

Committee Report Item No: 8.2

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*

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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).

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		<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>	

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		<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>

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		<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.

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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*

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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.

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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.

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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.

St Peters Quarter Bid

St Peters Quarter Business Improvement District would like to place on record its support for the above listed planning applications.

St Peters Quarter BID are into their third 5-year term running until 2027 and will continue to be a collective voice for all businesses currently in, or wanting to set up in and improve our area.

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This planning scheme will allow for the incubation of local entrepreneurs wanting to set up their first food business in the city encouraging budding talent. It makes brilliant use of redundant space that has become a hive of fly tipping, drug use and ASB and it helps revitalise the area assisting with footfall, dwell time and spend in the city.

The direct area will benefit from having this on their doorstep and it helps connect areas together. Currently it is wasteland that fronts a concrete high rise whereas the plan to develop this area helps soften this view somewhat.

There is a want for this to happen from the businesses in the area that we have spoken to and our board of directors also have a desire to see the land developed.

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

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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, 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

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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.

5.2. Conservation Area Advisory Committee:

CHAC were reminded of the previous application in September 2021. The comments made by the Committee included concerns about the disturbance of below ground archaeology and the need to ensure the necessary archaeological fieldwork took place. The likelihood that as part of the churchyard there are graves; there were gravestones around the perimeter. CHAC had felt the previous proposal was lacking in imagination, the open area could be retained by removal of some kiosks to enable the creation of a larger central and open seating, perhaps with covered seating. The kiosk design was poor and the use of uPVC materials in the construction was not beneficial. CHAC had previously objected on the details of the project but did not have any great reservations overall.

CHAC noted that this application had taken on board their previous comments. The current proposal was for 12 market stalls of a timber structure with greened roofs, previously 19 stalls had been proposed, there would be seating for approximately 100 people and toilets would be installed.

CHAC noted the contents of an email which highlighted there could be human burials on the land from the 10th century when St Peter's Church could have been founded. Such human remains are protected by statute under the 1857 Burials Act. In response to Derby City Council's Consultation the County Council had advised that an archaeological field evaluation should take place before proceeding with the development. However, the only measure made by the applicant to address the issue had been to provide a written Scheme of Investigation for an archaeological watching brief. This was inadequate for a proposal which could result in the disturbance of a large number of human remains. There was a need to understand the potential impact of the proposal on the human remains before continuing. The applicant should be asked to submit a more detailed indication of ground disturbance from this proposal, other than just on tree roots, and the provision of findings from an archaeological field evaluation.

CHAC heard that the existence of a burial site was speculative. However, to have a ground evaluation would be useful, particularly as the ground levels had been raised. The scheme was well considered in protecting the trees and there was appropriate access to the site though a new hole in the wall, and the stonework would be used to repair the back wall. Another CHAC member felt the scheme was better and that if

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the ground level had been raised then any burials would be at a considerable depth and not likely to be affected. A full-scale site excavation would be a large undertaking and perhaps trial trenching could be used or perhaps it would be better to leave the ground undisturbed. The structures proposed were lightweight and not permanent so the land could be put back in place after use. CHAC noted the central courtyard was not covered and it was suggested that a free-standing canopy could be put in place, but it was decided that using umbrellas to provide cover would be the simplest solution. CHAC had no objection and supported the proposal and they hoped that it would improve that area of Derby.

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.

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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.

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)

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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 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.

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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.

Development Control Archaeologist (03/10/2022)

In summary, please take this as confirmation that our previous comments and advice still apply (latest as 21st September).

The archaeologist's comments reproduced below are I believe those I already responded to on 21st September.

Just to summarise, the WSI is approved and relates to *pre-determination* evaluation as per local plan policy and NPPF para 194.

Without the results of the evaluation the application is deficient against NPPF para 194 and we object on these grounds.

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

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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 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

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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 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

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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 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.

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:

Listed Building Applications are not determined in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and so do not need to be determined in accordance with the development plan.

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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 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/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

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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* 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.*

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- *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 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

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- 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 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~~

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~~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 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.

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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 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.

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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 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”

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- 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 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 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

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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

