

Committee Report Item No: 8.1

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

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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		

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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*

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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.

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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

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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.

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.

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:

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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 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:

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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 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:

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

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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 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. 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 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

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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 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.

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(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 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

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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 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

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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 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

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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, 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.

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).

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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. 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).

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).

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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 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

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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.

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 trees 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

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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 appropriated 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 regarding 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.

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.

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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.
- 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

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- 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 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.

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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.
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.*

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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?

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.

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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. City Centre Neighbourhood Manager

Evidence and experience suggests that improving the physical environment and increasing the footfall in an area will result in a decrease in crime and anti social behaviour. Some of the types of behaviour we are seeing in the St Peter's Cross area are usually perpetrated in quieter and more secluded areas in the city centre, away from public view. I do believe that if this site was occupied during the day we could displace some of the anti social behaviour away from the area. Previously we have made decisions to situate events and mobile businesses in this area to deter some of the anti social behaviour which has seen some success. I definitely agree with Craig's email in terms of the applicant will need to give consideration and weight to associated crime and disorder issues which would require mitigation if the market will not be open after 5pm. Both lighting and CCTV would be recommended for security reasons to ensure the premises remain secure etc

5.10. 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 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

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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

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

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

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https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/enviromentandplanning/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*
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

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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 consuttee 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. 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

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– 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.

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

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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.

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

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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.

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

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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 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*

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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 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*

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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 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

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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 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	<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 cast iron spikes to the top of stone wall</i>• <i>Removal of existing harmful steel mesh fence</i>• <i>The layout and design of the proposal</i>

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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.

are considerate of the surrounding heritage assets and seek to minimise any impact on setting and fabric, without compromising future use.

- *The development consists of temporary structures which are reversible*

Public benefits include:

- *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 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.*
- *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*

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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.*
- *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 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.

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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 and would have a detrimental impact on protected trees which would compromise their long-term protection.</i> <i>The external materials, colour finish and</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 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</i>

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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

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

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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".

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

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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.

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

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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 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

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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

