00933/CLE	Lawful Development Certificate -Existing	46 Rutland Street Derby DE23 8PR	Use of the building as a six bedroom (six occupant) house in mulitple occupation (Use Class C4)	Approval	03/08/2022
22/00936/FUL	Full Application	20 Bethulie Road Derby DE23 8UT	Two storey and single storey extensions to dwelling house. Erection of an additional dwelling house (Use Class C3)	Approval	16/08/2022
22/00939/LBA	Listed Building Consent - Alterations	19 - 21 St James Street Derby DE1 1RF	Refurbishment of ground floor unit including installation of a suspended ceiling, new door, new stud walling and widening of an existing doorway (retrospective application)	Approval	05/08/2022
22/00941/FUL	Full Application	152 - 156 Abbey Street	Change of use and two storey extensions to	Refused	19/08/2022

		Derby DE22 3SS	office building to form three flats in multiple occupation (Use Class C4) and two flats (Use Class C3)		
22/00942/FUL	Full Application	15 Oaklands Avenue Derby DE23 2QG	Two storey side extension to dwelling house (covered way and landing/study area) and roof alterations to include installation of a rear dormer to form rooms in the roof space (storage, two bedrooms and shower room)	Approval	19/08/2022
22/00943/FUL	Full Application	14 Cavendish Way Derby DE3 9BJ	Single storey side/rear extension to dwelling house (enlargement of kitchen) and alterations to rear raised patio area	Approval	04/08/2022
22/00944/FUL	Full Application	4 Tweeds Muir Close Derby DE21 2JL	First floor side and single storey rear extensions to dwelling house (bedroom, study and sun room)	Approval	04/08/2022
22/00951/NONM	Non-Material Amendment	Kingsway Hospital Kingsway Derby DE22 3LZ	Demolition of existing warehouse and storage yard and construction of a new mental health facility and energy centre, associated landscaping, groundworks, parking, and access arrangements - Non-material amendment to previously approved planning permission 21/02055/FULPSI to amend condition 5 (landscaping) to allow details to be submitted pre-occupation rather than pre-commencement	Approval	26/08/2022
22/00955/CLP	Lawful Development Certificate -Proposed	45 Courtland Drive Derby DE24 0GL	Single storey rear extension to dwelling house	Approval	12/08/2022
22/00957/FUL	Full Application	29 Goodsmoor Road Derby DE23 1NH	Rear, ground and first floor extensions to dwelling house.	Approval	01/08/2022
22/00973/FUL	Full Application	Land Adjacent To 8 Friars Close Derby DE22 1FD	Erection of a dwelling house with detached garage (Use Class C3)	Application Withdrawn	30/08/2022
22/00975/FUL	Full Application	15 Rykneld Way Derby DE23 4AT	Two storey side and rear and single storey rear extensions to dwelling house (study, wet room, utility, kitchen/dining/sitting area, en-	Approval	30/08/2022

			suite and three bedrooms)		
22/00976/FUL	Full Application	14 Newbridge Crescent Derby DE24 9FR	Single storey rear extension to dwelling (enlargement of kitchen/dining area), installation of a dormer to the rear elevation and new window to the first floor side elevation to form rooms in the roof space (bedroom and en-suite)	Approval	10/08/2022
22/00978/VAR	Variation of Condition	169 Pastures Hill Derby DE23 4AZ	Raising of the roof height and extensions to the existing outbuilding (garage and garden room with storage/workshop over) - Variation of conditions 2 and 5 of previously approved planning permission Code No. 21/00771/FUL to amend the approved plans	Approval	12/08/2022
22/00979/FUL	Full Application	166 Stenson Road Derby DE23 1JG	Single storey rear extension to dwelling (living space)	Approval	11/08/2022
22/00980/FUL	Full Application	12 Lindon Drive Derby DE24 0LN	Single storey side and rear extensions to dwelling house (porch, utility/shower room, store and enlargement of dining room)	Approval	11/08/2022
22/00982/PNRT	Prior Approval - Telecommunications	Highway Verge Kingsway Derby	Installation of a 20m high monopole, equipment cabinets and ancillary development	Approval	31/08/2022
22/00986/CLP	Lawful Development Certificate -Proposed	22 Michigan Close Derby DE21 6WD	Use of the land for siting a mobile home for use ancillary to the main dwelling	Approval	12/08/2022
22/00991/ADV	Advertisement Consent	Bus Shelter Adjacent Entrance To Asda Derby Road Spondon Derby	Display of one internally illuminated single sided digital display screen	Approval	19/08/2022
22/00998/ADV	Advertisement Consent	Bus Shelter Opposite Chellaston Academy Swarkestone Road Derby	Display of one internally illuminated double sided digital display screen	Approval	16/08/2022

22/01001/ADV	Advertisement Consent	Jurys Inn King Street Derby DE1 3DB	Display of various signage	Approval	18/08/2022
22/01002/ADV	Advertisement Consent	Bus Shelter Ivy Square Osmaston Road Derby DE23 8LG	Display of one internally illuminated single sided digital display screen	Approval	25/08/2022
22/01003/ADV	Advertisement Consent	Bus Shelter Adjacent To 198 Derby Road Chellaston Derby	Display of one internally illuminated double sided digital display screen	Approval	17/08/2022
22/01004/FUL	Full Application	171 Western Road Mickleover Derby DE3 9GS	Two storey and single storey extensions to dwelling house (family room, garage, W.C., two bedrooms and bathroom)	Approval	05/08/2022
22/01008/NONM	Non-Material Amendment	Garage Court Paterson Avenue Derby DE21 6RP	Erection of six apartments (Use Class C3) in a two storey block and associated ground works - Non-material amendment to previously approved planning permission 21/00501/FUL to include the installation of solar panels to the roof and erection of a retaining wall	Approval	11/08/2022
22/01016/FUL	Full Application	52 Vicarage Avenue Derby DE23 6TP	Single storey rear extension to dwelling house (dining area and utility)	Approval	15/08/2022
22/01017/FUL	Full Application	87 Blagreaves Lane Derby DE23 1FG	Extension to outbuilding (formation of self contained annexe accommodation and enlargement of store)	Refused	05/08/2022
22/01019/FUL	Full Application	6 Western Road Mickleover Derby DE3 9GN	Single storey front/side extension to dwelling house (porch structure) and erection of front boundary wall	Approval	17/08/2022
22/01024/DISC	Compliance/Discharge of Condition	Former Sports Centre Moorways Sports Complex	Erection of a leisure centre (Use Class D2) including a 50M swimming pool, leisure water	Discharge of Conditions Complete	15/08/2022

		Moor Lane Derby DE24 9HY	including water slides, fitness suite, studios and other complementary uses with associated parking, drainage and related infrastructure. Demolition of store - Discharge of condition nos 9, 18 and 21 of previously approved permission 19/01206/FUL		
22/01026/FUL	Full Application	18 Eastwood Drive Derby DE23 6BN	Demolition of bungalow. Erection of a dwelling house (Use Class C3)	Approval	23/08/2022
22/01028/FUL	Full Application	51 Cavendish Way Derby DE3 9BL	Raising of the roof height to form rooms in the roof space (bedroom, en-suite and study) and erection of an outbuilding (garage and studio)	Refused	11/08/2022
22/01030/FUL	Full Application	53 Grasmere Crescent Derby DE24 9HS	Single storey front and side extensions to dwelling house (porch, two bedrooms with en-suites and utility)	Approval	11/08/2022
22/01033/FUL	Full Application	44 Normanton Lane Derby DE23 6GQ	Installation of a dormer to the side elevation	Approval	23/08/2022
22/01036/FUL	Full Application	440 Kedleston Road Derby DE22 2TG	Two storey and single storey front, side and rear extensions to dwelling house with rooms in the roof space and erection of two storey outbuilding (garage and home study area) together with the installation of render	Approval	25/08/2022
22/01037/FUL	Full Application	24 Bath Road Derby DE3 9BW	Single storey rear extension to dwelling (hobby room/bedroom) and erection of outbuilding (workshop)	Approval	23/08/2022
22/01038/TPO	Works to a tree with a TPO	32 Station Road Chellaston Derby DE73 5SU	Felling of a Weeping Willow tree protected by Tree Preservation Order no. 422	Approval	30/08/2022
22/01043/FUL	Full Application	Boulton St Marys Church Boulton Lane Derby DE24 0GE	Installation of a pair of doors to the south porch	Refused	25/08/2022

22/01045/FUL	Full Application	19 - 21 St James Street Derby DE1 1RF	Change of use from estate agents (Use Class E) to an urban room (Use Classes F1 (e) and Sui Generis) (Retrospective Application)	Approval	05/08/2022
22/01046/FUL	Full Application	59 Valley Road Littleover Derby DE23 6HR	Single storey rear extension to dwelling house (kitchen)	Approval	26/08/2022
22/01047/FUL	Full Application	36 Morley Street Derby DE22 3DG	Change of use from dwelling house (Use Class C3) to children's care home (Use Class C2)	Approval	25/08/2022
22/01048/FUL	Full Application	47 Littleover Lane Derby DE23 6JH	Singe storey rear extension to dwelling house (utility and garden room)	Approval	15/08/2022
22/01055/PNRH	Prior Approval - Householder	33 Wilsthorpe Road Derby DE21 4QR	Single storey rear extension (projecting beyond the rear wall of the original house by 4.2m, maximum height 3.8m, height to eaves 2.85m) to dwelling house	Prior Approval Not Required	05/08/2022
22/01059/FUL	Full Application	10 Gayton Avenue Derby DE23 1GA	Erection of a canopy to the front elevation - retrospective application	Approval	15/08/2022
22/01063/FUL	Full Application	18 Whitaker Street Derby DE23 8FB	Single storey side/rear extension to dwelling house (bedroom and shower room)	Approval	15/08/2022
22/01064/FUL	Full Application	57 Utttoxeter Road Derby DE3 9GF	Erection of an outbuilding (garage)	Refused	15/08/2022
22/01065/PNRH	Prior Approval - Householder	57 Wiltshire Road Derby DE21 6EY	Single storey rear extension (projecting beyond the rear wall of the original house by 4.35m, maximum height 3.6m, height to eaves 2.4m) to dwelling house	Prior Approval Approved	05/08/2022
22/01067/FUL	Full Application	8 Edale Avenue Mickleover Derby DE3 9FY	Single storey rear extension to dwelling house (conservatory)	Approval	30/08/2022

22/01071/TPO	Works to a tree with a TPO	St Peters Church Of England Junior School Thornhill Road Littleover Derby DE23 6FZ	Severing of roots of a Lime tree protected by Tree Preservation Order no. 319	Approval	05/08/2022
22/01072/FUL	Full Application	2 Fairway Close Derby DE22 2PD	Single storey side and rear extensions to dwelling house (study, bedroom and enlargement of kitchen/dining area)	Approval	15/08/2022
22/01074/FUL	Full Application	119 Pear Tree Street Derby DE23 8PL	Two storey and single storey rear extensions to dwelling house (kitchen, utility, shower room and enlargement of bedroom). Roof alterations including installation of front and rear dormers to form rooms in the roof space (bedroom and en-suite) and conversion and alterations to outbuilding to dependant relative accommodation	Refused	30/08/2022
22/01076/FUL	Full Application	19 Cobthorne Drive Derby DE22 2SY	Alterations to dwelling house to enclose existing side elevation carport/porch to form porch, hall and W.C.	Approval	17/08/2022
22/01081/FUL	Full Application	8 Wenlock Close Derby DE3 9NT	Single storey rear extension to dwelling house and installation of a bay window to the front elevation	Approval	15/08/2022
22/01084/FUL	Full Application	50 West Bank Road Derby DE22 2FZ	First floor side and single storey rear extensions to dwelling house (dining area and enlargement of bedroom)	Approval	23/08/2022
22/01087/DISCLB	Compliance/Discharge of Condition LB	Derby College The Roundhouse Roundhouse Road Derby DE24 8JE	Installation of a glazed screen to form a draught lobby - Discharge of condition 3 of Listed Building Consent application 22/00457/LBA	Discharge of Conditions Complete	18/08/2022
22/01089/PNRH	Prior Approval - Householder	175 Cameron Road Derby DE23 8RU	Single storey rear extension (projecting beyond the rear wall of the original house by 6m, maximum height 3m, height to eaves 3m) to dwelling house	Prior Approval Approved	05/08/2022
22/01095/ADV	Advertisement Consent	Unit 8A Meteor Centre	Display of various signage	Approval	19/08/2022

		Mansfield Road Derby DE21 4SY			
22/01096/ADV	Advertisement Consent	19 - 21 St James Street Derby DE1 1RF	Display of two non-illuminated fascia signs - retrospective application	Approval	05/08/2022
22/01105/FUL	Full Application	169 Cameron Road Derby DE23 8RU	Two storey and single storey rear extensions to dwelling house (kitchen/dining area and bedroom), roof alterations to include installation of a rear dormer to form rooms in the roof space (two bedrooms and shower room) and installation of a new first floor side elevation window	Approval	19/08/2022
22/01107/PNRH	Prior Approval - Householder	327 Uttoxeter Road Derby DE3 9AH	Single storey rear extension (projecting beyond the rear wall of the original house by 5.75m, maximum height 2.97m, height to eaves 2.75m) to dwelling house	Prior Approval Not Required	11/08/2022
22/01108/FUL	Local Council Own Development Reg 3	Littleover Community School Pastures Hill Derby DE23 4BZ	Installation of replacement windows and door	Approval	15/08/2022
22/01112/FUL	Full Application	5 Gable Court Derby DE3 9ND	Single storey side extension to dwelling house (garage)	Approval	19/08/2022
22/01113/CLP	Lawful Development Certificate -Proposed	4 Rivenhall Close Derby DE23 3HT	Single storey rear extension to dwelling house	Refused	22/08/2022
22/01116/FUL	Full Application	23 Moorway Lane Derby DE23 2FR	Single storey rear extension to dwelling house (kitchen and lounge)	Approval	15/08/2022
22/01120/NONM	Non-Material Amendment	Derby Sewage Treatment Works Megaloughton Lane Derby DE21 7BR	Erection of two wind turbines, access track, control building, temporary site compound and ancillary development - Non-material amendment to previously approved planning permission 09/10/01144 to amend the wording of conditions 3 and 4	Approval	22/08/2022

22/01121/FUL	Full Application	Derby Sewage Treatment Works Megaloughton Lane Derby DE21 7BR	Permanent retention of an existing substation	Approval	22/08/2022
22/01123/CLP	Lawful Development Certificate -Proposed	1 Roehampton Drive Derby DE22 4EE	Single storey rear extension to dwelling house (utility, W.C. and office)	Approval	25/08/2022
22/01127/FUL	Full Application	St Andrews Academy St Andrews View Derby DE21 4EW	Single storey front extension to school (entrance lobby and meeting room)	Approval	24/08/2022
22/01131/FUL	Full Application	Sunny Hill Service Station Blagreaves Lane Derby DE23 1PT	Raising of the roof height	Approval	25/08/2022
22/01132/FUL	Full Application	14 Stanage Green Derby DE3 9DX	Land levelling and construction of new steps to the front elevation with uniform riser and hand rail	Approval	24/08/2022
22/01139/FUL	Full Application	77 Hobkirk Drive Derby DE24 3DT	Two storey side and rear extensions to dwelling house (living space, kitchen, office, en-suite and enlargement of bedroom)	Approval	15/08/2022
22/01140/VAR	Variation of Condition	Land Adjacent To 125 Oaklands Avenue Derby DE23 2QL	Demolition of stairwell and store room building. Erection of six flats (Use Class C3) in a three storey block - Variation of condition 2 of previously approved planning permission 19/01746/FUL to amend the parking layout and to include solar panels on both front and rear elevations. Approval of Condition 3 (materials).	Approval	30/08/2022
22/01144/FUL	Full Application	1 Moorgate Derby DE22 4HH	Two storey side and single storey side and rear extensions to dwelling house (dining room, utility, storage, tea room, habitable room and bathroom)	Approval	19/08/2022
22/01145/FUL	Full Application	25 Brisbane Road Derby DE3 9LT	Single storey front and rear extensions to dwelling house	Approval	30/08/2022

22/01147/FUL	Full Application	244 Duffield Road Derby DE22 1BL	Installation of a dormer to the rear elevation	Approval	30/08/2022
22/01153/PNRH	Prior Approval - Householder	7 Cheshire Street Derby DE24 9AH	Single storey rear extension (projecting beyond the rear wall of the original house by 8m, maximum height 3.84m, height to eaves 2.62m) to dwelling house	Prior Approval Not Required	16/08/2022
22/01156/FUL	Full Application	4 Elmtree Avenue Derby DE24 8ET	Erection of 1.8m high front boundary fence and gates	Refused	31/08/2022
22/01160/CLP	Lawful Development Certificate -Proposed	43 Pinglehill Way Derby DE73 6NB	Conversion of garage into habitable space including bricking up of doors and installation of windows	Approval	30/08/2022
22/01165/DISC	Compliance/Discharge of Condition	Former Celanese Site Holme Lane Derby DE21 7BS	Outline planning application with access details and scale parameters included, for the redevelopment of a previously industrial brownfield site for B2, B8, associated E Class and F1 purposes and ancillary uses to provide up to 209,000 sq.m. of floorspace for facilities for food production; distribution; training and education; associated food support businesses and supporting energy generation/waste disposal - Variation of condition 11 (flood risk) of previously approved planning permission 21/01033/VAR - Discharge of condition 26 of planning permission 21/02197/VAR	Discharge of Conditions Complete	09/08/2022
22/01171/DISC	Compliance/Discharge of Condition	Site Of Former Celanese Acetate Holme Lane Derby DE21 7BS	Outline planning application with access details and scale parameters included, for the redevelopment of a previously industrial brownfield site for B2, B8, associated E Class and F1 purposes and ancillary uses to provide up to 209,000 sq.m. of floorspace for facilities for food production; distribution; training and education; associated food support businesses and supporting energy generation/waste disposal - Variation of condition 11 (flood risk) of previously approved planning permission 21/01033/VAR - Discharge of condition 15 -	Discharge of Conditions Complete	23/08/2022

			phase 2 plot 8 of approved permission 21/02197/VAR		
22/01177/DISC	Compliance/Discharge of Condition	4 Camp Street Derby DE1 3SD	Installation of replacement windows and door and re-instatement of stone mullion to the front elevation - Discharge of condition 3 of planning permission 22/00041/FUL	Discharge of Conditions Complete	12/08/2022
22/01178/TPO	Works to a tree with a TPO	Royal School For The Deaf 180 Ashbourne Road Derby DE22 3BH	Felling of two Horse Chesnut trees protected by Tree Preservation Order no. 456	Approval	30/08/2022
22/01187/PNRH	Prior Approval - Householder	68 Arnhem Terrace Derby DE21 7PR	Single storey rear extension (projecting beyond the rear wall of the original house by 4m, maximum height 4m, height to eaves 3m) to dwelling house	Prior Approval Not Required	24/08/2022
22/01198/PNRH	Prior Approval - Householder	54 Valley Road Littleover Derby DE23 6HS	Single storey rear extension (projecting beyond the rear wall of the original house by 5m, maximum height 3m, height to eaves 3m) to dwelling house	Prior Approval Not Required	24/08/2022
22/01217/PNRH	Prior Approval - Householder	84 Blagreaves Lane Derby DE23 1FP	Single storey rear extension (projecting beyond the rear wall of the original house by 6m, maximum height 4m, height to eaves 3m) to dwelling house	Prior Approval Not Required	30/08/2022
22/01223/DISC	Compliance/Discharge of Condition	Chellaston Infant School School Lane Derby DE73 6TA	Demolition of two temporary classrooms. Erection of teaching block. - Discharge of condition 4 of previously approved permission 21/01922/FUL	Discharge of Conditions Complete	31/08/2022
22/01224/FUL	Full Application	20B Dean Close Derby DE23 4EF	Extensions to dwelling house (wet room and kitchen/diner)	Approval	30/08/2022
22/01246/VAR	Variation of Condition	21 Derby Lane Derby DE23 8UB	Residential development (two flats in a detached single storey building) and demolition of existing detached garage - variation of conditions 1 and 3 of previously approved application 20/00060/OUT X	Application Withdrawn	16/08/2022

Paragraph 111 of the National Planning Policy Framework states that “Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.” To be clear, ‘severe’ does not relate to parking, but the consequences of congestion as a result of the traffic effects arising from the development. It is the view of the Highway Authority that it would not be possible to argue that the scheme would lead to ‘unacceptable impacts’ to highway safety.

Overall it is considered that the layout meets with the aims of Policy CP23 where it provides for suitable facilities available to the application site.

The Council’s Highway Officer confirms the development would not lead to a severe impact upon the adjacent highway network or would lead to ‘unacceptable impacts’ to highway safety. As such the proposal would be compliant with planning policy in this regard.

8. Recommended decision and summary of reasons:

8.1. Recommendation:

To grant planning permission with conditions.

8.2. Summary of reasons:

The proposed residential use would increase the variety and amount of housing delivery hence the proposal is considered to be acceptable in principle in this residential area. The proposal meets all the Council's housing standards, regarding room sizes and a satisfactory quality of living environment would be provided. The proposal would not cause any overriding adverse impact on highway safety or residential amenity.

8.3. Conditions:

1. Standard condition: 3 year time limit

Reason: As required by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004

2. Standard condition: approved plans.

Reason: For the avoidance of doubt.

3. Standard condition: Control use as a 7-person House in Multiple Occupation and for no other purpose. All rooms shall be used as single occupancy only.

Reason: This use only is permitted and other uses or a more intensive use, either within the same Use Class, or permitted by the Town and Country Planning (GPD) Order 2015 may not be acceptable to the Local Planning Authority in this location because of the potential impact on the amenities of the surrounding area, and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the

Committee Report Item No: 7.8

Application No: 22/00603/FUL

Type: Full Application

adopted City of Derby Local Plan Review as included in this Decision Notice

4. Cycle parking layout as indicated on the approve drawing has been provided. That area shall not thereafter be used for any purpose other than the parking of cycles.

Reason: To promote sustainable travel and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice

8.4. Informative Notes:

Housing Standards:

If the HMO property is occupied by 5 or more persons a mandatory HMO licence will be required:

<https://www.derby.gov.uk/trading-standards-environmental-health/environmental-health/housing-standards/houses-in-multiple-occupation/about/>

This will include individual HMO flats that are occupied by 5 or more persons except purpose-built flats in a block containing 3 or more flats. Flats created within converted buildings will not be regarded as purpose built. Regard shall also be had to the LACoRS Fire Safety Guide, which Housing Standards refer to regarding fire safety precautions in rented property:

<https://www.cieh.org/media/1244/guidance-on-fire-safety-provisions-for-certain-types-of-existing-housing.pdf>

8.5. Application timescale:

An agreed extension of time is in place until 12 October.

