



Derby City Council

PLANNING CONTROL COMMITTEE
7 September 2023

ITEM 8

Report sponsor: Chief Planning Officer
Report author: Development Control Manager

Applications to be Considered

Purpose

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

Recommendation(s)

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

Reason(s)

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

Supporting information

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

Public/stakeholder engagement

5.1 None.

Other options

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

Financial and value for money issues

7.1 None.

Legal implications

8.1 None.

Climate implications

9.1 None.

Other significant implications

10.1 None.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal		
Finance		
Service Director(s)		
Report sponsor	Paul Clarke	29/08/2023
Other(s)	Ian Woodhead	29/08/2023

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

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

1. Application Details

1.1. Address: Land north of Chaddesden Wood and south of Lime Lane, Oakwood

1.2. Ward: Oakwood

1.3. Proposal: Residential development (up to 150 dwellings)

1.4. Further Details:

Web-link to application:

<https://eplanning.derby.gov.uk/online-applications/PLAN/23/0008/OUT>

Brief description

This application relates to a green field site, approximately 8.2 hectares in area and previously in agricultural use, which lies south of Lime Lane and north of Chaddesden Wood in Oakwood. The land includes mature hedgerows and mature trees, with mature woodland to the east and south. The latter being Chaddesden Wood, which is also a local nature reserve and an ancient woodland containing veteran trees. Land levels rise gradually to the north from the wood and to the east. There is an area of new housing to the west of the application site, which has recently been completed and more established suburban-style housing, from the 1980's and 90's located to the east and south-west. To the north of Lime Lane, is open countryside, with agricultural land and former railway cutting, which is a footpath and cycle route known as the Northern Greenway. The site lies on the edge of the city boundary with land to the north, being in Erewash borough.

Outline permission is sought, including means of access, for erection of up to 150 dwellings on the site. All other details are reserved matters. The vehicular access would be formed off Lime Lane in a central position within the site. Various pedestrian routes are also proposed to be formed to provide access to the housing areas to the west and east of the site and link with the existing footpath into Chaddesden Wood. An illustrative masterplan and landscape strategy have been provided with the application, although these are indicative only and would not form part of the determination of the proposals. These show a suggested housing layout with two green space corridors running from north to south through the site, along the western boundary and through the centre to incorporate some existing trees and hedgerows and for provision of surface water attenuation features.

The application is supported by various technical and planning documents, including a Green Wedge Review, Arboricultural report, Ecological assessment, Flood Risk Assessment, Landscape appraisal and Transport Assessment.

2. Relevant Planning History:

Application No:	03/17/00283	Type:	Reserved matters
Decision:	Granted	Date:	19 September 2017
Description:	Erection Of 250 Dwellings and Formation Of Highways, Public Open Space, Drainage Attenuation Area And Landscaping - Approval Of Reserved Matters Under Previously Approved Outline Permission Code No. DER/04/15/00449. Land south of		

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

Mansfield Road, Breadsall Hill Top

3. Publicity:

- Site Notice
- Statutory Press Advert

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

4. Representations:

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

693 representations were received to the application. 686 were objections, including from Pauline Latham MP and the Oakwood ward Councillors. 6 supporting comments were also received. These can be summarised as:

- Adverse impact on Chaddesden Wood
- Adverse impact on wildlife and habitat
- Pressure on local facilities ie. Doctors, shops, nurseries
- Increase in traffic congestion on local roads
- Access off Lime Lane would increase traffic and be dangerous
- Loss of Green Wedge
- Increase in noise and disturbance
- Green spaces are very important for local community
- Harm to ancient woodland and nature reserve
- Lime Lane narrow, poor visibility and is dangerous
- Wood surrounded by housing development, harmful to wildlife and quality of the woodland
- Visual intrusion into countryside for recreation
- Loss of open space used by local community for re
- Increase in surface water and flooding would result.
- Sewage and drainage systems unable to cope
- Lack of school places

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

- Site should be retained as green corridor.

Comments have also been received from the Woodland Trust and Derbyshire Swift Conservation Project:

- Ecology report omits any specific recommendations for integrated nest bricks which should take form of swift bricks. Condition should be included to include up to 150 internal nest bricks in the dwellings
- Woodland Trust objects on basis of deterioration and detrimental impact on Chaddesden Wood, ancient semi-natural woodland and local nature reserve, due to: intensification of human activity and recreational disturbance: fragmentation of ancient woodland from adjacent semi-natural habitats: noise, light and dust pollution: threats to long term retention of trees from increased safety concerns: adverse hydrological impacts and cumulative effect of the above impacts resulting in long term deterioration:
- Buffer zone of at least 50 metres should be formed from development to prevent adverse impacts from pollution and disturbance and avoid root damage.
- Mitigation measures should be put in place to alleviate impact on the woodland and trees.
- Essential that no veteran trees are lost as result of the development.
- Green infrastructure would only partially alleviate pressures on Chaddesden Woods severance from the wider landscape.

5. Consultations:

5.1. Highways Development Control:

Revised comments received 7 August 2023:

Outline planning permission is sought for residential development of up to 150 dwellings on land at Lime Lane, Derby, with all matters reserved except access. It sets out the principle of the development and provides an indicative layout. However, because Section 106 Agreements have to be agreed at the outline stage, a framework travel plan and assessment of the wider off-site impacts has been undertaken. As such, any mitigation required, to make the quantum of development contained in this application acceptable in transport terms, has been assessed.

The issue with this development is not its overall impact on the highway network, it is its integration in sustainable transport terms with the surrounding urban area. Further, because the development is on the City boundary, and Lime Lane is a relatively rural road in character, the existing infrastructure for pedestrians and cyclists is limited. As such, this means that safe connections to the surrounding area, and facilities such as the Great Northern Greenway, are discontinuous and not direct.

Providing these connections is not unsurmountable. However, the developer is not willing to provide a footway/cycle link along Lime Lane. Further, the applicant has not provided any detailed modelling of the proposed mitigation scheme to signalise the Hill Top/Lime Lane junction. It is unclear whether the junction needs to be fully

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

signalised, however, it is the view of Highways Development Control that some form of signalised pedestrian crossing is required at this location. Further information is therefore required.

2.1 Opportunities for Sustainable Transport

The NPPF has a presumption in favour of sustainable development and consequently is seeking to influence the developer to put in place measures to provide opportunity and to encourage future residents to travel by non-car modes, wherever this is realistic and feasible i.e. measures to encourage walking, cycling and travel on public transport.

Non-Motorised Users

On average a person walks around 1.4 metres per second. On this basis a 20 minute walk distance is around 1.7 kilometres or 1 mile. The TA identifies a number of facilities that can be accessed by walking and cycling and the respective distance and travel time by mode.

Table 1: Walking and Cycle Distance and Times from the Application Site, Taken from the Applicant's Transport Assessment.

Facility	Approx. Distance (m)	Approx. Journey Time (minutes)*	
		Walking	Cycling
Education			
Parkview Primary School	680	8	3
The Honey Pot Day Nursery	850	10	4
Breadsall C of E Primary School	1670	20	7
Health			
Oakwood Medical Centre	1040	12	4
Wilson's Pharmacy	1150	14	5
Leisure			
Springwood Leisure Centre	895	11	4
Breadsall Cricket Club	1250	15	5
Retail			
The Windmill Inn	750	9	3
Wayfaring Road Shopping Complex (Including Hairdressers and Take-away stores)	1140	14	5
Newsagents/Off-License/Takeaway	1900	23	8
Co-operative Supermarket	1900	23	8
The Paddock	1950	23	8

*Assumes a walking speed of 1.4m/s (3.2mph or 5.0kph) taken from the Guidance for Providing for Journeys on Foot (IHT, 2000) and cycling speed of 4m/s (9mph or 14.4kph), taken from Local Transport Note 1/86.

Generally, the average walking trip is under 1 mile or 1.609 kilometres, which equates to a 20 minute walk time or 7 minute cycle time. As such, some of the destinations above are not within a suitable walking distance. For example, the co-operative supermarket, which would consist of a 48 minute round trip. Notwithstanding this, there are a number of destinations such as schools, health and leisure within a reasonable walking distance.

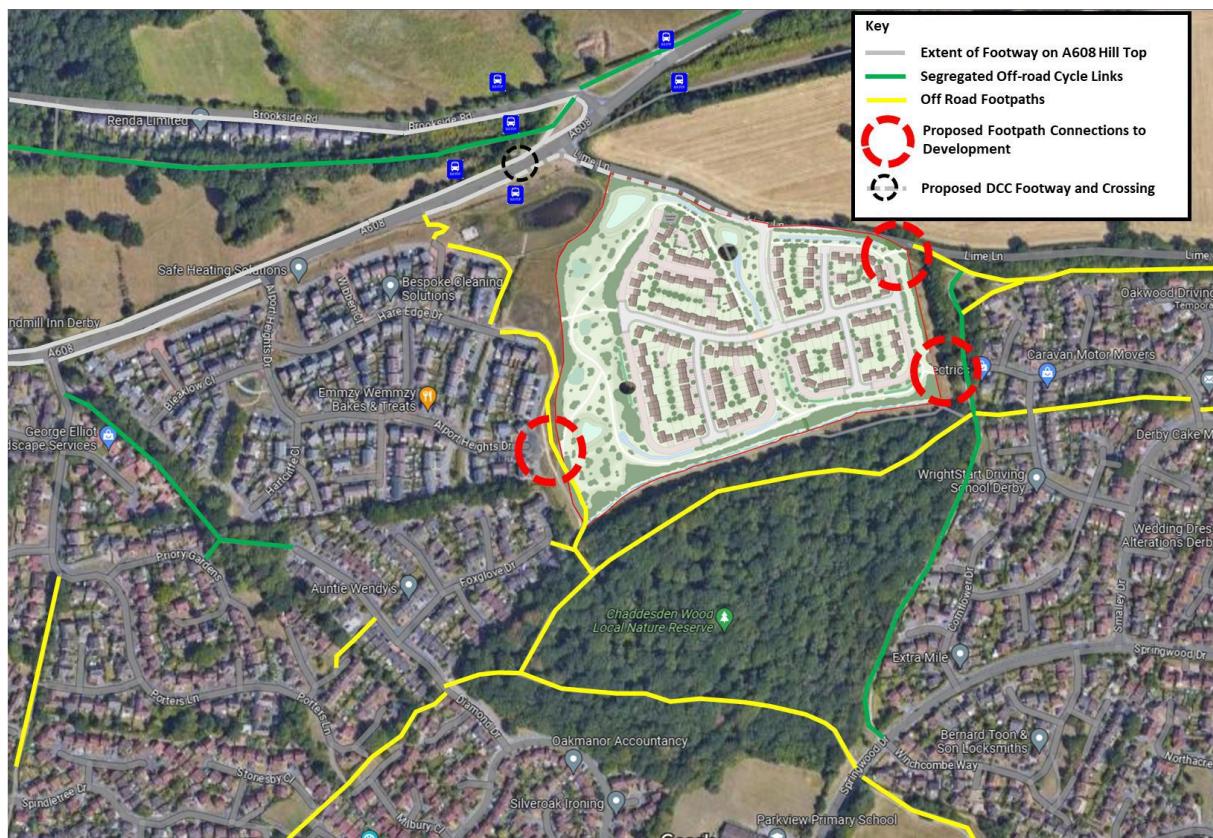
Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

However, the connection to these destinations relies on the site connecting to the existing footways and roads. The development has identified three footpath links, which are identified by the red dashed circles on Figure 1. The applicant has a letter of obligation from Persimmon Homes that they will provide the western link through the recently constructed development. However, this is linked to the applicant selling the site to Persimmon. This deal sits outside of the planning permission and if either of the parties pull out of the land sale then the developer will be left without the means to provide the connection.

Further, there is currently with no signed adoption agreements in place for the connecting roads through the adjacent development. Therefore, there is no surety that this will be available for use without controls being imposed by the neighbouring landowner. Also, the footways associated with the existing development are sub-standard for shared use (being only 2.0m wide) and do not extend far enough to be of benefit. Whilst some sections may be capable of being widened (subject to agreement); physical features such as a swale and hydrobrake make the delivery of a 3m wide shared path difficult to achieve.



The applicant has not identified how they will provide a connection to the south east linking the site to Cherrybrook Drive area. The existing shared cycle/footway, shown on Figure 1 as a green line, is adopted highway. The applicant's red line boundary does not cover the land between the cycle /footway and their site, and this suggests that it is not in their control and owned by a third party. As such, there is a question over whether the link is deliverable.

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

The applicant is proposing to provide a footpath/cycle link between the vehicular entrance and the existing path to the north east corner of the site. However, the existing link is footway only and would need to be improved and widened to allow cyclists to use it.

Without these links the development has no connections to the rest of the pedestrian footway network. Further, it should be noted that there are no cycle links connecting to the site other than the potential link proposed to the east. There are footpaths, for example through the Chaddesden Wood Nature Reserve, however, cyclists are prohibited from using them. As such, there are questions about how connected this development is in terms of cycling, and therefore the accessibility of the site to the destinations shown in Table 1.

The developer is proposing to provide an extension to the footway on the A608 Hill Top from the end of the existing footway (bus stop location) to the proposed signalised junction/crossing point. This is however only 2.0m wide and would not therefore be suited for use by cyclists.

Derby City Council has suggested to the developer that a shared cycle/footway link is provided along Lime Lane, from the vehicular entrance west to the Hill Top junction. This is shown on Figure 1 by the light grey dashed line. Bus stops are located close to the junction and the entrance to the Great Northern Green Way is also located here. Further, Brookside Road and the associated footway provides a link to the Breadsall Primary School, approximately 1 km from the site. The proposed path would provide a more direct route to this area and provide a link for existing residents from the Cherry Book Drive area. It is the contention of Highways Development Control that in practice, pedestrians are likely to walk along the Lime Lane verge, and cyclists will be forced to share the carriageway with vehicles, rather than use the proposed link to the south west corner of the site. This is because the Lime Lane route is more direct and pedestrians and cyclists will be prepared to take the less safe route. Therefore, suitable provision should be made.

Public Transport

The nearest bus stop is located on the A608 Hill Top. The H1, which is operated by Trent Barton, provides 4 buses per hour between Heanor and Derby City Centre. The bus stops are approximately 350 metres from the centre of the site via Lime Lane. However, using the proposed footpath link through the Persimmon site, the distance is 700 metres.

The level of existing bus service is high in relation to this proposed housing development. However, The Chartered Institution of Highways and Transportation outlines the recommended maximum walking distances to bus stops, for the frequency of service that exists, as 400 metres. Again this shows the importance of delivering a footway/cycleway link on Lime Lane.

Travel Plan

A Travel Plan will be provided for the development, which will include the following:

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

- The provision of a Travel Plan Co-ordinator (TCP).
- Welcome Pack
- 1 x temporary Spectrum bus Ticket per household covering a period of 3 – 6 months
- Action Plan detailing initiatives and programme of delivery
- Monitoring reviews will be undertaken once the site is 25%, 50%, 90% and 100% occupied, twelve months after this time, and then annually for a further four years.

However, the effectiveness of the travel plan relies on the physical connections to the public transport network, cycle and pedestrian network.

It is suggested that the travel plan will be secured through condition based on the draft that has been submitted with this application. It is proposed that a penalty clause is included for non-delivery of the travel plan within the S106 agreement and that monitoring fees are included.

Conclusion

The NPPF Paragraph 110 states that “(a) appropriate opportunities to promote sustainable transport modes (should be) taken up, given the type of development and its location...

Paragraph 112 states that applications for developments should “(a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use.

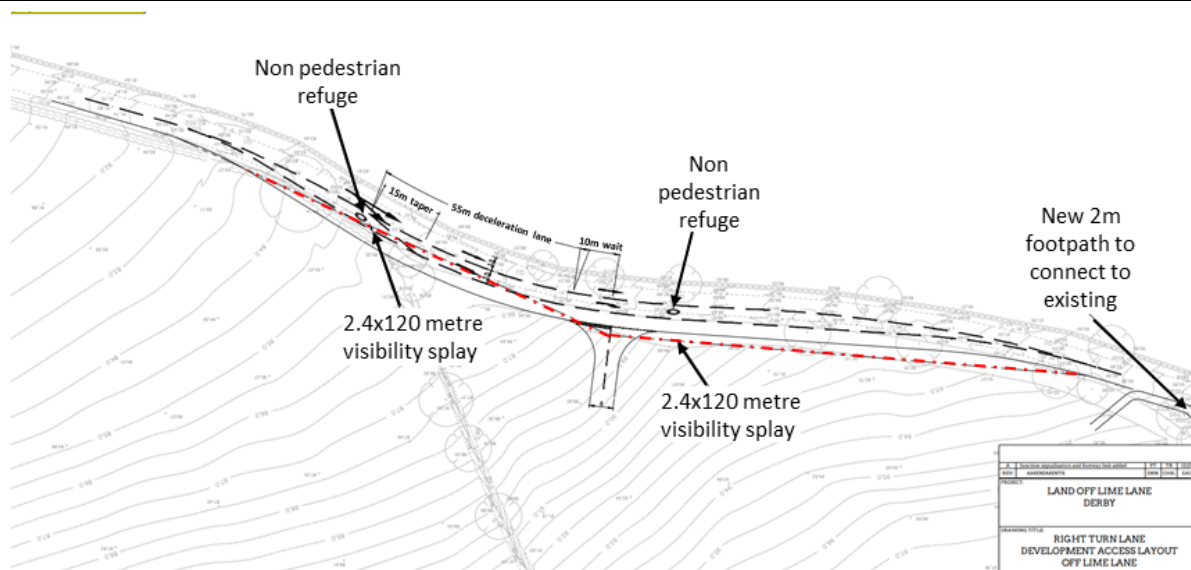
There is a question over the deliverability of some of the links identified on the masterplan. Further, it is the view of Highways Development Control that a suitable link along Lime Lane is required to provide a safe direct connection to bus services, footway links to Breadsall and the Great Northern Green Way. As such, the applicant fails to comply with guidance given in the NPPF.

2.2 Safe and suitable access to the site can be achieved for all people

The previous section discusses in detail cycle and pedestrian access in detail because it relates to the sustainability of the site and how it connects to the surrounding network.

Figure 2 below shows the proposed vehicular access located on Lime Lane. Lime Lane is an unrestricted rural lane with no street lighting or pedestrian footways.

Figure 2: Proposed Vehicular Access



The applicant is proposing to widen Lime Lane and provide a right turn ghost harbourage into the development. This is to protect right turning vehicles and assist in the free flow of traffic. Acceptable safe vehicular access of any new junction is based on the safe sight stopping distance (SSD). The SSD is the visibility distance that is required for a driver turning out of the junction to safely make the manoeuvre without collision with a vehicle on the mainline carriageway. The SSD is based on the measured speed of the road as set out in the Delivering Streets and Places Design Guide 2018. As such, the developer has undertaken 7 day speed surveys, on two separate weeks in 2016 and 2019, using pneumatic tubes located at the proposed access junction, and the extents of the SSD visibility envelope. Traffic speeds were recorded with 85th percentile speeds of 39.0 mph eastbound and 40 mph westbound. Average speeds were also recorded at 34.3 mph eastbound and 35.7 mph westbound. On this basis a design SSD of 40 mph has been accepted, or SSD of 120 metres. The SSD is shown on Figure 2 as the red dotted lines.

Planning should note that in order to maintain the visibility splay that the hedge and potential some of the mature trees may need to be moved or taken out. However, from a highway perspective visibility can be achieved within the applicant's land ownership.

Road Traffic Collisions

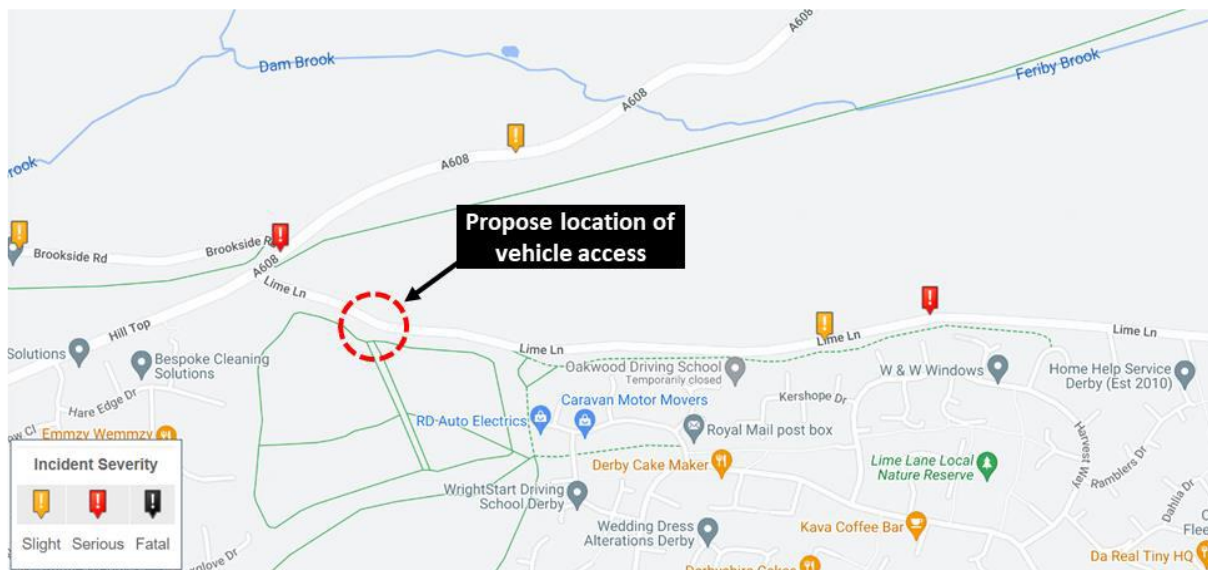
The other safety consideration is road traffic collisions recorded by the Police in the study area. The statistical significance of traffic collisions is taken from a sample over a 5 year period, and follows guidance provided by the Department for Transport (DfT). Figure 3 provides a summary of traffic collisions recorded around the proposed development site between 2017 and 2021.

Figure 3: Road Traffic Collisions Recorded between 2017 and 2021

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)



The collision summary data shows that there are very few accidents recorded on Lime Lane or the A608 Hill Top. In particular, there were no accidents recorded within the vicinity of the proposed access junction to the development.

Conclusion

In order to control traffic speeds in future on Lime Lane, Highways Development Control will condition the need for a Traffic Regulation Order to reduce the speed limit to 40mph. It will be proposed that the 40 mph is taken from the county boundary at Morley Road to the A608 Hill Top. The A608 is already subject to a 40 mph speed limit.

Highways Development Control has considered the proposed vehicular junction access in detail. As such, Officers are satisfied that a safe and suitable vehicular access can be gained into the application site, as shown for indicative purposes on submitted drawing 22116_08_020_04, by utilising a combination of existing Derby City Council Highway, and land within the applicant ownership/control.

However, NPPF Paragraph 110 b) states that safe and suitable access should be achieved for all users. As such, and because of the lack of existing facilities on Lime Lane, it is the view of Highways Development Control that a suitable link along Lime Lane is required to provide a safe direct connection to bus services, footway links to Breadsall and the Great Northern Green Way. As such, the applicant fails to comply with guidance given in the NPPF.

2.3 Transport Impacts of the development.

NPPF suggests the impact of the residual trips (i.e. the remaining car trips after travel by other modes has been taken into account) should be mitigated as long as it is affordable in the context of the value of the development. The Government does not define 'severe impact'. DCC takes the view that in this context 'severe' can relate to congestion, but definitely relates to safety as a consequence of increased traffic.

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

Traffic Generation and Distribution

The trip generation of the development is based on the industry standard TRICs data base and 85th percentile rates utilised by similar neighbouring developments in Derby. The rates are summarised in Table 2 and show that during the AM commuter peak (0800-0900) that the 150 houses generate around 95 vehicle trips and during the PM commuter peak (1700-1800) the development generates around 107 trips.

Table 2 – Trip Rates and total trips taken from the Transport Assessment

Land Use: C3 Residential (Private)	AM Peak Hour Weekday (08.00 – 09.00)		PM Peak Hour Weekday (17.00 – 18.00)	
	Arrivals	Departures	Arrivals	Departures
Ave. Vehicle Trip Rate/Dwelling	0.171	0.422	0.412	0.257
Trip Generation (160 Dwellings)	27 trips	68 trips	66 trips	41 trips
Two-Way Total	95 trips		107 trips	

The Census 2011 Journey to work data has been utilised to calculate the distribution of the development traffic from the site, based on the destination of trips from surrounding Census Output Areas. Table 3 below provides a summary of the distribution on selected roads.

Table 3 – Distribution of Development Traffic

	AM Peak (0800-0900)			PM Peak (1700-1800)		
	Arrive	Depart	2-way	Arrive	Depart	2-way
Total Development	27	68	95	66	41	107
Lime Lane west to/from Hill Top	25	63	87	61	38	98
Lime Lane East to/from Morley Road	2	5	8	5	3	9
A608 Hill Top to/from Morley	3	6	10	6	4	11
A608 Hill Top to/from Derby City	23	56	79	53	33	87
A61 to/from A38(T)	10	25	35	24	15	40
A61 to/from Derby City Centre	11	26	37	24	15	40

Junction Assessment

The main impact of the development is on the junction of the A608 Hill Top/Brookside Road/Lime Lane. The applicant has tested the junction using the industry standard junction modelling software Junctions 9. The results show that the development pushes the Lime Lane arm of the junction from 60% capacity to 95%. In junction operational terms, any arm operating over 85% is considered the point at which queuing starts.

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

The applicant has proposed a scheme to signalise the junction, which would allow traffic to turn out of Lime Lane and improve facilities for pedestrians and cyclists to cross the A608. However, signals would add a delay to the mainline A608 traffic, particularly during off-peak traffic periods.

However, to date the applicant has not submitted a capacity assessment of the signal scheme to underpin the need and benefit of the scheme. Further, the applicant needs to be aware that part of the junction is located within the County Council's administrative area and as such they will also need to be consulted and their comments fed back into the design.

3.0 Conclusion

Highways Development Control has considered the proposed vehicular junction access in detail. As such, Officers are satisfied that a safe and suitable vehicular access can be gained into the application site, as shown for indicative purposes on submitted drawing 22116_08_020_04, by utilising a combination of existing Derby City Council Highway, and land within the applicant ownership/control.

Planning should note that in order to maintain the visibility splay that the hedge and potentially some of the mature trees may need to be moved or taken out. However, from a highway perspective visibility can be achieved within the applicant's land ownership.

There is a question over the deliverability and maintenance of some of the links identified on the masterplan. Further, it is the view of Highways Development Control that a suitable link along Lime Lane is required to provide a safe direct connection to bus services, footway links to Breadsall and the Great Northern Green Way. As such, it is Highways Development Control's view that the applicant fails to comply with NPPF Paragraph 10 a), 10b) and Paragraph 112.

Further, the applicant has not provided any detailed modelling of the proposed mitigation scheme to signalise the Hill Top/Lime Lane junction. It is unclear whether the junction needs to be fully signalised, however, it is the view of Highways Development Control that some form of signalised pedestrian crossing is required at this location. Further information is therefore required.

For these reasons, Highways Development Control cannot support this application at this stage.

5.2. Environmental Services (Health – Pollution):

Contaminated Land

The applicant has submitted the following report as part of the application:

- Phase 1 Environmental Risk Assessment (M-EC Ltd ref: 22116/03-17/4348 REV B dated January 2023)

This report was originally issued in March 2017 and has been updated twice since then for new planning purposes. A walkover of the site was carried out by M-EC in March 2022.

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

The site is currently used as open fields with some evidence of fly tipping on the northern boundary. It is bordered by a further new development on the west of the site with Chaddesden Wood on the southern boundary. The proposals are to construct up to 150 additional dwellings adjacent to another new development already undergoing construction.

A number of sources of potential ground contamination have been identified as a result of the historic use of the site or adjacent land so further intrusive investigations are recommended.

A radon assessment has been carried out that has not identified any issues. However, we would comment that the UK radon map has recently been updated and this should be reviewed to determine whether the assessment carried out needs to be updated accordingly.

We would concur that further investigations are likely to be necessary and would therefore recommend that the recommended conditions be attached to any planning permission granted.

Noise

With regards to the above planning application, I am concerned that the proposed residential units would be exposed to high levels of traffic noise from Mansfield Road and Lime Lane.

For the reason given above, I would have very serious concerns of detriment that will be caused to future occupiers of the proposed residential units due to noise.

I would recommend that the recommended condition is attached to the consent.

Prior to development commencing above foundation level, a detailed noise assessment on the existing noise climate at the development site shall be submitted to and been approved in writing by the Local Planning Authority and the report shall include details of any noise mitigation measures for the affected residential accommodation. The sound insulation measures shall be designed to achieve noise insulation to a standard that nuisance will not be caused to the occupiers of residential accommodation by existing external noise sources. The noise assessment shall be carried out by a suitably qualified acoustic consultant/engineer and shall take into account the provisions of BS 8233: 2014 Guidance on sound insulation and noise reduction for buildings. The approved scheme shall be implemented prior to the occupation of the units.

Air Quality

The application seeks to develop the site with up to 150 residential dwellings. Given the number of potential traffic movements to and from the site associated with this number of dwellings, there is a potential for air quality impacts on the local area resulting from traffic emissions.

The application is not supported by any consideration or assessment of air quality impacts and no justification is provided for this.

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

I do note however the submission of a transport assessment which indicates the predicted number of vehicle movements to and from the site during the morning and evening rush hour periods (AM and PM Peaks).

This suggests around 200 two-way trips each day to/from the site during the peak periods.

When considering DMRB (LA105) Guidance, it is noted that sites which generate less than 1000 AADT (Annual Average Daily Traffic) can generally be scoped-out of further detailed air quality assessment.

On this basis, the site is unlikely to create any significant air quality impacts which would warrant a detailed assessment.

Consequently, the Environmental Protection Team has no objections to the application on air quality grounds.

5.3. Highways Land Drainage:

This site does not appear to have any flooding issues but there will of course be the requirement to treat and reduce surface water run-off. The layout can accommodate a range of SuDS including swales and open infiltration or attenuation ponds.

The applicant has considered a number of drainage options and the assumptions made are now entirely suitable.

The approval of this outline application should be accompanied by conditions to secure an appropriate surface water drainage scheme, including a SuDs solution.

5.4. Natural Environment (Tree Officer):

- The trees within the site are protected by the Area type TPO No. 31.
- Chaddesden Wood is protected by TPO No.1.
- The tree survey is woefully out of date; being produced in April 2018.
- Since the tree survey was produced Oak tree T405 – B1 has been vandalised. A fire was lit at the base of the tree and has destroyed approximately 50% of the bark and sap wood at the base. The long term retention of this tree has been seriously compromised.
- Of note tree T443 – A1 is recorded as a veteran tree on the Woodland Trust Ancient Tree Inventory as a veteran tree. It is recorded as a fully mature within the tree survey.
- Chaddesden Wood is ancient and is regarded as the only ancient woodland within the city and is believed to have existed since the Middle Ages.
- Ancient and veteran trees/woodlands are considered irreplaceable within the NPPF.
- Tree T444 has been awarded a C retention category. Whilst its size does not automatically make it a veteran tree it does have many veteran tree features and is an important wildlife habitat. I would argue that it is a category B3.

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

- The trees are located adjacent to, or in the case of T405 within, ploughed fields. This will be having a significant impact on tree health, and you could argue that including the trees within linear POS's would improve the rooting environment of the trees. Creating a planted woodland buffer between Chaddesden Wood and the development would likely increase favourable rooting environments. However this could be restricted by the ditch that runs between the wood and the development.
- The indicative access into the site would necessitate the removal of trees and hedge either side of the entrance which may include T442 which has been awarded an A retention category. It is not considered to be a veteran tree.

T442 – Category A



The impact of the proposed access on trees and hedges has not been assessed.

- A tree impact assessment has not been carried out to assess the impact of a development on trees. Whilst a development of some kind in theory be carried out the devil is in the detail. There is a danger that inappropriate trees removals would be required to ensure a viable scheme.
- Presently the poor condition Ash trees do not have significant targets should they or parts of them fail. However including them in a POs would increase targets and would necessitate either their removal or reducing them significantly to reduce the risk of failure.

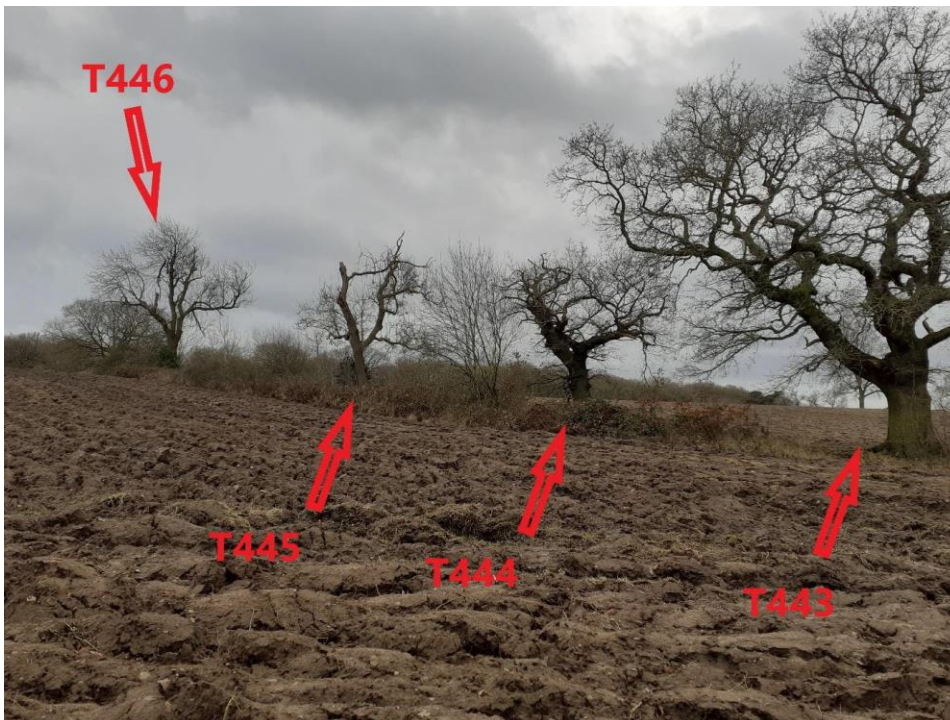
Conclusion:

- An up to date tree survey, TCP and AIA is required before an assessment of the proposed development can take place.

T443 (Veteran)



T443, T444, T445 and T446



Base of T405



5.5. Environmental Services (Parks):

Destruction of mature corridors into the wood

The network of hedgerows into and around the proposed development site are the lifeblood of Chaddesden Wood's wildlife population. Any disruption to this would severely impact the complicated web of nature connectivity that exist here. It has been noted that hedgerows on Lime Lane and through the fields have been in existence for at least 135 years but this is likely to be a lot longer considering the veteranised features observed in many of these tree lines. Complete removal and replanting is not an option as this would ultimately be the death of the wood.

The Climate Change and Biodiversity Crisis

The UK's climate and biodiversity crises are inextricably linked. Derby City Council has declared a climate emergency and are committed to taking the action needed to prevent climate change becoming much worse of which granting this application would contribute significantly. The negative impact on the neighbouring established ancient woodland will require considerable biodiversity net gain requirements, rendering development potential on this land as nil.

Hydrology

We have witnessed Chaddesden Wood drying out in recent years as a direct result of new housing being built and drainage systems taking water away from the area. Underlying aquifers are particularly vulnerable on the potential development site and

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

we need to ensure no further damage to these systems takes place to prevent further drying out of the woodland. Ponds and ditches, vitally important wildlife habitats, are all at risk.

Community Wellbeing

Established community groups and members of the public use Chaddesden Wood and its surroundings on a daily basis. It is used for a variety of recreational activities vital to the health and wellbeing of all in the community. Mental health is at the forefront of today's conversation with the wood and its surrounding area providing a natural health service in what is a densely urban area devoid of nature. This development will not only destroy the natural fabric of an ancient woodland but the developing Oakwood Ward community wellbeing.

5.6. Resources and Housing (Strategy:

No objections. Developer should engage to discuss affordable housing provision. It is important this is done at early stage to ensure that properties meet the housing need for the city as well as necessary space and design standards.

5.7. Police Liaison Officer:

There are no objections in principle. No reason why this land should not be suitable for residential development from the perspective of crime and disorder.

The indicative layout leans towards a replication of the recently developed adjacent site, and it is very noticeable that this newer development has a much stronger outlook over adjacent space than more established development close by.

The strongly defined back to back blocks of housing have the potential to enhance and widen the presence of active edges if treated appropriately.

A note of caution over the handful of parking courts shown in the indicative plan.

This form of parking provision has the potential to be abandoned in favour of unregulated front of, or close to plot parking if not adequately supervised.

I note that some of the indicative courts appear to have housing plots within and some not. I would see this as essential, combined with sensitive back of plot fencing to permit views over vehicles from associated houses where possible.

Measures to restrict the passage of motor cycle around the Chaddesden Wood edge are evident.

This will need to be a consideration for new links to the wood edge, and also at key points for the substantial area of public space and footways between this proposed phase and first phase of the development.

5.8. Derbyshire County Council:

Thank you for your reconsultation on the above planning application specifically in respect of amended/ new submitted Highways, Flood Risk Assessment and Drainage information.

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

County Highways Authority Comments

With regard to the comments made by the Derbyshire County Council Transportation Assessment and Studies Officer, Geoff Blissett, in Derbyshire County Council's letter to you dated 6 March 2023, please note that Geoff Blissett has retired. Please see Geoff's comments pasted below for information.

The application supports residential development of some 150 dwellings on land north of Chaddesden Wood, Lime Lane, Derby, construction of which would be wholly within the city of Derby. Access to the site would be by means of a priority junction on Lime Lane. It would therefore be for Derby City Council to establish whether this constituted a safe and satisfactory means of access.

The application is accompanied by a transportation assessment, scoping of which has been agreed between the applicant, Derby City Council and National Highways. The transportation assessment considers a number of off-site junctions including the A608 Mansfield Road / Lime Lane/ Brookside Road, a staggered priority junction straddling the county boundary.

Assessment of the junction concludes that future reserve capacity would decrease only slightly upon implementation of the proposed development. Bearing in mind advice provided in paragraph 111 of the NPPF that Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe, on this basis, I would be minded to accept the applicants conclusion that, no mitigation measures are required to make the proposed development acceptable in highway terms.

The transportation assessment includes consideration of personal injury accident (PIA) data, provided by Derbyshire Constabulary covering a 5-year period, between October 2010 and September 2015. It is recommended in view of the vintage of the accident data that a review of the accident data using more recent information be undertaken. With regard to the newly submitted information the subject of this reconsultation please see below comments from Geoff Blissett's successor, Paul Bigg, Derbyshire County Council - Highways Development Control Engineer, who made the following comments on 3 August 2023:

It would appear from Geoff Blissett's original response that he accepted the applicants conclusion that no mitigation measures are required to make the proposed development acceptable in highway terms. This includes at the A608 Mansfield Road/Lime Lane/Brookside Road, a staggered priority junction straddling the county boundary. I see no reason to disagree with Geoff's response.

However, it now appears that the applicant is proposing to signalise the junction of the A608 Mansfield Road /Lime Lane/Brookside Road Junction and clarification is requested from the applicant as to whether this is in fact the case.

It is considered that whilst the proposal to signalise the junction would improve facilities for pedestrians and cyclists and traffic using the side roads it is likely to result in delays to traffic using the A608 Mansfield Road. Prior to reviewing and providing comments on the proposed signalised layout of the junction it is considered

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

that operational assessments of the scheme need to be undertaken and submitted first to establish the impact of the proposal in terms of queues and delays to traffic on all arms of the junction. Once this information has been submitted by the applicant we will review and establish whether the proposed signalisation is acceptable in operational terms. If this is the case we will then provide comments on the proposed signalised layout of the junction.

Derbyshire County Lead Local Flood Authority Comments

The Derbyshire County Council Flood Risk Management Team as the County Lead Local Flood Authority made the following comments on 8 August 2023:

Derbyshire County Council as the County Lead Local Flood Authority (LLFA) has reviewed the information submitted for this application. The LLFA has no objection subject to the conditions below:

To ensure adherence to National Planning Policy Framework, DEFRA's Non-statutory technical standards for sustainable drainage systems and local guidance, the recommended conditions should not be altered without consulting the County Council Flood Risk Management team.

Original comments received 6 March 2023:

Comments in respect of the above planning application have been received from County Councillor Carol Hart, Elected County Member for Breadsall and West Hallam Ward on 30 January 2023 as follows:

I have been lobbied by not only the Breadsall Parish Council but also many residents of Breadsall, they are all extremely worried about this planning application. There are two new developments on their boundary already, both just about completed, and they have caused nothing but misery, not only the increased traffic using Breadsall as a 'rat run' going one way to the A38 or the other to join the M1, there have been severe flooding problems, there have always been some flooding issues in Breadsall which DCC have been involved in solving but since particularly one of the developments was commenced this problem has increased with little co-operation from Derby City or the developers. We all know that more housing is needed but I think that this third planning application in such a small area is causing untold distress and misery for the residents of Breadsall.

Assessment and Conclusions on the Planning Application

On the basis of the detailed Officer comments below, Derbyshire County Council considers that the proposed development is unacceptable. Derby City Council can only identify a 3.17 year housing land supply using the new standard methodology which, together with the proposed 45 affordable dwellings as part of the development, would normally weigh in favour of the proposal. However, the application site sits on land which is allocated in the Derby City Local Plan as Green Wedge. The importance of this allocation is paramount as it links with the Green Belt north of the application site which falls within the boundary of the adjoining Erewash Borough and provides significant benefit to the local community as a recreational

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

asset and a 'green lung' in this area that has experienced significant residential development growth in recent years.

Green Wedge policy in the Local Plan is clear where it presumes against development on a scale similar to Green Belt and open countryside policies generally, seeking to maintain the openness of the Green Wedge and restricting proposals to small scale development.

The proposed development does not accord with Local Plan Green Wedge policy and, it is considered, would impact detrimentally upon this important 'green' land allocation. The site has already been assessed via Derby City Council's Housing Land Availability Assessment (SHLAA) process, the conclusion of the City Council being that the site is deemed unsuitable for residential development, given that the Green Wedge has been reduced significantly through previous development. Derbyshire County Council would concur with this conclusion. Any community benefit arising from the proposed development i.e. the 45 affordable dwellings, the potential for a children's play area and/or a community fund, would be outweighed by the loss of the Green Wedge which is of such importance to the existing local community.

5.9. Erewash Borough Council:

No comments received.

5.10. Derbyshire County Council Archaeologist:

The submitted geophysical survey of the site has identified probable and possible archaeological features in parts of the site, including settlement enclosures, ditches, boundary features, pits and a possible kiln or hearth.

These observations suggest that the site has potential for below-ground archaeological remains of up to regional importance, though the features do not appear complex or extensive enough to constitute an objection to development at this stage or to merit further evaluation fieldwork before determination.

I advise that this archaeological interest be addressed through a scheme of archaeological work secured by planning conditions in line with NPPF para 205, in the event these proposals gain consent. This would comprise evaluation trenching in the first instance to establish significance and preservation, followed by stripping of areas of significant archaeological remains to allow full excavation and recording before the commencement of development.

5.11. Derbyshire Wildlife Trust:

The Trust objects to the planning application on the basis that the development is likely to result in a range of adverse impacts detrimental to the biodiversity of Chaddesden Wood and will result in the loss of land identified as part of Derby City's Green Wedge.

The proposed development is for up to 150 dwellings immediately north of Chaddesden Wood within an area of land identified as a Green Wedge site that forms a valuable part of Derby City's Green Infrastructure and ensures that Chaddesdon Wood is not surrounded by, and isolated within, an urban environment.

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

Chaddesden Wood is identified by Natural England as an Ancient Semi-natural Woodland and listed on the Ancient Woodland Inventory (AWI). It is also designated as a Local Wildlife Site and together with Lime Wood forms the Chaddesden and Lime Woods Local Nature Reserve. It is one of only two ancient semi-natural woodlands in Derby City and is the larger of the two. However, it is still a relatively small woodland extending to c.9.34 ha. The semi-urban nature of the woodland and its relatively small size make the wood vulnerable to a range of adverse factors.

The Trust is concerned that these impacts could act singly and cumulatively to cause the deterioration of the woodland for both wildlife and people. These concerns and issues are listed below:

- The isolation and urbanisation of Chaddesden Wood
- The increase in recreational activities within and adjacent to the wood
- Adverse impacts from various types of pollution including nutrient, chemical, noise, and light
- Impacts on microclimate, hydrology, soils, and woodland management
- Reduced opportunities for expanding, connecting, and enhancing the woodland in the future as part of local nature recovery strategies
- Edge effects, increased predation from domestic animals, and an increase from non-native invasive species

Isolation and reduced connectivity

Although the land is open farmland formerly used for crops, it provides a valuable connection for wildlife moving between the woodland and the wider countryside to the north. Though farmed, this area of land is relatively quiet and offers opportunities for species dispersal and movement as well as foraging and nesting opportunities. The ecological appraisal and local recorders have recorded a wealth of birdlife living in the woodland and the surrounding fields and hedgerows as well as a variety of mammals and invertebrates.

The development would replace open farmland with an urban environment dominated by residential housing and roads. Even with the retention of some areas as green space and buffers along the edge of the wood, the overall effect will be to isolate and surround Chaddesden Wood within an entirely urban environment.

Increased recreational use within the woodland

The woodland is already under considerable pressure from recreational use and the recent development to the north-west has added to this. Trampling and soil compaction is evident along some of the main paths through the wood. The wood is also likely to be noisy during periods of peak use and there will be movement of people and dogs. The increase in human pressure on the woodland will potentially reduce the value of the ancient woodland for the quiet relaxation and wellbeing of local people through deterioration caused by over-use.

The measures proposed in the Ecological Appraisal such as a Rights of Way Plan and a Landscape and Ecological Management Plan do not really add that much to

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

what is already in place at the woodland. There are already well marked paths, and the site is already under management. The EA refers to steering footfall away from sensitive areas, but it is whole wood that is sensitive not just a few areas within the woodland.

Pollution

The proposed development is likely to add to the pressure on the woodland from light pollution, chemical pollution, nitrate deposition and as mentioned above noise pollution.

Hydrological impacts – the woodland could be prone to drying out in hot summers. The adjacent development could affect hydrology, though this may be something that could be addressed more easily through appropriate mitigation.

Urban heat island effect and microclimate – urban environments tend to be hotter than rural ones and the microclimate within the woodland is vulnerable to change as it becomes surrounded by a built environment. During periods of high temperatures, the woodland could be adversely impacted by this. Climate change makes it increasingly likely that we will experience more frequent extremes of climate including drought and heatwaves.

Non-native invasive species – one of the threats to some ancient woodlands is the establishment of invasive plant and animal species. The risk of plants, especially escaping, from gardens into semi-natural habitats is much higher in an urban setting.

Increased predation from domestic cats – predation can reduce bird and small mammal populations within isolated woodlands. Further development will bring more domestic pets within range of the woodland.

The edges of woodlands are often the most vulnerable to the above effects. Trees and shrubs at the edge of woods are exposed to greater rates of evapotranspiration, warmer microclimate, higher wind speeds, soil moisture can be reduced and light, noise and chemical pollution including nutrients can penetrate 30 or more metres into the wood. Chaddesden Wood is not a large woodland and has a significant edge to area ratio (1315m perimeter to 9.3 ha). Assuming edge effects of up to 30m as much as 40% of the woodland may already be subject to adverse edge effects of some type. Already 715m of the woodland edge is adjacent to residential development and another 166m adjoins a primary school. The remaining 434m is adjacent to the arable land to the north. This development could result in additional built development within a few metres of the woodlands northern edge.

Proposed mitigation and layout

The Ecological Appraisal refers to the creation of a buffer along the northern edge of the woodland but refers only to the absolute minimum buffer for ancient woodlands of 15m. The proposed masterplan and landscape strategy are difficult to interpret in this respect, but in our view, this is wholly inadequate and is unlikely to address detrimental impacts on the ancient woodland. This position is supported by Natural England and Forestry Commission's standing advice which states that "the proposal should have a buffer zone of at least 15 metres from the boundary of the woodland to avoid root damage (known as the root protection area). Where assessment shows

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

other impacts are likely to extend beyond this distance, the proposal is likely to need a larger buffer zone”.

The EA proposes restricting access to any buffer area by planting thorny shrubs and using a barbed wire fence. However, this would not help to better distribute people to reduce pressure or allow for the creation of the best possible woodland composition. It would also be at odds with the ethos of the adjacent Local Nature Reserve.

Whilst the development does include the creation of areas of open space these are significantly smaller than the existing open fields and will be divided by residential land-use, roads and other urban infrastructure as well as heavily used by people. Whilst some habitat creation is proposed that is potentially of biodiversity value it is mostly scrub, open grassland and a SUDS, rather than the creation of new woodland habitat that would better deliver nature recovery in this area.

To achieve the Government’s objectives for nature recovery ancient woodland should be expanded, better managed and better connected to other semi-natural habitats. For Chaddesden Wood the best approach to try and secure its long-term future is to try and increase the size of the woodland. This development will permanently remove the potential for Chaddesden Wood to be expanded and reduces its potential to contribute to nature’s recovery.

Biodiversity Net Gain

Although the development has set out details of how it will provide an on-site gain for biodiversity it cannot factor in the detrimental impact on the ancient woodland. Ancient woodland is an irreplaceable habitat and where impacts are likely to occur it requires bespoke compensation outside of the scope of the biodiversity metric approach. The biodiversity net gain is therefore only a limited part of the overall assessment in this case.

Planning Policy and Legislation

There are several policies set out within the Derby City Local Plan - Part 1 Core Strategy (2017) which this development is incompatible with including CP16 (Green Infrastructure), CP18 (Green Wedge) and CP19 (Biodiversity). The proposed development site is part of the City’s green infrastructure, identified as part of the Green Wedge and due to its proximity to Chaddesden Wood, would have a detrimental impact on Biodiversity.

The Green Wedge policy recognises under section 5.18.1 that all green wedges ‘have important existing or potential recreational and ecological value and play an important role in mitigating against climate change’. Green Wedge sites are part of the Green Infrastructure of the City and the GI policy also refers directly to the need to ‘seek to ensure that connections between biodiversity habitats are resilient and appropriately protected. The policy states that where opportunities arise, new connections will be created’ (section f) and that it will ‘seek to avoid the fragmentation of habitats..... (section g).

It is also noted that the extent of the Green Wedge along this northern edge has already been reduced by as much as 50% through recent development. The loss of

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

the remaining area of Green Wedge would undermine the effectiveness and purpose of the whole policy.

With regard to CP19 (Biodiversity) the proposals do not fully comply with the policy especially in relation to the following paragraphs,

The Council will:

(a) seek to avoid, minimise and mitigate the impacts on biodiversity and contribute to the City's ecological and geological resources resulting in a net gain in biodiversity over the plan period

(b) seek to reduce habitat and species fragmentation by developing a functional ecological network and maximising opportunities for restoration, enhancement, better management and connectivity of natural habitats, including links beyond the City.

In addition, the National Planning Policy Framework (July 2021), paragraph 180, states: "When determining planning applications, local planning authorities should apply the following principles:

c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons⁶³ and a suitable compensation strategy exists;"

Footnote 63, defines exceptional reasons as follows: "For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat."

There is no wholly exceptional reason for the development in this location and as such this development should be refused on the grounds it does not comply with national planning policy.

Conclusions

The development will result in adverse impacts on the biodiversity associated with Chaddesden Wood and seeks to build on land identified as part of Derby City's Green Wedge and Green Infrastructure. The development would isolate the wood and prevent any meaningful expansion of Chaddesden Wood in the future, thereby limiting opportunities to better connect the wood to other semi-natural habitats to the north. The proposed development is therefore not compatible with the Council's Green Infrastructure, Green Wedge and Biodiversity policies or the National Planning Policy Framework. The Trust is therefore objecting to the proposed development.

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.

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

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

CP1a	Presumption in favour of Sustainable Development
CP2	Responding to Climate Change
CP3	Placemaking Principles
CP4	Character and Context
CP6	Housing Delivery
CP7	Affordable and Specialist Housing
CP16	Green Infrastructure
CP17	Public Green Space
CP18	Green Wedge
CP19	Biodiversity
CP21	Community Facilities
CP23	Delivering a Sustainable Transport Network
MH1	Making it Happen

Saved CDLPR Policies

GD5	Amenity
H13	Residential Development
L5	Outdoor Recreation

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

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

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

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

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

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

6.2. Applications involving the provision of housing:

The Local Plan (consisting of the policies of the DCLP1 and the saved policies of the CDLPR) covers the period 2011 to 2028 and was adopted on 25 January 2017. The policies of the local plan have been reviewed in line with Regulation 10a of the Town and Country Planning (Local Planning) (England) Regulations 2017 and paragraph 33 of the NPPF, the provisions of which require Local Plan policies to be reviewed at

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

least every 5 years. The officer led review was endorsed by the Council's Cabinet on 8 December 2021.

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

Policy CP6 sets a housing requirement of 11,000 new homes over the 17 year Plan period (647 dwellings annually). However, in December 2020, Government amended it's 'Standard Method' for calculating Housing Need to include a 35% uplift in the top 20 largest urban areas in England which includes Derby. The standard method housing need calculation for Derby City now stands at 1,266 dwellings a year and this is significantly higher than the CP6 requirement. Therefore, the housing requirement in Policy CP6 is out of date.

A further consequence of the significant increase in housing requirement, brought about by the change to the standard method, is that the Council can no longer demonstrate a 5 year supply of housing land as required by the NPPF (NPPF paragraph 74 (footnote 39) refer). At April 2023 the supply of deliverable sites is sufficient to provide 3.69 years of dwellings against the annual 1,266 requirement.

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

Paragraph 11d of the NPPF requires that where there is no 5 year supply this means granting planning permission unless –

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

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

Other material considerations to weigh in the planning balance are that the Council's housing needs have increased significantly and as such the benefits of delivering housing carry greater weight. Also, the degree to which the Council is unable to demonstrate a 5 year supply is material. A housing land supply of 3.69 years is a significant shortfall and therefore very significant weight should also be applied in favour of applications that can contribute to increasing this supply.

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

7. Officer Opinion:

Key Issues:

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

7.1. Principle of residential development

7.2. Green Wedge Impact

7.3. Highways Impact

7.4. Tree and Biodiversity Impact

7.5. Other Environmental Impacts

7.6. Design and amenity

7.7. Section 106

7.8. Conclusion

7.1. Principle of residential development

Outline permission is sought for residential development of up to 150 dwellings, with all matters reserved except for means of access on agricultural land, north of Oakwood. The site is located on the northern edge of Derby city's boundary with Erewash borough. It sits between two residential areas of housing and north of Chaddesden Wood, which is a Local Nature Reserve and ancient woodland.

The application site is on land designated as Green Wedge and an area of proposed Outdoor Recreation in the saved Local Plan. An area Tree Preservation Order also covers the whole site (Number 31: Land off Lime Lane, Mansfield Road and Morley Road, Derby). Chaddesden Wood abuts the site to the south and a wildlife corridor is located close to the eastern boundary, linking Chaddesden Wood and Lime Lane Wood.

The proposal would deliver a significant amount of new housing to the Oakwood area and contribute to the wider need for housing delivery in the city. Given that Policy CP6 is now out of date and there is no longer a five year supply of housing, the benefits of delivering a large amount of new housing development in this location, must be given considerable weight in the tilted balance. The overall provision of new housing meets the intentions of the NPPF, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

7.2. Green Wedge Impact

The site is within the designated North Oakwood Green Wedge and the proposed development for housing would be contrary to Policy CP18 of the Derby City Local Plan – Part 1. Green Wedges define the urban structure of distinct neighbourhoods within the city and allow the open countryside around Derby to penetrate into the urban area. They are a long-established feature of the city and Green Wedge land has been protected from unacceptable built development for many years. Policy CP18 seeks to protect the wedges from inappropriate development and criterion (a)

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

lists the uses which the Council consider to be appropriate and housing development, as is proposed, is not considered to be an appropriate use.

Criterion (b) adds additional considerations, stating that the Council will:

ensure that development does not endanger the open and undeveloped character of the Wedge, its links and green infrastructure value; taking into account scale, siting, design, materials and landscape treatment and would not lead to an excessive increase in numbers of people, traffic or noise.

The proposed erection of 150 dwellings, would conflict with parts of b) particularly “endangering the open and undeveloped character of the wedge, through increasing the numbers of people, traffic and noise.”

To support the application, the applicant has submitted their own Green Wedge Review, which assessed the application site and two nearby wedges, in relation to the three purposes suggested by the applicant rather than against the more extensive purposes set out in Policy CP18. To reiterate, Green Wedges are considered to be areas of land that define and enhance the city’s urban structure, maintain the identity of the different residential neighbourhoods, provide an uninterrupted link to the countryside, form part of the wider green infrastructure network and play an important role in climate change adaptation.

A Green Wedge Review was produced to support the current Derby City Local Plan, which was adopted in January 2017. It is worth highlighting a number of conclusions of the Review, which indicate the important role that the North Oakwood Green Wedge plays. Paragraph 17.1 highlights the important role the Wedge plays in defining the edges of Oakwood, contributing to its character and identity. It continues by highlighting that it provides a vital break in the urban landscape, thus helping to reduce the feeling of urban sprawl and finally stressing the important role it plays in allowing the countryside to penetrate the city and providing benefits to both residents and wildlife alike.

The North Oakwood Green Wedge was also considered at the Local Plan Inquiry where the Inspector recognised its importance, especially the openness which was in marked contrast to the extensive areas of residential development it separates.

The proposed development of the land for housing, would result in the loss of a large proportion of the site for housing, undermining its openness and removing the current link with the open countryside to the north. The Wedge has already been narrowed by the development of 250 dwellings to the west of the site in the past 5 years, which is allocated under Policy AC26 in the current Local Plan. The proposed housing now being promoted, would effectively close most the remaining gap in the North Oakwood Wedge up to Lime Lane. This would remove most of the remaining open land in the wedge up to the city boundary. It would also enclose Chaddesden Wood, to the south, such that it would be largely surrounded by housing. This is discussed in more detail in Section 7.4.

The loss of the Green Wedge, which would result from this proposal is contrary to the intentions of Policy CP18 of the DCLP – Part 1.

The County Council has highlighted that the Green Belt lies to the north of the site on the north side of Lime Lane, although the development would have no direct impact.

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

The Green Wedge has a visual link with the Green Belt, which extends into the open countryside to the north.

The site is also allocated for outdoor recreation, under saved Policy L5 of the City of Derby Local Plan Review, with the aim of providing a range of opportunities to create leisure and recreational uses of an open nature, such as private sports pitches or golfing facilities. Whilst this policy is still part of the current Local Plan for Derby, it was intimated in the Issues and Options consultation for the Part 2 Local Plan, that the undelivered allocations would be deleted. However, Policy L5 still remains relevant, until such time as the new Local Plan for the city is adopted.

7.3. Highways Impact

Means of access is being determined under this outline application for 150 dwellings and is proposed to be formed off Lime Lane to the north of the site. A single vehicular access would be located in a central position within the site. This would involve widening the carriageway of Lime Lane and providing a right turn ghost harbourage lane into the development. The proposed access includes the provision of visibility splays as part of the new junction layout, with removal of part of the existing hedgerow and trees to form the splays on either side of the access. The Highways Officer has no concerns with the design or layout of the proposed access arrangement on highway safety grounds.

In terms of traffic impacts, the applicant's transport assessment considers that there would be an increase in traffic flows on Lime Lane as a result of the development and this is agreed by the Highways Officer. The applicant proposes to mitigate this impact by signalising the junction of Lime Lane at Mansfield Road/ Hill Top, which would improve facilities for pedestrians and cyclists to cross the highway. However, it is noted that both the Council's Highways Officer and the County Council Highways Officer have both questioned, whether this signalisation of the junction is necessary in this location and pointed out that it could also lead to delays to traffic on the A608 during peak periods. The provision of a formal crossing for pedestrians and cyclists is welcomed in this location to ensure safe crossing link to the Northern Greenway.

The Highways Officer considers that there would be no significant impacts on the highway network arising from the development, in terms of traffic generation. However, there are concerns about how the development could be integrated into the wider transport network, through pedestrian and cycle connections. There remain unresolved issues with this element of the scheme since the site currently sits within a rural context and has no existing connections with the transport network. Lime Lane is a rural road, which is relatively narrow and bordered by hedgerows and trees. It is noted from the Highway Officer's comments that there have been traffic collisions in the vicinity in recent years and a reduction in speed limit from 60 to 40mph would be recommended in the event that the development comes forward.

The proposed access would not include adoptable pedestrian or cycle paths alongside Lime Lane to the junction with Mansfield Road. Highways Officers have requested that such paths are incorporated, to link with the adjacent development on Mansfield Road and the Northern Greenway footpath/cycle route. However, the applicant considers that an adoptable path along Lime Lane is not needed and would require the removal of more of the existing hedgerow and trees fronting Lime Lane.

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

As set out in Section 7.4 below, this section of trees and hedge are of considerable significance for their biodiversity and amenity value, so their removal would result in a regrettable loss of green infrastructure. Instead, the proposal is to form an off-road, adoptable footpath and cycleway, of not less than 3 metre width to the adjacent housing development to the west of the site, which has recently been completed. This would create a link through the open space corridor to connect with paths already formed on the neighbouring development. The applicant has submitted a letter from the developer of this housing development to support this proposal and demonstrate that an off-road link with the adjacent housing would be secured through an existing sales agreement. This is an agreement, which the City Council is not party to, so there is some concern from Highway Officers that there is insufficient means to ensure that the required link would be implemented as proposed, if the named developer does not purchase the application site. Furthermore, there is also a question over how an appropriate level of maintenance of this link would be ensured, since the Council has no control over management of the open space and footpaths on the adjacent housing site.

The nearest bus stop to the development site is on Mansfield Road, at Hill Top, which is opposite the adjacent housing development to the west. There are pedestrian links to the bus stop from this development, although the only accessible route from the proposed housing area would be via this link, through the neighbouring development.

Highways colleagues have also noted that there is “currently no signed adoption agreements in place for the connecting roads through the adjacent development. Therefore, there is no surety that this will be available for use without controls being imposed by the neighbouring landowner. Also, the footways associated with the existing development are sub-standard for shared use (being only 2.0m wide) and do not extend far enough to be of benefit.”

The applicant is also proposing two other footpath links to connect the development to the housing area which lies east of the site. This would involve forming new paths through the narrow woodland corridor to link with existing pedestrian and cycle paths, which links with the existing housing. It is not clear whether these links are deliverable, since the red line of the site does not extend into this wooded corridor. There are also no existing cycle routes on the development to the west or through Chaddesden Wood, so the only link for cyclists which may be feasible would be the proposed link to the east, provided that access could be secured through the woodland corridor.

Overall, Highways colleagues are satisfied that a safe and suitable access can be achieved for this development. However, there are significant concerns that the development would not be fully accessible for pedestrians and cyclists, due to concerns over the deliverability and maintenance provision in relation some of the proposed cycle and pedestrian links to the wider area, which raise questions over the whether the sustainability of the development in terms of transport provision can be achieved. There also concerns that the proposed signalised junction on Lime Lane and A608 junction has not been properly justified, although a signalised pedestrian/cyclist crossing is considered to be required at this location. The highway impacts of the development proposal have therefore not been adequately addressed and fail to

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

meet the requirements in Policy CP23 of the DCLP – Part 1 and the provisions of the paras. 10 and 112 of the NPPF relating to highway impacts and sustainable travel.

7.4. Trees and Biodiversity Impact

The development site includes a number of mature hedgerows and trees around the boundaries and within the land. Some of these features would be removed to form the proposed access onto Lime Lane. Since the proposal is in outline, it is not clear at this stage how much of the existing green infrastructure would be lost to form the development.

The site is covered by an area Tree Preservation Order, which protects all of the trees within the site. It is noted that there are two category A trees on the site, one which is shown to be removed to form the vehicular access on the illustrative layout and a number of B class trees, which are also of high significance and should be retained where possible. The adjacent Chaddesden Wood also is covered by a woodland Tree Preservation Order, as well as being a Local Nature Reserve. The wood has numerous veteran trees and is described as an ancient woodland, with significant importance for biodiversity and habitat. There is also a designated wildlife corridor along the eastern boundary of the site, linking Chaddesden Wood with Lime Land Wood, which extends up to Lime Lane.

The Council's Tree Officer has raised concerns about the potential impacts of the development on the trees within the site, some of which have been categorised as high quality and include veteran trees. The formation of the access and drainage features and ditches are highly likely to result in damage to roots and/ or the removal of trees and hedgerows within the site. He also notes that the tree survey was carried out in 2018 and has recommended an updated survey be carried out along with impact assessment and tree constraints plan. None of these requested documents have been forthcoming.

The Council's Parks Officer has also expressed concerns about the potential harm to Chaddesden Wood from the siting of the development in close proximity to the woodland, resulting in loss of biodiversity and reduced drainage to the woodland.

The Woodland Trust has objected to the development on the grounds of the likely deterioration and detrimental impacts on Chaddesden Wood and the loss of veteran trees as a result of the proposed development. The Trust highlights that the proximity of the development to the woodland and veteran trees is likely to be harmful to the overall habitat quality and health of the wood and individual trees, through damage and disturbance from human activity and invasive species, noise, dust and light pollution and hydrological impacts through an increase in hard standing areas and drainage systems.

Derbyshire Wildlife Trust considers that the development would result in a range of adverse impacts on the biodiversity of Chaddesden Wood, which includes becoming surrounded and isolated within the urban environment. The wood is felt to be vulnerable to the impacts described above, due to its existing semi-urban position adjacent to residential areas of Oakwood and its relatively small size at 9.3ha. The proposed housing development would enclose the woodland completely, by removing the remaining connection with the open countryside to the north. The land

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

currently provides a link for wildlife moving between the wood and the wider rural area. This would be undermined by the development of housing on this site, despite the provision of two green corridors of open space and drainage features between the woodland and Lime Lane.

Chaddesden Wood is considered by a number of consultees and comments made by members of the public, to be a highly valued woodland and green space, for its biodiversity value and character and as a recreational space for the local community. There is a broad level of concern that the proposed siting of the housing development, adjacent to the northern edge of the wood, would adversely affect the condition and health of the woodland as a whole and thereby damage its habitat value and character.

In this instance, the requirements of Policies CP16 and CP19 need to be considered.

Policy CP16 is an over arching policy covering all green infrastructure in the city, including trees and woodland, local nature reserves and wildlife sites. These features also overlap with Green Wedges, which is the case here. In m) the policy seeks to:

“ ensure that where new development has an adverse impact on a recognised important element of green infrastructure, that impact should be clearly understood, minimised and any residual adverse impacts mitigated for. As a last resort, the impact should be compensated for, either on-site or off-site. Any opportunities for enhancement and better management of the asset through development should be sought. In assessing the impact of the development, its need and benefit will be weighed against the harm to the green infrastructure. “

Policy CP19, which relates to biodiversity, states that:

“Proposals for development in, or likely to have an adverse effect (directly or indirectly) on a Locally Designated Site such as Local Nature Reserves, Local Wildlife Sites, Local Geological Sites and/ or ancient woodlands, veteran trees and hedgerows or wildlife corridors, priority habitats and species will only be exceptionally permitted where:

1. they cannot be located on alternative sites that would cause less or no harm;
2. the benefits of the development clearly outweigh the impacts on the features of the site and the wider network of natural habitats; and
3. adequate mitigation or, as a last resort, compensation measures are provided.”

The applicant has submitted an Ecological Impact Assessment and further mitigation report, which looks at both the application site and the impacts on the neighbouring local nature reserve and Chaddesden Wood. It is proposed to carry out substantial native planting along the woodland edges to the south and east of the development site, to provide a woodland planting buffer alongside the existing woodland areas and minimise the adverse impacts on their habitat and character. Habitat creation is also proposed through formation of two open space corridors within the development, to link the woodland with the wider countryside to the north of the site. The larger of the two landscape corridors would run along the western boundary of the site and adjoin with the linear open space which was formed as part of the adjacent housing development and has recently been completed. The proposal is that these corridors

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

would provide habitat linkages, between Chaddesden Wood and the open countryside and green open space for recreational use. The proposed landscaping and habitat creation package is intended to deliver Biodiversity Net Gain on the site, of around 57%, although it should be noted that the proposals are currently in outline with details of landscaping to be reserved and this figure only relates to on-site impacts and not to any indirect effects on the adjacent woodland, resulting from the proximity of the housing development .

The applicant promotes the Green Wedge benefits of the wider open space corridor through the provision of a connection for public use and for biodiversity to the countryside north of the city boundary.

It is noted that the consultees with interests in ecology and trees, do not consider that the landscape and open space proposals would overcome the potential harm to the local nature reserve and ancient woodland, or safeguard the biodiversity and habitat value.

Overall, it is considered that the proposed housing development on this site, would result in significant harm to the condition, biodiversity and amenity value of Chaddesden Wood and a loss of important veteran trees, without adequate mitigation being provided. The proposal is therefore contrary to the intentions of Policies CP16 and CP19 of the Derby City Local Plan – Part 1.

7.5. Other Environmental Impacts

Flood Risk and Drainage

The application site is an open field which has a gently sloping gradient, which falls roughly from Chaddesden Wood towards Lime Lane. It is in Flood Zone 1 so is considered to be at low risk of flooding and this is confirmed by the Council's Land Drainage Officer. There are no known flooding issues on the site at present, although the proposed housing development would increase the potential risk of flooding to other land which is downstream of the site.

Whilst this proposal is in outline only, a drainage strategy and flood risk assessment has been submitted in support of the application and a further drainage statement has been provided in response to the comments made by the Land Drainage Officer. The illustrative masterplan and supporting information indicates that the drainage proposals for the development would take the form of SuDs features including three attenuation ponds and open water swales. However, the western side of the site, where an open space corridor is proposed, is considered to have a gradient which is too steep for a swale to be achievable. The submitted drainage strategy has established the principles for a SuDs surface water drainage system for the development and the Land Drainage Officer is in agreement with the drainage options and assumptions which have been put forward. A condition is recommended to secure an appropriate surface water drainage scheme and overall the development would meet the flood risk and drainage intentions set out in Policy CP2 of the DCLP – Part 1 and the Technical Guidance for flood risk.

The County Council's Local Flood Authority has also raised no objection to the development subject to a sustainable drainage scheme being agreed for the site. Their comments have also noted concerns raised by Breadsall Parish Council and

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

residents of Breadsall about potential flooding issues, which are felt to be linked to new housing developments in this part of the city. There is no evidence to suggest that this is the case and this is reflected in the comments provided by both the City and County Lead Local Flood Authorities.

Archaeology

The site has Derbyshire HER records for potential for below ground archaeology associated with a former medieval village and Romano-British activity in the local area. Following comments received by the County Archaeologist, a Geophysical survey report has been submitted dated July 2016, which he considers to be satisfactory. This identifies possible archaeological evidence of a settlement on parts of the site, which should be investigated further. A scheme of archaeological work is therefore recommended prior to any development taking place and this can be secured through an appropriate pre-commencement condition. The requirements of saved Policy E21 of the CDLPR are therefore satisfactorily met to safeguard potential archaeology on the site.

7.6. Design and Amenity

Policies CP3 and CP4 of the DCLP – Part 1 and saved Policy H13 of the City of Derby Local Plan Review seek high quality design and efficient use of land in residential development. Saved Policies H13 and GD5 both require development to safeguard amenity of both existing and future residents.

A Landscape and Visual appraisal has been submitted in support of the application to illustrate how the development would sit in the wider landscape. This shows that the site is in an elevated position in the landscape, alongside the recently developed housing development off Mansfield Road, when viewed from locations to the north of Breadsall and from Mansfield Road/ Brookside Road. This suggests that the new housing would be visually prominent from these northerly vantage points and have the effect of extending the urban environment to the eastern edge of the city boundary.

Since the application is in outline only, the submitted illustrative layout is purely indicative and does not form part of the determination. However, supporting information has been provided, in the form of a Design and Access Statement and Design Code which give parameters for the design and layout of the housing development. This proposes to form two housing areas which are separated by three open space/ landscape corridors, linking Chaddesden Wood with the open countryside to the north of the site. The development is proposed to be a suburban style layout comprising of two and three storey houses, similar to that which has been implemented on the adjacent site to the west. This form of development would be in keeping with the type of housing which is in the rest of Oakwood and the neighbouring development south of Mansfield Road.

In terms of residential amenity, the development would need to provide a high quality living environment for future residents. This is entirely achievable in this location and the illustrative layout suggests, that a good level of amenity could be provided through the design process. I note that Environmental Health Officer has expressed some concerns over the potential impacts of traffic noise from nearby roads and

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

recommended that a noise assessment is submitted with any reserved matters. Given its location on the edge of the city, the site is not in my opinion exposed to high levels of noise, so there are unlikely to be any significant issues for future residents, subject to appropriate sound insulation measures being incorporated into any new housing.

Overall, the proposal is capable of forming a housing scheme, which achieves a high quality design and efficient use of land, as well as providing a good quality living environment for future residents. In principle, the development would therefore meet design principles and amenity requirements set out in Policies CP3 and CP4 of the DCLP – Part 1 and saved Policies H13 and GD5 of the CDLPR.

7.7. Section 106

A Section 106 package of contributions, based on the adopted Planning Obligations Supplementary Planning Document (2018) is still in the process of being negotiated and a final position will be reported to Members at the committee meeting. The proposed housing development would normally attract a requirement for the following:

- 30% affordable housing provision
- Amenity green space and major open space, with future maintenance
- On-site play area
- Contributions toward primary and secondary education
- Public transport contribution
- Health care improvement contribution
- Community centre and Sports facilities contribution (off-set against additional open space provision)

7.8. Conclusion

This proposal seeks outline permission, with means of access for development of up to 150 dwellings and associated infrastructure on a green field site, north of Oakwood, adjacent to Chaddesden Wood. The development would be served by a new access onto Lime Lane, north of the site. The land is designated Green Wedge and is covered by an area Tree Preservation Order.

The development would deliver a significant quantum of new housing in Oakwood which would contribute towards the city's housing need. The tilted balance must be applied because the proposal is for the provision of housing and the Council cannot demonstrate a 5-year housing supply. The NPPF therefore requires that an application should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. This requires applying weight to the various benefits and adverse impacts and then considering them in the context of the tilted balance. As this is an outline application, at this stage, we can only deal with the principle of development, as many of the details are unknown.

The main benefits would be the provision of a significant number of new homes and potentially a quantum of affordable homes which would be provided in the context of very significant housing needs resulting from the increased dwelling numbers required in the standard method. There would be temporary economic benefits through job creation for the construction of homes and infrastructure and marketing of

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)

the site. The applicant is through Biodiversity Net Gain also proposing a significant uplift in habitat creation.

However, there are significant adverse impacts arising from the proposal, which include the loss of Green Wedge land and development of a greenfield site, harm to biodiversity and protected woodland, arising from the enclosure and proximity of the development to Chaddesden Wood, which is an ancient woodland and local nature reserve and the lack of clarity afforded to the provision of sustainable transport connections for pedestrians and cyclists to the wider townscape and local amenities.

For these reasons, the proposed residential development is contrary to the intentions of Policies CP2, CP16, CP18, CP19 and CP23 of the Derby City Local Plan – Part 1 and over arching guidance in the NPPF, relating to transport implications and protection of ancient woodland and biodiversity.

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 residential development of this greenfield site would be prominent and result in a loss of an important area of the Oakwood Green Wedge at the northern edge of the city, which would undermine its openness and remove the current undeveloped link with the open countryside to the north of the city. For this reason the development would compromise the role and function of the Green Wedge in this location, contrary to the intentions of Policy CP18 of the Derby City Local Plan – Part 1.
2. In the opinion of the Local Planning Authority, the proposed development does not provide convincing or sufficient evidence of fully accessible connections for pedestrians and cyclists to and from the development and the wider transport network to ensure provision of linkages with local amenities and the city centre. For this reason the proposals are contrary to the sustainable transport objectives in Policy CP23 of the Derby City Local Plan – Part 1 and the NPPF.
3. In the opinion of the Local Planning Authority, the quantum of proposed housing development of the site would result in enclosure and isolation of Chaddesden Wood from its connection to the open countryside to the north and is thereby likely to result in long term harm to the overall health and condition of the ancient woodland, with particular regard to loss of biodiversity and habitat and specifically adverse effects on the woodland arising from increased recreational use, light and noise pollution, impacts on hydrology and micro-climate and introduction of invasive species. For these reasons, the development is contrary to the intentions of Policies CP2, CP16 and CP19 of the Derby City Local Plan – Part 1 and paragraph 180 of the NPPF which requires protection of ancient woodland.

Committee Report Item No: 8.1

Application No: 23/0008/OUT

**Type: Outline (with
access)**

8.3. S106 requirements where appropriate:

See Section 7.7 of report.

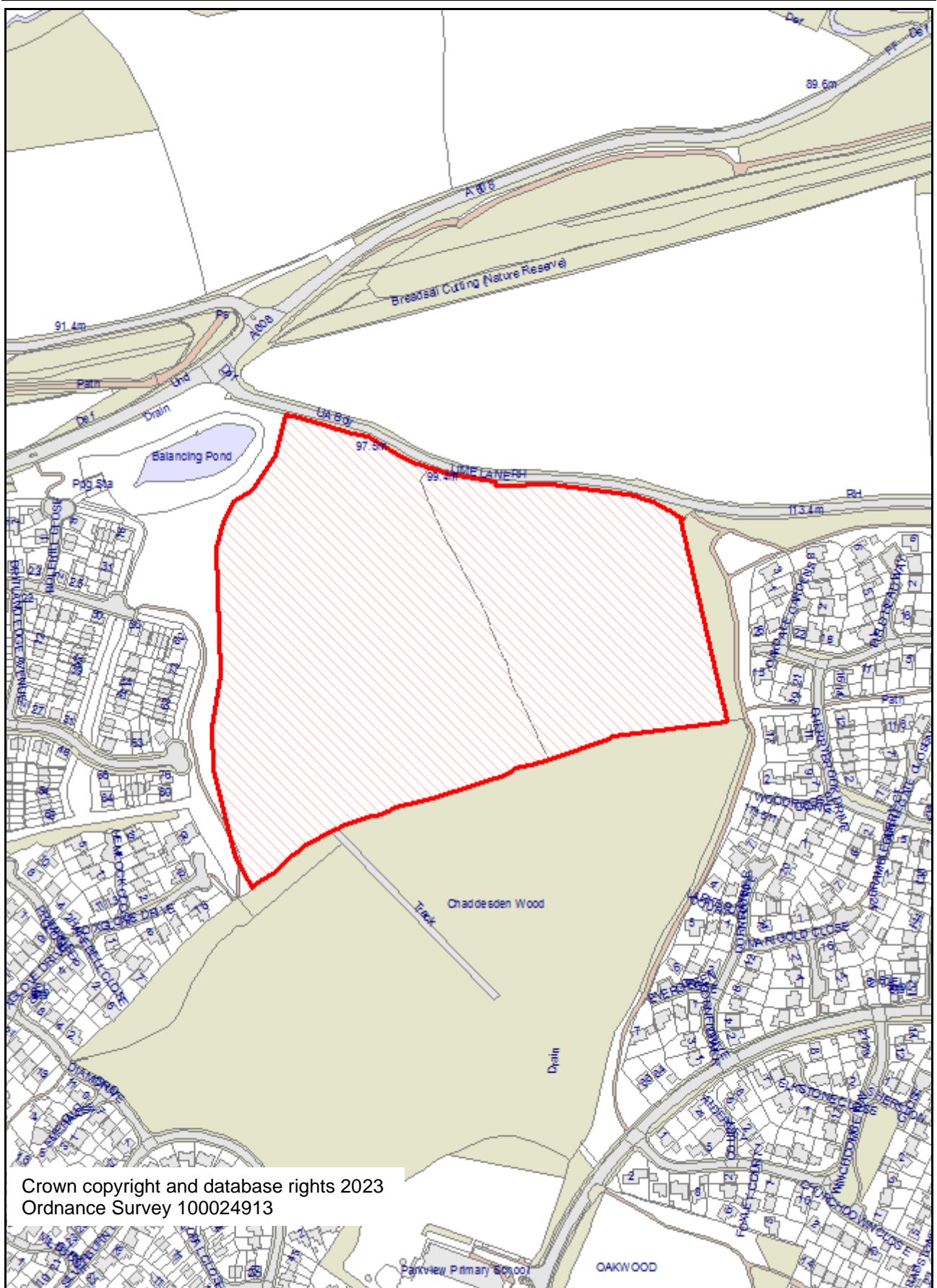
8.4. Application timescale:

The statutory target date for determination of the application was 7 April 2023 and has been extended by agreement to the 15 September 2023 to allow for consideration by the Planning Control Committee.

Committee Report Item No: 8.1

Application No: 23/0008/OUT

Type: Outline (with access)



Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

1. Application Details

1.1. Address: Eagle Market, Derby Theatre, Castle and Falcon Public House, Morledge, Theatre Walk, East Street, Derby

1.2. Ward: Arboretum Ward

1.3. Proposal:

Demolition or part demolition of existing Eagle Market building, public house and theatre. Erection of a phased mixed-use development, including residential and commercial floorspace (Use Classes C3 and E); new public square; servicing; car and cycle parking provision; hard and soft landscaping works; provision of new pedestrian routes, and other associated works.

1.4. Further Details:

Web-link to application:

<https://eplanning.derby.gov.uk/online-applications/PLAN/23/00086/OUT>

Brief description

This outline planning application, with all matters reserved, seeks permission to demolish the Castle and Falcon Public House, Eagle Centre Market, and Derby Theatre along with the supporting structures of the access ramps and removal of the basement car park and the erection of a phased development comprising of up to 875 residential units, commercial floor space, public realm/landscaping and public square, servicing and car parking.

The application site is currently occupied by the Castle and Falcon Public House which is currently still occupied and open for use. The building offers little to the street scene, from an architectural merit perspective but would be a lost leisure facility within the city centre. Although, the proposal offers the opportunity to replace such a use. The Eagle Centre Market will also be lost however this is predominately vacant now following its closure in March 2023. There are some concerns with regards to the loss of the market, as the Market Hall is yet to re-open, these are considered further in Section 7.1 of this report. The parade of shops linking the Derbion Centre with the Cock Pitt Car Park and Derby Theatre remain open. The existing facilities are serviced by the internal Derbion links or directly off East Street.

The application would also see the demolition and loss of the Derby Theatre, as the Becketwell Performance Venue and Guildhall Theatre are not open there are concerns with the loss of the theatre provision of across the city. This will also be considered further in Section 7.1 of this report. Although, it is considered that with the inclusion of suitably worded conditions there can be continuity of provision within the city.

The existing buildings offer little in terms of architectural merit to the city or its skyline. In fact, they create a barrier to connectivity from the north-east and restrict visibility and links from the bus station and train station providing a poor gateway to the city centre. As such their demolition and loss would be of a benefit to the city creating an opportunity for re-development and the introduction of a gateway to the city centre, from the east. Land levels across the site vary as a result of the basement car parking provision.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

Members will be familiar with the site and have recently considered an alternative re-development scheme, known as Eastern Gateway under code no. [22/01809/FUL](#). That application has a resolution to grant following the July Planning Control Committee. The application, in short, seeks to partially demolish the Eagle Centre and full demolition of the Castle and Falcon Public House which will allow a new entrance to the market to create a family entertainment facility, new building façade and landscaping. At this stage it is not clear whether elements of the Eastern Gateway scheme could be retained and incorporated into this wider scheme or whether the Eastern Gateway scheme would have to be removed in whole or part. This will be a matter that will need careful consideration during any reserved matters phases, if the Eastern Gateway scheme is implemented. The granting of planning permission does not necessarily mean that a scheme will be delivered.

Given the complexities around the compatibility of the Eastern Gateway scheme, the Derby Theatre and general land assembly the applicant, in their letter dated 27th July, 2023, are seeking a 10 year time limit to this outline planning permission rather than the usual three year permission.

“Section 91 of the Town and Country Planning Act 1990 allows Local Planning Authorities to grant a planning permission for a longer or shorter period than the standard 3 years, if considered appropriate having regard to the provisions of the development plan and to any other material considerations.”

Within the submitted letter, the applicant sets out their justification for why a 10 year permission should be considered, and is reasonable. Their justification is summarised as follows:

- The consideration of longer (or shorter) period of time are allowed under the provisions of the act.
- This would align with the aspirations of policy AC2, and the Council’s Ambition Document. *Although, it should be noted that a 10 year permission would go beyond the current plan period.*
- The proposal is a for a phased development, longer time period are often needed for scheme of this scale, as a recognition of their complexities and timescales for construction
- The Council has already set a precedent for 10-year time limits with the following permission having recommendations or approvals for longer time periods, Infinity Park Way (22/01685/OUT). *Other schemes include Derby Triangle (19/00491/OUT).*

In light of the above, the complexities of the scheme, its scale, land assembly I am minded to consider that this request is reasonable, in this instance when considering the scale of the scheme, land assembly complexities and the need to consider the theatre provision.

The application site covers an area of approximately 1.91 hectares and is bound by bus station and hotels to the north-east, to the south by the Derbion shopping centre and cinema complex, to the west and north by the city centre, historic core and commercial uses. The application site is located to the south-west of the core city centre. With the exception of the built form there are no existing ecological feature

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

within the application site but there are a number of street trees along East Street which will need to be considered during the delivery of any reserved matters application(s). There are no designated heritage assets within the application site.

However East Street does form the boundary of the City Centre Conservation Area and there are designated buildings within the vicinity of the application site. Given the scale of the proposal, it will be important to consider the relationship created with heritage assets across the city including the world heritage site and its buffer and the Grade I Cathedral. This will be considered in more detail in Section 8.2 of this report and the comprehensive comments of consultees including ICOMOS, Historic England, Derwent Valley Mills World Heritage Panel and the Council's Built Environment Officer, amongst other consultees.

During the life of this application additional information has been submitted to supplement the original documents, to provide further justification, reasoning and understanding of the proposed development and its impacts. The application, as updated, has been duly consulted upon and the most recent comments of consultees are set out in Section 5 of this report.

Amendments have been submitted to reflect the changes to the Eastern Gateway proposal, as set out in the applicants letter dated [23rd June 2023](#). The letter confirms *"The Eagle Quarter scheme was originally designed with parts of the new residential provision sitting above the Eastern Gateway scheme. This previously comprised part demolition of the Eagle Market and full demolition of the Castle and Falcon public house and redevelopment to provide a food store, coffee shop and new public realm ramp. The Eagle Quarter drawings referenced the Eastern Gateway planning application for works at entrance level."* and *"This amendment will ensure the Eagle Quarter planning application submission encompasses the development of all parts and levels of the site, and no longer needs to refer to proposals which are the subject of a separate planning application."*

This proposal forms part of the Derbion Masterplan which seeks to unlock the development of two of their sites (Bradshaw Way under code no 23/00087/OUT) and this, the Eagle Quarter scheme.

The application would be residential led with a landscaped/public realm core with ancillary and complimentary uses, comprising of the following:

- Up to 875 residential units
- Up to 2,358 sqm Gross External Area (GEA) commercial space
- Up to 10,961 sqm GEA of parking, servicing and ancillary space

The proposed development would comprise of 11 buildings of varying heights. The land uses, maximum heights, mix of uses are summarised as follows, as taken from Table 4.2 from the submitted Planning Statement:

Block	Maximum Number of Storeys	Max. AOD (metres)	Land Use	Use Class	Floorspace GEA (sqm) by use	Total floorspace GEA (sqm)	Total residential units
Block A1		108.5	Commercial	Class E	323	13,860	136

Committee Report Item No: 8.2**Application No: 23/00086/OUT****Type: OUT**

	18 + Plant and roof access		Residential	Class C3	13,537		
Block A2	29 + Plant and roof access	141.5	Residential	Class C3	22,946	22,946	224
Block A3	14 + Plant and roof access	96	Commercial	Class E	229	11,733	477
			Residential	Class C3	11,504		
Block B	4 + Plant and roof access	63.9	Residential	Class C3	585	585	4
Block B1	14 + Plant and roof access	97.5	Commercial	Class E	414	10,819	117
			Residential	Class C3	10,405		
Block B2	12 + Plant and roof access	87.5	Residential	Class C3	6,943	6,943	78
Block C	10 + Plant and roof access	84.5	Commercial	Class E	579	9,352	99
			Residential	Class C3	8,733		
Block D	4 + Plant and roof access	60.5	Residential	Class C3	594	594	8
Block D1	10 + Plant and roof access	78.5	Residential	Class C3	6,621	6,621	58
Block D2	7 + Plant and roof access	69.5	Residential	Class C3	3,738	3,738	34
Class E units	2	57.5	Commercial	Class C3	813	813	0
Basement Level	1		Mixed use	Sui Generis	10,961	10,961	0
Total						98,968	875

For reference, the Grade I Cathedral measures 53.3 metres from the pavement outside of the west door to the top of the pinnacles, as confirmed by the Cathedral's architect. This would be a maximum of 106.00 AOD metres. The flagpole rises a further 2.1 metres above this height. The pinnacles being the small spires on the corners of the Cathedral tower.

The indicative form and layout of the development has evolved from the preliminary application stage as summarised within the Design and Access Statement following early consultation with consultees, stakeholders and third parties. The schemes evolution has also considered the topography of the site, its wider context, the city's skyline along with the site's opportunities and constraints. Given the changing land levels the application is accompanied by a ground level illustrative masterplan and an upper-level masterplan. The masterplans should be reviewed in conjunction with the following parameters plan to understand the maximum parameters of the development.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

The masterplan(s) indicate the location on the interlinking public realm areas and the enhanced pedestrian connections through and across the development, these are detailed in the upper-level masterplan:



The application is supported by a suite of parameter plans which seek to secure the limits of the development in terms of distances between blocks, the heights of blocks and land uses:

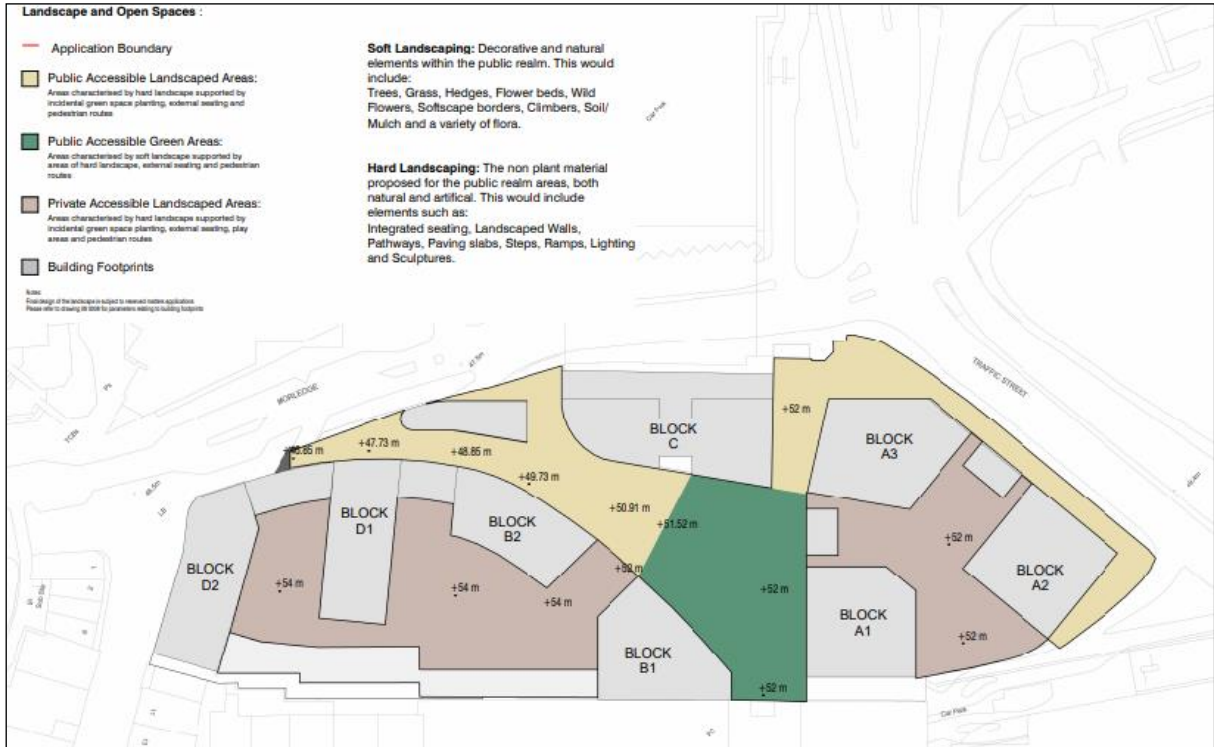
- Proposed Parameter Plan 01 – Principal Land Use Ground Floor Rev P02
- Proposed Parameters Plan 02 – Principal Land Use – Upper Floor Rev 02
- Proposed Parameters Plan 03 – Horizontal limits Deviation Plan Ground Floor Rev 02
- Proposed Parameters Plan 04 – Horizontal limits Deviation Plan Upper Floor Rev 01
- Proposed Parameters Plan 05 – Vertical limits Deviation Plan Rev 01
- Proposed Parameters Plan 06 – Landscape and Open Spaces Rev 02
- Proposed Parameters Plan 07 – Principal Land Use Lower Level Rev 01
- Proposed Parameters Plan 08 – Horizontal Limits of deviation plan – Lower Level P01

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

The provision of the enhanced public realms and provision of amenity space for further occupiers of the development can be viewed on the submitted landscaping masterplan and show how there would be spaces between the building creating a welcome sense of place:



The proposed development would be set across various blocks of differing heights as indicated on the Proposed Parameter Plan 05 – Vertical limits of Deviation Plan:



When considering the building heights the application has sited the tallest building at the junction of Traffic Street and Moreledge with building heights declining towards

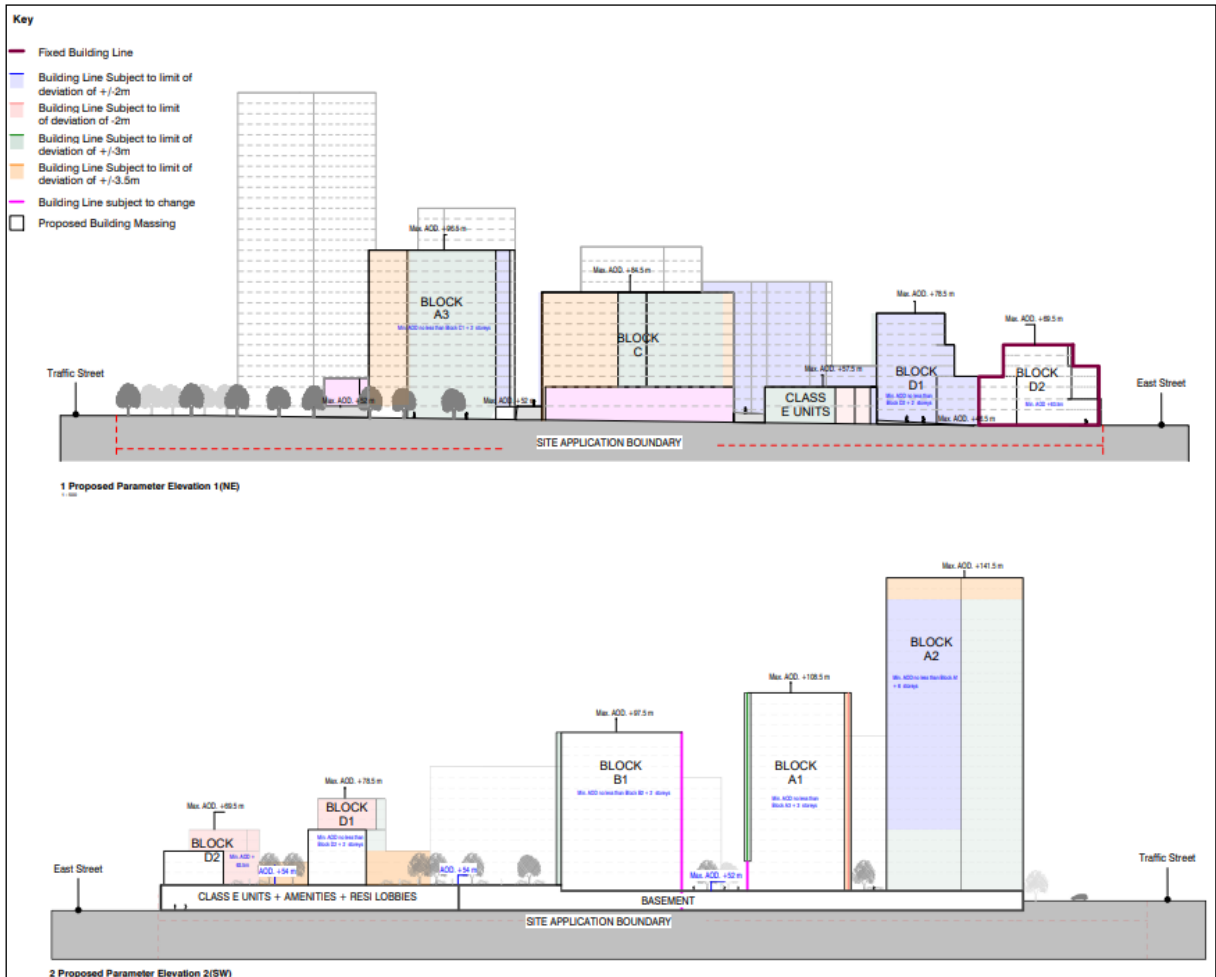
Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

East Street as indicated on the submitted Proposed Parameter Elevations 1 & 2 and Proposed Parameter Elevations 3 & 4.

Proposed Parameters Elevations 1 & 2:

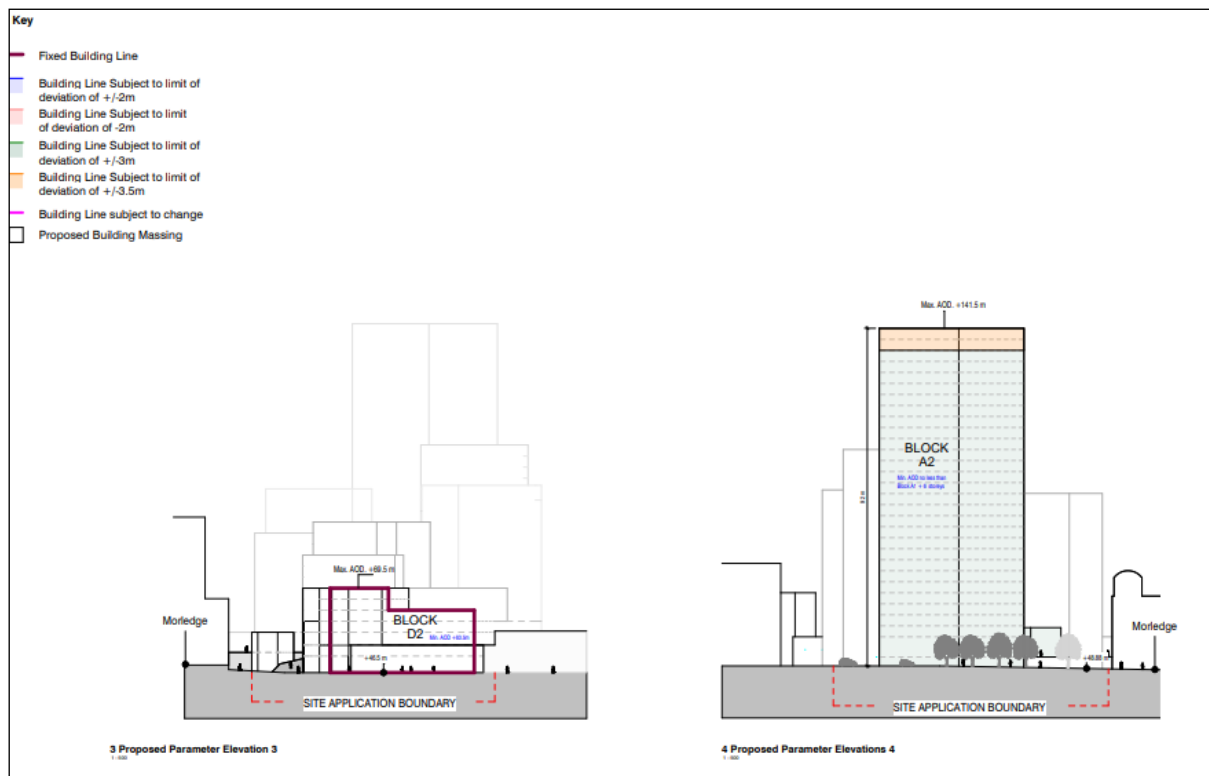


Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

Proposed Parameters Elevations 3 & 4:



The application is accompanied by a suite of technical and design documents some of which have been updated and amended during the life of the application. The application is in outline with all matters reserved. Therefore, all details are illustrative at this stage and the parameters plans showing the upper limits of the development in terms of heights and the distance between the blocks. Details relating to access and servicing are also indicative at this stage.

Environmental Impact Assessment

Prior to the submission of this application the applicant sought to screen the development to ascertain whether an Environmental Impact Assessment would be required. The full screening request, consultation responses and the Council's response can be viewed on the following link:

<https://docs.derby.gov.uk/padocumentserver/index.html?caseref=22/01902/EIA>

Planning Practice Guidance for Environmental Impact Assessments states that:

"It should not be presumed that development above the indicative thresholds should always be subject to assessment, or those falling below these thresholds could never give rise to significant effects, especially where the development is in an environmentally sensitive location. Each development will need to be considered on its own merits".

In conclusion, whilst the proposed development is considered to be 'Schedule 2 Development' requiring screening under the Regulations it is determined that it is not likely to have any significant effects on the environment, above the local level or that

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

cannot be adequately controlled or mitigated for. Accordingly, it is determined that the 'Proposed Development' described in the screening request is not an EIA development within the meaning of the Regulations and therefore an Environmental Impact Assessment is not considered to be necessary for this proposal. This opinion has had regard to the relevant EU Directives, the 2017 Regulations and current guidance.

2. Relevant Planning History:

Application No:	22/01809/FUL	Type:	Full Planning Application
Decision:	Pending	Date:	
Description:	Part demolition of existing Eagle Market building and full demolition of public house, allowing for change of use of the retained part of the Eagle Market from Retail (Class E) to indoor go-karting, drinking establishment, family entertainment, amusement centre (Use Class E/ Sui Generis). Installation of a new building façade alongside associated access, parking, servicing area and landscaping.		
Application No:	22/01811/FUL	Type:	Full Planning Application
Decision:	Granted Conditionally	Date:	03/02/2023
Description:	Change of use of part of the existing Eagle Market from retail (Use Class E) to indoor go-karting, drinking establishment, family entertainment and amusement centre (Use Class E/Sui Generis)		
Application No:	22/01902/EIA	Type:	Environmental Impact Assessment – Screening
Decision:	EIA Not Required	Date:	13/01/2023
Description:	The Town & Country Planning (Environmental Impact Assessment) Regulations 2017. Regulation 6(2). Environmental Impact Assessment Screening Opinion Request in respect of preliminary proposals for redevelopment of site to provide - 800-1000 residential dwellings, maximum GFA 99,000sqm, maximum height of 92 metres (up to 30 storeys)		

3. Publicity:

- Neighbour Notification Letters sent to 10 properties.
- Site Notices were erected on Albion Street, Traffic Street, outside of the Castle and Falcon Public House and on the Morledge (opposite the Riverside Car Park)
- Statutory Press Advert published 27th January 2023

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

Pre-submission Publicity

Prior to the submission of the application the applicant carried out a series of local community engagements including:

- Leaflet drop.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

- Website
- Press Release
- In-person exhibition (2nd and 3rd December)
- Stakeholder engagement with the Design Review Panel, Environment Agency, Historic England, Derby Civic Society, Derwent Valley Mills Partnership, Victorian Society, St Peters Quarter BID, Cathedral Quarter BID, Derby Cathedral, Derbyshire Constabulary, Marketing Derby, University of Derby, elected Members and MP's Amanda Salloway and Margaret Becket along with existing tenants of the building(s).

The outcome of the public engagement is summarised within the submitted [Statement of Community Involvement](#). Overall, *“The response to the questionnaires demonstrates a high level of public support for, or agreement to, the redevelopment of the Eagle Quarter site and the wider proposals presented in the Derbion Masterplan...”*. The pre-submission engagement allowed the applicant the opportunity to discuss the scheme with stakeholders and to address comments and concerns, stakeholders raised, within the suite of documents submitted in support of the outline planning application.

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 5 letters, the comments of Derby Civic Society have been reproduced in Section 5 of this report. The letters of contribution are summarised as follows:

- Oppose the loss of the entertainment provision of the theatre.
- Loss of the market provision
- No need for further housing
- Nothing in the city centre to attract people to live in it
- There needs to be sufficient infrastructure in place to support new homes such as schools, doctors etc.
- Concerns about fire safety and fire prevention
- The proposed buildings are too high and should be no higher than 10 storeys.
- Lack of information about refuse collection
- The development would be complicated to construct.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

- There would be impacts on pedestrians as a result of wind tunnels.
- There is insufficient amenity space for the number of residential units proposed.
- The large-scale demolition will expose the rear elevations of properties and how will these look
- Lack of information about the demolition process and how access will be maintained. Will there be a large hole in the ground for years to come?
- There will be a negative impact on the city's skyline.

5. Consultations:

5.1. Transport Planning

1.0 Introduction and Background

This application is outline with all matters reserved. It sets out the principle of the development including the scale and land use profile. However, because the broad principles of the Section 106 Agreements have to be agreed at the outline stage, a travel plan and assessment of the wider off-site impacts has been undertaken. As such, any mitigation required, to make the quantum of development contained in this application acceptable in transport terms, has been assessed and the schemes either conditioned or are set to be set out in the Section 106 agreement.

In summary, the above application is for an outline masterplan that includes 875 flats, and 2358 sqm GFA of E Class commercial, business and service use. The latter is ancillary to the residential and is likely to be small retail or coffee shop style outlets. The principle of the development is to create low car-based apartments for city centre living. In total the development will include 182 parking spaces for residents, which equates to a parking ratio of 0.2 spaces per flat.

As such, the issue for this application is not it's impact on the wider transport network. It is whether, given the type of development and location that there is sufficient access opportunity by sustainable travel modes, for this development to work as a high density and low car design.

However, it should be noted that there is no certainty over the masterplan and it has been agreed with planning officers that the different phases can come forward through separate full planning applications. As such, the cumulative implications of any elements of the scheme delivered or committed will be dealt with through an extant Reserved Matters (RM) approval. The s106 agreement will enable a comprehensive review of potential obligations at each RM stage.

1.2 Local Planning Policy

Derby City Local Plan Part 1 – The development site is located in the City Centre, within the Core Area of the Central Business District Boundary. This should be noted because of particular policies within the Derby City Core Strategy on transport.

AC4 is a specific transport and accessibility policy on development within the City Centre. The Local Plan policy states the following about developing sites in the City Centre, and that the Council will:

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

- (a) encourage developers to make the most of, and strengthen, the opportunities provided by existing walking and cycling networks.
- (b) encourage developers to work with public transport providers to ensure that all users are able to access development by sustainable means, especially taking account of times when developments are likely to be busiest
- (c) support proposals for the improvement of the public realm, particularly where it would improve access and legibility across the City Centre.
- (d) support proposals that improve safety, improve air quality and reduce carbon emissions.
- (e) ensure development provides a level of car parking which reflects the realistic requirements of the users and the highly accessible nature of the city centre. Parking should not take precedence over facilities provided for more sustainable modes of access.
- (f) seek to ensure a sufficient level of good quality and accessible public parking, subject to meeting sustainability objectives.

Further AC4 states that, the city centre is extremely accessible and also has a significant amount of public parking available. New development should not always, therefore, require the maximum number of spaces that would be suggested by the standards set out in Appendix C. The Council will, therefore, be generally supportive of proposals for lower levels of parking.

2.0 Assessment against the National Planning Policy Framework (NPPF)

The 2010 coalition government introduced the NPPF and set out below is the criteria against which the highway impact of the proposed development should be tested. It is important that this is the criteria used as the Secretary of State would use NPPF to consider the suitability of the above proposal should the application go to appeal.

Paragraph 110 of the NPPF says: In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
- b) safe and suitable access to the site can be achieved for all users; and
- c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree, also:

Paragraph 111 of the NPPF says: Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Paragraph 113 says: All developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

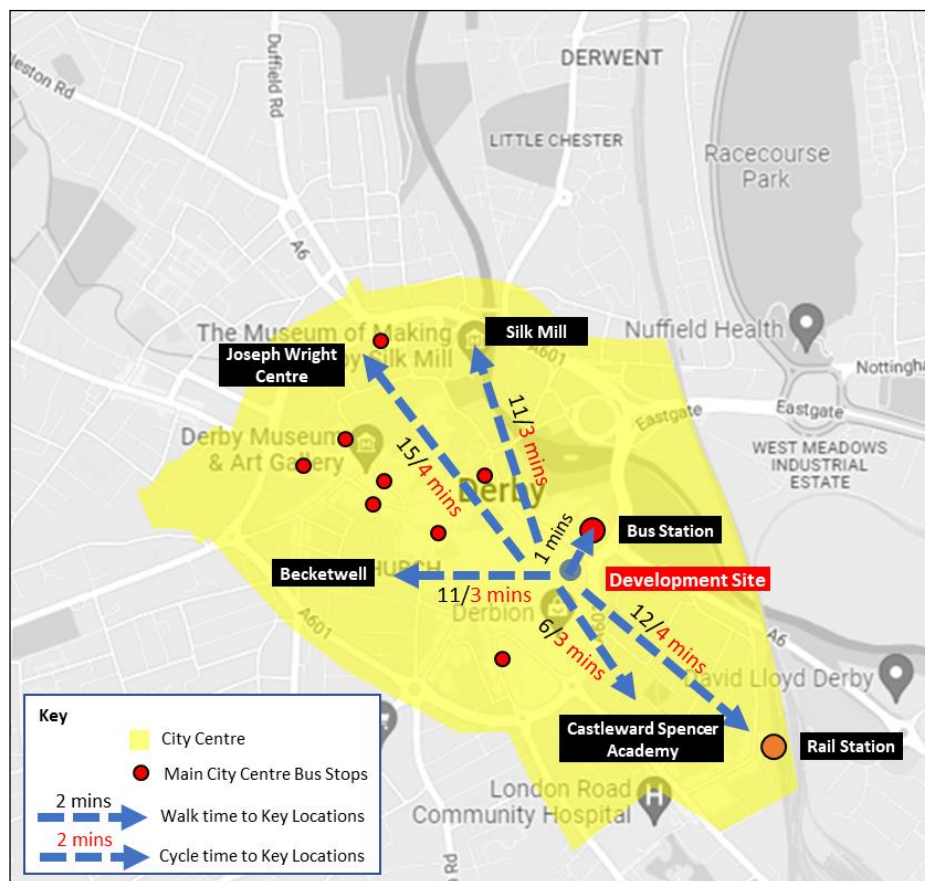
Considering the above criteria, Highways Development Control has the following comments:

2.1 Opportunities for Sustainable Transport

The NPPF has a presumption in favour of sustainable development and consequently is seeking to influence the developer to put in place measures to provide opportunity and to encourage future residents to travel by non-car modes, wherever this is realistic and feasible i.e. measures to encourage walking, cycling and travel on public transport.

Non-Motorised Users

Located in the city centre, this development is perhaps in the most sustainable location that can be defined in planning terms. The main city transport hubs are within a few minutes walk of the development. Further, residents will have access to a wide range of food and non-food retail, leisure, restaurants, health and service facilities. Figure 1 provides a map of the location of the development, showing the city centre boundary and walk and cycle times to key locations.



On average a person walks around 1.4 metres per second. On this basis a 20 minute walk distance is around 1.7 kilometres or 1 mile. Presently, this means that the whole of the city centre is within a 1 mile walking distance of the development site. Indeed, the Derbion Centre, and all of the facilities that it offers, will be on the doorstep of this development.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

Derby Bus Station will also be on the doorstep of the development providing access to the whole of the City and beyond to destinations in the rural market towns and villages that surround Derby.

Derby Rail Station is within a 12 minute walk of the development site and provides a large range of local and national rail services. These include frequent services to Nottingham, Birmingham, Sheffield and London. The speed of services to London will potentially be enhanced in the future if the plans for HS2 are realised with current proposals to provide two services per hour to Derby Station.

Cycling is one of the most sustainable forms of transport, and increasing its use has great potential. To release this potential, highways, public spaces and other rights-of-way need to be organised accordingly.

Figure 2 provides an extract from the Derby Cycle map and shows the location of the development to the cycle network. A benefit of the proposed development location is the convergence of the transport network in the City Centre. For cycling this means a network of relatively quiet roads, cycle priority and traffic free routes through the City Centre that link the development to the radial routes beyond.

More locally, there are segregated off road routes that were constructed as part of Connecting Derby and the new inner ring road. National Route 6 is located approximately 400 metres to the south west of the site and provides links to Pride Park, eventually picking up the off-road riverside route to Borrowash and south via the old canal route to Osmaston, Boulton and Chellaston. Northwards Route 54 provides a link to Chester Green, Darley Abbey and beyond to Little Eaton.

The application is in outline and as such the proposals are not detailed in terms of cycle provision. However, it will be conditioned that a detailed framework travel plan must be submitted with the first detailed application and that this includes certain initiatives with the development. For example, that a certain level of secure cycle parking and maintenance facilities for cyclists are provided, such as a bike pump. It is clear from the location of this development that cycling is a viable option, and that potentially more could be achieved.

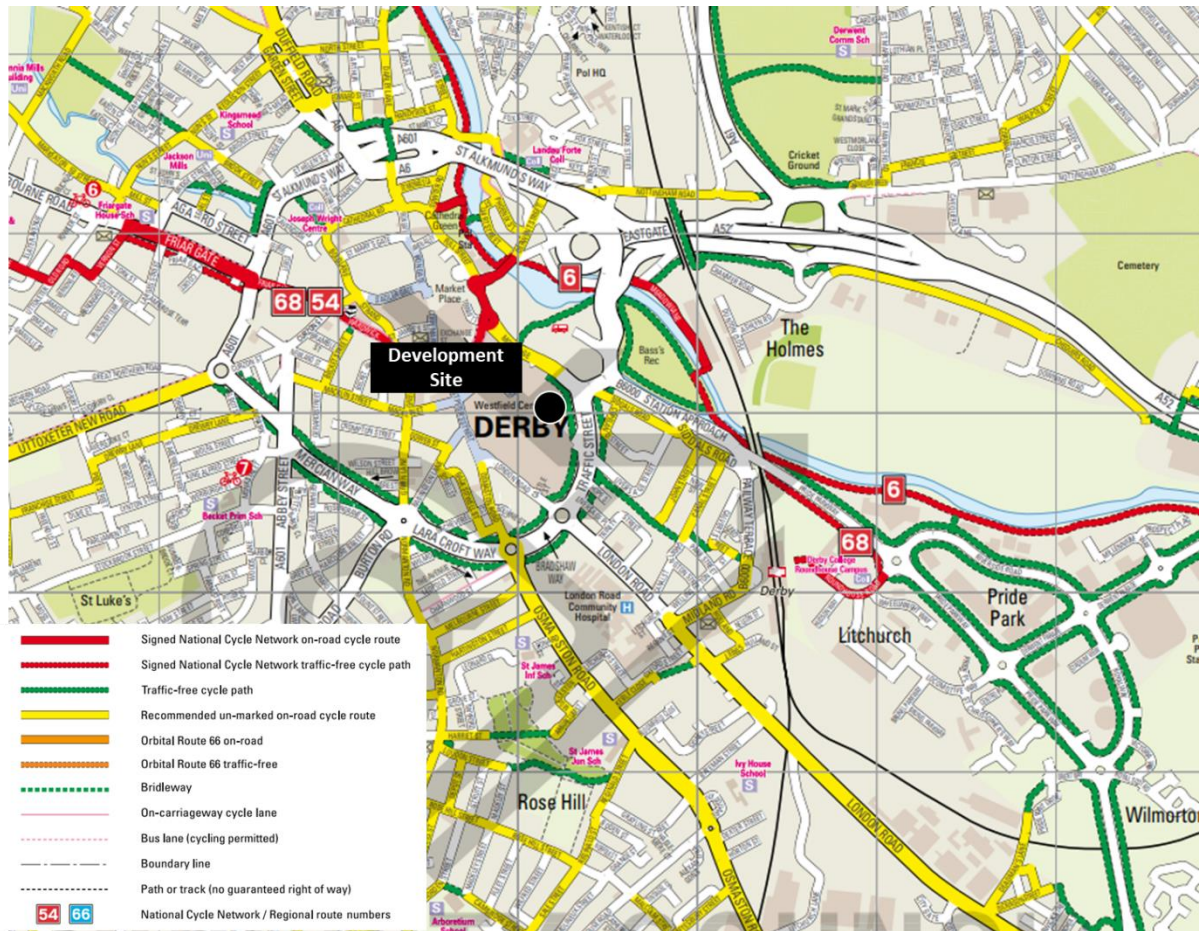


Figure 2: Cycle Network in Relation to the Proposed Development

Travel Plan

A Travel Plan will be provided for the development. This will be secured by condition and the detail of what will required included in the Section 106 agreement. For example:

- A Travel Plan Co-ordinator to be provided by the developer to oversee the delivery of a Travel Plan across the whole site. The Co-ordinator must be employed before the occupation of the first flat and identified in writing to the LPA.
- Submission timeframe for the Travel Plan.
- Known committed initiatives, such as:
 - A large secure cycle area within the car park for residents and employees; or space provided with the flats for residents.
 - Cycle maintenance facilities such as the those provided in the Derbion Cycle Hub.
 - Provide a Personalised Travel Plan service.
 - Commitment to provide car club scheme.
 - Marketing Strategy including information welcome packs, website, travel campaigns, e-notice boards and newsletters.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

- Travel Plan targets. (What and at what point do they provide them).
- Parking Management Plan that identifies how parking spaces will be allocated.
- 5% of spaces have EV charging available.
- Action Plan detailing initiatives and programme of delivery.
- Monitoring strategy first survey within 3 months of first occupation of the development. Subsequently, annually on the anniversary of the initial survey, until 3 years after first occupation of the last unit.

It is proposed that a penalty clause is included for non-delivery of the travel plan and that an annual monitoring fee is requested to coincide with the monitoring programme.

It is considered that the applicant has done as much as can reasonably be expected at this stage to make this site sustainable.

2.2 Safe and suitable access to the site can be achieved for all people

Although this application is outline only and access will be a reserved matter, it is likely that the development will use the existing access on Traffic Street as its main access point for residents parking and servicing. **Figure 3** below shows the proposed outline development access layout in the context of the masterplan.

The development proposals include removing the current accesses from the Morledge, which currently provide the service access to Derby Theatre and an unused secondary access to the Derbion Basement Car Park.

The current masterplan shows pedestrian access provided at five points, allowing permeability between the public realm space within the development and the surrounding area. As such, the development will open up the area facing the Morledge creating new connections to the Derbion Centre, Bus Station and Traffic Street.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT



As access is a reserved matter, there is not too much detail that needs to be conditioned as part of this application. However, a condition will be included that sets out with any detailed application that a masterplan is provided, which shows the proposed layout of the site including all pedestrian and cycle links. Further, that general layout plans are provided at 1:1250 of any access and service arrangements and that swept path analysis is provided to show that such arrangements work and do not cause safety problems with access or egress to and from the highway.

Also, a general condition will be included that requires the developer to consider wider improvements for non-motorised transport users on the public highway. This is to ensure that the development properly integrates into the surrounding network. For example, Derby City Council would want to see the widening of the footway on Traffic Street and improvements to the crossing area to the Derbion rooftop service road and Basement Car Park. This is already a busy pedestrian area and the development is likely to increase footfall as a result of the numbers of residential flats and new retail offer. As such, there is an opportunity to provide better shared cycle/pedestrian facilities to improve safety and maximise access by non-motorised modes to the development.

2.3 Transport Impacts of the development.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

NPPF suggests the impact of the residual trips (i.e. the remaining car trips after travel by other modes has been taken into account) should be mitigated as long as it is affordable in the context of the value of the development. The Government does not define 'severe impact'. DCC takes the view that in this context 'severe' relates to congestion but can also relate to safety in terms of impacts on the operation of off-site junctions.

Transport Assessment

Although the planning application is outline with all matters reserved, any wider mitigation, and potential mitigation through either Section 106 or Section 278 agreements, needs to be established at the outline stage. As such, an assessment of the wider traffic impacts have been undertaken and a Transport Assessment submitted with the application.

Traffic Generation

The proposed upper limits of the development outlined includes 875 flats, and 2358 sqm GFA of E Class Commercial, Business and Service use. The latter is ancillary to the residential and is likely to be small retail or coffee shop style outlets. The principle of the development is to create low car-based apartments for city centre living.

Traffic generation has been calculated using the industry standard database TRICs and applied to each of the separate proposed land uses. It is not possible to measure the operational trips of the existing Eagle Market as the Basement Car Park used by stall holders and patrons is open to the public and the Derbion Centre. Further, the Eagle Market has not been fully operational for some years now and the majority of stalls and units are empty. As such, trip rates from TRICS have also been applied to estimate the existing trips generated by the Market Hall, based on its total floor area. **Table 2** below sets out the predicted traffic generation of the proposed development and the estimated trip generation of the existing Eagle Market.

	Trip Rates				Vehicles Trips			
	Existing Eagle Market		Proposed		Existing Eagle Market		Proposed	
	AM Peak	PM Peak	AM Peak	PM Peak	AM Peak	PM Peak	AM Peak	PM Peak
Market 12020sqm (per 100 sqm)	0.12	0.26			14	32		
Glass E Commercial, business & Service 2358 sqm (per 100 Sqm)			0	2.324			0	55
875 Flats (per flat)			0.229	0.244			200	214
Total Trips in Vehicles					14	32	200	269
Net Difference							186	237

Table 2: Comparison of Traffic Generation Weekday AM Peak (0800-0900) and PM Peak (1700-1800)

Table 2 shows that the development proposal generates around **200** trips in the AM Peak (0800-0900) and **269** in the PM Peak (1700-1800). However, in planning terms

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

because there is an existing land use on the development site, then the existing trip generation can be off-set against the proposed development to give a **net** change in vehicles trips. **Table 2** shows that the net change in trips as a result of the development is **186** trips in the AM Peak (0800-0900) and **237** in the PM Peak (1700-1800).

	Trip Rates (Two-way)		Vehicles Trips	
	Existing Eagle Market	Proposed	Existing Eagle Market	Proposed
	1200-1300	1200-1300	1200-1300	1200-1300
Market 12020sqm (per 100 sqm)	1.81		217	
Glass E Commercial, business & Service 2358 sqm (per 100 Sqm)		6.77		159
875 Flats (per flat)		0.173		151
Total Trips in Vehicles			217	310
Net Difference				93

Table 3: Comparison of Traffic Generation Saturday Peak

The applicant was asked to consider the trip generation of the development on a Saturday because the development is located in a retail area, which generally has a high weekend peak. However, residential development tends to have a weekday peak related to the morning and evening peak commuter journey time. As such, the highest weekend peak was calculated to be between 12:00 and 13:00 hours and generate around 151 vehicles. However, some consideration has to be given to netting off the existing Eagle Market land use. The information in TRICS is limited for Saturday trip rates relating to indoor markets. **Table 3** provides a rate, however, because it is historical it has to be treated with caution. However, it shows the general level of trips that the existing Eagle Market might generate if it was fully operational. Further, whilst the proposed includes a trip generation for restaurants, it is likely that such land use in this location will be ancillary to the rest of the development and generally to the city centre and people already shopping in the area. Overall, it is likely that the existing and proposed, in planning terms, will net each other off and the general impact on the Saturday of the development will be small.

Parking

The principle of the development is to provide a low car high density development in the City Centre. The NPPF has a presumption in favour of sustainable development and identifies that low car developments in city centres and town centres can optimise the density of development.

The proposed residential flats will have a specific car park that only they will be able to access within the Derbion Basement Car Park, see **Figure 4**. A total of 182 spaces will be provided, which for the 875 flats provides a parking ratio of 0.208 spaces per flat.



Figure 4: Proposed Car Park Location

This is a relatively low ratio, however, the development is in one of the most sustainable locations in the city, and the need for a car to travel is significantly reduced by the doorstep offer of retail, leisure, services, employment, education and public transport. The 2021 census data for provides information on car ownership levels for Derby. **Figure 5** provides a plot of ownership levels along the A514 corridor from the city centre to the city boundary to show how they change.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

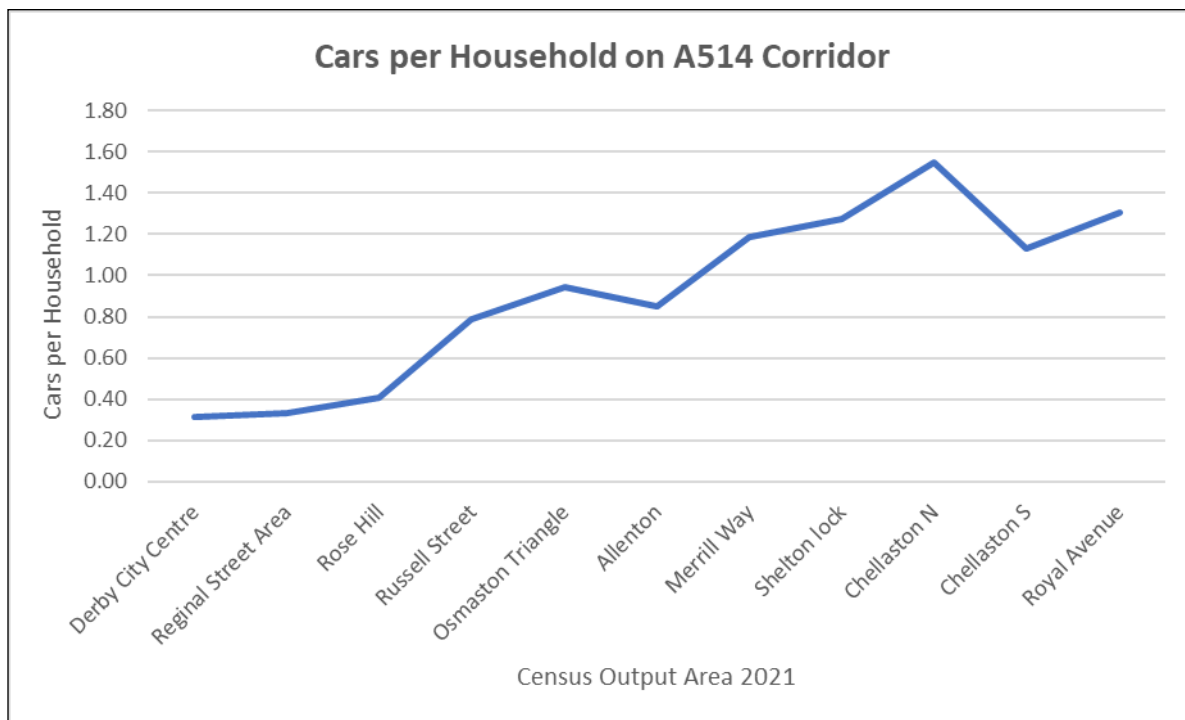


Figure 5: Car Ownership Levels on A514 Corridor by Census Output Area

The graph above shows that there is a significant difference in car ownership between the city centre and city boundary. It ranges from 1.6 cars per household on the outskirts of Derby to 0.3 in the city centre. The data shows that Derby residents in the city centre do not have high car ownership. This is because they have access to good public transport, retail, services and leisure within close proximity to where they live. However, it also probably reflects their social economic status and density and size of housing, where for example single young people are more likely to be attracted to city centre living rather than families. The above data is based on all households and does not reflect differences in housing type such as between houses or flats, or between privately owned and rented. Generally, private flats have a lower car ownership level less than private housing, around 25% less. Rented flats have a car ownership level of around 62% less than private housing. At this point it is not certain what ratio of private to rented flats will be constructed.

A ratio of 0.3 spaces per flat would equate to 262 spaces. However, based on a ratio of 25% less for private flats equates to 197 spaces. As such, and because of the city centre location, the development should be able to sustain a lower ratio or 182 spaces.

Further, prospective residents to the flats will be aware of the parking ratio provided by the development and will have to make a choice as to whether the development is suitable for their needs. If residents do require a parking space, and can't secure a space in the development, then potentially there is a large amount of public parking in the city centre. For example, Derbion currently offers season tickets for around £960 per year. However, the Transport Assessment identifies that the Derbion Car Parks are not operational 24 hrs with a closing time on weekdays of between 1:30 am and 6:00 am. The restrictive hours and the additional cost of season tickets is likely to control the attractiveness of this type of parking.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

In terms of parking on-street, the opportunity for parking is very limited in the city centre and surrounding residential areas to the south east of the site. **Figure 6** shows the parking restrictions around the development site and demonstrates that the highway network is either restricted by waiting restrictions, pay and display or permit holder only restrictions. The nearest road that is not controlled by a waiting or parking restriction is around 1 mile from the development site.

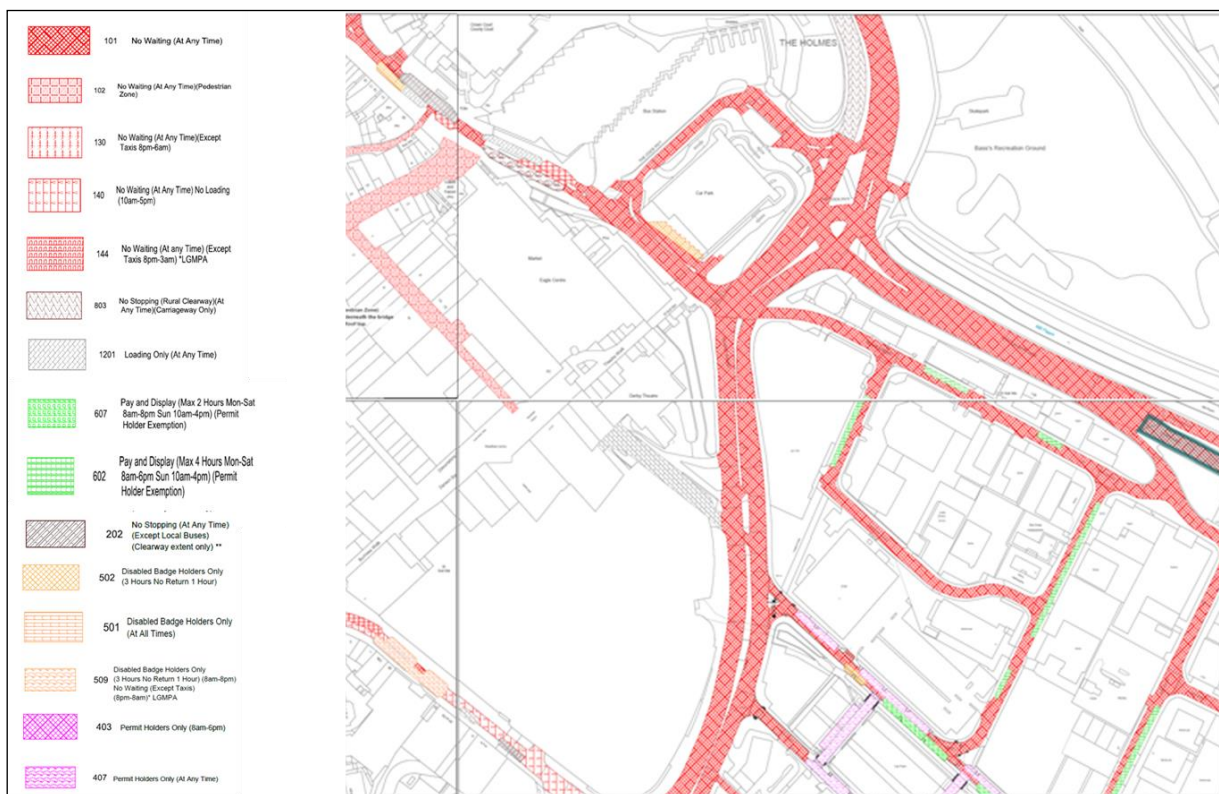


Figure 6: Parking Restrictions Around the Development Site

For the commercial use it is likely that this will be a mixture of small coffee shop outlets or no food retail. This development will be ancillary to the residential development and the proposals do not include any specific parking for this element of the development. It is likely that customers will either be the residents of the proposed flats or will already be in the city centre. Any new customers can use the Derbion Basement Car Park, which has a capacity 647 public spaces.

In line with the Government's motion in 2019, Derby City Council declared a climate change emergency to respond to this challenge. Research supported by DfT has identified that reducing car use and ownership is necessary for decarbonising the UK economy. From this perspective high density low car ownership living in the city centre is the right approach to take.

The City Council's Planning policies within the 2017 Core Strategy support this approach. Specifically AC4 states that, the city centre is extremely accessible and also has a significant amount of public parking available. New development should not always, therefore, require the maximum amount of spaces that would be suggested by

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

the standards set out in Appendix C. The Council will, therefore, be generally supportive of proposals for lower levels of parking.

As such, and for the reasons outlined above, Highways Development Control supports the parking ratio proposed for this development. However, because this is an outline application a condition will be included that asks for a parking management strategy to be submitted with any detailed application, which sets out how parking will be managed and allocated to residents. Further, if the availability of parking changes, such as the re-opening of the Riverside Car Park; or changes in Derbion car park opening times; or the control of the Derbion Basement Car Park, then any detailed application will be asked to reassess the impacts of the wider masterplan.

Traffic Impact and Junction Analysis – Derbion Basement Car Park Access and the Cock Pitt Signalised Junctions

Figure 7 provides a summary of the net distribution of development traffic in the weekday AM (0800-0900) and PM Peak (1700-1800).

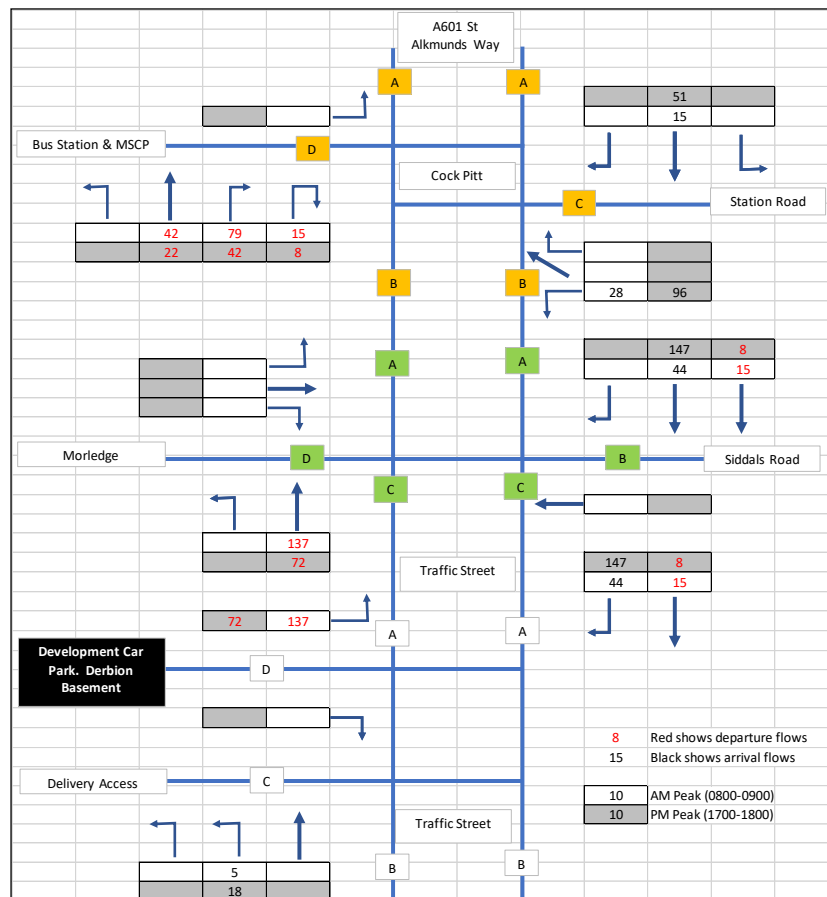


Figure 7: AM Peak (0800-0900) and PM Peak (1700-1800) Weekday Development Distribution, Taken from Transport Assessment

The major impacts from this development will be at the points where traffic distributes from the site and first accesses the surrounding network. Primarily, the main access junction to the site and the Cock Pitt signalised junction.

The main access junction to the Derbion Basement Car Park on Traffic Street is signalised. Traffic is able to turn right into the car park, and left in and left out. Vehicles

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

needing to turn right southbound have to U Turn around the Cock Pitt junction. For this reason, most traffic to and from the Derbion Basement Car Park, and hence development, will also travel through the Traffic Street/Morledge Junction and Cock Pitt Junction. As such, the developer has modelled the existing network based on a 2028 opening year and then the impact of the development against the three junctions.

The predicted junction impacts have been modelled using the industry standard signal junction modelling software LINSIG. **Table 4** provides a standardised performance for each junction based on their percentage capacity of the worst arm. The table highlights in red text those junctions that operate over a 90% capacity, considered to be the point where queuing starts to occur. The table also identifies the difference in junction performance with and without development scenario for the 2028 opening year.

Junction	Total Traffic Through Junction 2023		Dev Trips Through Junction		Operating Capacity Degree of Saturation (%)						Change between 2028 Base and 2028 + Dev	
	AM Peak	PM Peak	AM Peak	PM Peak	2023 Base		2028 Base		2028 + Dev		AM peak	PM peak
					AM Peak	PM Peak	AM Peak	PM Peak	AM Peak	PM Peak		
Derbion Basement Access Junction	2276	2310	186	237	53.6%	63.1%	55.9%	66.7%	58.9%	77.6%	3.0%	10.9%
A601 Traffic Street/Morledge	2486	2693	196	227	64.7%	86.4%	67.4%	89.9%	67.6%	89.9%	0.2%	0.0%
A601 Cock Pitt/Station Approach/St Alkmunds Way/Bus Station	5055	5368	181	219	81.3%	79.8%	84.9%	83.0%	84.9%	85.0%	0.0%	2.0%

Table 4: Summary of Development Traffic Impacts by Junction, and Junction Performance

The modelling work is based on traffic surveys undertaken on Tuesday 28th February 2023. The COVID pandemic has had a significant impact on traffic flows as a result of changing working patterns, particularly office workers and their continued hybrid home working. As such, traffic flows on Derby's network are typically lower than historical pre COVID conditions, although Tuesday, Wednesday and Thursday are seeing a return in similar traffic levels. Comparing the survey count day to historical pre COVID counts on Traffic Street, showed that traffic flows were 19% lower in the AM Peak and 5% lower in the PM Peak. It is difficult to say whether COVID has changed travel patterns for the long term, however, almost 2 years has passed since the easing of lockdown and it is probably fair to assume that the count undertaken on the 28th of February represents a relatively 'normal' situation post COVID.

The opening year assessment of 2028 did include around 4% growth in background traffic, based on Government TEMPRO growth predictions. As such some growth has been factored into the forecast open year and junction modelling.

The junction modelling summarised in **Table 4** shows that the development has the largest impact on the Derbion Basement Car Park Access, which is the same parking entrance as the proposed parking for the development. The development traffic is predicted to reduce the capacity of the junction during the forecast 2028 PM Peak by 11% from 67% to 78%, however, it is still predicted to operate within an acceptable operational capacity.

The junction modelling suggests that the Cock Pitt and Morledge junctions already operate close to acceptable capacity in the 2023 peaks. The Morledge Junction in the PM Peak operates at 86.4%. The Cock Pitt Junction operates at around at around 80% capacity during both AM and PM Peaks. In the 2028 future opening year, which

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

includes background traffic growth, capacity is predicted to further reduce with the Morledge junction operating at 90% capacity. The Cock Pitt is predicted to operate at around 85% capacity in the AM and PM Peaks. However, the development is predicted not have a significant impact on the operation of either junction. This is probably because the background traffic flows through the junction are large compared to the increase in development traffic. For example, in the AM Peak 2486 vehicles travel through the Morledge Junction and 5055 travel through the Cock Pitt Junction.

Notwithstanding this, the Cock Pitt Junction only allows for around 3 vehicles to queue for the U-turn movement per traffic signal cycle. Any exceedance of this number and the queuing vehicles will quickly impact on the ahead movement. There are very few existing vehicles that currently make this movement, with only 3 recorded during the AM Peak and 17 during the PM Peak. The development will increase this movement to 16 vehicles in the AM Peak and 25 in the PM Peak, and the junction should be able to comfortably absorb this increased movement in traffic. However, any increases in parking numbers for residents in the Basement Car Park, as part of this development, is likely to increase the U-turners. As such, it is important parking associated with this development, particularly the Derbion Basement Car Park, is controlled.

It must be highlighted that at peak seasonal periods, such as Christmas, the Derbion Basement Car Park has been historically busy and that there have been problems of traffic queuing on the network in this area. As such, future residents to this development may find that there are problems accessing and egressing their car park.

3.0 Conclusion and Conditions

3.1 Conclusion.

This application is outline with all matters reserved. It sets out the principle of the development including the scale and land use profile.

In summary, the above application is for an outline masterplan that includes 875 flats, and 2358 sqm GFA of E Class commercial, business and service use. The principle of the development is to create low car based apartments for city centre living. In total the development will include 182 parking spaces for residents, which equates to a parking ratio of 0.2 spaces per flat. As such, and given the scale of this development, the issue for this application is not necessarily it's impact on the wider transport network. It is whether, given the type of development and location, there is sufficient access opportunity by sustainable travel modes, for this development to work as a high density and low car design.

Given its position in the city centre, this development is perhaps in the most sustainable location that can be defined in planning terms. The main city transport hubs are within a few minutes walk of the development. Further, residents will have doorstep access to a wide range of food and non-food retail, leisure, restaurants, health and service facilities.

Despite the low car parking density, and because of the scale of development, the proposed application does generate around **200** trips in the AM Peak (0800-0900) and **269** in the PM Peak (1700-1800). However, in planning terms because there is an existing land use on the development site, then the existing trip generation can be off-set against the proposed development to give a **net** change in vehicles trips. The net

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

change in trips as a result of the development is **186** trips in the AM Peak (0800-0900) and **237** in the PM Peak (1700-1800).

The junction modelling shows that the development has the largest impact on the Derbion Basement Car Park Access, which is the same parking entrance as the proposed parking for the development. The development traffic is predicted to reduce the capacity of the junction during the forecast 2028 PM Peak by 11% from 67% to 78%, however, it is still predicted to operate within an acceptable operational capacity.

The junction modelling suggests that the Cock Pitt and Morledge Junctions already operate close to acceptable capacity in the 2023 peaks. The Morledge Junction in the PM Peak operates at 86.4%. The Cock Pitt junction operates at around 80% during both AM and PM Peaks. However, the development does not have a significant impact on the operation of the junction. This is probably because the background traffic flows through the junction are large compared to the increase in development traffic.

Notwithstanding this, the Cock Pitt Junction only allows for around 3 vehicles to queue for the U-turn movement per traffic signal cycle. Any exceedance of this number and the queuing vehicles will quickly impact on the ahead movement. There are very few existing vehicles that currently make this movement, with only 3 recorded during the AM Peak and 17 during the PM Peak. The development will increase this movement to 16 vehicles in the AM Peak and 25 in the PM Peak, and the junction should be able to comfortably absorb this increased movement in traffic. However, any increases in parking numbers for residents in the Basement Car Park, as part of this development, is likely to increase the U-turners. As such, it is important parking associated with this development, particularly in the Derbion Basement Car Park is controlled.

As such, there are no highway objections to the principle of the development subject to the following conditions and notes. *The full list of proposed conditions can be viewed on the following link –*

<https://docs.derby.gov.uk/padocumentserver/DownloadDocument.aspx?docid=200986253>

5.2. Highways Development Control:

As in outline form there are no Highways Development Control comments, at this stage. Please see Transport Planning comments for impacts of the proposal on the highway network.

5.3. ICOMOS – The World Heritage Panel

1. Background

On 27 February 2023, ICOMOS received a notification from the State Party submitted to the World Heritage Centre under the provisions of Paragraph 172 of the Operational Guidelines for the Implementation for the World Heritage Convention, regarding two proposed developments in the city of Derby: the Bradshaw Way and the Eagle Quarter development proposals.

- The Bradshaw Way proposal is for a phased mixed-use development comprised of residential, commercial and office floor space of varying heights, to a maximum of 19 storeys(113m AOD).

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

- The Eagle Quarter development proposal foresees the redevelopment of an existing urban precinct to house a mixed-use development of 11 buildings of varying heights. These are proposed to house up to 875 homes, commercial floorspace and a public square. The highest of these is planned to be 29 storeys (141,5m AOD).

Both development sites are located outside the buffer zone boundary of the World Heritage property but are in its immediate setting.

The State Party in its submission notes that the developments have the potential to affect the Outstanding Universal Value (OUV) of the Derwent Valley Mills World Heritage property. The submission includes the advice of Historic England, the Derwent Valley Mills World Heritage Site Partnership (who act as site management coordinators) and the Derby City Council's Urban Design and Conservation Team. From their submissions, the summary of their conclusion is that the proposals are incompatible with the maintenance of Outstanding Universal Value of the World Heritage property.

2. The Derwent Valley Mills World Heritage property

The Derwent Valley Mills World Heritage property was inscribed on the UNESCO List of World Heritage under Criteria (ii) and (iv) in 2001. 1 The World Heritage Committee adopted a retrospective Statement of Outstanding Universal Value for the property in 2010-²

Criterion (ii): The Derwent Valley saw the birth of the factory system, when new types of building were erected to house the new technology for spinning cotton developed by Richard Arkwright in the late 18th century.

Criterion (iv): In the Derwent Valley for the first time there was large-scale industrial production in a hitherto rural landscape. The need to provide housing and other facilities for workers and managers resulted in the creation of the first modern industrial settlements.

The Brief Synthesis for the property, excerpts of which are reproduced below, specifically notes the industrial character of the property:

The Derwent valley, upstream from Derby on the southern edge of the Pennines, contains a series of 18th and 19th century cotton mills and an industrial landscape of high historical and technological significance...

...The four principal industrial settlements of Cromford, Belper, Milford, and Darley Abbey are articulated by the river Derwent, the waters of which provided the power to drive the cotton mills. Much of the landscape setting of the mills and the industrial communities, which was much admired in the 18th and early 19th centuries, has survived...

... The insertion of industrial establishments into a rural landscape necessitated the construction of housing for the workers in the mills, and the resulting settlements created an exceptional industrial landscape. The change from water to steam power in the 19th century moved the focus of the industry elsewhere and thus the main attributes of this remarkable cultural landscape were arrested in time.³

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

The property is protected by a buffer zone, adopted at the time of inscription. This buffer zone was defined to:

...protect the setting of the nominated site from any development which would damage it. Some secondary buildings or features which relate to the primary significance of the nominated site are included. Wherever possible, boundaries of existing protected areas have been adopted.⁴

Maintaining the integrity of the relationship between the historical industrial landscape and its rural setting is integral to the maintenance of the Outstanding Universal Value (OUV) of the property. The statement of integrity also highlights this relationship:

The relationship of the industrial buildings and their dependent urban settlements to the river and its tributaries and to the topography of the surrounding rural landscape has been preserved, especially in the upper reaches of the valley, virtually intact. Similarly, the interdependence of the mills and other industrial elements, such as the canals and railway, and the workers' housing, is still plainly visible. All the key attributes of the cultural landscape are within the boundaries. The distinctive form of the overall industrial landscape is vulnerable in some parts to threats from large-scale development that would impact adversely on the scale of the settlements.⁵

The contribution of the picturesque nature of this rural landscape is noted in the nomination dossier as:

Much of the Valley's landscape setting, valued in the eighteenth century for its picturesque quality, has survived and it forms an attractive context for the mills and their associated housing.⁶

The concern regarding the potential negative impact of larger scale developments on the property is expressed in the nomination dossier:

Large scale or simply high, new developments in locations near the site could damage the visual amenity of the cultural landscape. For this reason a buffer zone has been defined as a framework for policies to safeguard the setting of the nominated site.⁷

The setting of the property relates to more than the visual setting of the property. Paragraph 112 of the Operational Guidelines provides guidance on the matter of setting:

Effective management involves a cycle of short, medium and long-term actions to protect, conserve and present the nominated property. An integrated approach to planning and management is essential to guide the evolution of properties over time and to ensure maintenance of all aspects of their Outstanding Universal Value. This approach goes beyond the property to include any buffer zone(s), as well as the broader setting. The broader setting, may relate to the property's topography, natural and built environment, and other elements such as infrastructure, land use patterns, spatial organization, and visual relationships. It may also include related social and cultural practices, economic processes and other intangible dimensions of heritage such as perceptions and associations. Management of the broader setting is related to its role in supporting the Outstanding Universal Value.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

3. Tall building developments in Derby In July 2019, ICOMOS undertook a review of a development proposal for the so-called 'The Landmark' development. The project is for a residential block composed of a 17 storey, 54m tall (Ground+16) tower component with a 9 storey (Ground+8) section. The project was seen as harmful by Historic England and the Derwent Valley Mills World Heritage Site Partnership and the City of Derby Local Planning Authority Planning Officer recommended that the project application be denied, in part because...

...by virtue of its scale, overwhelming mass, height and external appearance would be harmful to the significance and setting of the following heritage assets; Derwent Valley Mills World Heritage Site.⁸

ICOMOS concluded based on the information available that the proposed development would have a significantly negative impact on the Outstanding Universal Value (OUV) of the Derwent Valley Mills World Heritage property and should not proceed. 9 The proposal, however, was approved by the City of Derby in August 2020. Construction has reportedly not yet commenced.

The City of Derby at the time had commissioned an update of its 2008 Tall Building Study, this study was published in 2021. This recommended a maximum general height in the City of Derby of 5 stories (for a delineated area identified as Area D, set to the south of the city centre, away from the Silk Mill) and identified locations for local low and high landmarks and one opportunity for a district landmark. The Study concluded with a recommendation that: ...Derby City Council prepare a dedicated tall buildings policy based on the evidence in this report.¹⁰

The 17 storey Landmark development was not included in the Tall Buildings Study modelling. The Tall Building Study identifies the current Darwin Place inner loop (parking area) as a location for a 17-storey maximum. This is justified as being: situated furthest away from the World Heritage site and in the least sensitive location within the Riverside Cluster.¹¹ The Landmark project site is located closer to the Derby Silk Mill, a key attribute of the World heritage property, and therefore in a location of greater sensitivity.

The Tall Buildings Study maintains the position that tall buildings should not be higher than the body of the Derby All Saints Church Cathedral tower (96m AOD). The Tall Buildings Study is adopted as part of the City of Derby Local plan evidence base to support the Adopted Derby City Local Plan Part 1. ¹²

The Tall Buildings Study did take cognisance that the setting of the World Heritage property contributes to the authentic and integrity of its Outstanding Universal Value, noting that:

The Buffer Zone is just part of the setting of the World Heritage Site and structures which are visible from the DVMWHS [Derwent Valley Mills World Heritage Site] or which are visible in conjunction with the DVMWHS lying beyond the Buffer Zone may still fall within its setting and could therefore affect its significance. ¹³

and

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

Its Buffer Zone was intended to provide a visual envelope to views from the DVMWHS, to extend to ridges and parts of the Derwent Valley that can be seen from the DVMWHS, but this does not include all of the setting of a World Heritage Site. ¹⁴

The study correctly takes the position that the Derwent Valley Mills World Heritage property has a ‘...very High Overall level of Sensitivity to Tall Buildings.’ Such a sensitivity relates not only to direct visual impacts, but also to the contribution of the larger landscape as the setting for the Outstanding Universal Value of the property. Paragraph 82 of the Operational Guidelines provides a framework for the assessment of the conditions of authenticity, and this includes both location and setting and spirit and feeling; aspects that go beyond a direct visual presence. However, ICOMOS has not been able to establish if the proposals included in the Tall Buildings Study were assessed for their individual and cumulative impact on the Outstanding Universal Value of the property.

The proposed Eagle Quarter and Bradshaw Way projects are located in Area D, of the Tall Buildings Study, which is identified as having a maximum carrying capacity of 5 storeys at a maximum. The Study also makes provision for Low Local Landmarks (LM4 and LM 10, both up to a maximum of 12 storeys) in the area proposed for development. Both proposals greatly exceed the limits set in the Tall Buildings Study.

It should also be noted that the current 4 storey Derbion shopping centre is visible from the Silk Mill and therefore the two planned Low Local Landmarks (Tall Buildings Study LM4 and LM10) would also be visible from the Silk Mill and therefore might also lead to harm to the property’s Outstanding Universal Value.

ICOMOS notes that the United Kingdom National Planning Policy Framework (Article 200) indicates 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...:

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 exceptional.*

In the spirit of Article 4 of the World Heritage Convention, the Guidance and Toolkit for Impact Assessment in a World Heritage context (2022), developed in collaboration between the Advisory Bodies and the World Heritage Centre, notes that: Negative impacts on Outstanding Universal Value should always be avoided altogether, since the OUV of a World Heritage property is irreplaceable and damage to OUV is unacceptable.¹⁵

When taking together the already approved ‘Landmark’ project, it is undeniable that the skyline of the city of Derby will be irrevocably altered should these developments be approved. The city of Derby is the setting of the Derby Silk Mill and the most southern entry point into the World Heritage property. They will alter not only the skyline but lead to a permanent erosion of the rural landscape quality of the World Heritage property – an essential attribute of its Outstanding Universal Value.¹⁶

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

To effectively assess and avoid negative impacts through urban growth, a study of the contribution that the relationship between urban and built form and the rural landscape makes to the Outstanding Universal Value is advisable. Such a study would be a valuable tool for the future management of the property, which, with the 2003 Landscape Character of Derbyshire could be used in the decision making processes for the management of the property.

5. Conclusions and recommendations. The landscape setting of the Derwent Valley Mills World Heritage property is under pressure from urban development which should be a cause of concern not only from the perspective of visual change. Changing land-use patterns, introduction of new building topologies and the expansion of transport infrastructure, are all a source for concern. The already approved Landmark project will with the proposed Eagle Quarter and Bradshaw Way developments result in damage to the Outstanding Universal Value of this World Heritage property. Approval of the proposed Eagle Quarter and Bradshaw Way projects in their current form would not only lead to damage, but also indicate large shortcomings in the conservation and management system, which could be seen as posing a threat to its Outstanding Universal Value.

ICOMOS reiterates its 2019 recommendations on the Phoenix Street 'Landmark' project that:

- *Based on an assessment of the information available to ICOMOS, the proposed development would have a significantly negative impact on the OUV of the Derwent Valley Mills World Heritage property and should not proceed;*
- *Should the proponent or the City of Derby wish to further pursue the development the project, a full Heritage Impact Assessment – following the 2011 ICOMOS Guidance on Impact Assessment for Cultural World Heritage Properties [17] – needs to be undertaken by a suitable qualified professional and include a rigorous Visual Impact Assessment, before any further decisions can be made or the project further pursued. This full Heritage Impact Assessment should include definition of attributes of the Outstanding Universal Value to assess the impact of such a proposed development on the Outstanding Universal Value of the World Heritage property. This assessment of attributes should include their setting which includes the contribution of the urban typology and morphology of Derby as well as the larger landscape around the property. Such an assessment should also address cumulative impacts and their magnitude on the setting of the Derwent Valley World Heritage property, taking the Biohouse project into consideration;*
- *ICOMOS invites the State Party to submit the Terms of Reference for such an HIA to the World Heritage Centre for review by the Advisory Bodies, should a new Heritage Impact Assessment, including Visual Impact Assessment be commissioned;*
- *ICOMOS further request that should a new Heritage Impact Assessment, including Visual Impact Assessment be commissioned, it invites the State Party to submit such a Heritage Impact Assessment, including Visual Impact Assessment for to the World Heritage Centre for review by the Advisory Bodies, before adopting its conclusions. ¹⁸*

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

ICOMOS also recommends that:

- *Noting that the framework provided by the 2022 Derby Tall Buildings Study would lead to an alteration of the skyline of Derby, this framework should in its entirety be assessed through a Heritage Impact Assessment, based on the principles contained in the 2022 Guidance and Toolkit for Impact Assessment in a World Heritage Context – specifically including assessment of the impact on the landscape character of the property, its buffer zone and the setting, and the relationship between built and urban form and the rural landscape – before such plans are approved or implemented;*

Further, ICOMOS recommends that for the Eagle Quarter and Bradshaw Way developments:

- *The Eagle Quarter and Bradshaw Way developments will in their current form individually and cumulatively lead to harm of the Outstanding Universal Value of the Derwent Valley Mills World Heritage property and should therefore not be approved;*
- *Any further iterations of these proposals could be developed within the maximum limits of the guidance provided by the 2022 Derby Tall Buildings Study, and through an iterative Heritage Impact Assessment, based on the principles contained in the 2022 Guidance and Toolkit for Impact Assessment in a World Heritage Context – specifically including assessment of the impact on the landscape character of the property, its buffer zone and setting and the relationship between built and urban form and the rural landscape – before such plans are approved or implemented;*
- *A study of the contribution that the relationship between urban and built form and the rural landscape makes to the Outstanding Universal Value should be undertaken to augment the 2003 Landscape Character of Derbyshire.*

5.4. Historic England

Initial comments sent 15.02.2023 –

<https://docs.derby.gov.uk/padocumentserver/DownloadDocument.aspx?docid=188020519>

Comments sent 16.05.2023

<https://docs.derby.gov.uk/padocumentserver/DownloadDocument.aspx?docid=200274092>

Comments sent 11.07.2023

Historic England Advice

Thank you for your email of 27 June 2023 re-consulting Historic England on plans for the 29 storey Eagle Market Development. As described by the applicant in their letter of 23 June 2023 the revised scheme effectively fills in the entrance level element that was previously subject to a separate application. The tall building element remains unchanged and we would therefore refer you to our previous substantive advice on the Eagle Markets scheme, as set out in our letters of 16 May 2023 and 15 February 2023. We continue to raise an objection to this scheme.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

Derby is a city of considerable historic character, notable for the principal buildings and historic areas whose interest and designations have been summarised in our detailed advice letters. Its wider - indeed, international - significance is reflected in the inclusion of a part of the city in the Derwent Valley Mills WHS and its buffer zone. Derby played an important role in supporting the world changing innovations in manufacturing seen in the WHS and was a hotbed for innovation, culture and the arts associated with the 18th century enlightenment.

The key impacts we identify relate to the appearance of these tall buildings on the skyline of Derby. Derby is notable as a city whose prominent historic buildings remain its chief landmarks, in particular the elegant Cathedral Tower set against the sky. This historic skyline provides setting and context to the Derwent Valley Mills World Heritage Site (DVMWHS). Set on the river forming the southern gateway to the WHS, the Silk Mill is instantly recognisable in historic views of Derby's skyline. This scheme impacts upon the overall character of the city as you move through its streets, bridges and public spaces. Derby would be largely recognisable to those who shaped it as town of innovation and enlightenment in the 18th century. This is a city which retains its human scale in those streets and landmark historic buildings. The Eagle Quarter tower would be wholly out of scale; a new development appearing in views up those historic streets and across to those landmarks, a development at odds with the character and quality of the fine skyline the city has retained.

By virtue of its inappropriate scale, the proposed scheme will be harmful to the significance of some of Derby's principal historic buildings and conservation areas and to the Outstanding Universal Value of the Derwent Valley Mills World Heritage Site. The overarching effect, however, would be upon Derby's character as a city, and the questions this raises, in respect of planning and urban design, lead back to the historic environment.

The Eagle Market proposals appear contrary not only to national policy but also to relevant provisions of the Local Plan. Although your authority's Core Strategy envisages the development of "tall buildings" in "gateway" locations, the scale of what is proposed, certainly for the Eagle Quarter, exceeds that envisaged, and both proposed developments fail to meet the criterion that such developments should not harm the setting of heritage assets. The proposals also run counter to the Core Strategy's policy in respect of the WHS. This, consistent with the Derwent Valley Mills World Heritage Site Management Plan, indicates that the Council will not approve proposals for development outside the World Heritage Site if their effect upon the OUV of the World Heritage Site or its setting is adverse. Finally, the incompatibility of the proposed developments with the character of Derby's cityscape flows in part from the failure of the designs to respond to the approach to the design of developments set out in the National Design Guide. The design of neither this scheme nor the Bradshaw Way development responds well to the context or identity of Derby in its built form (National Design Guide, C1, C2, I1, B2).

ICOMOS Technical Review We previously forwarded to you the ICOMOS Technical Review (1 June 2023) provided to the Department for Culture, Media & Sport (DCMS) in its role acting as UK State Party to the World Heritage Convention. It is of great importance that your authority's planning committee have the opportunity to consider the advice of ICOMOS in full and to reflect upon the wider concerns it raises as an advisor to UNESCO's World Heritage Committee regarding development management

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

and the conservation of the World Heritage Site. National Planning Policy Framework paragraph 2 sets out that ...Planning policies and decisions must also reflect relevant international obligations and statutory requirements. ICOMOS (The International Council of Monuments and Sites) advises the UNESCO World Heritage Committee. When the Committee (or its Secretariat the World Heritage Centre) has particular concerns about the condition or management of a World Heritage Site it can request that the State Party provide a State of Conservation Report for examination. A State of Conservation Report for the Derwent Valley Mills WHS is due to be examined in September when the World Heritage Committee next meets. The concerns that led to this request surrounded decision making about planning applications, including tall buildings within Derby City. The Committee will be considering this latest Technical Review report from ICOMOS within that context. If measures to safeguard the Outstanding Universal Value of a World Heritage Site are unconvincing and threats are not addressed the Committee can place the site on the List of World Heritage in Danger <https://whc.unesco.org/en/danger/>. Ultimately as happened at Liverpool - Maritime Mercantile City <https://whc.unesco.org/en/list/1150/> - this can lead to the deletion of a property's world heritage inscription. Derby Planning Committee members must be clear that the concerns raised by ICOMOS in relation to this application require their urgent attention.

Should the developer or other parties have comments on the ICOMOS Technical Review or any other matter in relation to the application these should be directed to the LPA - not to ICOMOS, UNESCO or DCMS directly. Your authority can then consult Historic England for advice on those comments in our role as Government's advisor.

Recommendation. Historic England objects to the application on heritage grounds. Notwithstanding the outline nature of the information provided, we consider that the proposal both individually and cumulatively together with the Bradshaw Way proposal and other consented schemes would result in a considerable degree of harm to designated heritage assets, including the DVMWHS, listed buildings including the grade I listed Cathedral Church of All Saints, and numerous conservation areas. It would dramatically alter the character of the Derby cityscape, which forms a key part of the setting of these heritage assets.

We consider that the application does not meet the requirements of the NPPF, in particular paragraph numbers 2,130,134,197,200,202 and 206. In addition the current proposal is clearly in conflict with Derby City Local Plan Part 1 (2017) Policy CP3 (Placemaking Principles), Policy CP20 (Historic Environment) Policy AC1 (City Centre Strategy), Policy AC5 (City Centre Environment) and Policy AC9 (Derwent Valley Mills World Heritage Site), as well as Policies E18 (Conservation Areas) and E19 (Listed Buildings) contained within the saved policies of the City of Derby Local Plan Review (2006) and your authority's Tall Buildings Study 2021.

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.

If your authority is minded to grant permission for the application in its current form, please treat this letter as an objection and notify the Secretary of State of this application, in accordance with guidance set out within the PPG.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

5.5. Derwent Valley Mills Partnership

Initial comments sent 10.02.2023

<https://docs.derby.gov.uk/padocumentserver/DownloadDocument.aspx?docid=187830341>

Comments sent 20.03.2023

<https://docs.derby.gov.uk/padocumentserver/DownloadDocument.aspx?docid=195374247>

Comments Sent 24.05.2023

<https://docs.derby.gov.uk/padocumentserver/DownloadDocument.aspx?docid=200352893>

Comments sent 11.07.2023

The sites lie outside the Derwent Valley Mills World Heritage Site (DVMWHS) and its Buffer Zone, but in the wider setting of both. The Derwent Valley Mills were inscribed on the World Heritage List by UNESCO in 2001. The Derwent Valley Mills Partnership, on behalf of HM Government, is pledged to maintain the Outstanding Universal Value of the Derwent Valley Mills World Heritage Site by protecting, conserving, presenting, enhancing and transmitting its culture, economy, unique heritage and landscape in a sustainable manner.

The retrospective Statement of Outstanding Universal Value (SOUV) for the Derwent Valley Mills was adopted by the World Heritage Committee in 2010. The SOUV refers to the following UNESCO criteria, which the World Heritage Committee agreed were met at the time of inscription. They are:

C(ii) That the site exhibits “an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town planning or landscape design”;

C(iv) That the site is “an outstanding example of a type of building or architectural or technological ensemble or landscape, which illustrates a significant stage in human history”.

The SOUV records that these criteria were met for the following reasons:

C(ii) The Derwent Valley saw the birth of the factory system, when new types of building were erected to house the new technology for spinning cotton developed by Richard Arkwright in the late 18th century.

C(iv) In the Derwent Valley for the first time there was large-scale industrial production in a hitherto rural landscape. The need to provide housing and other facilities for workers and managers resulted in the creation of the first modern industrial settlements.

A Management Plan for the World Heritage Site was created in 2002, and updated in 2020. It has as the first of its nine aims to: “protect and conserve the Outstanding Universal Value of the DVMWHS to ensure its transmission to future generations.” In accordance with this aim, and with reference to the operational guidance in Section 20 of the Management Plan, I have consulted with Derbyshire County Council’s

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

Conservation, Heritage and Design Service (which advises the World Heritage Site Partnership in planning matters), and have received the following advice:

Having reviewed the revised information and drawings submitted for the outline planning applications, the DVMWHS Partnership believes they have not been altered in sufficient detail to alter the previous response.

There is still insufficient information to appropriately and adequately assess the impact of the proposed developments. In line with Derby's tall buildings strategy, applications of this nature should not be considered in outline.

5.6. Conservation and Heritage Advisory Committee 02.03.2023

Resolved: Objection

The Chair explained that the proposal had been talked about at the January meeting of CHAC and summarised the key points made in the submitted preapplication response agreed by CHAC. Key points were highlighted:

- The existing development was negative in cityscape terms and was characterised by a relentless, sterile frontage with nothing of animation or interest to attract or engage passers-by
- Overall design elements were meaningful in terms of the Public Realm
- The fact that the need to improve links to the riverside (and its treatment) has been recognised was very positive
- A detailed exploration of scale/height and form will be needed to ensure a development which does not dominate its immediate context and the finer grain buildings along Morledge (south).'

The officer highlighted the impact on the setting of a number of listed buildings including the grade I Cathedral, grade II Central Library, and grade II Friar Gate Bridge.

It was explained that this was an outline application for demolition of the Eagle Market, Public House, and Theatre. The Heritage Impact Assessment did not fully use ICOMOS guidance for Cultural World Heritage Properties. The height of the proposed blocks was discussed they ranged from 32m 11 storeys, 14 to 15 storeys, and 56m 18 to 19 storeys the highest block was approximately 92m or 30 storeys.

The committee made the following comments:

The re-development was clearly welcomed; however, the height of the proposed buildings would have a significant negative impact on the city skyline and would change the current nature of Derby's skyline. English Heritage had objected to the height of the buildings and there was no justification in any of the reports as to why the buildings should be so high.

This was an outline application which established certain principles for the site, but it was thought that realistically the application cannot be considered without more detail. General comments can be made about the height of the buildings and the negative impact they will have on the surrounding conservation areas and listed buildings. In order to judge the application properly and in context there is a need for more detail, an outline application which has so much impact on the historical context of the city

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

was felt to be inappropriate. The issue of wind blowing between and around the high buildings should also be considered.

There were concerns about the impact of the buildings on the setting of the conservation area. Tall buildings in the right place are acceptable but there was no justification for a building of 30 storeys, Derby is a small-scale city. The officer highlighted that the Tall Building Strategy indicated that the site could take some height and recommended 12 storeys to maintain a character. The tallest building was five times the context height and would be a metropolitan landmark that could be seen across the city and further away.

The Skyline and Significant Views Study and The Tall Building Strategy are in place and although mentioned in the submission do not seem to have been considered as the proposed buildings were much more than the recommended limit. There was a suggestion that this was a landmark building to signify the entrance to Derby, but there are other ways to signify an entrance to the City of Derby. It cuts across all provision including the Local Plan and takes no account of the work undertaken on tall buildings, there was not enough emphasis on the Cathedral Tower also the World Heritage Site had not been given sufficient consideration.

The development of the site was concerning in terms of its density, there were more than 875 dwellings, which brought the site above what was acceptable in a London Authority. The question of amenities such as schools, GP practices needed to be a consideration, also would people wish to live in such a high-density development. A member of the committee highlighted key issues raised by Derby Civic Society. Views from the flats will be poor, these should be compensated for by making the design of the flats and amenity areas of a high standard, with a generous allowance of internal spaces to allow for working from home.

The possible demolition of the theatre was of concern it was an asset, and its loss would be great. The theatre was important to Derby as part of the leisure and culture offer. A suggestion was put forward that a condition could be put in place that a replacement theatre should be built if the current theatre was demolished or funds to enable this through a legal agreement.

The closure of the Eagle Market meant that there would be no market in the city and a market in any town or city was integral. It was suggested introducing an outdoor market in the marketplace.

The committee asked if developers of the neighbouring Derby Royal Infirmary and Castleward site had been apprised of the application as the future sale of houses could be affected by overlooking skyscrapers. There was likely to be a setting issue across the area with a building of that size.

Finally, the Heritage Impact Assessment was inadequate.

CHAC objected to the proposals; they had serious concerns about the heights of the buildings and as this was not a detailed application. They were concerned about the impact on surrounding Conservation Areas in particular aspects from around the city. They were concerned about the loss of the theatre, which was an asset, concern about there being no secure proposal for a replacement and about the impact on listed buildings, the World Heritage Site, and the lack of a market.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

Meeting 13.04.2023

The application came before CHAC on 2nd March 2023, CHAC had responded robustly against the proposals. A rebuttal letter had been received from Lichfields on comments made. A revised Heritage Impact Assessment had been submitted focusing on the DVMWHS.

The Chair asked for comments on the new information, CHAC reiterated comments from the meeting on 2nd March 2023. They were, as before opposed to the demolition of Derby Theatre without a condition that a replacement Theatre should be built. They thought the applicant had not considered the Tall Building Study for Derby City. CHAC were concerned about the context of the proposed building against the Cathedral and other buildings in the city. They were concerned about the view of Derby City skyline from viewpoints outside of the city such as Kedleston, the A38 and A52. They were also concerned about the density within a small area in comparison with other cities with high rise buildings. The issue of infrastructure was raised, CHAC asked if thought had been given to provision for more GP surgeries, dentists, or schools.

CHAC objected to the proposal and suggested that the full minutes from the meeting on 2 March should be put forward again as they were succinct and raised all the same issues of concern.

5.7. County Archaeology

The proposal site is situated on the periphery of Derby's medieval core, just to the south of the Archaeological Alert Area (Local Plan saved policies) corresponding to the edge of the medieval town. There is potential for medieval activity peripheral to and outside the medieval settlement, and a medieval town ditch to c3m bgl has recently been recorded to the north of the town in a broadly analogous position.

Despite this rather promising location for medieval archaeology, the site has undergone large scale development activity during the later 20th century, with construction of the Eagle Market, the Derby Theatre and the public house, all of which appear to have deep basements or basement car parking, and this is likely to have resulted in substantial truncation of archaeological levels. Some partial survival of deeper features or islands of lesser impact may be present, but it is not possible to assess this on present evidence with the existing buildings still on site.

The applicant's desk-based assessment also identifies some geo-archaeological or palaeo-environmental potential associated with alluvial deposits within the site, and again this aspect of potential may survive at depth where previous truncation is lesser.

As these aspects of archaeological potential can only satisfactorily be assessed when the buildings on site are demolished, I therefore recommend that the interest is addressed through a planning condition, requiring a post-consent scheme of archaeological work. The detail of this will depend on the sequence of groundworks proposed, but will involve in the first instance some monitoring and archaeological observations during the demolition process to identify and safeguard areas of lesser disturbance and during removal of basements and foundations, and also during the ground investigation process where boreholes should be archaeologically interpreted and test pits monitored. This information will inform a decision on whether any further

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

archaeological involvement is required, which could include trial trenches, geo-archaeological work, further monitoring or even targeted areas of formal excavation.

The following conditions should therefore be attached to any planning consent:

"a) No development, including demolition, shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the local planning authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the local planning authority. The scheme shall include an assessment of significance and research questions; and

- 1. The programme and methodology of site investigation and recording*
- 2. The programme for post investigation assessment*
- 3. Provision to be made for analysis of the site investigation and recording*
- 4. Provision to be made for publication and dissemination of the analysis and records of the site investigation*
- 5. Provision to be made for archive deposition of the analysis and records of the site investigation*
- 6. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation"*

"b) No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition (a)."

"c) The development shall not be occupied until the site investigation and post investigation reporting has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under condition (a) and the provision to be made for publication and dissemination of results and archive deposition has been secured."

5.8. Derby Civic Society

- The proposal for inner city housing is welcome as it should bring a rejuvenation of the city centre.
- The height of the apartment blocks must comply with the Tall Buildings Policy.
- The views from the flats will be poor. To compensate for this the design of the flats and amenity areas should be of a high standard.
- Generous allowance of internal spaces to allow for 'working from home'.
- The application includes the demolition of Derby's main theatre. Permission should be conditioned on an application for a replacement theatre being built. A city like Derby should never again be in a position where it has no permanent theatre. Many smaller towns and cities have more than one theatre. For example, Chesterfield has two.

Likewise the closure and demolition of the Eagle Market will leave us with no market in the City Centre at all. Chesterfield has a thriving outdoor market on its Market Place. An outdoor market should be re-introduced into the Market Place as soon as possible, even if it is only twice a week.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

- A Section 106 Agreement should be put in place to provide funds for the refurbishment of the Hippodrome.
-

5.9. Built Environment Officer

Initial comments sent 17.02.2023

<https://docs.derby.gov.uk/padocumentserver/DownloadDocument.aspx?docid=188369031>

Comments sent 21.07.2023

Designated Heritage Assets affected

This site, located upon the Morledge, is outside the Internationally important Derwent Valley Mills World Heritage Site (DVMWHS) and its buffer zone but is within its wider setting and will be seen within views of the city's skyline both from within and outside the city. The city skyline is an important part of the city's character and appearance with the prominence of significant historic buildings within it. It provides collective visual setting of designated heritage assets including the DVMWHS, the Cathedral and many other listed buildings, conservation areas and other heritage assets.

There are a number of listed buildings, of national importance, across the city where their settings will be affected by the development including the grade I Cathedral Church of All Saints, grade II* St Mary's Church, grade II listed former Central Library, Friar Gate Bridge, 45 St Peter's Street, St Peter's Church and The Guildhall on the Market Place etc. The site is not located within a conservation area but is just outside the City Centre Conservation area. However it impacts the setting of this conservation and a number of others including Friar Gate Conservation Area, Green Lane and St Peter's Conservation Area, Strutt's Park Conservation Area, Darley Abbey Conservation Area and Little Chester Conservation Area (which include within them many listed buildings that will also be impacted). These are designated heritage assets in National Planning Policy Framework terms (2021).

There are locally listed buildings nearby where their setting will also be impacted by the proposal including The Council House and The Court House Public House on The Morledge nearby. These are classed as heritage assets in National Planning Policy terms.

Information submitted, Impact of proposals on Heritage Assets and comments

This proposal is an outline planning application for the part demolition of the existing Eagle Market building, public house and theatre and the erection of a mixed-use development, including residential and commercial floorspace (Use Classes C3 and E). The outline states that all matters reserved, so this application is looking at the principle only. The Tall building study mentions that outline planning applications should not be accepted (page 186, Derby Tall building study, 2021) because the visual impact of a building can substantially differ depending on the details including scale, massing, height, form, layout, detailed design and materials etc. Tall buildings, of any height, need to be of the upmost quality and with an outline application for principle there is no way of agreeing the quality as full details have not been submitted. The full impact of the proposal on heritage assets therefore cannot be fully assessed. However, the contents of the masterplan, design code and accompanying parameters plans are

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

noted. There are a number of urban design and placemaking benefits presented in the documentation but there is a degree of risk and no certainty that these will be delivered due to this outline application rather than being a detailed full planning application.

Issues with the visuals

Within previous comments it was highlighted that there are issues with the visuals, within the T&VA appendix 3 Technical Visualisations, the existing photos and proposed model views do not show the same view or the extent of the view affected, which is misleading and potentially visually downplays the impact. This occurs in a number of views including, for example, VP1 (VP - viewpoint), VP11 and VP25 – The Morledge when looking at the photo and the proposed model view and the height relationship of the proposals with the existing car park. Suggest looking at the visuals presented alongside the verified views T&VA appendix 4 Technical Visualisations.

A number of viewpoints, for example, VP12 Lara Croft Way (revised) (appendix 3 Type 2 and within appendix 4 Type 4 Technical Visualisations) shows the outline of the proposed Bradshaw way and the view of the Eagle Quarter development. Bradshaw Way is also shown within many of the other viewpoints when it is not the development which is being assessed in this application. This is misleading when looking at the visuals and assessing relative height and impact – Bradshaw Way is not currently in the view or on the skyline.

Impact of proposals

Demolition and Regeneration – In heritage terms there is no issue with the extent of demolition proposed of the existing Eagle Market building, public house and theatre – which date from the 1970's, and later, and although are part of Derby's recent history are of limited heritage value. The existing buildings on this site sit to the south of The Morledge and adjacent to the unsightly Derbion cinema box, which, although much lower in height in comparison to the proposals, has a negative impact on the Derby skyline.

The principle of a phased mixed-use development use, including residential and commercial floorspace (Use Classes C3 and E), new public square, servicing, car, and cycle parking provision, hard and soft landscaping works, provision of new pedestrian routes and other associated works is noted and regarding these uses there is no issue. There is opportunity for the regeneration of this site. It is important that from the bus station pedestrian exit that the route is clearly legible and leads the eye and pedestrians to East Street and the new Derbion entrance. Connectivity, public realm, the regeneration of the area, the cityscape, creating character, access to sustainable public transport and access to the river are all aspirational benefits of the scheme. However, please see comments on principle and limitations of outline applications and the potential risks above.

The existing buildings on this site sit to the south of The Morledge and adjacent to the unsightly Derbion cinema box, which has a negative impact on the Derby skyline. The proposal is a cluster of 10 towers and blocks ranging in heights. Within the planning statement proposals state (page 9) the lowest is block D max height 60.5m A.O.D. (above ordnance datum) (4 storeys + plant and roof access), Block B max height 63.9m A.O.D. (4 storeys + plant and roof access), D2 max height 69.5m A.O.D. (7 storeys +

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

plant and roof access), D1 max height 78.5m A.O.D. (10 storeys + plant and roof access), up to Block C max height 84.5 A.O.D. (10 storeys + plant and roof access), block B2 max height 87.5m A.O.D. (12 storeys + plant and roof access), block B1 is proposed to be max height 97.5m (14 storeys + plant and roof access), Block A3 max height 96.5m A.O.D. (14 storeys + plant and roof access), A1 which is proposed to be max height 108.5m A.O.D. (18 storeys + plant and roof access), and A2 the tallest block max height 141.5m A.O.D. at approx. 92m (approx. 29 storeys + plant and roof access).

The new development overall can be seen to be several times taller than the Derbion cinema box, which caused considerable concern when it was added to the former Westfield shopping centre. The proposed buildings are a cluster of towers up to tower A2 which is approximately 141.5m A.O.D. (approx. 29 storeys plus plant and roof access). In storey heights this is almost double the height of the 17-storey consented Landmark proposal on Phoenix Street. This is substantial in height and taller than anything on the city skyline including being also much taller than the Cathedral (almost a third taller in height). Comparing this with the Cathedral main tower height of approx. 96.5m A.O.D. and height from pavement level outside the west doors to the top of the pinnacles which is approx. 106m A.O.D. demonstrates the difference in height.

Block A1 the second tallest (18 + plant and roof access) is 108.5m A.O.D., the third and fourth tallest block A3 and B1 respectively (both 14 + plant and roof access) is 96.5m and 97.5m respectively. This shows that tower block A1 and B1 is taller than the Cathedral tower and block A3 is comparable to the Cathedral tower height (of approx. 96.5m A.O. D)

The approach of the indicative layout, or the principle of slender towers stepped across the site is noted and accepted, however, this proposal are for towers which are extremely tall in height and scale for Derby, taller than much on the city skyline including the Derbion Box and The Cathedral tower and other historic towers and spires on the city skyline. The highest towers of this proposal will become the most dominant on the skyline and will rival the current dominance of the Cathedral tower and other historic landmarks within the city. The sheer height, scale and massing collectively will mean that the dominance of these proposals will be severely negative on the city skyline. The Derby Tall building study (2021) states that part of the character of the city skyline is that it has always been low lying with the cathedral, other significance towers and industrial structures breaking through.

The Derby City Council Tall Building Study (2021) recommends an approach to enable tall buildings to be constructed in appropriate locations and not in inappropriate locations across the city centre. The site was assessed within the study to be where a tall building of local landmark height of 12 storeys would be appropriate (on this site ref. LM4) in this location when looking at the skyline as a whole. An appropriate height is described as 12 storeys (between 2x and 3x the context height which is 5 storeys) to maintain the character and distinctness of the city skyline. However, the proposal is for a number of very tall towers up to block A2 the tallest at approx. 141.5m A.O.D (approx. 29 storeys + plant and roof access).

The height of the tallest tower block A2 is defined in Derby's Tall Building Study as well above 5x the context height, which is classed as the largest type of tall building, as a 'Metropolitan Landmark' which will be perceived in relation to its context as having a

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

'jarring contrast, disconnected from the prevailing urban context height across the place' and 'can be seen across the city and from far away' (Derby Tall building study, 2021, p37). Blocks B1, A3, A1 and A2 are the tallest of the proposed towers and are far taller than those highlighted as being appropriate within Derby's Tall Building Study (2021) with block A1 (19 storey) classed as a 'district landmark' and blocks A3 and B1 (14 Storey) defined in the Study as a 'local landmark'. The sheer height, scale and dominance of the taller blocks means that the impact will be severely negative on the city skyline.

The Derby Skyline study (2019), which fed into the above Tall Building study, shows that the city skyline historically has always been relatively low rise with the Cathedral tower and other significant historic towers, domes and spires breaking through. This demonstrates important characteristics and the historic significance of the Derby skyline and setting to many of the heritage assets within it (DVMWHS, a number of listed buildings, conservation areas and locally listed buildings etc). Within this study there are also 31 key important views highlighted which are important to the skyline across the city. This list is not exhaustive and there may be more views that need to be assessed relating to a specific development proposal.

Many views within the city centre are not static but are a serial of views which are encountered when moving (kinetic). There are static views presented in the submission with wire outlines of proposals within Appendix 3 and 4 including Type 2 and 4 technical visualisations. The substantial height of the proposal in relation to its context can be particularly seen in many of the contextual views (including viewpoint 1, 2, 3, 4, 25, 26, 28, 32, 33 Appendix 3) and the type 4 technical visualisations (appendix 4). Viewpoint VP32 shows that the proposed taller element is it seems at least three times the height of the current cinema box to the roof of the Derbion shopping centre, which is itself a tall building and seen from many parts of the city. Viewpoint VP33 shows that, although a taller element, in principle, may be useful as a way finder, the tall buildings proposed are substantial and extremely dominant in height, size, scale and massing in relation to context.

The setting of a Heritage Asset is *'the surroundings in which a heritage asset is experienced'* (NPPF, 2021, glossary). The impact of the principle of this development will be explored (even though details are missing as an outline application with all matter reserved rather than a full planning application as previously explained above) the exact degree of impact on heritage assets cannot fully be undertaken due to a lack of specific detailed information.

As a result of the proposal there would be a negative and harmful on the wider setting of the Derwent Valley Mills World Heritage Site's (DVMWHS) OUV (Outstanding Universal Value), its context of the DVMWHS and how it is experienced in from a range of views throughout the city which are not necessarily just static but are often a serial of views which are encountered kinetic views. There are examples of a some static view points within a number of the Appendix 4 Type 4 visualisations and updated T&H viewpoints – revision 2, which includes VP 14 from Darley Park (from within the Darley Park Conservation Area) and HE Viewpoint 3 (amended - Townscape and Heritage Viewpoints Rev 2) looking towards the city centre from Darley Park (west side of river). These show the proposal will be very clearly visible on the skyline, it will change its character and impact the prominence of historic structures such as St Mary's Church , Cathedral tower and other historic buildings on the skyline. The information also shows

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

that the proposal would not substantially impact the UNESCO monitoring viewpoint, P6 – Causey Bridge (within Appendix 2 Type 2 visualisations) and HE Viewpoint 1 and viewpoint 02 that there is a change above the current buildings and HE viewpoint 04 and 05 show a big impact of the proposals, located above the tree line, looking from the recreation ground at Chester Green (south of Rugby Club) looking towards the city centre.

These dominant towers due to their height, size, scale, and collective massing located within the wider setting of the DVMWHS, have a negative impact upon the outstanding universal value (OUV) of the DVMWHS. This negative impact can be seen in the longer distance views of Derby's skyline, which is part of its character as a city, and views of Derby's landmarks, especially the current dominance of the Cathedral and other historic buildings with towers, domes and spires. The tallest of the proposed tower blocks will become by far the tallest most dominant element on the skyline rivalling the historic prominence of the cathedral tower. The Historic England letter (10th June 2023) highlight the ICOMOS Technical Review (received by DCC 1 June 2023) letter which was provided to the Department of Culture Media and Sport (DCM&S) highlighting its concerns as advisor to UNESCO World Heritage Committee regarding the development management and conservation of the World Heritage Site. These concerns are regarding decision making about planning applications, including tall buildings in Derby. The letter outlines the possible risk of Derwent Valley Mills WHS losing its WHS status and being removed from the UNESCO WHS list. This is a serious situation.

In terms of impact on listed buildings the height of the new development will be negative as it will be seen immediately adjacent and as partial backdrop (so lessening the definition) of the grade I listed Cathedral tower in the view when looking down the A6/King Street, in viewpoint VP5. The development will have a negative impact in viewpoint VP7 (see both viewpoint VP7 in TVA and page 3 of the technical visualisations dated January 2023). However, this view with the wire frame does not match the site photo in the T&VA so suggest this is checked and exact impact clarified. The current views from and adjacent to Strutt's Park Conservation area of the cathedral are going to be impacted by the proposed development so contrary to the heritage statement submitted, the impact will be a negative one rather than being preserved as it states.

The view is not the same also in viewpoint VP28 from London Road Bridge. The weather on the day the photo was taken was misty and it is possible if adjusted view to eye level height that the view of Derby Cathedral will be obscured by the new development. This is difficult to confirm due to the angle of the visualisation and weather conditions in the photo when it was taken. The size of the development in this view will be of substantial size and scale on the skyline and would impact the prominence and dominance of other towers and the Cathedral.

There are key views from the Friar Gate Conservation Area, the grade II listed Friar Gate Bridge and grade II former Central Library, as well as other listed buildings within it, are negatively impacted particularly in viewpoints VP9 along Friar Gate to the proposal and VP18 along the highly graded listed buildings on Friar gate to and beyond the bridge to the city centre. The definition of the former library's clock tower and spire in the view will be severely negatively impacted as the proposed taller building blocks are located directly behind it and the development will have a very negative impact on

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

the view, the townscape, roofscape and skyline. There is therefore harm to the setting of the conservation area (and the visual setting of a number of listed buildings within it).

The setting of the City Centre Conservation Area, and its cityscape, will also be negatively affected by the extreme height of the taller towers as seen in viewpoint VP11 Corporation Street and VP19 in relation to the existing buildings, within the conservation area, along the Morledge. There is therefore a degree of harm on the conservation area's setting.

There are views within the Green Lane and St Peter's Conservation Area, adjacent to St Peter's Church and the listed Court building looking towards the development where the proposal will be seen above the current ridge line of the grade II listed former Boots building on St Peter's Street. There is therefore a degree of harm to the conservation area's setting. There is also a negative impact on the setting of the Darley Abbey Conservation Area and Little Chester Conservation Area.

As a result of the proposals. There would be a severely harmful impact on a number of heritage assets as a result of this proposal including the wider setting of the DVMWHS, the Derby skyline, setting of a number of listed buildings itemised above (especially those with towers, spires or domes such as the Cathedral and Library and many within conservation areas), the setting of the City Centre conservation area, Friar Gate Conservation Area, Strutt's Park Conservation Area, Little Chester Conservation Area and the Green Lane and St Peter's Conservation Area and other heritage assets. The NPPF para 200 states that any harm to, or loss of, the significance of a designated heritage asset including within its setting should require clear and convincing justification.

Policies –

The Planning (listed building and conservation areas) Act 1990 section 66 as regards the statutory duties regarding listed buildings is relevant. The NPPF regarding design and Section 16 on Conserving and enhancing the historic environment of the NPPF is relevant, in particular paragraphs 130, 134, 189, 195, 197, 199, 200, 202, 203 and 206. Heritage assets are '*an irreplaceable resource*' (NPPF, para 189), '*Great weight*' should be given to the conservation of heritage assets, with assets of higher importance given greater weight (NPPF, para 199) and when considering the impact of a proposal any conflict between a heritage asset's conservation and any aspect of the proposal should be avoided or minimised (NPPF, para 195). Historic England advice note on 'The Setting of Heritage Assets' (HEGPA P.N. 3 2nd Ed., 2017) and HE Advice note 4 (2nd Ed) on Tall Buildings are also both relevant. Also relevant is E18 and E19 of the saved Local Plan Review (2006) and CP3, CP4, AC9 and CP20 of the Local Plan – core strategy (2017). Local Plan Policies CP20 on the '*Historic Environment*', CP3 '*Placemaking principles*' and CP4 '*Character and context*' are relevant. Included within the contents of these seek to limit harm to heritage assets, to make sure proposals respond positively to heritage assets and need to be based on robust context analysis and the proposals need to be assessed in terms of their suitability in relation to neighbouring buildings and the local area in relation to building form, scale, height and massing. The Derby Skyline work (2019) and Derby Tall building study (2021) are part of the Local Plan evidence base so are also important.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

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.

Para 203 states, regarding locally listed buildings and other heritage assets, 'The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.'

Recommendation: Object to proposal on heritage grounds.

Strong concern about substantial scale, height and dominance of the proposal and impact on the setting of designated heritage assets throughout the city including the wider setting and context of the DVMWHS and the Derby skyline, setting of listed buildings, conservation areas and other heritage assets.

5.10. Design Review Panel

INTRODUCTION

The Design Review Panel has been invited by the planning department to provide independent design advice during the application process for the above applications.

The aim of the panel is to improve the design quality of the City's built environment. Its role is to independently review major planning applications and provide feedback during the planning process.

CONTEXT

The Applicant's team presented both schemes to the Design Review Panel at pre application stage on 24 November 2022. Both schemes were then updated prior to formal submission based on the DRP's comments. The changes to each application, following the pre-app are summarised in the DAS (design and access statement) of each application:

Eagle Quarter (from page 11 - 13)

<https://docs.derby.gov.uk/padocumentserver/DownloadDocument.aspx?docid=187664940>

Bradshaw Way (from page 10)

<https://docs.derby.gov.uk/padocumentserver/DownloadDocument.aspx?docid=187661463>

CONCLUSION

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

The DRP feel the changes have improved the design quality in both schemes. The schemes have the potential to revitalise and transform the city centre and provide an exciting future for the City.

The Panel consequently provide their full support to both applications subject to the comments on monitoring design quality below.

Scale & Massing

The height and number of storeys is considered acceptable on the basis it will not cause 'noticeable' harm to the city's existing heritage assets. The precedent of high rise development in the context of heritage assets has been successfully delivered in other Cities. There is no reason why Derby should be held back by restricting the height of this development. The key is to ensure the right checks and balances are in place via the planning system to maintain a high level of design quality. This can be easily controlled by enforceable planning condition. To this end the DRP would welcome being given the necessary powers to influence planning condition discharge for these schemes only when they feel the quality is right and fit for the City.

Limit new leisure or retail use on each application site to allow the offer to spread to the rest of the city centre where regeneration is in higher need.

5.11. Environment Agency

We have reviewed the submitted documents and on this occasion the Environment Agency will not be making any formal comment on the submission for the following reason:

- The development falls within flood zone 2 and therefore the LPA should apply national flood risk standing advice (FRSA) in this instance.

<https://www.gov.uk/guidance/flood-risk-assessment-local-planning-authorities>

There are no other environmental constraints associated with the application site which fall within the remit of the Environment Agency. If, however, the proposal subsequently changes such that you feel that it may pose a significant environmental risk then please do not hesitate to contact us and we will be pleased to review our response.

5.12. DCC Land Drainage

No Objection subject to compliance with the following recommended condition:

No development shall take place until a surface water drainage scheme has been submitted and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority. The approved drainage system shall be implemented in accordance with the approved Sustainable Drainage Strategy prior to the use of the building commencing and maintained thereafter for the lifetime of the development. The scheme shall include, as far as reasonably practicable:-

1. A sustainable drainage solution, including engineering details, drawings, cross sections and computations.
2. Proposals to comply with the recommendations of the Non-statutory technical standards for sustainable drainage systems (March 2015) and The SuDS Manual (CIRIA C753).

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

3. Restriction of surface water runoff from the whole site to the greenfield rate or as near as possible to it.
4. Provision of appropriate levels of surface water treatment defined in Chapter 26 of The SuDS Manual (Ciria C753) or similar approved.
5. Appropriate ability to maintain the system in a safe and practical manner and a securely funded maintenance arrangement for the life of the development.
7. Demonstration by way of index approach or other suitable assessment that the that the quality of surface water at the point of discharge is of appropriate quality. The approved drainage infrastructure is to be maintained for the life time of the development to ensure that the required drainage standard and water quality is maintained.
8. Details of the required schedule of inspection and maintenance to ensure the functioning of the designed drainage system.

5.13. Pollution – Land Contamination

1. Please note that the following comments do not seek to interpret or discuss the suitability, or otherwise, of any of the geotechnical aspects of the development, other than within a land contamination context.
2. In addition, all comments relate to human health risks and therefore I would refer you to the Environment Agency for their comments on any conclusions made in the report surrounding risks that may exist to controlled waters, since the Local Authority cannot comment on these aspects.
3. The proposal is to demolish the existing retail area and replace it with a new mixed use redevelopment including residential and amenity areas.
4. The applicant has submitted a Preliminary Geo-Environmental Risk Assessment (Delta-Simons Ltd ref: 22-1374.02_2nd_APP_Eagle Quarter_PRA_20230116F dated 16/01/2023) as part of the application documents.
5. The report has identified a number of potential historic sources of contamination although the risk is assumed to be low due to the presence of a basement area. The construction of this area is likely to have removed much of the material that could be affected by residual contamination.
6. However, due to the ongoing presence of made ground and the change of use in some areas to a more sensitive residential land use, a further intrusive investigation is proposed to ensure that the site will be suitable for the intended use.
7. We have no objections to this proposal in light of the mixed use of the site and the need to ensure that all potential pollutant linkages are investigated appropriately. We would therefore recommend the following conditions be attached to any planning permission granted:
 - i) Where the previously submitted Phase I geo-Environmental Assessment has identified potential contamination, a Phase II Site Investigation shall be carried out to determine the levels of contaminants on site that could pose a risk to the development. A risk assessment will then be required to determine

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

the level of potential risk to end users of the development and to controlled waters. A detailed report of the investigation will be required for submission to the Local Planning Authority for written approval prior to commencement of the development.

- ii) In those cases where the agreed Phase II Investigation Report has detailed significant contamination risks exist on site, a Remediation Strategy will be required in order to identify measures needed to mitigate the identified risks. The Remediation Strategy shall be submitted for written approval by the Local Planning Authority prior to commencement of the development.
- iii) The risk reduction measures detailed within the agreed Remediation Strategy shall be implemented in full. A Validation Report shall subsequently be produced which adequately demonstrates that the measures have been implemented in full and that all significant risks to users of the development and controlled waters have been removed. The Validation Report shall be submitted to and approved in writing by the Local Planning Authority prior to the development being occupied.

I have no other comments to make on the application regarding contaminated land at this time.

5.14. Pollution – Noise

I have reviewed the noise survey with reference: Project No: WIE19524, I would offer the following comments in relation to Noise implications for the development as follows.

The area 'use' is principally city-centre retail and commercial, though there are hotels close to the proposed development, including the IHG Holiday Inn.

The noise assessment has indicated that the Indoor ambient noise guideline values as specified in British Standard BS 8233:2014 will not be achieved with windows left open. The consultant has therefore recommended appropriate glazing specifications for all areas and has also recommended some sort of trickle ventilation.

Trickle ventilation is not an effective method of cooling during periods of warmer weather without additional mitigation in place. It is therefore, recommended that mechanical ventilation be installed in all habitable rooms. The ventilation arrangements shall ensure 4 air changes per hour, using mechanical ventilation, and it is available on demand (to ensure thermal comfort and purged ventilation). Any proposed mechanical ventilation it achieves the Indoor ambient noise guideline values as specified in British Standard BS 8233:2014. If the applicant is not willing to install a mechanical ventilation, then tm52/59 overheating assessment will be required to determine whether trickle vent will prevent overheating especially during summer periods.

Furthermore, details of proposed plants were not submitted with the application, it will be difficult to recommend full approval at this stage. It is therefore, recommended that a supplementary BS 4142:2014+A1:2019 assessment be submitted once they know the exact plants that will be installed. Applicant needs to ensure the criteria below is met.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

- Proposed criteria for plant noise Plant Noise Rating Level (L_{Ar},Tr) Daytime (07:00 – 23:00) Night-time (23:00 – 07:00) ≤ 55 dB ≤ 47 dB

I also note that the proposal will involve some demolition and building works. Given the proximity of some noise sensitive properties, I advise that contractors limit noisy works to between 07.30- and 18.00-hours Monday to Friday, 07.30 and 13.00 hours on Saturdays and no noisy work on Sundays and Bank Holidays. This is to prevent nuisance to neighbouring properties.

Finally, light food offering for the commercial units should be cold or microwavable food, other hot/cooked food would require a ventilation system. No ventilation flue should be installed until agreed in writing with the Council.

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

5.15. Pollution – Air Quality

1. I have reviewed the application information and I would offer the following comments on Air Quality.
2. The proposal is for a residential-led scheme providing circa 875 residential units across mixed-height multi-storey apartment blocks, some commercial space (Class E units) and with the site overall encompassing relatively extensive areas of public open space and outdoor amenity.
3. The site is currently occupied by a car park, indoor market, theatre and ancillary shopping precinct/shops and therefore draws a number of people (and their vehicles) into the locality.
4. The underground level, currently used for car parking, will still maintain a level of associated car parking, however the current proposals suggest a reduction in car parking spaces of around 112, down to 182 spaces (from the existing 294 spaces).
5. In theory, this has the potential to create an improvement in local air quality due to slightly reduced road traffic emissions.
6. The introduction of significant numbers of new sensitive receptors (i.e. the occupants of the new dwellings) into a part of the city known for poor air quality, is however a concern.
7. In this regard, I note the submission of an Air Quality Assessment in support of the application (Waterman Infrastructure & Environment Limited, Ref: WIE19524-100-AQA-R-1-4-1, Dated: January 2023). I can offer the following comments on the report and any relevant observations to the determination of the application.

Air Quality Assessment

8. The assessment considers three main aspects of air quality impacts, namely:
 - Construction dust/vehicle emissions;
 - Emissions associated with traffic using the development; and
 - Existing air quality impacts upon proposed new receptors (the occupants of the new dwellings).

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

9. A qualitative assessment of construction emissions is included. This has been carried out in accordance with IAQM/EPUK Guidance.
10. The construction emissions assessment concludes a medium risk of dust soiling and human health impacts. Consequently, mitigation is deemed necessary and reference is made to the mitigation options outlined in the Guidance.
11. In terms of traffic emissions, the report confirms that the appointed transport consultants state that vehicle trips generated by the Development would not result in a change of more than 100 LDVs or 25 HDVs AADT. In accordance with relevant guidance, this appears to negate the need for a detailed air quality assessment and subsequently, development-generated traffic emissions are scoped out of the assessment.
12. In addition, there are no proposals for centralised combustion plant on site, so again, this is scoped-out. Predicted Future Exposure
13. A review of background data and also monitoring data produced by this Department, have been considered in the assessment.
14. The report suggests that the most relevant air quality monitoring data is that from the diffusion tube located adjacent to 25 Morledge. The report suggests that this diffusion tube “is considered representative of annual mean NO₂ concentrations the Site could be exposed to”.
15. Whilst this is broadly true, the report fails to recognise certain factors which suggest that emissions at other locations around the site could be higher than those measured at 25 Morledge.
16. For example, the access to the Derby Bus Station sits adjacent to the site and this location would suffer additional emissions due to idling buses and also buses queuing and turning into the station at the Station bus access.
17. I further note that additional queuing takes place towards the Morledge/Traffic Street junction and also at the traffic lights along the Traffic Street northern approach as it meets the Morledge junction. These factors are also likely to cause higher emissions when compared with the available diffusion tube data at 25 Morledge.
18. As a result, I would question the statement in the report that air quality impacts are predicted to be ‘not significant’, simply based on the nearby diffusion tube result at 25 Morledge.
19. Given the stated conclusions, the report offers no suggestions for air quality mitigation on site.

Conclusions and Recommendations

20. The submitted air quality assessment provides a reasonable summary of potential air quality impacts associated with the development.
21. I would accept the report’s conclusions regarding construction dust and development-generated traffic emissions, namely that the development is predicted to be ‘not significant’ in planning terms.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

22. I do not, however, share the confidence with the report in terms of the potential exposure of future occupants to local air pollution associated with the adjacent roads (The Morledge and Traffic Street).
23. In this regard, further evidence is needed in order to ensure that future occupants are not exposed to air pollutant concentrations which could impact upon human health.
24. This is particularly pertinent in light of current evidence from COMEAP and the World Health Organisation (WHO) concluding that human health impacts can occur at air pollutant concentrations well below the UK National Objective levels.
25. Should planning permission be granted, I would therefore recommend the following condition is attached to the consent:
 - A detailed air quality assessment or air pollutant monitoring exercise shall be completed in order to determine the potential nitrogen dioxide (NO₂) and fine particulate matter (PM_{2.5}) concentrations at the nearest façades of all proposed residential dwellings to the kerb of The Morledge and Traffic Street, proposed under the Development. Where the assessment suggests that mitigation is required in order to protect the occupants from significant human health risks associated with air pollution, this shall be implemented in full prior to the occupation of the dwellings.
26. Alternatively, I would suggest a condition requiring that no dwellings are constructed within 15m of the kerb of either The Morledge or Traffic Street, in the interests of protecting public health associated with air pollution.
27. A condition requiring a Demolition and Construction Environmental Management Plan (D&CEMP) is also recommended in order to ensure that appropriate levels of mitigation are employed on site during the demolition and construction works.

5.16. Derbyshire Wildlife Trust

08.03.2023

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 Ecological Impact Assessment Report (January 2023), the Bat Endoscope Inspection Report (January 2022) and the Biodiversity Net Gain Assessment (February 2023) all prepared by Watermans Group Ltd. The assessments are considered to provide sufficient information in relation to potential impacts at the site and have identified suitable mitigation and biodiversity enhancements. Provided the development is implemented in accordance with the mitigation and biodiversity enhancement and habitat is retained as detailed in the reports, the development should be able to provide a net gain for biodiversity in line with Local Plan policies and the NPPF. The Biodiversity Metric calculation predicts a 22.14% gain for habitat achieved

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

by the creation of neutral grassland, introduced shrub, urban trees and green roof on existing hardstanding and modified grassland.

There are no nature conservation designations within or immediately adjacent to the site and the habitats present are of site value only.

Habitats – given the urban nature of the site impacts on habitats within the site are very limited and no habitats of high nature conservation value are likely to be affected.

Bats – one building (B3 – Falcon & Castle Public House) was considered to have ‘low potential for use by roosting bats. However, an endoscope inspection of the potential roosting features ruled out possible use by bats and reduced the assessment to ‘negligible’. Therefore, no structures or trees within the site were considered suitable for bats.

Birds – condition required to ensure breeding birds are not affected.

No other protected species are considered likely to be affected and no non-native invasive species were found within the site boundary.

Recommendations/Conditions

It is advisable to attach conditions to ensure that impacts on species are avoided and / or mitigated as well as a condition to secure biodiversity enhancement in line with the EclA report and the Biodiversity Net Gain assessment. Suggested text is set out below:

Breeding birds

No stripping, demolition works or vegetation clearance shall take place between 1st March and 31st August inclusive, unless preceded by a nesting bird survey undertaken by a competent ecologist no more than 48 hours prior to clearance. If nesting birds are present, an appropriate exclusion zone will be implemented and monitored until the chicks have fledged. No works shall be undertaken within exclusion zones whilst nesting birds are present.

Comments: The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this act.

(Trees and scrub are likely to contain nesting birds between 1st March and 31st August inclusive. Trees and scrub are present on the application site and are to be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is certain that nesting birds are not present).

Mitigation measures

The following condition is required to ensure that risks identified in the BNG Report to protected species are fully implemented by the development.

Landscape and Biodiversity Enhancement and Management Plan (LBEMP)

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

A Landscape and Biodiversity Enhancement and Management Plan (LBEMP) shall be submitted to, and be approved in writing by, the LPA prior to the commencement of the development. The aim of the LBEMP is to enhance and sympathetically manage the biodiversity value of onsite habitats, in accordance with the proposals set out in section 5.3, 5.5, 5.6 of the EclA Report (January 2023) and section 7.1 and 7.2 of the Biodiversity Net Gain Assessment (February 2023) prepared by Watermans Group Ltd. The LBEMP should combine both the ecology and landscape disciplines and shall be suitable to provide to the management body responsible for the site. It shall include the following: -

- a) Additional tree planting to be included as part of the proposed landscaping to include fruit and nut bearing species of native varieties to provide foraging opportunities for invertebrates and other species.
- b) Proposed landscaping around the new buildings to be sown with a species-rich lawn mix such as 'Flowering Lawn Mixture EL1' from Emorsgate.
- c) The proposed development should include the provision of bat and bird boxes installed into buildings. These should comprise bird boxes, including House Sparrow terraces and general-purpose nest boxes such as the Schwegler 1B nest box; and ten integral bat boxes.
- d) Monitoring reports should be provided annually to the LPA for the first five years and then after 10, 15 and 20 years.
- e) Requirement for a statement of compliance upon completion of planting and enhancement works.

The LBEMP shall also include details of the legal and funding mechanism(s) by which the longterm implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The approved plan will be implemented in accordance with the approved details.

14.03.2023

Following on from our discussion this morning I can confirm that we are satisfied that Waterman Infrastructure and Environment Ltd have undertaken a sufficient level of survey for the Council to be reasonably confident that bats will not be adversely affected by the proposed development.

In our email sent 1st March 2023 we had advised that a single emergence survey was required for the Eagle Centre in relation to application no: 22/01809/FUL. There have been differing interpretations of the suitability of this building, but Waterman have now confirmed their assessment of this building as having negligible suitability for bat roosts and after further consideration we accept that assessment.

With regard to the Castle and Falcon Public House we have already responded to this via the 1st March email from Rhianna Kemp and via a letter from Jenny Wheeldon (in response to Application No.: 23/00086/OUT). Both of these responses have accepted the results of the recent Bat Endoscope Assessment and as such no further bat surveys are required on this building.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

The Council is advised to request details for a precautionary method of working for bats in relation to the partial demolition of the Eagle Centre building and the full demolition of the Castle and Falcon Public House.

5.17. Theatre's Trust

Remit: Theatres Trust is the national advisory public body for theatres. We were established through the Theatres Trust Act 1976 'to promote the better protection of theatres' and provide statutory planning advice on theatre buildings and theatre use in England through The Town and Country Planning (Development Management Procedure) (England) Order 2015, requiring the Trust to be consulted by local authorities on planning applications which include 'development involving any land on which there is a theatre'.

Comment: This application has come to the attention of the Trust because it is seeking outline planning permission which would include the demolition of Derby Theatre. We have not been directly notified despite this falling within our statutory remit outlined above. Please ensure the Trust is consulted on future applications relating to theatres in Derby.

This scheme encompasses not just Derby Theatre but a wider area. Our comments are in relation to the theatre specifically, we make no comment on the acceptability or appropriateness of loss of other buildings and uses or on the proposed design, scale or mix of replacement development.

Derby Theatre opened in 1975 as the Derby Playhouse, located as part of the Derbion Shopping Centre. It was designed by noted architect Roderick Ham who's other theatre work included the Thorndike in Leatherhead and Ipswich's New Wolsey. It has two performance spaces, a main auditorium with 531 seats and a smaller 110 seat studio. After a brief period of closure following its operator going into administration it was taken on by the University of Derby initially in partnership with the City Council and it was renamed. Its programme includes university productions and professional touring along with learning and community activities. Since 2012 it has been run entirely by the university.

In terms of design and layout it has a single rake which reflect's Ham's earlier work at Leatherhead, although the walls are rendered rather than brick. Its stage is well-equipped with an orchestra pit in front on an elevator. Our database describes it as being one of the best single-tier theatres in the UK but one which is lacking in interior decoration. We are aware of plans for the theatre to relocate, potentially to the site of the former Assembly Rooms.

Indicative future floorspace information shows that there would be complete loss of theatre provision from the wider site.

Paragraphs 6.18 and 6.19 of the Planning Statement deal with the theatre. This reflects our understanding that there is interest in relocation of the theatre elsewhere. Derby Theatre is an important arts and cultural facility for the city, particularly as Derby is currently without dedicated large-scale theatre provision. This is compounded by the ongoing closure of the Guildhall Theatre. It is therefore critical that it is supported and protected. Paragraph 93 of the NPPF (2021) guards against the unnecessary loss of such facilities. Similarly Policy CP21 of the Core Strategy also supports the retention

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

of existing facilities. In principle we have no objection to loss of this theatre, although this is conditional upon a replacement facility being delivered elsewhere and becoming operational in advance of closure of the existing theatre. This must be made a condition of any planning permission, for which we can provide advice to the Council on appropriate wording based upon experience elsewhere. Whilst the existing theatre does not appear to be of any particular decorative significance, it is evidently of high quality in terms of audience and technical standards so a replacement theatre must be of at least equal standard. We would strongly encourage inclusion of a condition requiring the undertaking of a written and photographic recording report prior to demolition.

We note from paragraph 6.19 of the Planning Statement that there is scope for retention of the existing theatre if a new site does not come forward. We welcome this flexibility within the Masterplan.

We are keen to engage further with the Council regarding their plans for theatre provision within Derby, and similarly we would welcome future consultation with the applicant regarding their plans for Derby Theatre.

In summary, we have no objection to this scheme but this is conditional on the safeguards and planning conditions outlined.

5.18. Cadent Gas

Plan

<https://docs.derby.gov.uk/padocumentserver/DownloadDocument.aspx?docid=189314161>

Comments

<https://docs.derby.gov.uk/padocumentserver/DownloadDocument.aspx?docid=189310639>

5.19. Police Liaison Officer:

I have already met with the design team architects late last year, together with a Counter Terrorism Security Adviser, to talk over the scheme pre-application. In general, we were/are supportive of the proposals.

A lack of any co-ordinated development of the former Eagle Centre beyond the Westfield, Intu and now Derbion boundaries has led to an odd relationship between the two, with associated over complicated connecting pedestrian access arrangements.

Consequently, a wider and considered development of this part of the city is welcomed, and in general the indicative plans shown, and Building Design Code, are in accordance with guidance over reducing criminality and anti-social behaviour by design.

The current combination of quite stark, disconnected external building edges and movement routes create a very vehicle dominated environment which from my perspective is lacking essential elements for safer pedestrian movement.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

The proposed enlivening and widening of pedestrian movement corridors, as well as a defining of the three private residential pockets of open space I expect will help with rationalising this arrangement, and in turn developing better and safer pedestrian flow.

The more focussed Derbion entrance seems sensible.

There will clearly be challenges over future detail, which have been discussed with the project architect, in areas such as the appropriate definition and associated enclosure between what is required to be private and public space externally, matters of hostile vehicle mitigation, and reducing the risks involved with both semi-private and private access to very high terraces and balconies, but these matters can all be subject to further discussion subsequent to any outline approval.

5.20. Marketing Derby:

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

This letter follows consultation with members of Derby Economic Development Advisory Committee (DEDAC) and is written in full support of the Derbion Masterplan application for outline planning consent to redevelop Bradshaw Way and the Eagle Quarter, as we believe it fits with the city's ambition for regeneration.

Marketing Derby on behalf of DEDAC supports both applications in principle as they aim to improve areas of the city that have been neglected.

The Bradshaw Way development complements an area already undergoing significant regeneration in Castleward and Nightingale Quarter and supplements the requirement for more residential accommodation within the city limits.

The Eagle Quarter development complements the current plans to regenerate an important gateway into the city centre from Derby Bus Station - the Eastern Gateway. It also supplements the housing demand and improves the quality of the area.

The proposed developments improve 2 key gateways into the city, producing a modernised and regenerated welcome to the city centre with an improved building aesthetic and streetscape.

Both schemes benefit the neighbouring St Peter's Quarter, and, by enhancing residential footfall, diversifies the city's economy.

However, in order to be fully cohesive with the city's main core objectives, we would actively encourage the final designs to include more green and blue, in order to fit with the City's Vision of Urban Cooling: 'The Vision should promote greening of the city centre, including new green spaces, tree planting, greening of streets (and) landscaping' Towards a New City Vision. Ambition 2022 Document.

There is scope to introduce some biodiversity or biophilic design into the final scheme. With these considerations Marketing Derby and DEDAC are fully supportive of the proposed application. Please accept this letter as confirmation of our ongoing support for this project and the economic benefits that the project will provide.

5.21. Cathedral Quarter BID:

The Cathedral Quarter BID was established in 2007 and is now in its fourth term. The BID is home to almost 450 levy-paying businesses, all of whom invest in projects and activities which benefit the area.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

The Cathedral Quarter Business Improvement District (BID) would like to place on record its support in principle for the application mentioned above.

The Eagle Quarter development complements the current plans to regenerate an important gateway into the city centre from Derby Bus Station - the Eastern Gateway. It also supplements the housing demand and improves the quality of the area.

The proposed development improves the gateway into the city centre, producing a modernised and regenerated welcome with an improved building aesthetic and streetscape. It will benefit St Peter's Quarter by enhancing residential footfall and diversifying the city's economy.

However, in order to be fully cohesive with the city's main core objectives, we encourage the final designs to include active frontages on the elevation facing the key pedestrian arrival point outside the Bus Station rather than a blank block façade of a food supermarket retail unit. The active elevation should be welcoming and include such uses as street cafes and hospitality.

With these considerations the Cathedral Quarter BID is supportive of the proposed application. Please accept this letter as confirmation of our ongoing support for this project and the economic benefits that the project will provide.

5.22. St Peters Quarter BID:

The St. Peters Quarter BID was established in 2007 and is now in its fourth term. The BID is home to almost 450 levy-paying businesses, all of whom invest in projects and activities which benefit the area.

The St. Peters Quarter Business Improvement District (BID) would like to place on record its support in principle for the application mentioned above.

The Eagle Quarter development complements the current plans to regenerate an important gateway into the city centre from Derby Bus Station - the Eastern Gateway. It also supplements the housing demand and improves the quality of the area.

The proposed development improves the gateway into the city centre, producing a modernised and regenerated welcome with an improved building aesthetic and streetscape. It will benefit St Peter's Quarter by enhancing residential footfall and diversifying the city's economy.

However, in order to be fully cohesive with the city's main core objectives, we encourage the final designs to include active frontages on the elevation facing the key pedestrian arrival point outside the Bus Station rather than a blank block façade of a food supermarket retail unit. The active elevation should be welcoming and include such uses as street cafes and hospitality.

With these considerations the St Peters Quarter BID is supportive of the proposed application. Please accept this letter as confirmation of our ongoing support for this project and the economic benefits that the project will provide.

5.23. Housing Strategy:

The redevelopment of the Eagle Quarter will provide much needed homes for the city and the garden area provided on the roof will provide a private green space for the residents. The location is sustainable, has good access to the facilities on offer within the city and will also increase footfall and economic activity within the City centre.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

As this is an outline application we would encourage the developer to work with us to ensure the residential accommodation meets a good design and space standard so that it achieves the city aspirations for safe, high quality homes where people want to live and are sustainable in the longer term creating a sense of place and a settled community.

5.24. Aerodrome Safeguarding:

The Safeguarding Authority for East Midlands Airport has assessed this proposal and its potential to conflict aerodrome Safeguarding criteria. We have no objections to the outline scheme presented but wish to be consulted when further details are available. Informative:

The applicant's attention is drawn to the procedures for crane and tall equipment notifications, please see: <https://www.caa.co.uk/Commercial-industry/Airspace/Event-and-obstacle-notification/Crane-notification/>. Aviation Obstacle lighting may be required on tall equipment, this will be advised via the application process.

5.25. Biodiversity Net Gain

The Environment Act seeks to ensure that, from November 2023, all development delivers Biodiversity Net Gain (BNG) and this aspiration is reflected within Policy CP19, specifically criterion (a). At the present time, the requirement to deliver Biodiversity Net Gain is voluntary and the 10% target will be required only when BNG becomes mandatory in November 2023. However, the Providing Biodiversity Net Gain Supplementary Planning Guidance clearly states that the Council aspires to delivering a 10% gain. In addition, the NPPF, paragraph 174 states that planning decisions should provide net gains for biodiversity.

The applicant, in the Ecological Impact Assessment, paragraph 6.9, indicates that a Biodiversity Metric will be submitted at the Reserved Matters stage. In the meantime, the applicant has submitted a Biodiversity Net Gain report which indicates that there will be positive change of +22.14% and that the trading rules would be satisfied. These figures are based on the Proposed Parameter Plan and can only give a rough indication of the habitat uplift and will be confirmed through the reserved matters application. Ideally, the applicant should have submitted the BNG Metric at this outline stage but this requirement will only be compulsory when the delivery of BNG becomes mandatory.

Returning to the envisaged uplift, the Environment Act requires a minimum uplift of 10%, a requirement which is also reflected in the Council's Supplementary Planning Guidance. Therefore, the applicant's intention to deliver a BNG uplift of +22.14% is welcomed.

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

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

Derby Local Plan Review (2006). It provides both the development strategy for the City up to 2028 and the policies which will be used in determining planning applications.

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

- CP1(a) Presumption in Favour of Sustainable Development
- CP2 Responding to Climate Change
- CP3 Placemaking Principles
- CP4 Character and Context
- CP6 Housing Delivery
- CP7 Affordable and Specialist Housing
- CP9 Delivering a Sustainable Housing
- CP11 Office Development
- CP12 Centres
- CP14 Tourism, Culture and Leisure
- CP15 Food, Drink and the Evening Economy
- CP16 Green Infrastructure
- CP19 Biodiversity
- CP20 Historic Environment
- CP21 Community Facilities
- CP23 Delivering Sustainable Transport Network
- AC1 City Centre Strategy
- AC2 Delivering a City Centre Renaissance
- AC3 Frontages
- AC4 City Centre Transport and Accessibility
- AC5 City Centre Environment
- AC9 Derwent Valley Mills World Heritage Site
- MH1 Making It Happen

Saved CDLPR Policies

- GD5 Amenity
- CC17 City Centre Servicing
- H13 Residential Development – General Criteria
- E13 Contaminated Land
- E17 Landscaping Schemes
- E18 Conservation Areas
- E19 Listed Buildings and Buildings of Local Importance
- E24 Community Safety
- E30 Safeguarded Areas Around Aerodromes
- T10 Access for Disabled People

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

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

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

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

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

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

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

6.2. Applications involving the provision of housing:

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

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

Policy CP6 sets a housing requirement of 11,000 new homes over the 17 year Plan period (647 dwellings annually). However, in December 2020, Government amended it's 'Standard Method' for calculating Housing Need to include a 35% uplift in the top 20 largest urban areas in England which includes Derby. The standard method housing need calculation for Derby City now stands at 1,266 dwellings a year and this is significantly higher than the CP6 requirement. Therefore, the housing requirement in Policy CP6 is out of date.

A further consequence of the significant increase in housing requirement, brought about by the change to the standard method, is that the Council can no longer demonstrate a 5-year supply of housing land as required by the NPPF (NPPF paragraph 74 (footnote 39) refer). At April 2023 the supply of deliverable sites was sufficient to provide 3.69 years of dwellings against the annual 1,266 requirement.

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

Paragraph 11d of the NPPF requires that where there is no 5 year supply this means granting planning permission unless –

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

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

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

Other material considerations to weigh in the planning balance are that the Council's housing needs have increased significantly and as such the benefits of delivering housing carry greater weight. Also, the degree to which the Council is unable to demonstrate a 5 year supply is material. A housing land supply of 3.69 years is a significant shortfall and therefore very significant weight should also be applied in favour of applications that can make a meaningful contribution to increasing this supply.

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

7. Officer Opinion:

Key Issues:

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

7.1. Overarching Policy Context

7.2. Heritage Assets

7.3. Socio-Economic Benefits

7.4. Design, Street Scene and Amenity

7.5. Transport and Access

7.6. Environmental Impacts

7.7. Planning Obligations

7.8. Planning Balance

7.1. Overarching Policy Context

Under the umbrella of the tilted balance explained at 6.2 above we have a housing land supply of **3.69** years which is a significant shortfall and therefore very significant weight should also be applied in favour of applications that can contribute to increasing this supply.

The application seeks outline permission for the demolition of the existing Eagle Market building, public house and theatre and the erection of a phased mixed-use development, including residential and commercial floorspace (Use Class C3 and E); new public square; servicing; car and cycle parking provision; hard and soft landscaping works; provision of new pedestrian routes, and other associated works. The proposal includes eleven buildings or blocks of varying heights, ranging from circa 4 to 29 storeys (+ plant and access), including blocks of 10, 12, 14 and 18 storeys. Development of this scale could provide up to 875 new homes, 2,358sqm of commercial space and 10,961sqm of parking, servicing and ancillary spaces.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

The application site is the existing Eagle Market complex, including the Castle and Falcon PH on East Street and Derby Theatre located off Traffic Street. The site is located in the eastern area of Derby city centre and is circa 1.91 ha in size.

This outline application is in addition to the two separate full applications that have both been approved seeking partial demolition of the Eagle Market to enable the creation of a new entrance and associated uses (Eastern Gateway) and the change of use of the residual market to leisure (22/01809/FUL and 22/01811/FUL).

Principle of Development:

The site as a whole is not allocated for anything specific in the DCLP1 but is located within broad policy areas including the Central Business District – CBD (AC2), the St Peters Quarter ‘character area’ (AC2) and the Core Area (AC2). The site is not identified as primary frontage, as the existing building lacks ground floor street frontage. However, the rest of East Street is defined as Primary Frontage, recognising the importance of this street as a key shopping street and important link between the bus station / riverside and St Peter’s Street.

AC1 is clear that the Council is committed to delivering a renaissance for the city centre and reinforcing its central economic, cultural and social role by supporting sustainable economic growth and regeneration, improving the quality of the built environment, creating new residential neighbourhoods and enhancing its standing as a regionally important business, shopping, leisure, tourism and cultural destination.

AC1 goes on to recognise that the Council will encourage investment which strengthens and integrates the City Centre’s retail, employment, leisure, cultural and residential functions and meets overall sustainability objectives, whilst promoting the ‘Core Area’ as the preferred location for new retail development and supporting proposals which serve to protect and enhance its overall vitality and viability. AC1 specifically supports the delivery of a *minimum* of 2,200 new homes across the city centre within the Plan period.

AC2 identifies the CBD as the main focus for economic and leisure activity and also identifies the Core Area as the sequentially preferable location for major new retail development within the city (reflected in CP12).

AC2 also identifies the St Peters Quarter character area acknowledging its long-standing high-street shopping role as well as providing crucial pedestrian links between the Cathedral Quarter, Derbion and the Riverside. Reflecting this, the policy goes on to note that priority will be given to the revitalisation of East Street / Albion Street / Exchange Street / Morledge area which is relevant to this proposal.

More specifically, in relation to the Core Area, AC2 recognises that the Council will maintain an appropriate level of retail market provision, having regard to a ‘Markets Review’.

AC3 identifies primary shopping frontages within the city centre. Whilst not specifically identified as primary frontage, the site of Eagle Market can be considered as a secondary frontage. AC3 allows for a range of uses within secondary frontages in the St Peters Quarter, including shops, food and drink uses (subject to CP15) and leisure uses.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

In terms of the commercial uses being sought, the new E use class covers a range of potential uses including amongst other things, retail, offices, café's, restaurants, gyms, nurseries, doctors, financial and professional services. All of these uses would be supported, but with support for food and drink uses caveated by consistency with CP15, which seeks to avoid concentrations of food and drink uses that could impact on community safety and / or the character, role and function of the centre. Given the central location of the site, I am satisfied that the provision of food and drink uses in this location would be in-keeping with the character, role and function of the centre as a whole.

The Eagle Market site is highly sustainable and accessible being located opposite the bus station and within easy walking distance of the railway station. The site could be argued as the **most** sustainable location in the whole city.

Clearly, the principle of the uses being proposed are in keeping with the overarching policy objectives set out in AC1, AC2, CP2, CP11, CP12 and CP15. In the context of the Council's housing supply position (as set out above), the potential delivery of up to 875 new homes should be given very significant weight in decision-making. Section 7.7 of this report considers the Planning Obligations, including the potential approach to affordable housing.

The potential for new office floorspace as part of the proposed commercial development (use class E) is also warmly welcomed and supported by the policy framework. The need for new, high-quality office floorspace in the city centre is widely recognised.

Having reviewed relevant Local Plan policies associated with the principle of the proposals, the key policy issues for consideration relate to the loss of the existing uses, namely the Eagle Market, Castle and Falcon PH and Derby Theatre. AC2 raises a specific question in this regard, which is whether an *appropriate level of market provision will be maintained* if the Eagle Market is lost in its entirety.

Loss of Public House, Market and Derby Theatre:

Policy CP21 recognises 'local shops', 'public houses' and 'cultural buildings' as community facilities. In this context, it can be argued that the Eagle Market, Castle and Falcon PH and Derby Theatre should be considered as community facilities and their proposed loss should therefore be considered against the provisions of CP21.

CP21 supports the retention of existing community facilities unless it can be demonstrated that there is no longer a need to retain the use, alternative provision is made or where the Council can assist strategic partners to renew or restructure their provision.

In terms of the Castle and Falcon PH, I am satisfied that there are many other similar establishments located in the city centre that can meet community needs. The rationale for including public houses within the provisions of CP21 is generally aimed at retaining public houses in village centres and suburbs, where there might only be one facility of this nature. The Castle and Falcon PH does not fall into this category and I am satisfied that alternative provision is available, in line with CP21.

In addition to the loss of the Eagle Market as a community facility, its total loss also needs to be considered against the NPPF which makes specific reference to market

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

provision. Paragraph 86 (c) of the NPPF requires planning policies to '*retain and enhance existing markets and, where appropriate, re-introduce or create new ones*'. This is a clear steer towards retention and therefore the loss of the market needs to be appropriately justified.

Picking up on the reference in AC2 to 'having regard to a Markets Review', the applicant has used the findings of the 2015 'Colliers' study to justify the loss. The Colliers work outlines that the Eagle Market suffers from high vacancy rates. At that time (2015), Eagle Market had a vacancy rate of 49% of stalls and 43% of lettable space. The report also noted that the Castle & Falcon pub detracts from the East Street entrance. Additionally, the large level change between East Street and the market makes access difficult and deters people from using the market as a passage into the shopping centre. The report concludes that both markets (Eagle and Market Hall) require substantial change in the relatively near future.

Whilst this was a 'Markets Review', the study is dated, so it's sensible to consider a range of other evidence, including the Council's Retail and Centres Study (2019), work produced to support the Council's Future Highstreet Fund bid and also the relatively recently published consultation document, Towards a New Vision for Derby City Centre – Ambition (2022).

The Retail and Centres Study (2019) describes the Eagle Market as oversized for its existing use and therefore concluded that it represents a regeneration opportunity for providing town-centre uses. The study notes that high levels of pedestrian activity in Derbion do not translate into comparable levels of activity in the Eagle Market. The study goes on to conclude that the Council should support the partial reconfiguration or redevelopment of the Eagle Market with a potential focus on 'urban leisure' uses and a significantly improved frontage on to East Street.

To support the Future Highstreet Fund bid submitted by the Council, Nexus Planning were commissioned to provide evidence and justification in relation to the loss of retail floorspace, including the Eagle Market. The report contrasts market provision in Derby with comparable 'Major Regional' centres. On the basis that the Eagle Market is redeveloped entirely and the Market Hall (2,895 sqm floorspace) constitutes Derby's only market space, this would result in a provision in line with the comparable centres - Nottingham (2,185 sqm floorspace), Leicester (3,420 sqm floorspace), Chester (3,800 sqm floorspace), and York (900 sqm floorspace).

The report overall determines that the Future Highstreet Fund proposals, will have a significant impact on the composition of Derby city centre. In supporting new activity and lessening the amount of retail stock, the proposals should help retailers within the core by reducing the vacancy rate and the negative perceptions associated with underutilised premises.

The need to rationalise the amount of floorspace dedicated to retail sales (including markets) and diversify the range of uses in the city centre is reflected in the recently published consultation document, Towards a New Vision for Derby City Centre – Ambition (2022). In relation to retailing, the document acknowledges that the city centre has too much floorspace and this is contributing to high rates of vacancy and a general air of decline. In response to this, the Ambition document identifies the Eagle Market as an 'Area of Change', which could include significant redevelopment of the Eagle Market, beyond that planned in the Eastern Gateway scheme, and provision of

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

improved links between East Street, the bus station and Derbion. It also highlights the Eagle Market as a residential led development opportunity area.

The Ambition document sets the foundations for the development of a new Vision. Whilst the Vision will be a non-statutory plan (and therefore carry limited weight in decision making), the Ambition document was approved by Council Cabinet and provides an indication of the direction of travel for all matters associated with the city centre and was generally well received by stakeholders and the public alike.

The applicant suggests that the latest vacancy rate of stalls in the market has increased to 57%. This demonstrates further deterioration of the situation at Eagle Market.

Alongside funding for the Eastern Gateway project, the Future Highstreets Fund is contributing to the regeneration of the Market Hall. This will provide modern, flexible market floorspace within a fully restored and regenerated Victorian Market Hall. The floorspace provided by the Market Hall will be significant and comparable to the level of provision (in terms of floorspace) in other cities. I agree with the applicant that the resultant position of losing Eagle Market but having an enhanced Market Hall will be that of less market space, but an enhanced and more sustainable markets offer in the city centre as a whole.

Having reviewed relevant evidence and documentation, I am satisfied that the impacts of the loss of the market have been adequately considered and accepted and that there is sufficient justification to outweigh the steer provided by the NPPF. I am also satisfied that given vacancy levels in the Eagle Market and the ongoing work towards the creation of an enhanced Market Hall, the provisions of CP21 can be met, as alternative provision will be provided and that an *appropriate level of market provision* can be maintained in the longer term, in line with AC2.

There is a concern around the 'lag' between the potential closure of the Eagle Market and the reopening of the Market Hall. Whilst it can be argued that from a CP21 perspective, community 'needs' for local shopping will be met by other shops in the city centre in the interim period, there is a concern about the potential economic impact of losing stallholders in the interim if they are not adequately relocated. Although, it is noted that as the Eagle Market has now closed a number of stallholders have taken tenancies within the city centre and Derbion. Policy CP9 is clear that the Council will encourage proposals which provide relocation opportunities, particularly where it would enable regeneration. The intentions of Policy CP9 have been given due regard through the opening of new shops within the city centre.

Comprehensive redevelopment of the site would also require the relocation of Derby Theatre. The University of Derby has signalled their interest in working with the Council to relocate the facility to the existing site of Derby Assembly Rooms, which has been closed since 2014. However, these plans currently remain unconfirmed.

The outline application has been designed with a phased approach. Should no plans for relocation of the theatre come forward, this phase could be delayed or not be progressed, and the theatre would remain in its current location, with enhanced public realm and access arrangements. Although, should this phase of development not be brought forward then there will be a reduction in the overall number of residential units delivered across the site. This would also erode the benefits of the scheme, albeit not entirely but proportionately. Notwithstanding this, a condition should be imposed to

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

ensure that a replacement facility (of equal or improved quality) is provided elsewhere in the city centre, before the current Derby Theatre building is demolished, to ensure compliance with the provisions of CP21 and also CP14 which seeks to enhance Derby's cultural offer.

Consideration also needs to be given to the public art that is installed on the external elevations of the Derby Theatre. The applicant has agreed that they would work with the Council to relocate the artwork and this matter can be satisfactorily dealt with by condition.

Scale, Design and Heritage:

Having reviewed the submitted material, a further key issue appears to be the scale of development required to produce the outputs being suggested. As already noted, the building heights indicated range from 4 storeys to 29 storeys on the site of Derby Theatre. With the application being in outline, the maximum heights of the buildings would be secured by condition. Nonetheless, it is worth considering the rationale for the proposed scale of development.

The starting point is Policy AC5 which recognises the Traffic Street / Morledge junction as a Secondary Gateway. Criteria (h) supports the construction of 'tall buildings' in appropriate gateway locations, where these are of high-quality design and do not adversely affect the setting of heritage assets and the character of the city centre. CP4 acknowledges the need to give '*particular scrutiny*' to proposals for tall development. The supporting text to CP4 highlights that tall developments are generally considered to be proposals over 20 metres in the city centre.

Following the adoption of AC5 and CP4, the Council (in conjunction with Historic England) commissioned a Skyline and Significant Views Study, which was subsequently used to inform the Council's Tall Buildings Study (2021).

The Tall Buildings Study goes further in defining tall buildings as being at least twice the general context height of the surrounding area. The site of Eagle Market is specifically identified by the study as a location that could potentially accommodate a tall building. The study states that, "*This site offers the opportunity to redevelop the under-performing Eagle Market with a mix of city centre uses. A tall building in the vista from the bus station could visually emphasise this key arrival point in the city and help enhance local legibility. The tall building should be aligned along Morledge. It could also mark a new pedestrian link from Morledge to the Inner Ring Road and Derby Theatre, that would replace the need to walk underneath the riverside multi-storey car park*".

The location is identified as an opportunity for a 'local landmark' and provides an indicative tall building height of 12 storeys, based on a context height of 5 storeys, with a justification that a tall building would mark a place of local significance and support local legibility. The study goes on to identify site specific design criteria for tall development in this location including the need for tall buildings to be:

- located in the vista along Morledge and visible from the bus station
- visually distinctive and of the highest quality.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

- an integral part of a lower rise development block and be situated in a prominent position
- part of comprehensive development of the entire site that delivers a new high quality pedestrian street with Derby Theatre and the inner ring road, and delivers wider regeneration benefits

Seven of the eleven blocks indicated in the proposal should be considered as tall buildings, based on the definition in the study. The proposals therefore constitute a tall buildings cluster. The study identifies opportunities for tall building clusters, but the Eagle Market site is not identified as one.

At 18 and 29 storeys, two of the proposed blocks are significantly in excess of the scale envisaged by the study. Nonetheless, the proposal has the potential to be consistent with some of the site-specific design criteria. Given that the proposed scale is significantly more than that indicated by the study, it will be crucial to ensure that the impact on views is fully assessed and tested. At circa 29 storeys there is an in-principle issue as to whether the block would challenge the primacy of the Cathedral Tower on the city skyline. Whilst not set out in policy, this is an important issue for the city to grapple with.

The key issue in considering the appropriateness of the scale is that the proposal is in outline form. The Tall Buildings Study is very clear that applicants seeking planning permission for tall buildings should submit full applications and that outline proposals should not be accepted. This is because the impact of a tall building is very much related to its design taken as a whole, as opposed to simply its height.

Given that the proposed scale is in excess of that indicated by the Tall Buildings Study, it will need to be ensured that the design of the building is of exceptional quality. There is some uncertainty about whether this is achievable as the application is in an outline format.

The potential impacts on heritage assets will need to be assessed and the detailed comments of ICOMOS, Historic England, Conservation Officer and Derwent Valley Mills World Heritage Panel will be considered in Section 7.2 of this report. Along with the comments of the Design Review Panel.

The decision maker, when considering this application, needs to firstly consider whether the National Planning Policy Framework gives a clear reason for refusal. If the National Planning Policy Framework does give a clear reason for refusal then the decision maker would consider the application in the planning balance.

However, if the National Planning Policy Framework does not give a clear reason for refusal then the tilted balance under Paragraph 11d is evoked.

In my opinion, the National Planning Policy Framework refusal to consider here is in respect of proposals impact on designated heritage assets. Does the decision make consider that the proposal would constitute harm to designated heritage assets or would the impact be “less than substantial harm” as explored within Section 7.2 of this report and as set out by the Heritage Consultees in their comprehensive comments in Section 6 of this report.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

Other Matters:

The policy implications related to policy CP23 will be considered in Section 7.5 of this report along with the comprehensive comments of colleagues in Highways and Transportation.

The Environment Act seeks to ensure that all development delivers Biodiversity Net Gain and this aspiration is also reflected in Policy CP19. At the present time, the requirement to deliver Biodiversity Net Gain is voluntary but the applicant is advised to give due consideration to the inclusion of BNG into their proposals from the earliest opportunity. The inclusion of a public square at the heart of the proposed development is welcomed and may provide an opportunity for BNG enhancements.

Part of the site is located within Flood Zone 2 and therefore the comments of the Environment Agency and Land Drainage team along with the implications in terms of consistency with CP2.

The inner ring road and Morledge are covered by an Air Quality Management Area (AQMA). Colleagues in the Environmental Protection Team have provided details comments regarding Environmental Protection matters including air quality, noise and contaminated land.

Saved policy E30 from the CDLPR relates to safeguarding areas around aerodromes - largely related to the safe operation of East Midlands Airport. The safeguarded area covers much of the city and only generally comes into play where development is in excess of 90 metres in height. The policy seeks to ensure that development would not result in serious safety hazards to aircraft through scale and design, creating bird hazards or by impacting on navigational aids / air traffic control systems. At 141m (AOD), block A2 must be close to triggering the threshold. On this basis the views of East Midlands Airport / Civil Aviation Authority have been sought. The Civil Aviation Authority have confirmed no objections to the proposal but would like to be re-consulted on any future phases.

Conclusions:

Making the city centre an attractive place to live as well as to work, shop and spend leisure time in will be a crucial part of its transformation, not just because this will generate more activity and vibrancy, but also to help meet Derby's unprecedented level of housing needs.

There would be very significant benefits from the provision of circa 875 new homes to the Council's housing supply, in arguably the city's most sustainable location. Although it is unknown at this stage, if some of these provided affordable housing there would be further benefits as the city has considerable affordable housing needs. Further benefits would come from the removal of the outdated Eagle Market and Castle and Falcon PH buildings, provision of new commercial floorspace and the creation of a more permeable, pedestrian friendly form of development, with opportunities for green infrastructure enhancements. The fact that the principle of the uses being proposed are in line with the policy framework and are supported by the Council's Ambition document, also weigh heavily in favour of the proposal.

Subject to Derby Theatre being retained or replaced (and secured through appropriate condition), the adverse impacts are most likely to be associated with the potential visual

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

impacts of this scale of development, both on the character of the city centre, but also potentially on heritage assets.

Quality is important if city living is going to support a re-invention of the city centre into a destination of choice. Poor quality homes should not be seen as a mark of success or progress. The decision maker will need to be satisfied that whilst in outline format, the proposals have the potential to deliver high quality development and associated living environments and consider whether it is possible to include conditions relating to the design principles set out in the submitted Design Code.

Subject to securing the retention or replacement of Derby Theatre through condition and any concerns in relation to scale / impacts on heritage, there are no policy objections to the principle of the proposal.

National Planning Policy dictates that where there is no 5-year housing supply, that proposals which include the provision of housing should be approved unless:

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

In terms of (i), footnote 7 includes reference to policies relating to designated heritage assets. Therefore, the decision maker will firstly need to consider whether the policies in the NPPF relating to designated heritage assets provide a clear reason for refusing the development proposal. If they do not, then (ii) is triggered meaning that the proposal should be approved unless the adverse impacts significantly and demonstrably outweigh the benefits (my emphasis). The benefits and adverse impacts therefore need to be considered and quantified in determining the application. The ability to fully understand visual impacts and potential impacts on heritage assets is impeded by the application only seeking outline approval.

In my opinion and judgement, the National Planning Policy Framework does not provide a clear reason to refuse planning permission, as the conclusions of the heritage policy test conclude that the development would result in 'less than substantial harm' and therefore the impact should be weighed in the balance against the public benefits. The position would invoke the titled balance as set out in Paragraph 11d as explored within Section 7.2 Heritage Assets and 7.3 Socio-Economic Benefits which in summary confirm that as a result of the scale of the proposed development Heritage Consultees conclude there would be 'less than substantial harm' on a number of highly graded assets including the World Heritage Site and its associated buffer, the Grade I Cathedral and the city's skyline. However, the myriad of social, economic and environmental benefits outlined within Section 7.3 of the report outweigh the 'less than substantial harm', in this instance.

7.2. Heritage Assets

There are no Statutory Listed or Locally Listed Buildings within the application and the application site is not located within a Conservation Area. The boundary of the City Centre Conservation is along with middle of East Street and therefore the proposal

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

would have a direct impact on its setting. There are also a number of Locally Listed Building along East Street.

Given the scale and height of the proposed development and its impact on the city's skyline there is a potential for the development to have an impact on a number of designated and non-designated heritage assets that reside within the site's wider context, this includes but is not exclusive to, the following list taken from the submitted Heritage Assessment, page 6:

- City Centre Conservation Area (including the Listed Buildings within it)
 - Cathedral Church of All Saints (Grade I)
 - Central Library (Grade II)
 - Guildhall (Grade II)
- Green Lane and St Peters Conservation Area (including the Listed Buildings within it)
 - Church of St Peters and attached Boundary Walls (Grade II*)
- Friar Gate Conservation Areas (including Listed Buildings within it)
- Group: Railway Conservation Area (including listed buildings within it) and Former Railway Workshop At Derby Railway (Grade II*), Former Carriage Shop At Derby Railway (Grade II*, Former Engine Shed (Remains Of The Original Midland Region Railway Station (Grade II*) and Clocktower (Grade II)
- Hartington Street Conservation Area (including listed buildings within it)
- Group: Arboretum Conservation Area (including listed buildings within it) and Derby Arboretum RPG (Grade II*)
- Nottingham Road Conservation Area
- Little Chester Conservation Area (including listed buildings within it)
- Strutts Park Conservation Area (including listed buildings within it)
 - Roman Catholic Church of St Mary (Grade II*)
- Nottingham Road Cemetery RPG (Grade II)
- Northcliffe House (Grade II)
- Magistrates Court (Grade II)
- 45 St Peter's Street (Grade II)
- Group: Liversage Almshouses (Grade II), Walls And Railings Fronting London Road Of The Derbyshire Royal Infirmary (Grade II) and Florence Nightingale Statue (Grade II), Church Of The Holy Trinity, London Road, (LLB), London Road Community Hospital (LLB)
- Group: Serbian Orthodox Church Of Apostles St Peter And St Paul (Grade II) and Bell And Castle Inn (Grade II)
- Church Of St Luke (Grade II*)

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

- Rykneld Mill (Grade II*), also including The Powell Seat Company Limited Former Warping Mill (Grade II), Wesley Chapel (Grade II) and 2-8 Brook Street (Grade II)
- Group: Town Goods Shed In St Mary's Goods Yard (Grade II), Grain Warehouse To South Of Town Goods Shed (Grade II) and Accumulator Tower To The South Of Grain Warehouse (Grade II)
- Derwent Valley World Heritage Site

The heritage assets are taken from a 2km study area. The submitted Heritage Assessment confirming that *“The scope was further refined by fieldwork, as set out below, to allow a proportionate assessment to be prepared that considered only those assets where significance may be affected. For assets where no material change to setting would occur, or where the change to setting is characteristic, these have been excluded from the scope. Other heritage assets have been scoped out often due to a combination of distance from the site and a Zone of Theoretical Visibility (see Appendix 4) showing low to nil visibility of the scheme. Fieldwork undertaken to visit areas of potential visibility allowed us to further refine the scope.”* Those assets removed from the Heritage Assessment are set out on Page 7 of the submitted assessment.

The applicant has submitted a Heritage Assessment, Townscape and Visual Appraisal, Eagle Quarter, Derby. The suite of accompanying documents has sought to provide an assessment of the proposal and its relationship with the aforementioned heritage assets in accordance with the requirements of the NPPF. The applicant has submitted a number of views using the Council’s 3D Model along with photo montages of the proposed development.

The submitted assessments consider the historical context of the application site, the heritage assets, the local context and provides a massing analysis of the proposed development in this context. Colleagues have requested additional viewpoints through the life of the application in order to assist with their assessment. These have been provided by the applicant. The assessment considers the significance of the heritage asset, the attributes of setting contributing to significance from the application site and the attributes of dynamic experience of the asset contributing to significance along with providing details of their methodology, relevant legislation and guidance and visual assessment.

Section 5.5 of the submitted Heritage Impact Assessment lists the heritage assessment and considers it’s importance and the effect of the development on the significance of that assets. When considering the majority of the heritage assets it is considers that the significance of that asset is preserved and where there is an effect it is considered, by the applicant, to be less than substantial harm at the lower end of the scale. The low-level harm, less than substantial harm is considered to be to the following assets:

1. Derby City Centre Conservation Area
2. Cathedral Church of All Saints (Grade I)
3. Central Library (Grade II)
4. Friar Gate Conservation Area (including the listed buildings within it)

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

5. Little Chester Conservation Area

It is the harm on these heritage assets that the applicant considers needs to be weighed in the planning balance. The application is accompanied by a Planning Benefit Statement which will be considered in Section 7.3 of this report.

In considering the application decision makers must engage Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 which 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) of the Planning (Listed Building and Conservation Areas) Act 1990 is not relevant in the determination of this application as the site is not located within a Conservation Area.

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

The Local Plan – Part 1 policy CP20 seeks to protect and enhance the city's historic environment, including listed buildings and Conservation Areas. CP20(c) requires development proposals which impact on the city's heritage assets to be of the highest design quality to preserve and enhance their special character and significance through appropriate siting, alignment, use of materials, mass and scale.

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

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

In term of general design principles, Local Plan – Part 1 policies CP2, CP3 and CP4 are relevant and saved policy GD5 of the adopted CDLPR are 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, Conservation Area, World Heritage Site) paragraph 197 of the NPPF states that, in determining applications, local planning authorities should take account of:

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

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

Paragraph 201 states that where proposals “...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.”

Guidance in the NPPF provides that proposed developments involving substantial harm to (or total loss of a significance of) a designated heritage asset planning permission should be refused and would require clear and convincing justification.

Where the harm to the designated asset is considered to be less than substantial, as is considered to be the case with this proposal, paragraph 201 of the NPPF provides that the “*harm should be weighed against the public benefits of the proposal, including securing its optimum viable use*”.

Paragraph 203 of the NPPF also requires any impact on the significance of non-designated heritage assets to be taken into account in the planning balance.

The application is accompanied by a Townscape and Visual Appraisal and Eagle Quarter Rebuttal which analyses the impact of the development on the aforementioned heritage assets and wider townscape. The submitted appraisals use best practice guidance. The Townscape and Visual Appraisal (TVA) outlines the methodology used and in particular viewpoints across the city and the aforementioned heritage assets. The range of viewpoints considers the short and long range views of the townscape; including the protected views of the World Heritage Site. Through discussions with the applicant team further views have been included. Not all views and photos have been verified but those considered the most important have been verified. Full details of the imaging are contained within Townscape and Visual Appraisal – Appendix 4.

The TVA concludes in terms of the Townscape Effects of the development in Section 8.1 that:

“The proposed development does not result in adverse effects on the identified townscape receptors. This is the result of architecture that responds appropriately to the contextual townscape qualities.

The proposal responds to the architecture of the existing shopping centre but also brings back permeability that would have existed on the Site prior to the current building.

The analysis of the proposed buildings scale, which include some substantial height, notes that a stepping approach was adopted in the master plan design to integrate the proposal within the contextual height. Therefore, lower elements of the proposal are adjacent to the existing low-lying residential area and green

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

river corridor, while the taller element leads to the existing tall buildings (i.e. the Derbion Shopping Centre).

This taller element in the south-east corner of the proposal has the potential to have some adverse effect by interfering with sense of history from the prominence of the Cathedral tower on the Derby Skyline. However, a carefully detailed design of the top of the tall element could reduce the prominence of the proposal and therefore mitigate this effect.

Finally, the replacement of the existing nondescript townscape is also considered positive as the Site is at a prominent nodal location which would benefit from the improvement of the existing townscape qualities and enhancement of a stronger sense of place. Critically the intention of achieving high-quality architecture, as illustrated in the Design Access Statement (DAS), is necessary to ensure beneficial effects are experienced by all identified receptors.”

In terms of Visual Effects the TVA acknowledges in Section 8.2...

“It was also noted that the proposal causes the loss of visual appreciation of a key historic landmark in the approach from Friar Gate towards the city centre. Although less noticeable as intervening vegetation filters views of the heritage asset and the proposal, this adverse visual effect erodes the historical associations of this ancient approach.

The proposed development is otherwise found appropriate to the visual context of Derby’s city centre and skyline. The proposals respond to the Site’s contextual height with a stepping-down approach which is generally successful at integrating the new development within Derby’s city centre. It preserves the appreciation of historical landmarks from most of the assessed views, therefore preserving the historical association of Derby’s skyline.”

Overall, the TVA concludes that the proposed development is considered to result in the following positive effects:

- *Bringing back permeability that existed within the urban grain prior to the existing building;*
- *Introduction of a distinctive local landmark that complements the Derby Skyline, is not overbearing on adjacent buildings and aids legibility within the local landscape;*
- *Replacement of a currently nondescript townscape feature with a well-thought-out and aspirational master plan which will improve the visual and townscape experience at an important nodal location on the access to Derby’s city centre.*

The application is also accompanied by a Heritage Statement and Eagle Quarter Rebuttal which have been robustly assessed along with the suite of documents accompanying the application by the World Heritage Panel (ICOMOS), Historic England, the Conservation and Heritage Advisory Committee and Council’s Built Environment Officer.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

Section 5.8 of the Heritage Impact Assessment acknowledges changes in the city skyline and that any harm needs to be carefully considered.

“The skyline has continually evolved over the centuries, creating a different identity for Derby depending on the social and economic conditions of the time; the proposed scheme represents a continued evolution of Derby to create a vibrant 21st Century City with a high number of new homes within the City centre that forms a catalyst for regeneration.

The Council will need to give careful consideration to the harm caused to the heritage assets through the introduction of this new piece of cityscape that brings with it an intensification and regeneration of a poor-quality area of the City.”

The Rebuttal concludes *“The OUV of the WHS would be preserved by the proposed development, as a minor neutral effect would occur.”* *“Due to the scale of the WHS, the small area that would be affected, the reduced integrity of the historic Derby Skyline through 20th century development, and the loss of integrity of the wider setting of the WHS in this area, it is clear that there would only be a minor effect on the WHS, and this effect would be considered neutral, as the OUV would be preserved.*

It is recommended that this impact is considered as part of the overall assessment of the proposed development’s effects on Derby’s heritage assets. In terms of the harm which has been identified to other heritage assets within the vicinity of the WHS, this harm should be considered within the overall planning balance.”

The applicant in their letters dated 18th August considers the most recent consultation responses and in particular those of ICOMOS, acknowledging that *“There is a fundamental difference of opinion between the consultee responses and our own assessment on the effect of the proposed development on the OUV of the Derwent Valley Mills World Heritage Site.”* Expressing their concern around the conclusion drawn between the comparisons of Derby and Liverpool. The applicant remains of the opinion that they *“...disagree with ICOMOS’s conclusion and believe that in granting consent to the proposed development, the conservation and management systems can be demonstrated to have robustly tested the proposals. A comprehensive and thorough Heritage Impact Assessment was carried out using a thorough methodology to establish the effects of the proposed development on surrounding heritage assets and the World Heritage Site. This found there to be some harm to a number of heritage assets, not including the World Heritage Site. We have provided further substantiation of this assessment in response to previous consultee responses.”*

The Derwent Valley Mills World Heritage Site and its associated buffer to located to the north and north-west of the application site. The buffer zone is approximately 252 metres (the closest point) and the World Heritage Site is approximately 483.5 metres away. The application considers the monitored views of the Derwent Valley Mills World Heritage Site and associated buffer (DVMWHS) and provided visualisations showing views across the WHS and taking into consideration other heritage assets.

The Derwent Valley Mills World Heritage Site and its buffer were inscribed on the World Heritage List by UNESCO in 2001. The retrospective Statement of Outstanding Universal Value (SOUV) for the Derwent Valley Mills was adopted in 2012 where the following were met and agreed at the time of inscription:

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

C(ii) That the site exhibits “an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town planning or landscape design”;

C(iv) That the site is “an outstanding example of a type of building or architectural or technological ensemble or landscape, which illustrates a significant stage in human history”.

The SOUV records that these criteria were met for the following reasons:

C(ii) The Derwent Valley saw the birth of the factory system, when new types of building were erected to house the new technology for spinning cotton developed by Richard Arkwright in the late 18th century.

C(iv) In the Derwent Valley for the first time there was large-scale industrial production in a hitherto rural landscape. The need to provide housing and other facilities for workers and managers resulted in the creation of the first modern industrial settlements.

The World Heritage Centre (ICOMOS) has considered the proposed development and the cumulative impacts of this Eagle Quarter proposal and the Bradshaw Way scheme (under code no. 23/00087/OUT). ICOMOS have considered the previously approved schemes within the city including The Landmark where ICOMOS considered that this scheme would have a significantly negative impact on the Outstanding Universal Value of the WHS.

Further consideration has been given, by ICOMOS, to the Tall Buildings Study which “... maintains the position that tall buildings should not be higher than the body of the Derby All Saints Church Cathedral tower (96m AOD).”

Overall, ICOMOS considers that “*The landscape setting of the Derwent Valley Mills World Heritage property is under pressure from urban development which should be a cause of concern not only from the perspective of visual change. Changing land-use patterns, introduction of new building topologies and the expansion of transport infrastructure, are all a source for concern. The already approved Landmark project will with the proposed Eagle Quarter and Bradshaw Way developments result in damage to the Outstanding Universal Value of this World Heritage property. Approval of the proposed Eagle Quarter and Bradshaw Way projects in their current form would not only lead to damage, but also indicate large shortcomings in the conservation and management system, which could be seen as posing a threat to its Outstanding Universal Value.*”

Concluding that “*The Eagle Quarter and Bradshaw Way developments will in their current form individually and cumulatively lead to harm of the Outstanding Universal Value of the Derwent Valley Mills World Heritage property and should therefore not be approved;*”

The Bradshaw Way scheme was considered by Planning Control Committee, under code no. 23/00087/OUT. This application has been referred to the Secretary of State who is considering the proposed development.

The Derwent Valley Mills Heritage Panel has considered the proposal and their full comments can be viewed above. Similar to ICOMOS, the panel have raised concerns

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

about the outline format of the application and insufficient information being submitted to allow appropriate and adequate assessment of the proposal and its impacts. The panel state “...it is clear that the development for both these sites will be exceptionally tall relative to their context; even compared to the existing Derbion centre which caused concern at the time of its development. To this end, the LPA, when assessing both schemes, needs to satisfy itself that they will not adversely impact on the setting of the WHS. In order to do so, this will require a Heritage Impact Assessment written in accordance with ICOMOS guidelines to fully understand its impact; as referred to in para 21.1 (Heritage Impact Assessments) of the current DVMWHS Management Plan.”

There are concerns, by a number of consultees that the submitted Heritage Impact Assessment, does not adequately follow the guidance of ICOMOS, in drafting such an assessment to assess the impact of the development on the WHS. The applicant has provided a further confutation to this point in their rebuttal and as such this is still a point of dispute between the consultee(s) and the applicant.

That being said, as the application has attracted a letter of objection from Historic England if the application reserves a positive resolution the application will need to be referred to the Secretary of State for his consideration. As stated within Section 8 of this report.

In considering the DVMWHS, consideration must also be given to the aforementioned heritage assets. From the longer-range views, you appreciate the land level changes of the city and the elevated position of the historic core. Given the scale of the proposed development the taller elements of the development will be visible from above the townscape.

When considering the wider context of the city’s skyline and the heritage assets within the long-range viewpoints of note are considered to be P2, P4, P5, P6, P7, P8, P9, P10, P18, P24, P28, P29, P32 of the Townscape View Assessment (Revision 2). The taller elements of the proposed development are visible from these viewpoints and there are views where the proposed development protrudes above the skyline and will be visible alongside the Cathedral Tower from various viewpoints within the assessment.

To the north of the application site is the historic core of the city including the WHS, and there would be visibility of the proposal from within the viewpoints from the north including those from Causey Bridge, Cathedral Green and King Street where the proposal would protrude above the skyline alongside the Cathedral Tower. The development would also protrude above the skyline along Friar Gate, and Friar Gate/Ford Street. This impact is a direct result of the proposals scale of the tallest blocks rather than the proposed development as a whole. However, consideration should be given to the changing land levels.

To the east of the application site are the open aspects of Bass’s recreation ground which offer no heritage assets. However, viewpoints from the east do indicate the setting of the development within its immediate setting of the City Centre Conservation Area and those longer-range views show the elevated position of the historic core and the interaction of the taller elements of the proposal.

To the south of the application site are the group of listed buildings on London Road (either side of Bradshaw Way) however given the land levels changes there will be little

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

or no interaction between the development proposal, as shown from London Road bridge.

The majority of heritage assets are located to the west of the application site and there will be a clear interaction between the development and these assets these include the City Centre and Green Lane and St Peters Conservation Area, Grade II* Church of St Peters, Grade II* Old Grammar School and Grade II 45 St Peters Street.

The application is accompanied by an extensive suite of view analysis and heritage analysis. However, Historic England state:

“Notwithstanding the fact that the application is made in outline, it is accompanied by a set of visualisations. These include horizontal lines indicating the extent of the site, outlines of the proposed development, and block forms. As the visualisations do not show the actual appearance of the proposal, these are of limited use. However, they do give an indication of the potential bulk and height of the proposal. Some of the specific viewpoints appear to be positioned to ensure that the impact of the proposal is minimised due to intervening buildings and planting. Furthermore, there is an absence of key viewpoints, particularly from sites within the DVMWHS. Notwithstanding these significant limitations, it is clear from the visualisations provided that there would be a harmful impact in views from the southern end of the WHS in the vicinity of the Silk Mill, in historic approach views towards the city centre, particularly along Friar Gate, and from the wider area, particularly along the river corridor and Darley Park.

The supporting documents make repeated claims that proposed development will be of high quality and elegant. As the application is made in outline such quality cannot be guaranteed, even with the support of the Building Design Code. Approval of this application would commit the authority to a structure of the maximum size proposed.”

Overall, Historic England remain to conclude that the application does not meet the requirements of the NPPF and would *“dramatically alter the character of the Derby cityscape, which forms a key part of the setting of these heritage assets.”*

The Council’s Built Environment Officer, like others, offers no objection in heritage terms to the demolition of the existing Eagle Market, public house or theatres as they are of limited heritage value. They also offer no issues with the proposed uses, new public square, servicing, car parking, landscaping or the creation of pedestrian routes. There is an opportunity for regenerating this site and improving the connectivity from the bus station. However, they do highlight the limitation of an outline submission and the potential risks of not understanding detail of the scheme. The Officer concluding *“Strong concern about substantial scale, height and dominance of the proposal and impact on the setting of designated heritage assets throughout the city including the wider setting and context of the DVMWHS and the Derby skyline, setting of listed buildings, conservation areas and other heritage assets.”*

There remains concern that the full impact of the proposed development cannot be fully assessed in an outline format with all matters reserved. The heritage consultees echo each other’s concerns that the development will have a degree of harm, some stating that this would be a considerable degree of harm to the designated heritage

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

assets including the WHS, Grade I listed Cathedral Church of All Saints, numerous conservation areas and a number of significant designated heritage assets. The development would also dramatically alter the character of the cityscape which forms a key part of the setting of these heritage assets, as a result of the tallest element of the proposal being over twice the height recommended in the Tall Buildings Study.

The Conservation and Heritage Advisory Committee “... *had serious concerns about the heights of the buildings and as this was not a detailed application. They were concerned about the impact on surrounding Conservation Areas in particular aspects from around the city. They were concerned about the loss of the theatre, which was an asset, concern about there being no secure proposal for a replacement and about the impact on listed buildings, the World Heritage Site, and the lack of a market.*”

The Derby Civic Society has also expressed their concerns to the proposal particularly the loss of the theatre and identified that the “...*views from the flats will be poor. To compensate for this the design of the flats and amenity areas should be of a high standard.*”

Design Review Panel observed that “*The height and number of storeys is considered acceptable on the basis it will not cause ‘noticeable’ harm to the city’s existing heritage assets.*”

As previously discussed, the application is accompanied by a suite of supporting information that has been updated throughout the life of the application which has been duly considered by the consultees. As a result of the negative comments from these consultees and the clear policy position as set out in the NPPF I am drawn to conclude that the proposal would, based on the maximum parameters of building height, result in ‘less than substantial harm’ to the setting of the aforementioned heritage assets and townscape.

ICOMOS and Historic England confirming that the proposal would have an impact but there would be a cumulative impact when considering the Bradshaw Way scheme and this proposal.

In the context of the paragraph 201 of the NPPF, as previously included for members reference, the public benefits of the proposal, that need to be weighed against the harm as identified above (this being less than substantial harm) to the setting of the list of designated heritage assets which includes a world heritage site, conservation areas, listed buildings and locally listed buildings are summarised within Section 7.3 of this report.

7.3. Socio-Economic Benefits

Michael Gove stated that in his Long-term plan for housing: Secretary of State’s Speech (July 2023) that “*Failing to densify our inner cities means lower growth – with a 10% increase in our cities’ population potentially unlocking a £20 billion increase in UK GDP.*”

Skylines form part of a city’s identity and portray the investment in and development of a city centre generating the city’s portrait. Cities of all descriptions and periods rise aloft with distinctive landmarks celebrating their growth. In fact, a distinctive and attractive skyline is frequently used for the presentation of a city to the outside world and plays an important role in city marketing and branding. Vantage points, or viewing

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

balconies, from where a particular skyline can be appreciated, and distinctive landmark structures are often an important tourism focus, and as such foster the local economy.

Such opportunities along with the wider social, economic and environmental public benefits that are attributed to development proposals, such as this, should be weighed in the balance to counter the 'harm' created, as set out in paragraph 201 of the NPPF.

The Design Review Panel state *"The schemes have the potential to revitalise and transform the city centre and provide an exciting future for the City."* Further commenting that *"There is no reason why Derby should be held back by restricting the height of this development."*

Marketing Derby comment that *"The Eagle Quarter development complements the current plans to regenerate an important gateway into the city centre from Derby Bus Station - the Eastern Gateway. It also supplements the housing demand and improves the quality of the area."* Concluding that *"...Marketing Derby and DEDAC are fully supportive of the proposed application. Please accept this letter as confirmation of our ongoing support for this project and the economic benefits that the project will provide."*

Prior the submission of the application the applicant carried out engagement with stakeholders and residents, the outcome of which is analysis of which is set out in the Statement of Community Involvement concluding that there was a large amount of support for the principle of development of the site. *"As shown in Section 4 above, when asked if respondents support the emerging proposals for the Eagle Quarter site (Q5 - Do you support the emerging Derbion Masterplan proposals for the two sites? (Eagle Quarter), 62.3% strongly agreed and 16% agreed. Additionally, in response to Q6 (Do you have any other comments on the Eagle Quarter proposals?), many stated that the proposals will help to transform Derby's image and help Derby to realise its potential as a city."*

In assessing this application, the decision maker needs to consider the benefits it would bring to this site, the city as a whole and all the regeneration opportunities it would attract.

In order to explore and bring into the planning balance the public benefits arising from the proposal, the applicant has expanded the public benefits identified in the Planning Statement in the Planning Benefits Statement, in accordance with paragraph 201 of the NPPF. The public benefits arising from the proposed development, summarised by the applicant, are considered to be:

Housing and Regeneration Benefits

1 Delivery of new homes - delivering up to 875 new high-quality homes for the Build to Rent or open market, in a sustainable location, widening the offer available in the city centre;

2 City centre regeneration - securing the long-term future of this part of Derby city centre with the redevelopment of the underutilised site with new commercial development at ground floor level;

3 Brownfield re-development - providing sustainable development with the optimisation of brownfield land with development up to 29 storeys in height,

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

meeting housing need within the city centre and reducing the need for development on greenfield sites;

Design and Placemaking Benefits

4 High quality architecture and design - delivering high-quality architecture and, creating an attractive and new and distinctive urban quarter;

5 New public realm - introduction of a public square or 'Green Heart' making a significant contribution to the provision and quality of the public realm within the city centre for residents and visitors;

6 Townscape legibility - creating a gateway development and legibility for those arriving in the city centre from the south, providing legible connections from the Railway Station and Castleward;

7 Pedestrian routes - creating enhanced pedestrian routes through the site by removing physical barriers to movement and providing improved connections to surrounding parts of the city centre and to the river;

Economic Benefits

8 Investment – investing £212,134,339 in Derby city centre;

9 Employment - generating 619 direct FTE construction jobs per year of the construction process and 107 direct FTE operational jobs from the operation of the Class E commercial units;

10 Spending and fiscal benefits - generating direct and indirect spending from new residents, £1.33 million in Council Tax receipts per annum, and between £1.32 and £1.41 million in New Homes Bonus payments over a period of a year; Eagle Quarter;

Environmental Benefits

11 Landscaping and biodiversity - delivering an increase in landscaping on the site, with the introduction of high-quality greenspace with corresponding ecology, surface water attenuation, biodiversity and air quality benefits.

The Planning Statement further concludes that in the opinion of the applicant “*The public benefits decisively outweigh the adverse impacts and that the balance lies heavily in favour of the proposals. In this case the same level of public benefits could not be delivered on the site if the height of the scheme, which is the element which causes harm, was reduced.*”

Policy AC1 states:

“The Council is committed to delivering a renaissance for the City Centre and reinforcing its central economic, cultural and social role by supporting sustainable economic growth and regeneration, improving the quality of the built environment, creating new residential neighbourhoods and enhancing its

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

standing as a regionally important business, shopping, leisure, tourism and cultural destination.”

It is considered that the development, with the benefits outline above would assist in meeting the objective of this policy through increasing footfall and the social and economic benefits associated with this. On visiting the city centre it is evident that Derby, like other city centres, is struggling post-covid and with the economic downturn, cost of living crisis through the closure of retail stores, businesses and leisure uses, the investment and injection of up to 875 new high-quality homes, commercial space and ancillary use, would greatly assist in the rejuvenation of the southern end of the city centre thus meeting the aspirations of the Core Strategy, City Centre Masterplan 2030 and City Centre Ambition Document.

The Planning Benefits Statement indicates that the development could potentially see the investment of some £212,134,339 in Derby's City Centre. Along with generating up to 619 direct full time employees through construction jobs and up to 107 full time jobs as a result of the operational jobs associated with the proposed land uses.

The increased city centre living would also generate direct and indirect spending from new residents, up to £1.33 million in council tax receipts per annum and between £1.32 and £1.41 million in New Homes Bonus payments over a period of a year.

These fiscal benefits would be significant for the city.

Another of the key benefits, in my opinion, would be the creation of housing in the city centre. This clearly satisfies a number of Council objectives and policies. The creation of city centre living would bring with it clear economic and social benefits that would assist the city as a whole. The development of housing within the city, on brownfield land would also reduce the pressure on greenfield sites, which also assists in wider placemaking and design benefits that could act as a catalyst to more widespread regeneration in the city centre.

The design and placemaking benefits highlighted by the proposal would see the creation of a new public realm which would significantly contribute to the quality of the city centre; creating a more legible townscape would break the barrier created by the existing Eagle Centre formed by the land levels and topography of the site. This would see the creation of a greater legibility from the bus station and train station along with the new residential community on Castleward and to a lesser extent the community of Nightingale Quarter. The placemaking and design benefits associated with proposals should not be underestimated in the decision making process.

Taking into consideration the submission made by the applicant along with the detailed comments made by consultees the public benefits of the scheme are considered to be as follows:

- Delivering up to 875 new homes in a sustainable location
- The creation of housing would assist in meeting the Council's housing land supply
- Introducing a permanent residential population, driving the economy beyond the traditional shopping and leisure opening hours (supported by the bid companies)
- Creating a gateway development, improving the townscape and legibility of the city centre and improving wider connectivity

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

- Removing the physical barriers created by the topography of the site
- Regeneration of an under-used and prominent site creating a new and distinctive place and visual improvement of the site
- Optimising the potential of the site physically and economically
- Securing design principles at the outline stage to ensure a high-quality development is delivered
- Generating and improving the landscape and biodiversity opportunities of the site and within the city centre
- Direct and indirect fiscal and spending benefits
- Supporting the economic growth of the city during the construction and operational phases of the development
- Providing a sustainable development, optimising brownfield land, meeting housing needs and reducing the pressure on greenfield development
- Encouraging pedestrian footfall within active ground floor use and improving natural surveillance and creating a safer city centre

The decision maker, bearing in mind the tilted balance referred to Section 7.1, has to weigh in the balance all of socio-economic benefits against the *'less than substantial harm'* the proposed development would have on the designated and non-designated heritage assets in accordance with the policy test set out in Section 16 of the NPPF. We need to take into consideration all of the benefits and all of the adverse impacts of the scheme, under the umbrella of the tilted balance. We also need to consider the period over which these benefits would be delivered, in that the applicant is seeking a 10-year outline planning permission.

7.4. Design, Street Scene and Amenity

"The quality of the homes that we live in, the physical nature of our neighbourhoods, the design of our communities, determines so much. Our health, our happiness, our prosperity, our productivity – all depend on where we live." (Michael Gove, July 2023)

This application has been submitted in an outline format with all matters reserved including layout, appearance, scale and landscaping. The details contained within the application are indicative but will set the parameters of the scheme, setting out the maximum limits of the development. Whilst the application is in an outline format, the applicant wishes to agree the design parameters of the scheme, these are contained within the submitted Building Design Code.

When considering the design of the proposal it is necessary to have regard to and give weight to the provisions of Policy CP3 (Placemaking Principles) and CP4 (Character and Context) in the adopted DCLP.

Policy CP3 states: *"High quality design should promote Derby as an evolving modern city and contribute to improving the life of the City's residents. It should enhance the*

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

experience of the place for visitors, workers and inward investors and help create a vibrant city that all residents are proud of.”

Some consultees have raised concerns that the ‘true’ impacts of the development on heritage assets, street scene and the city as a whole cannot be truly assessed. However, I am of the opinion that with suitable conditions, scrutiny and assessment at reserved matters stage, the impact and acceptability of the phases can be fully assessed and evaluated to ensure its appropriateness for suitability for the city. The design code will also ensure the phased development is brought forward in a cohesive and well-designed manner.

The Design and Access Statement states the *“Eagle Quarter masterplan design approach is not only to provide new homes but also aspires to be a well integrated mixed-use expansion of the city - that will provide new public realm and streets for pedestrian experience. Masterplan design has been developed, keeping development zones in mind such that we can design each zone self-sufficient in itself whilst also not compromising the existing operations.”*

The Building Design Code seeks to agree the design principles of development and implementation of the masterplan as envisage, through setting out the building heights, the location of the public realm/square, active frontage locations and the architectural vision.

The masterplan proposes a central public realm, creating a green heart to the development, encompassed by the built form of the development. The building heights increasing from East Street towards Traffic Street where the tallest building is to be located on the junction. This form will feature the gateway building at the junction with buildings gradually decreasing in scale providing a development of varying heights rather than a mass of development at one scale, as detailed below:



Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

The Building Design Code, in Section 3.1 on pages 12 - 14 details the design principles of the proposal. The architectural vision of the proposed masterplan is based on being divided into two zones. These are summarised as follows:

Heritage and Culture Zones - These buildings are closest to Heritage and Culture District of Derby. Architectural design of these buildings should be such that they respect the Heritage and Character of Derby. The material palette should have considerations of the local and wider context, drawing reference from Derby's historic buildings. These buildings should respect the height of its surrounding and articulation of the facade should be kept in mind while designing the facades.

New Regeneration Zones - These buildings are most visible in long distance views across the city. The buildings should be designed such that they are architecturally distinct and have an urban character to them. They should make positive contributions to the skyline of the city. The material palette should have a visual impact and could vary from the Heritage and Culture zone to have its own identity as the new regeneration zones.

The design principles are summarised as follows:

- *Respect height of local heritage buildings*
- *Materiality to be contextually aware whilst reflecting the history of the site but also representative of architectural diversity and interest*
- *Use of contemporary and articulated building forms to break up the city scape and mass of the proposal*
- *Provide an activated ground floor of mixed-use to bring the buildings down to a human scale*
- *Large windows with majority of facing activity and wider scale views towards the River Derwent*
- *Follow minimum set distances between buildings*
- *Opportunity to provide a mix of protruding and recessed balconies in appropriate locations*
- *Addition of green roofs to promote sustainable development and biodiversity*
- *Min. 3m floor to floor above ground level*
- *Min. 4.5m clear height ground level commercial units*
- *Main building entrances to engage with the public streets and spaces*
- *Large full height windows*
- *Transparent ground level frontages for street display and interaction*
- *Opportunity for private rooftop terraces*
- *Building facades to be designed such to mitigate potential impact on micro climate (down draft effect etc.). This can be achieved by providing balconies with impermeable balustrades, hard landscape that includes solid canopies and artworks, large stationary planters, boundary trees and rows of hedges.*

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

The Building Design Code, Indicative Masterplan and Proposed Parameter Plans 01 – 08 indicatively detail how the application site can reasonably accommodate, to the maximum quantum, the proposed development based around a green core, provide active frontages, increasing and promoting connectivity.

Proposal Parameter Plan 01 Principle Land Use identifies the location of the proposed uses these are predominantly residential within class E uses at ground floor these will either provide ancillary/amenity space for the proposed residents or will be shops, restaurants or leisure uses. The plan identifies the outward facing nature of the uses which will activate and animate the public square. Principle Plan 02 shows the residential uses at the upper floors. Proposed Parameter Plan 07 splits the site into two, the primary uses and secondary uses.

Proposed Parameter Plans 03, 04 and 08 set out the horizontal limits of the ground floor of the development. Identifying the fixed buildings lines and where the building lines can deviate + or – 2, 3 or 3.5 metres. The plan indicates the maximum and minimum distance between the blocks. The distances at ground floor are considered to be acceptable. There are some concerns that the minimum distances, at the upper levels, may create concerns of overlooking between blocks however as these are only indicative and will be given further consideration at reserved matters stage(s) accordingly I would not wish to see the minimum limits reduced any further.

Proposed Parameter Plan 05 sets out the vertical limits of the proposed development. Each block is identified as having an upper and lower development height from ground level (AOD). It is important to note that the land levels vary across the site.

Proposed Parameter Plan 06 – Landscape and Open Space identifies the core open space which is centrally located within the development. The open space would comprise of publicly accessible areas as well as private landscaped area to serve the new community. The layout of the landscaped area provides an improved connection with the Morledge and a softened edge to Traffic Street.

In general terms, the proposed design principles are considered to follow good practice and are generally acceptable. However, the precise details of the reserved matters application(s) will need to be reviewed and assessed in full to ensure the promoted design principles are adhered to and a high-quality scheme is delivered. It is welcoming that the Design Review Panel have expressed a determination to be included in ensuring such high quality. Therefore, the proposed development shall broadly accord with these design principles and to ensure changes in policy are reflected particularly, as this will be a phased development realised over a number of years.

As the masterplan is realised there will be a need for continued review of how the proposed development will integrate with the recently approved Eastern Gateway development, under code no. 22/01809/FUL. To re-evaluate whether elements of the improved public realm, delivered by the Easter Gateway scheme, can be retained.

The application has attracted objection from heritage consultees but has also generated support from the Design Review Panel, the Cathedral Quarter and St Peters Quarter bid companies and Marketing Derby. The points of objection relate to the scale of the development and the impact it will have on the setting of a number of heritage assets and the city's skyline. But offer no objection, in general, to the principle of re-developing the site. Although, there are concerns about the loss of the theatre which

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

have been covered in Section 7.1 of this report. It is important to note that this is from a theatre provision perspective rather than the loss of the buildings and its architectural merit.

The negative position of heritage consultees is not one of principle, indeed no objection is given to the principle of re-development the site but one that is focused on the scale and height of the development.

The Design Review Panel considers that *“There is no reason why Derby should be held back by restricting the height of this development. The key is to ensure the right checks and balances are in place via the planning system to maintain a high level of design quality.”* The Design Review Panel offers its full support to the application.

There are no objections to the principle of the development, matters raised that relate to detailed design would need to be considered during the reserved matters application(s). The objections raised in respect of the scale and height of the development are explored above and in Section 7.2 of this report.

The Tall Buildings Strategy identifies the application site as a regeneration area with the potential to accommodate a tall buildings cluster as identified as LM4 on Figure 1: Tall Buildings Recommendation on page 11 of the Tall Buildings Strategy. The tall building would be a of a local landmark height. That being said, the height of the proposed development would exceed the height of a local landmark (high).

The suite of submitted supporting information, in my opinion, details why a taller landmark building has been proposed and identified why it is acceptable. There is a clear justification for the design and layout of the proposed development, providing a clear urban design rationale for the siting of the taller elements of the proposal assessing its impacts and the positive contributions the development would have on the city, as a whole.

In addition, national policy and the Council's local policies provide clear direction for supporting “the construction of ‘tall buildings’ in appropriate gateway locations, where these are of high-quality design and do not adversely affect the setting of the heritage assets and the character of the City Centre” – Policy AC5

There are matters that will need to be fully assessed during the reserved matters submissions in particular, design, materials and external appearance along with scale the maximum parameters of development as included within the suite of drawings are considered to be acceptable and would provide an envelope for development to take place within.

The applicant confirming, *“The Eagle Quarter outline planning application is presented as a phased proposal, designed so that individual parcels can be brought forward for development when conditions allow, designed and delivered in the context of a masterplan for the whole site. Planning permissions of this type and scale are often subject to longer time-limits in recognition of their complexity and the likely timescales over which it is anticipated they will be constructed.”*

Whilst there are concerns that the development has been submitted in outline, the Council would retain further control when considering and determining any reserved matters application which would be subject to full consultation and democratic

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

consideration. The full set of recommended conditions are included within Section 8 of this report, albeit these have been abbreviated.

7.5. Transport and Access

The application is accompanied by a Transport Assessment (TA) which has been updated during the life of the application to take into consideration the initial comments of Transport Planning colleagues.

When considering Transport and Access aspects of this proposal it is necessary to have regard to and give weight to the overarching guidance within the National Planning Policy Framework and the provision of Policy CP23 in the adopted CDLP.

Policy CP23 states that *“The Council will ensure that people living, working and travelling within Derby will have viable travel choices and effective, efficient and sustainable transport networks which meet the needs of residents and businesses while supporting sustainable economic growth and competitiveness.”*

The full comments of Transport Planning colleagues are set out in Section 5.1 of this report. They consider the scope of the proposed development and comprehensively consider opportunities for sustainable transport, the transport impacts of the development including the traffic generation and parking in particular the loss of parking and the proposed parking. Given the thorough comments of colleagues I do not intend to rehearse these, particularly as the application is in an outline format with all matters reserved.

The submitted Transport Assessment has assessed the maximum land use parameters of the development (up to 98,965sqm of new floorspace (GEA) comprising of up to 875 residential units, Class E, Flexible commercial, business and service floorspace land use with a maximum floorspace GEA of 2,358 sqm; Sui Generis, Car Park, and plant with a maximum floorspace GEA of 10,961 sqm). In total the development would include 182 parking spaces (equating to 0.2 spaces per flat).

It is important to note that the Council does not have any maximum or minimal residential parking standards and therefore this level of parking, in this sustainable city centre location is acceptable.

Transport Planning conclude *“given the scale of this development, the issue for this application is not necessarily it’s impact on the wider transport network. It is whether, given the type of development and location, there is sufficient access opportunity by sustainable travel modes, for this development to work as a high density and low car design.”*

The application site is located within the possibly one of the city’s most sustainable locations with main transport hubs in close proximity and in walking distance to amenities, leisure uses, health services and retail. That being said, the proposal will generate a level of trip generation in both the AM and PM peaks. The transport modelling showing that this would not have a detrimental impact on the highway network and junctions would operate within an acceptable operational capacity.

The comprehensive comments of Transport colleagues concludes that there are no objections to the principle of development subject to compliance with their

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

recommended conditions. As such it can be considered to the proposed development broadly complies with the NPPF policy and local policy in this regard.

7.6. Environmental Impacts

Flood Risk

The application site is partly located in flood zones 2 and 3, according to the Derby City Strategic Flood Risk Assessment, and is accompanied by a Flood Risk Assessment. The Environment Agency do not wish to comment on the proposal, as *“The development falls within flood zone 2 and therefore the LPA should apply national flood risk standing advice (FRSA) in this instance.”*

The Lead Local Flood Authority notes that it is necessary to carefully consider the implications of developing in a high-risk flood location such as this and the need for safe egress and access to and from the site during a flood event. Further details consideration of this will be required at the reserved matters stage(s) and further information secured by conditions.

In developing the detailed design of the future phases the applicant is recommended to consider the greenfield runoff rate and there should be a sustainable drainage scheme rather than a hard landscaping scheme such as tree pits, rain water gardens, green roofs etc. Therefore, this outline application is considered to adhere to policy CP2, in broad terms.

Noise

The application has considered Noise as part of the application however further assessment will be required once the exact plant is identified, and to consider the distances between the various uses within the development site and those surrounding it along with the any associated road noise.

The assessment should be carried out in accordance with BS8233:2014, ProPG Guidance on Planning & Noise or any other relevant standards or guidance. Consideration will also need to be given to the ventilation of the residential units and the indoor noise levels that can be achieved. As such reserved matters phases shall be accompanied by a further noise assessment.

Overall, the Council’s Environmental health Officer offers no objection to the application, and it is considered that an acceptable level of amenity can be provided and broad adherence to policy GD5 and H13.

Contaminated Land

The application is accompanied by a Phase I Geo-Environmental Report which has been duly considered. However, further reports and assessments will need to be undertaken post demolition in order to comply with policies E12 and E13. Therefore, a detailed series of conditions are recommended.

Air Quality

The application is accompanied by an Air Quality Assessment which considers three aspects (construction dust/vehicle emissions, emissions from traffic using the development and existing air quality impacts upon the new development). Despite this

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

further assessment will be necessary at the reserved matters phases, this will be secured by detailed conditions and ensure adherence to policies GD5 and E12.

Demolition and Construction Management

There are no concerns in respect of demolition and construction providing suitable construction and demolition management plans are agreed and followed during the life of the development.

Ecology and Biodiversity

The application incorporates the demolition of a number of buildings which have been the subject of a bat survey which has been supplemented during the life of the application. There have been concerns about the suitability of the report however these are considered to be acceptable. Given the format of the application, further assessment work will be necessary and can be secured by condition. Conditions are also recommended to secure enhancement and management plan and breeding birds. Compliance with these conditions will ensure the development satisfies the requirements of relevant national and local policies, policies CP16 and CP19.

Consideration of the improved public realm, secured under application 22/22/01809/FUL (Eastern Gateway), will also need to be considered as this will have changed the baseline position of the development site – if the Eastern Gateway development is implemented as approved.

Furthermore, The Environment Act seeks to ensure that all major development, from November this year, delivers Biodiversity Net Gain and this aspiration is also reflected in Policy CP19. At the present time, the requirement to deliver Biodiversity Net Gain is voluntary but I would strongly advise the applicant to incorporate BNG into the proposal from the earliest opportunity and through the submission of any reserved matters submissions.

Trees

There are a number of street trees along East Street and along Traffic Street which will need to be assessed during reserved matters phases. Trees should be retained where possible and any tree loss should be replaced both in terms of numbers and tree canopy coverage.

7.7. Planning Obligations

Policy MH1 (Making it Happen) is the policy in the Core Strategy which sets out requirements for appropriate supporting infrastructure to be provided with new development. The policy seeks to ensure that the necessary infrastructure is provided to support new developments. MH1 sets out the tools available to the Local Planning Authority to implement this policy which includes the imposition of planning conditions and securing developer contributions, amongst others.

In line with our Planning Obligations SPD a scheme of this size gives rise to requirements for affordable housing, amenity green space, major open space, education, transport, travel planning, community facilities, sports facilities and health facilities. The applicant has submitted a viability appraisal that shows that the

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

development cannot afford to provide any of these requirements. In these circumstances the next step would be to have the District Valuer assess that viability appraisal to ensure it was a correct and robust assessment.

However, this is an outline scheme with all details of the eventual development unknown at this stage, including the number of units to be built. The viability appraisal submitted shows the viability for one potential hypothetical scheme, but there are any number of different schemes that could come forward at reserved matters stage, each with their own viability position.

Therefore, the viability position as submitted cannot be considered in reducing any of the requirements at this stage.

Therefore, the S106 Agreement will secure policy compliant contributions for all the items listed above. There will then be a mechanism for the developer to submit a viability appraisal at reserved matters stage. This way the viability will be based and tested on the actual scheme coming forward. If any of the viability appraisals, once assessed by the District Valuer, show that any or all of the contributions cannot be afforded, the contributions will be reduced to reflect that. This would be secured through a Deed of Variation and any reductions would be subject to our standard overage clause which sees any future increase in profit shared 50/50 between the Council and the Developer.

This process replicates the Becketwell outline S106 and is therefore a tried and tested mechanism. The applicant has agreed to this position.

7.8. Planning Balance

Michael Gove, (24 July 2023), stated *“as part of a long-term plan for housing, the Prime Minister and Secretary of State for Levelling Up, Housing and Communities have committed to a new era of regeneration, inner-city densification and housing delivery across England, with transformational plans to supply beautiful, safe, decent homes in places with high-growth potential in partnership with local communities.”*

This application would, in my opinion, seek to achieve this long-term plan through the delivery of a residential led masterplan in the core city centre, regenerating an underused and depreciated prominent gateway location, creating a new city centre community that will support the economic recovery of the city, post covid.

The appraisal set out above addresses the material considerations of this scheme along with the required policy tests. There is support for this scheme as it would bring forward regeneration opportunities, deliver much needed housing and city centre living along with boosting the city's economy and encouraging footfall into the city centre in arguably the city's most sustainable location.

In general, there are no objections to the demolition of the Castle and Falcon Public House and Eagle Centre market. Further consideration is needed to the loss of the Theatre, not because of its architectural merit but the provision of the facility within the city. However, this can be adequately addressed by recommended condition(s) to ensure adherence and broad compliance to policy CP21.

The scheme has generated support from Marketing Derby, the two bid companies representing Cathedral quarter and St Peters quarter, and our Housing colleagues

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

along with the Design Review Panel. This support and the public benefits outlined within this report must be weighed in the balance, as a required by the National Planning Policy Framework, against the less than substantial harm the proposal would have on the designated and non-designated heritage assets and the wider cityscape, as comprehensively detailed by ICOMOS, the Derwent Valley Mills World Heritage Panel, Historic England, Conservation and Heritage Advisory Committee and the Council's Built Environment Officer.

The objections received are principally concerned with the height of the proposal and in particular the cumulative impact of the Derbion Masterplan (Bradshaw Way and Eagle Quarter). That being said, neither proposal relies on the delivery of the other and each scheme can be delivered independently of the other.

The Tall Buildings Study confirms that a tall building can be accommodated on this site to provide a gateway feature. This study forms part of the local plan evidence base and provides a guiding rationale for tall building opportunities across the city centre.

This is an outline planning application, with all matters reserved and therefore in terms of decision making, you are being asked to determine the principle of the demolition of the Eagle Market, Theatre and Castle and Falcon Public House and delivery of the residential led masterplan. Whilst there are policy concerns with regards to the loss of these community facilities, under CP21, I am satisfied that through the attachment of specific conditions restricting the demolition of the theatre until an alternative provision has been secured, that the proposal would broadly comply with policy CP21. Furthermore, the phases design of the layout would allow for the retention and integration of the theatre within the masterplan. In addition, the uses within the masterplan provide opportunities for Class E uses and therefore replacement retail and leisure provision will be secured, in the long term. Subject to delivery of the masterplan as outlined within the Building Design Code, indicative masterplan and parameters plans 1-8.

The subsequent reserved matters application(s) will allow the Council and consultees to assess the design, scale, appearance and external materials of the proposed development blocks which all have a significant influence on the impact and success of a scheme.

The application, as amended and updated, during its life has been properly considered in accordance with the relevant policies in the Development Plan. The heritage test in the NPPF has been given full regard and the consultee comments have been weighed in the balance against the public benefits of the proposal.

The specialist comments of all heritage consultees are set out within this report and consider the proposals impact on the aforementioned heritage assets including the Derwent Valley Mills World Heritage Site and its buffer, Grade I Cathedral amongst others. Overall, the consultees conclude that the proposal would have a harmful impact on the setting of those assets and the outstanding universal value of the world heritage site and have indicated that a reduction in the scale of the development would reduce this impact. It is concluded by consultees that the harm of the proposal would be less than substantial harm and therefore the NPPF under paragraph 202 requires the decision maker to weigh in the balance the harm against the public benefits of the proposal.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

In this case the benefits arising from this proposal are set out within Section 7.3 of this report and are summarised as follows:

- Delivering up to 875 new homes in a sustainable location
- The creation of housing would assist in meeting the Council's housing land supply
- Introducing a permanent residential population, driving the economy beyond the traditional shopping and leisure opening hours
- Creating a gateway development, improving the townscape and legibility of the city centre and improving wider connectivity
- Removing the physical barriers created by the topography of the site
- Regeneration of an under-used and prominent site creating a new and distinctive place and visual improvement of the site
- Optimising the potential of the site physically and economically
- Securing design principles at the outline stage to ensure a high-quality development is delivered
- Generating and improving the landscape and biodiversity opportunities of the site and within the city centre
- Direct and indirect fiscal and spending benefits
- Supporting the economic growth of the city during the construction and operational phases of the development
- Providing a sustainable development, optimising brownfield land, meeting housing needs and reducing the pressure on greenfield development
- Encouraging pedestrian footfall within active ground floor use and improving natural surveillance and creating a safer city centre

In my opinion the public benefits do outweigh the 'less than substantial harm' as a result of their overarching and wide reaching nature.

Therefore, there is no policy reason within the National Planning Policy Framework to refuse planning permission, according to the policy tests within the NPPF test contained within Para. 202.

Therefore, the decision maker should, in accordance with Paragraph 11d 'the titled balance', give greater weight to the provision of housing within this proposal.

The public benefits associated with the proposed development can be considered as significant in particular the housing led characteristics of the masterplan. The challenges facing the city centre economy have increased following the pressure exerted by Covid-19 and the overall purpose and function of the city centre is changing. Members will also be acutely aware of the importance of housing delivery, particularly in highly sustainable locations such as the city centre. All facilities and amenities would

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

be on the doorstep of future residents and city centre housing delivery also, in part, reduces the pressure on greenfield sites and more sensitive locations around the city.

The objection by Historic England means that any decision to grant outline permission, subject to the various conditions and legal agreement, triggers a referral to the Secretary of State. The important advice, comments and objections from the specialist heritage consultees have been fully considered.

Weighing up the 'less than substantial harm' impact and the overarching public benefits is a complex assessment as the impacts on the heritage assets can be irreparable. However, the continued longer-term decline of the city centre, failure to provide sufficient housing can and will have a negative impact on the city's economic growth and its residents. Therefore, I consider the proposal and its benefits, in this instance, would outweigh the 'less than substantial harm'. The decision maker must consider whether impacts would be significantly and demonstrably outweighed by the benefits.

This outline permission would be accompanied by a range of conditions to ensure that all reserved matters submissions deliver high standards of overall design to meet the wider government aspiration to achieve beautiful and well-designed places and the recently published aspirations of the Secretary of State for Levelling up, housing and communities. In my opinion the benefits of proposal, subject to the recommended conditions, would significantly and demonstrably outweigh its impacts, as outlined within this report. Therefore, in accordance with Paragraph 11d of the NPPF planning permission should be granted as:

- i. The application of policies within the framework do not provide a clear reason for refusing the development considering in particular the impact of the proposal on designated and non-designated heritage assets.
- ii. The benefits would significantly and demonstrably outweigh the harm of the development.

As stated within the Design and Access Statement, the proposal seeks to give “...*back to the city. Making the city centre an attractive place to live as well as to work, shop and spend leisure time in will be a crucial part of our vision for its transformation, not just because this will generate more activity and vibrancy, but also to help meet Derby's unprecedented level of housing needs.*”

Therefore, I conclude that the proposed development accords with the Development Plan, when considered as a whole and outline planning permission is recommended in line with the invoked titled balance.

8. Recommended decision and summary of reasons:

8.1. Recommendation:

To be minded to grant planning permission with conditions subject to:

A To refer the application to the Secretary of State for Department for Levelling Up, Housing and Communities, in accordance with Paragraph 6 of the Town & Country Planning (Consultation) (England) Direction 2021 due to the objection from Historic England.

B. Subject to that referral not generating a call-in for determination by the Secretary of State, to authorise the Director of Planning, Transport and Engineering

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

to negotiate the terms of a Section 106 Agreement to achieve the objectives set out below and to authorise the Director of Legal, Procurement and Democratic Services and Monitoring Officer to enter into such an agreement.

C To authorise the Director of Planning, Transport and Engineering to **grant permission** upon conclusion of the above Section 106 Agreement

8.2. Summary of reasons:

In the opinion of the Local Planning Authority, the residential led scheme has the potential to secure a range of economic, social and environmental public benefits which would marginally outweigh the 'less than substantial harm' to heritage and non-designated heritage assets including the Derwent Valley Mills World Heritage Site and buffer zone, Grade I Cathedral and City Centre and Green Lane and St Peters Conservation Areas and listed buildings. The public benefits include:

- Creation of a gateway development, providing townscape legibility and improving connectivity from the Bus Station
- Enhancing pedestrian connectivity through the removal of physical barriers on the application site
- Providing a sustainable development, optimising brownfield land meeting housing needs and reducing the pressure on greenfield development
- Regeneration of prominent city centre site creating a new and distinctive place and visual improvement of the site, securing a more optimal long-term use.
- Creation of up to 875 residential units in a highly sustainable location assisting in meeting the housing land supply of the Council
- Generating direct and indirect spending from new residents and tax revenues.
- Introducing a permanent residential population, driving activity beyond traditional shopping and leisure opening hours
- Encouraging pedestrian footfall within active ground floor use and improving natural surveillance and creating a safer city centre
- Supporting the economic growth of the city through job creation, both during construction and operational jobs and investment. In excess of 700 jobs during construction and once operational.
- Improving the landscape and generating biodiversity opportunities
- Securing design principles at the outline stage to ensure a high-quality development is realised.

Therefore, although there are a number of issues that need to be addressed through future submissions and further assessment across a range of topic areas, the proposed development accords with the Development Plan when considered as a whole.

8.3. Conditions:

Members will note that certain consultees have recommended the detailed wording of conditions in this report. However, in line with previous Counsel advice the following

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

conditions are provided in an abbreviated format to ensure that the final wording can be subsequently agreed by all parties. If there are any over-riding issues with the inclusion/exclusion or the wording of any condition(s) the Chair and Vice Chair will be consulted to agree a way forward.

All conditions will be drafted to allow them to be discharged on a phased basis.

General Conditions

1. Condition relating to the submission of the reserved matters application(s)
2. Condition relating to the time limit for the outline (10 years)
3. Condition relating to the indicative masterplan, Building Design Code and Parameters Plans

Pre-Commencement Conditions

4. Condition relating to the requirement of a Transport Assessment or Transport Statement depending on the scale of the reserved matters
5. Condition requiring the submission of a travel plan
6. Condition requiring the submission of a Construction Management Plan (operational)
7. Condition securing a parking management plan
8. Condition securing off-site improvements for non-motorised users and integration with existing ped/cycle network
9. Condition securing the provision of electric vehicle charging points for vehicles and cycles for visitors and residents
10. Condition securing the provision of cycle parking for all users (residents/commercial/occupants/visitors and general usage)
11. Condition securing the submission of a landscape and biodiversity enhancement management plan
12. Phases condition securing the submission of an air quality assessment and implementation of mitigation
13. Condition securing the submission of a demolition environmental management plan (noise, dust)
14. Condition securing the submission of a construction environmental management plan (noise, dust)
15. Condition securing the submission of a Phase II geo-environmental report
16. Condition securing the submission of a remediation strategy
17. Condition securing a details noise assessment to consider plant and commercial uses
18. Condition requiring the submission of vent/flue details
19. Condition restricting the demolition of the theatre until alternative provision has been secured
20. Condition relating to access, parking, turning, gradients, surfacing, lighting, structures, visibility splays and drainage

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT

21. Condition relating to the submission of residential ventilation for air quality
22. Condition relating to the submission of an overheating assessment for all residential units and appropriate mitigation
23. Condition securing the submission of an archaeological written scheme of investigation
24. Condition securing the submission of an arboriculture method statement and tree protection in relation to street trees on East Street
25. Condition securing a landscaping plan and tree planting including soil volumes
26. Condition securing further bat assessment
27. Condition securing a sustainable drainage scheme
28. Condition securing an energy and sustainability statement for each phase

Pre-Occupation Conditions

29. Condition securing the implementation of the remediation strategy and submission of a validation report
30. Condition securing a flood response plan
31. Condition securing the submission of an external lighting scheme
32. Condition securing a waste management plan

Management Conditions

33. Condition restricting the maximum parking to 182 parking spaces
34. Condition restricting works during the breeding bird season
35. Condition restricting the distance of residential properties to the Morledge and Traffic Street (15 metres from the kerb face)
36. Condition restricting the hours of operation and demolition

8.4. Informative Notes:

- 1) Works are potentially required to be undertaken where the development accesses join the public highway, which is land subject to the provisions of the Highways Act 1980 (as amended) and over which you have no control. In order for these works to proceed, you are required to enter into an agreement under S278 of the Act. Please contact Keren Jones Tel 01332 641767 for details. Please note that under the provisions of S278 Highways Act 1980 (as amended) commuted sums will be payable in respect of all S278 works.
- 2) For details of the Delivering Streets and Places Design Guide and general construction advice please contact Keren Jones Tel 01332 641767.

8.5. S106 requirements where appropriate:

Matters relating to Section 106 Obligations are addressed within Section 7.7 of this report.

8.6. Application timescale:

Committee Report Item No: 8.2

Application No: 23/00086/OUT

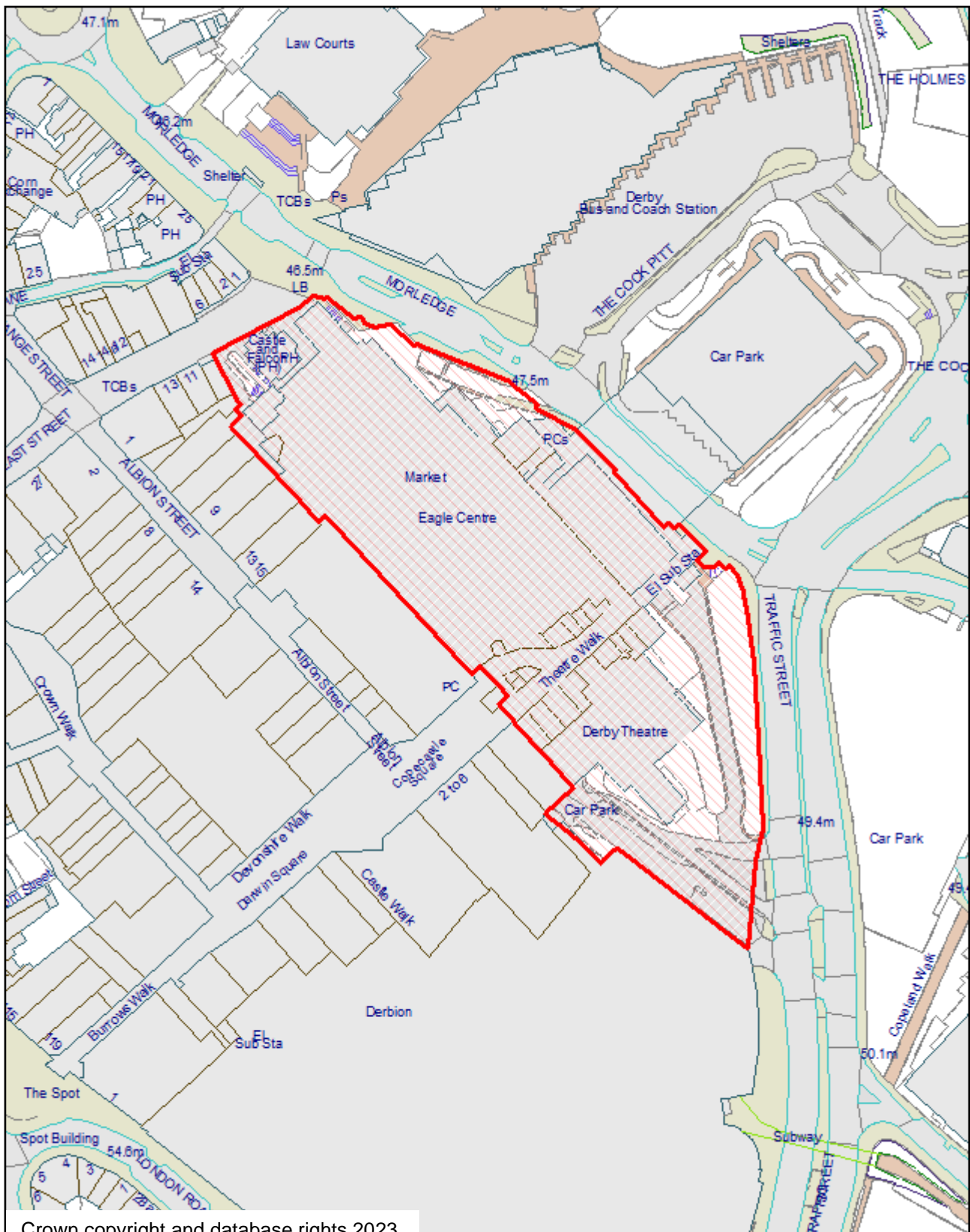
Type: OUT

An Extension of Time has been agreed with the applicant, until 29th September 2023. However, a further extension of time is likely to be required to allow the referral of the application to the Secretary of State, completion of the Section 106 negotiations, drafting the agreement and issuing of the decision notice.

Committee Report Item No: 8.2

Application No: 23/00086/OUT

Type: OUT



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Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

1. Application Details

1.1. Address: Derby Dance Academy Lynton Street Derby DE22 3RW

1.2. Ward: Abbey

1.3. Proposal:

Change of use from dance studio (Use Class E) to one six bedroom (six occupant) flat in multiple occupation (Use Class C4) and one five bedroom (five occupant) flat in multiple occupation (Use Class C4), together with alterations to fenestration

1.4. Further Details:

Web-link to application:

<https://eplanning.derby.gov.uk/online-applications/PLAN/23/00605/FUL>

The application property is located at the junction of Peet Street and Lynton Street on the south-western outskirts of the City Centre. It forms part of a group of former industrial buildings dating from the 1890's. Historically the site was used as plaster works and then a tape factory. The application property was last in use as a dance studio (Use Class E). It has been vacant since early 2023.

The main part of the building is two-storeys in height with a white painted finish. There is a single storey red brick addition along the Lynton Street frontage. To the rear of the application property is a small courtyard providing access and parking for some of the neighbouring units. The application property itself has no off-street parking provision.

The surrounding area is predominately comprised of traditional terraced housing with some small-scale commercial uses; these include a boxing gym located along Lynton Street, and 'The Nest Studio', an office/studio/meeting space which is accessed off Parliament Street. The attached buildings to the south of the application property have previously been converted into three residential units.

There are existing residents parking restrictions (Permits Only Monday-Sat 8am -6pm) on the north side of Lynton Street. The southern side of Lynton Street is not covered by the restriction, nor are the adjoining streets (with the exception of the (south) eastern side of Peet Street).

The Proposal

Planning permission is sought to convert the building into two flats in multiple occupation (use class C4). The proposal (as amended) would provide: one six bedroom (six occupant) flat on the first floor of the building; and one five bedroom (five occupant) flat on the ground floor.

The proposed residential accommodation would be a mixture of both studio apartments with their own in-room cooking facilities, and bedroom accommodation with shared kitchen and communal facilities. The rooms will be split across two cluster units. Each bedroom would have an en-suite. At ground floor level a communal living area would be provided. A ground floor cycle/bin storage area would also be provided within the building.

No extensions, or significant alterations, are proposed to the exterior of the building to facilitate the proposed change of use. Although, the proposals will require the blocking

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

up of an existing door opening on Lynton Street. General refurbishment of the exterior of the building and upgrading of the windows and doors may also be required. No designated off-street parking would be provided for the proposed residential accommodation.

2. Relevant Planning History:

Application No:	08/91/01084	Type:	
Decision:	Conditionally granted	Date:	31/10/1991
Description:	ALTERATIONS & EXTENSIONS TO EXISTING OFFICES, AND USE OF STABLE BLOCK AS OFFICES		

Application No:	03/90/00389	Type:	
Decision:	Conditionally granted	Date:	11/06/1990
Description:	USE OF GROUND FLOOR AS CAR PARK AND ERECTION OF 1 ST FLOOR EXTENSION FOR OFFICES AND WORKSHOP		

Application No:	05/85/00580	Type:	
Decision:	Conditionally granted	Date:	04/07/1985
Description:	USE OF PREMISES AS DANCE STUDIO WITH ANCILLARY ACCOMMODATION		

Application No:	12/88/01762	Type:	
Decision:	Conditionally granted	Date:	04/07/1985
Description:	USE OF WAREHOUSE AS GARAGE (GROUND FLOOR) WITH OFFICE ACCOMMODATION ABOVE		

3. Publicity:

- Neighbour Notification Letters – 11
- Site Notice

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

4. Representations:

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

11 objections have been received following the consultation on the application. The issues raised within the representations are summarised below:

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

- There are too many HMO's in the area
- Inadequate parking/concerns about where existing residents will park
- Increase in on street parking/congestion issues
- Highway safety concerns
- Concerns about access for emergency vehicles due to parked cars
- Concerns parked vehicles blocking the public footpath
- Increased noise, disturbance and anti-social behaviour associated with the proposed use
- Increase litter and concerns about bins – smells, vermin etc.
- Lack of community facilities in the area – no GP, post office or pub
- The premises should remain as a business
- There are already plenty of housing options locally
- More family accommodation is needed

The following comments have been made by Councillor Carmel Ashby

'There have been approximately 10 applications and Abbey councillors have been contacted by residents who have shared their concerns with us, including access for emergency vehicles. There have already been number of problems for residents and I would be grateful if you could seen a report from the fire and ambulance services.'

5. Consultations:

5.1. Highways Development Control:

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

Drawing 23,026-P-002 ~ Existing Floor Plans

Drawing 23,026-P-102 /B ~ Proposed Floor Plans

Drawing 23,026-P-103 ~ Proposed Elevations

Planning Statement

The application is reliant upon on-street parking for vehicles associated with the residential occupancy of the site. There is an existing residents parking restriction (Permits Only Monday-Sat 8am -6pm) on the north side of Lynton Street, occupants of the proposed development would not be eligible for the issue of permits.

The south side of Lynton Street is not covered by the restriction.

Adjoining streets (with the exception of the (south) eastern side of Peet Street are also not covered by waiting restrictions.

The Planning Statement says

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

'The site is located within 10 minute walking distance of a multitude of amenities, facilities, transport links as well as the city centre. Peet Mini Market is the closest shop, located 100 yards/1 minutes' walk away from the site, Lidl is within 8 minutes' walk of the site as well as several other supermarkets, takeaways, public houses and restaurants.'

Considering likely vehicle parking associated with the proposals:-

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

This shows that for a 1 room non-owner occupied flat (which is the best equivalent to a room in a House in Multiple Occupation) that the average car ownership is 0.3 vehicles. As such, for a 12 bedroom HMO this would equate to 4 vehicles.

There are no figures available to establish vehicular demand for the dance studio; however I can envisage occasions where there would be considerably more vehicles associated with the studios, in particular when they would be fully operational.

At worst, it is the Highway Authority's view that the proposals will not necessarily lead to a significant increase in vehicle generation over that which could be anticipated and associated with the present consented use of the site.

As stated, the site is in a sustainable location, within walking distance to shops, city centre amenities and public transport opportunities.

Para. 111 of the National Planning Policy Framework states that

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

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

Whilst the scheme would potentially increase demand for parking spaces, it would not be possible to argue that the scheme would lead to 'unacceptable impacts' to highway safety.

I do note that drawing 23,026-P-102 B shows an outwards opening door; this would not be acceptable to the Highway Authority.

Section 153 of the Highways Act 1980 requires that doors, gates, and windows do not open outwards over the public highway. The risk to highway users of an outward opening ground floor door, window or other obstruction must always be avoided.

There is a risk that if doors or windows open outwards onto the highway that pedestrians could be injured by protrusions (such as a window at head height for example), or that they could collide with a door that is either open or is in the process of being opened.

Accordingly, ground floor doors and windows should be inwards opening only. This can be dealt with by condition.

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

Recommendation:

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

Condition:

New doors and windows on the ground floor 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 doors and windows shall then be retained for the life of the development.

Reason:

In the interest of pedestrian and highway safety

5.2. Environmental Services (Health – Pollution):

I note that the application site sits on land formally occupied by a Tape Factory, which is categorised from a contamination perspective as a 'textile and dye works' (map dates 1947 and 1967). Consequently, future occupiers of the proposed residential units are at risk of exposure to contamination which could impact human health.

The application is not supported by any information relating to land contamination risks.

Recommendation

In the circumstances, the Environmental Protection Team would recommend the attachment of the following conditions to the planning consent, should it be granted:

- i) Before commencement of the development, a Phase I ground contamination study shall be completed for the site, documenting the site's previous history and identifying all potential sources of contamination and all plausible pollutant linkages with respect to future site users in accordance with the Government's Land Contamination Risk Management (LCRM) Guidance. A Phase I Desktop Study Report will be required for submission to the Local Planning Authority for written approval prior to commencement of the development.
- ii) Where the agreed Phase I Assessment has identified potential contamination, a Phase II Site Investigation shall be carried out to determine the levels of contaminants on site that could pose a risk to the health of future site users, in accordance with LCRM Guidance. A risk assessment will then be required to determine the level of potential risk to site end users. A detailed report of the investigation will be required for submission to the Local Planning Authority for written approval prior to commencement of the development.
- iii) In those cases where the agreed Phase II Investigation Report has detailed significant contamination risks to human health exist on site, a Remediation Strategy will be required in order to identify measures needed to mitigate the identified risks. The Remediation Strategy shall be completed in accordance with LCRM Guidance and

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

submitted for written approval by the Local Planning Authority prior to commencement of the development.

iv) The risk reduction measures detailed within the agreed Remediation Strategy shall be implemented in full. A Validation Report shall subsequently be produced which adequately demonstrates that the measures have been implemented in full, that all significant risks to human health have been removed and that the remediation targets have all been met. The Validation Report shall be submitted to and approved in writing by the Local Planning Authority prior to the development being occupied.

5.3. Environmental Services (Health – Noise):

With regards to the above planning application, I am concerned that the proposed residential units would be exposed to significantly high levels of noise. The building is situated in a predominantly residential area with a small mix of commercial enterprises adjacent and to the rear of the site, most notably Nest Studio's. The 'Boxing Gym' adjoining the site can possibly produce high noise level of noise (short duration) through weight lifts banging on the floor, raised voices and possible noise from music during training sessions.

For the reasons given above, I would have very serious concerns of detriment that will be caused to future occupiers of the proposed residential units due to noise. If planning consent is granted, I would recommend that the condition below is attached.

- *A comprehensive noise assessment must be undertaken, assessing the site against the criteria contained within BS8233:2014, ProPG Guidance on Planning & Noise or any other relevant standards or guidance. The Survey shall be completed by a competent and suitably qualified acoustician and a report submitted for written approval by the LPA prior to the commencement of the development. Where the agreed Assessment indicates that mitigation works are required, a scheme must be submitted by the developer for approval, before the development commences. All agreed mitigation works must be incorporated into the Development prior to its first occupation.*

5.4. Resources and Housing (HIMO):

The planning application has been reviewed by Housing Standards in accordance with the relevant housing legislation and guidelines applied by this department. It does not have objections but has the following comments to make:

The proposed development is for 2 flats within a two-storey building, having one flat on each floor. each flat contains six units of accommodation. Ten of the twelve units are labelled as studios and are self-contained. Two of the units (one in each flat) are not self-contained as they do not contain kitchen facilities. Instead, each flat has one separate kitchen, thus making the development technically two HMOs according to definitions set out under section 254 of the Housing Act 2004.

The size of each self-contained unit ranges from 14.6m² to 15.2m². These are considered small for self-contained units from a housing standards point of view and do not meet space standards set out by The Department for Communities and Local Government, in 2015, in 'Technical Housing Standards ' Nationally Described Space Standard'. This document sets out requirements for gross internal floor area of new

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

dwelling and specifies that single storey dwellings should be a minimum of 37m² for one occupant. The proposals for this development demonstrate a significant departure from this requirement.

This department assesses existing dwellings for health and safety using the Housing Health & Safety Rating system (HHSRS). One of the hazards is 'crowding and space' which is relevant to small dwellings such as those proposed. It directs the assessor to consider inadequate sized living space in the assessment. Current government guidance such as that detailed above should be referred to in an assessment and may lead an assessor to conclude there could be an impact on the health of occupants living in such units.

Under the HHSRS this department must also consider the fire safety of dwellings. A development such as the one proposed is high risk for the hazard of 'fire'. This is due to it being four storeys, having cooking facilities in most units and being occupied by a high number of separate households. The guidance used by this department for assessments of this hazard was published by LACORS in 2008 (a copy can be obtained from this department if required). The property would require as a minimum, a mixed fire alarm system consisting of Grade A LD2 and D1 in each unit along with the escape route protected by FD30s.

Other significant hazards under the HHSRS are also more likely to be present in small self-contained units such as 'damp and mould', 'flames, hot surfaces etc', 'food safety' and 'electrical'. Each self-contained unit must contain mechanical extract ventilation in the room containing cooking facilities, which is vented to external air. This is to reduce the build-up of moisture internally.

Each flat will be classed as a HMO under Section 254 of the Housing Act 2004 and will require a licence from this Authority for occupation by five or more persons. It will need to meet the guidelines set out by this Authority for HMOs in the City which can be obtained from this department. In order to obtain a licence it will also need to be adequately managed and free of significant hazards under the HHSRS (including fire, damp and mould and crowding and space etc as detailed above).

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

The Housing Standards department can be contacted with any queries on fire safety, HHSRS or HMO licensing.

5.5. The County Archaeologist

The proposed development lies on the site of two NDHA's, a former cement and plaster works established c. 1880 (MDR10266) which was then incorporated into a tape works (MDR10302) in the 1890's. However, I do not think that the proposals will impact below ground archaeology and have no objection.

6. Relevant Policies:

6.1. Relevant Policies:

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

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

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

- CP1(a) Presumption in Favour of Sustainable Development
- CP2 Responding to Climate Change
- CP3 Placemaking Principles
- CP4 Character and Context
- CP6 Housing Delivery
- CP21 Community Facilities
- CP23 Delivering a Sustainable Transport Network

Saved CDLPR Policies

- GD5 Amenity
- H13 Residential Development – General Criteria
- H14 Re-use of Underused Buildings
- E13 Contaminated land

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

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

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

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

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

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

6.2. Applications involving the provision of housing:

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

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

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

Policy CP6 sets a housing requirement of 11,000 new homes over the 17 year Plan period (647 dwellings annually). However, in December 2020, Government amended it's 'Standard Method' for calculating Housing Need to include a 35% uplift in the top 20 largest urban areas in England which includes Derby. The standard method housing need calculation for Derby City now stands at 1,266 dwellings a year and this is significantly higher than the CP6 requirement. Therefore, the housing requirement in Policy CP6 is out of date.

A further consequence of the significant increase in housing requirement, brought about by the change to the standard method, is that the Council can no longer demonstrate a 5 year supply of housing land as required by the NPPF (NPPF paragraph 74 (footnote 39) refer). The current supply of deliverable sites is sufficient to provide 3.69 years of dwellings against the annual 1,266 requirement, as of April 2023.

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

Paragraph 11d of the NPPF requires that where there is no 5 year supply this means granting planning permission unless –

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

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

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

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

7. Officer Opinion:

Key Issues:

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

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. Loss of the Existing Community Facility/The Principle of the Development

7.2. Provision of a satisfactory living environment for Future Occupiers

7.3. Impact on Neighbour Amenity/Character of the Area

7.4. Highway/Parking Issues

7.5. Other Issues

7.6. Conclusion

7.1. Loss of the Existing Community Facility/The Principle of the Development

As an educational/training facility, the use as a dance academy can be considered as a community facility and so the proposal falls under Policy CP21 of the Derby City Local Plan - Part 1 (Core Strategy). The policy supports the retention of existing facilities unless it can be demonstrated that there is no longer a need to retain the use or alternative provision is made. Information provided as part of the application indicates that the academy became non-viable for various reasons in this location and that it has moved elsewhere in the city. Due to alternative provision being made elsewhere, the proposal is considered to be in line with the intentions of policy CP21.

The site of the proposal isn't allocated for any particular use in the Derby City Local Plan – Part 1(Core Strategy). It is in an established residential area, close to local amenities and public transport links and is therefore considered to be a sustainable location for new residential development to be situated. The proposal would also increase variety and maximise the efficient use of the site contributing to housing delivery in line with the intentions of Saved Local Plan Policy H13 and Policy CP6 of the Derby City Local Plan – Part 1 (Core Strategy), a factor which should be given significant weight taking into account the City's housing supply position and the need to consider the tilted balance, as described above at section 6.2.

Overall, there are considered to be no 'in principle' concerns with the proposed use in this location, subject to a detailed assessment of its ability to create a high-quality living environment (as required by Policy H13 and GD5), impact on amenity/character (Policy GD5), and any parking/highway issues (Policy CP23). There matters which are considered in more detail below.

7.2. Provision of a satisfactory living environment for Future Occupiers

H13 specifically refers to Use Class C1, C2, C3 and hostels but can, by extension, be considered as guidance for other residential uses such as HMOs. Saved Policy H13 of the City of Derby Local Plan Review requires, amongst other things, that new developments provide a satisfactory form of development and a high-quality living, with good standards of privacy and security. Saved Policy GD5 also requires development to provide a satisfactory level of amenity within the site.

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

The proposed conversion would provide 11 single occupancy bedrooms across two floors, all with en-suites and most with their own cooking facilities. All bedrooms have good sized window openings, with reasonable outlooks, and achieve the required minimum floor space standards for HMO's contained within the City Council's '*Amenities and Space Standards for Houses in Multiple Occupation*' document. The revised layout also provides an additional communal area on the ground floor in the form of a shared living/dining space serving Flat A. No in principle objections have been raised by the Housing Standards Officer. Although further guidance on the layout and fire safety have been issued. Separate HMO licences would need to be obtained from the Housing Standards Team.

The neighbouring three storey former mill building on Lynton Street is in use as a boxing gym, which could possibly produce high levels of noise. To address this the Environmental Protection Officer recommends the inclusion of a noise related condition requiring an acoustic assessment to be submitted and the completion of any noise mitigation works (e.g. upgrades to glazing and sound insulation within the building) before the development commences. Details of an alternative means of ventilation may also be required, should the noise assessment require windows to be kept shut to maintain acceptable internal ambient noise levels. Again, this can be controlled through condition.

Although no external private amenity/garden space is proposed, the building is located a short walk from Stockbrook Recreation Ground where future occupants would have access to a large area of public open space. An internal bin storage area is provided for the proposed development. The applicant has confirmed that they plan to work with an M&E specialist to ensure sufficient mechanical ventilation is provided to the Bin Store to remove any foul smells. It is recommended that the provision of a ventilation scheme is controlled through condition.

Overall, whilst the accommodation proposed is fairly compact, it is considered that the proposed conversion, as amended, would provide a satisfactory living environment for future residents in compliance with saved Local Plan policies GD5 and H13.

7.3. Impact on Neighbour Amenity/Character of the Area

Saved Local Plan Policy H14 states that, although the Council will support the re-use of underused buildings for residential purposes, planning permission will only be granted provided that the scale and intensity of the use is sufficiently similar to the surrounding area so that it would not detract from its general character or amenity. Policy GD5 seeks to ensure that new development does not cause unacceptable harm to the amenity of nearby areas.

No significant changes are proposed to the exterior of the building and no extensions are proposed. As a result, there would be no harmful impact caused to neighbours through massing/overbearing or loss of light, and no direct loss of privacy/overlooking would occur. The proposal would clearly result in a significant change in the use of the building; however, this is a predominantly residential location and as a result it is difficult to argue that the proposed use would be out of keeping with the general character of the area per se. Whilst it is acknowledged that HMO's are a more intensive form of residential use than the typical terraced houses found in the area, it is

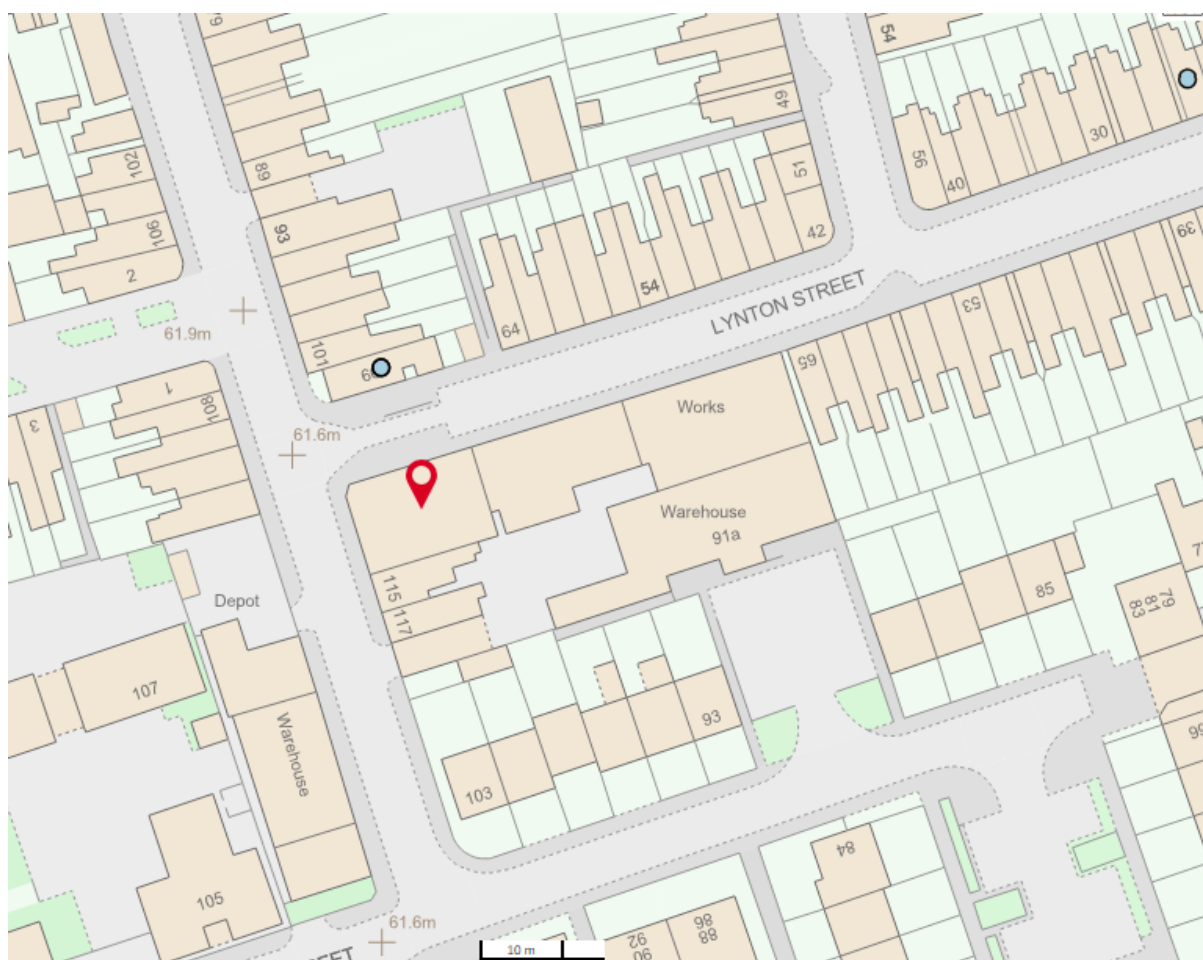
Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

considered that the proposed levels of activity associated with the proposed HMO is unlikely to be significantly more than could be expected from its former use as a dance studio; and there is no evidence to suggest that there would be any significant increase in issues such as littering and antisocial behaviour, as raised within the objection letters. I am also mindful of the overall size of the building and potential uses that could be occupied within it, including alternative Class E uses, which themselves have the potential to generate significant amounts of comings and goings, noise and disturbance.

According to the Council's register of licensed HMOs, which records licences issued for HMOs of five occupants or more, there is only one other HMO in the immediate area, which is located at No. 66 Lynton Street on the opposite corner to the application property (see map below). The next nearest licensed HMO is located further east at 24 Lynton Street. In view of this there is no evidence to suggest that there is an unacceptable proliferation of large HMOs locally, or that this conversion would significantly alter the area's character, as a result of a proliferation of such uses.



Licensed HMOs in the immediate area shown by blue circles.

Overall, the change of use would not, in my view, represent a significantly harmful change to the overall character of the property, or the character of the wider area, and it would be difficult to argue there would be any unacceptable harm to the amenity of neighbours, particularly considering the previous use of the building and the potential

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

noise and activity associated with it. A balanced approach must be taken, by weighing the level of objections against the Government's objective to boost the supply of residential accommodation; the Council's policies, which encourage the re-use of under-utilised or vacant properties for residential uses; and the lack of appropriate alternative uses for the building. I am also mindful of the contributions the development would make to housing delivery in the City, a factor which should be given significant weight taking into account the City's housing supply position and the need to consider the tilted balance.

Overall, it is considered that the perceived impact of the proposed use on the surrounding area would not be so harmful as to justify a refusal. Consequently, it is considered that the scheme is acceptable and complies with Local Plan Policy GD5.

7.4. Highways/Parking Issues

Adopted policy CP23 Delivering a Sustainable Transport Network seeks to ensure that new development provides appropriate levels of parking. Paragraph 110(b) of the NPPF encourages Local Planning Authorities to ensure that safe and suitable access can be achieved for all users.

The site is in a sustainable location, within walking distance of local shops and services, and in close proximity to public transport links. As such it is a location where the use of more sustainable modes of transport should be encouraged and where car free development would be difficult to resist. The proximity of shops, services and transport facilities would also substantially reduce the necessity for any future occupiers to own individual cars. The proposals include a large internal cycle storage area and the provision of 3 electric charging points for bikes, to further promote the use of sustainable modes of transport and discourage car use.

Due to the terraced nature of the housing within the immediate area many residents rely on on-street parking. As a result, the potential impact on parking, the inconvenience this may cause and the possible increase in traffic/congestion have been raised in many of the objection letters received. Although it is also acknowledged that the scheme could potentially increase demand for on-street parking spaces in nearby streets, it is the view of the Highway Authority that it would not be possible to argue that the development would lead to 'unacceptable impacts' to highway safety, or a severe cumulative impact upon the highway network.

I also feel it would be difficult to argue that the development would give rise to on-street parking which would be significantly detrimental to neighbour amenity, considering the fall back of the existing use of the building which could generate a certain level of on-street parking (potentially more than the proposed residential accommodation depending on class times and the frequency of use); and taking into account the presence of the existing residents only parking restrictions along the northern side of Lynton Street. Occupiers of the development would not qualify for residents parking permits in the area and therefore could not park in these restricted areas.

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

It is noted that concerns have been raised about access for emergency vehicles. Whilst the emergency services are not statutory consultees, they do receive a copy of the weekly list of planning applications and are able to provide comment should they wish. No direct comments have been provided on this particular application. Refuse bins would be located within a secure area inside the building, close to the main entrance, with the management company moving the wheelie bins out onto the road for collection when required.

Although the objections in this regard have been noted and fully considered, I feel it would be very difficult to demonstrate that the small incremental increase in parking demand which could potentially arise as a result of the proposed development, would be materially harmful to highway safety, or result in any significant congestion issues in the area. Or that any increase in parking would give rise to on-street parking which would be significantly detrimental to public amenity. As a result, I conclude that the proposal would not conflict with saved Policy GD5 of the Local Plan Review, or Policy CP23 of the Derby City Local Plan – Part 1(Core Strategy) in this regard.

7.5. Other Issues

Contaminated land – The land was formally occupied by a Tape Factory, which is categorised from a contamination perspective as a ‘textile and dye works’ (map dates 1947 and 1967). To ensure future occupiers are not put at risk of exposure to contamination a condition is recommended requiring the submission of a contamination study, and controlling the implementation of any agreed remediation works prior to first occupation.

External changes – Some minimal external changes are proposed to the exterior of the building, including the blocking up of openings. It is considered that precise details of and replacement window and door details, materials and finishes should be controlled through condition to ensure there would be no harmful impact on the overall character of the building in line with Policies CP3 and CP4 of the Derby City Local Plan - Part 1 (Core Strategy).

7.6. Conclusion

The application site is located in an established residential area, close to local amenities and public transport links and is therefore considered to be a sustainable location for new residential development to be situated. The proposal would also increase variety of accommodation type and maximise the efficient use of the site contributing to housing delivery in line with the intentions of Saved Local Plan Policy H13 and Policy CP6 of the Derby City Local Plan – Part 1(Core Strategy), a factor which should be given significant weight taking into account the City’s housing supply position and the need to consider the tilted balance.

Whilst the development may potentially give rise to some additional on-street parking, it is considered that this is unlikely to result in any demonstrable harm to highway safety, or residential amenity as a result. Nor would the proposal have such an overriding impact on residential amenity, or the general character of the area, as to warrant a refusal. It is considered that the minor adverse effects attributable to the

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

development would not significantly or demonstrably outweigh the benefits inherent in increasing the City's housing supply.

The proposal, as amended, meets all the Council's housing standards, regarding room sizes and a satisfactory quality of living accommodation is proposed. All other technical matters, such as noise and contaminated land, can be addressed through condition. Consideration has been given to the loss of the existing community facility and the development is considered to be in line with the intentions of Policy CP21.

Overall, it is considered that all relevant planning matters have been adequately addressed and the proposal reasonably satisfies the requirements of the adopted policies of the DCLP1 and the saved policies of the adopted CDLPR as included within this report, with the tilted balance being taken into consideration.

8. Recommended decision and summary of reasons:

8.1. Recommendation:

To grant planning permission with conditions.

8.2. Summary of reasons:

The "tilted balance" is engaged, meaning great weight must be given to the provision of residential accommodation. Whilst the development may potentially give rise to some additional on-street parking, it is considered that this is unlikely to result in any demonstrable harm to highway safety, or residential amenity as a result. Nor would the proposal have such an overriding impact on residential amenity, or the general character of the area, as to warrant a refusal. The minor adverse impact of granting permission in this case, if any, would be outweighed by the benefits of increasing the City's residential accommodation by even a small amount. The proposal is considered to be acceptable in principle, and with specific regard to the provision of a high-quality living environment and impacts on residential amenity, the local highway network and the character of the area.

8.3. Conditions:

1. The development hereby permitted shall begin before the expiration of three years from the date of this permission.

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

2. The development shall conform in all aspects with the plans and details shown in the application as listed below.

Location Plan – 23,026 – P -001

Proposed Floor Plan - 23,026 – P -102 rev: D

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

Proposed Elevations - 23,026 – P -103 Rev: A

Reason: For the avoidance of doubt.

3. Condition requiring the submission of a noise assessment and implementation of approved noise mitigation measures and any required ventilation prior to occupation of the residential accommodation.

Reason: To ensure a satisfactory living environment is provided

4. Contaminated land condition

Reason: To ensure a satisfactory living environment is provided and protect occupiers from any expose to contamination

5. Condition controlling provision and retention of a bin storage area and suitable ventilation of that space

Reason: To ensure a satisfactory living environment is provided

6. Condition controlling the provision and retention of cycle storage area and the provision of 3 electric bike charging points.

Reason: To promote the use of sustainable modes of transport.

7. Condition controlling details of replacement windows and doors – precise design, materials and finish

Reason: In the interests of visual amenity

8. Condition controlling the use of the building – use as two flats in multiple occupation (maximum 11 bedrooms and 11 persons)

Reason: To ensure a satisfactory living environment is provided and because a more intensive use may not be acceptable in this location because of the potential impact on the amenities of neighbouring occupiers and parking issues.

9. Condition restricting outwards opening doors and windows.

Reason: In the interest of pedestrian and highway safety

10. Condition requiring the submission of a Phase II report

Reason: To ensure a satisfactory living environment is provided and protect occupiers from any expose to contamination

11. Condition requiring the submission of a remediation strategy

Reason: To ensure a satisfactory living environment is provided and protect occupiers from any expose to contamination

12. Condition requiring the submission of a verification report

Reason: To ensure a satisfactory living environment is provided and protect occupiers from any expose to contamination

8.4. Informative Notes:

The applicant should note the Housing Standard's Officer comments with regards fire safety and amenity.

Please see comments from The Environmental Protection Officer below

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL

-
- The developer should note that windows shall not be sealed closed but should be able to be kept closed, by choice, whilst allowing the occupier to enjoy adequate source of fresh air. If deemed necessary by the survey, the sound insulation scheme shall incorporate a mechanical ventilation to allow windows to remain closed irrespective of the external conditions (The developer should note that the window shall not remain closed to achieve the Indoor ambient noise guideline values as specified in British Standard BS 8233:2014).
 - The ventilation arrangements shall ensure that 4 air changes per hour, if necessary, using mechanical ventilation, is available on demand in all habitable rooms (to ensure thermal comfort and purged ventilation). If mechanical ventilation is not required, then tm52/59 overheating assessment will be required for alternative ventilation system. • The scheme shall ensure that the LA_{max} does not exceed 45dB(A) on more than 15 occasions during any night-time period. full details of LAF_{max} will be required in a tabular format between 23:00 hours and 07:00 hours (every 15 mins) for the duration of the assessment.
 - I would like to see LA_{eq}, 1hr, throughout the day and night in a tabular format submitted as it will help determine the appropriate glazing specification required for the residential units.

Notwithstanding any Planning Permission please note that the proposed development will not qualify for the issue of residents parking permits

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.

Due to the change of use from a business premises to a residential property, you would need to contact Derby City Council and Royal Mail to notify them of the changes when the development approaches completion. You can contact Derby City Council by emailing customerservices@derby.gov.uk or telephone 01332 640000 and Royal Mail Development Team by emailing addressmaintenance@royalmail.com or telephone 0845 6011 110, option 3, option 1.

8.5. S106 requirements where appropriate:

None required.

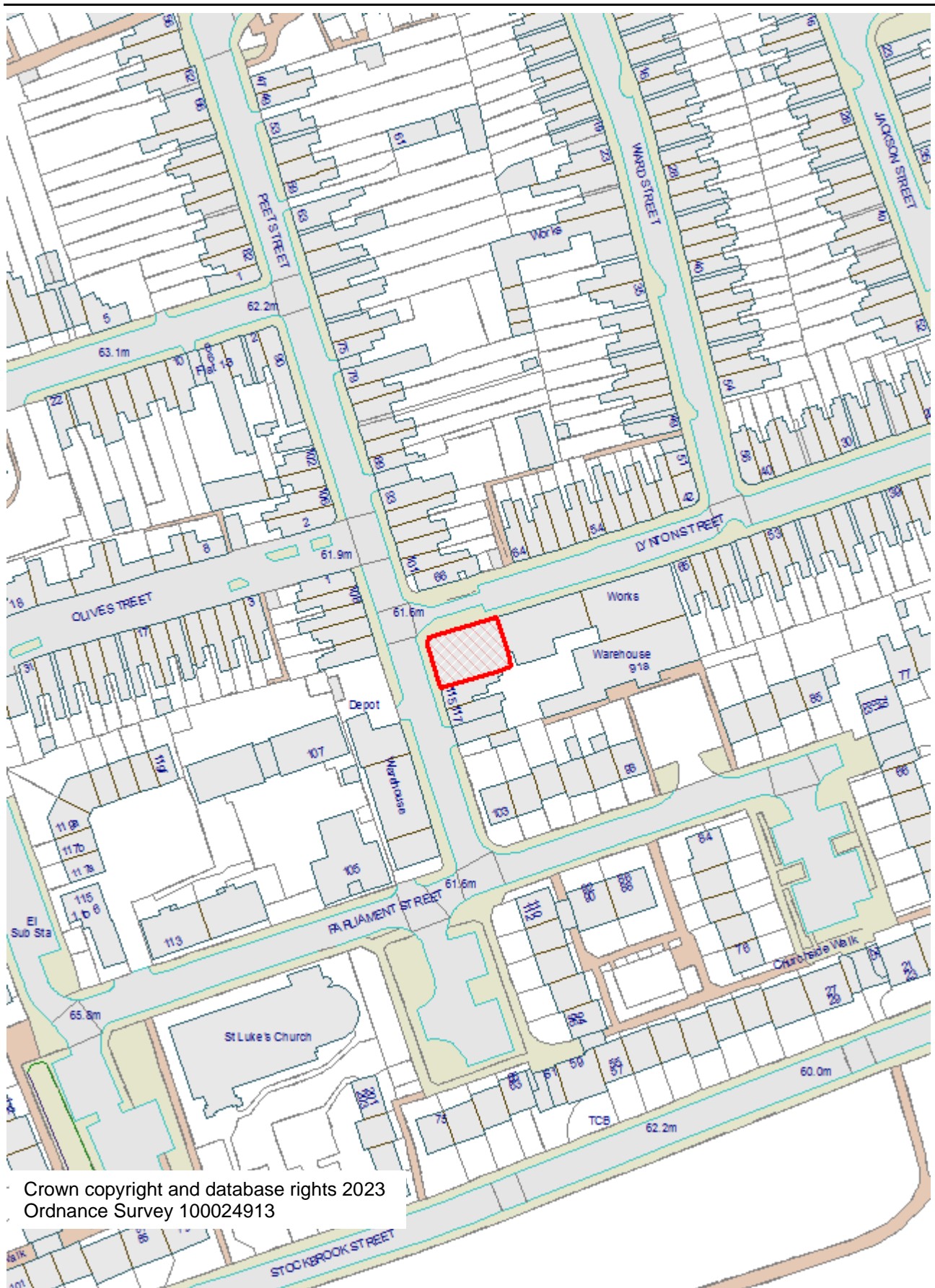
8.6. Application timescale:

The application has been called in to committee by Councillor Ashby. An extension of time has been sought on the application until the 9th September.

Committee Report Item No: 8.3

Application No: 23/00605/FUL

Type: FULL



Committee Report Item No: 8.4

Application No: 23/00429/FUL

Type: Full

1. Application Details

1.1. Address: 109 Brighton Road, Derby DE22 1GZ

1.2. Ward: Alvaston

1.3. Proposal:

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

1.4. Further Details:

Web-link to application:

<https://eplanning.derby.gov.uk/online-applications/PLAN/23/00429/FUL>

Brief description

109 Brighton Road is a residential plot on the east side of the street and flanked by residential plots to the north and east. The adjoining property to the south is a retail unit. A two-storey terraced house stands towards the site's western boundary with the remainder of the site in use as garden space.

Permission is sought for a change of use from a house in multiple occupation (HMO) for six occupants to an HMO, housing eight occupants by allowing the two first-floor bedrooms to each accommodate two people. The application has been amended to alter the layout of the shared kitchen on the ground floor following comments from the Council's Housing Standards team. See application documents for details.

2. Relevant Planning History:

Application No:	21/00071/CLP	Type:	Certificate of Lawful Proposed Development
Decision:	Approval	Date:	04.02.2021
Description:	Change of use from dwelling house (Use Class C3) to a five bedroom house in multiple occupation (Use Class C4) including a single storey rear extension and alteration to the existing out house roof		

3. Publicity:

- Neighbour Notification Letter
- Site Notice

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

4. Representations:

In line with the Data Protection Act and associated legislation this appraisal should not include details, or seek to identify through repeating specific

Committee Report Item No: 8.4

Application No: 23/00429/FUL

Type: Full

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.

5 objections, including one each from Councillors Kus and Graves have been received and raise the following concerns:

- Increased demand for on-street parking, increased congestion;
- Increased activity and disturbance;
- Proliferation of similar developments nearby;
- The potential behaviour of residents;
- The quality of accommodation to be provided with regard to available space and overcrowding;
- The potential for ad-hoc bin storage;
- In-principle opposition to the use of the building by multiple households.

5. Consultations:

5.1. Highways Development Control:

The property currently consists of six one person rooms. The applicant proposes to turn two of these rooms into double rooms for occupation by two residents. Work has already started, with alterations to the front of the property.

The property has no off-road parking and most of the parking in the area is on road – there are no restrictions on Brighton Road outside the property, other than junction protection on the corner of Wisgreaves Road. However, there is a shop next door which is likely to impact on available parking throughout its opening hours.

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

This shows that for a 1 room non-owner occupied flat (which is the best equivalent to a room in a House in Multiple Occupation) that the average car ownership is 0.3 vehicles. As such, it could be argued that at maximum there would be one additional vehicle associated with the change in occupancy which is unlikely to have a significant impact on the highway.

The site is close to a bus route and amenities in Alvaston district centre, therefore sustainable travel should be encouraged.

Committee Report Item No: 8.4

Application No: 23/00429/FUL

Type: Full

Recommendation: The Highway Authority has No Objection with no conditions.

5.2. Resources and Housing (HIMO):

The layout will need to be reviewed with additional dining/living space provided on the ground floor. The proposed development appears to meet Derby City Councils Housing Standards Teams requirements for space and amenities within HMOs.

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)

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

Saved CDLPR Policies

GD5	Amenity
H13	Residential Development – General Criteria

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

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

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

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

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

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

6.2. Applications involving the provision of housing:

Committee Report Item No: 8.4

Application No: 23/00429/FUL

Type: Full

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

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

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

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

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

Paragraph 11d of the NPPF requires that where there is no 5 year supply this means granting planning permission unless –

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

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

Other material considerations to weigh in the planning balance are that the Council's housing needs have increased significantly and as such the benefits of delivering housing carry greater weight. Also, the degree to which the Council is unable to demonstrate a 5 year supply is material. A housing land supply of 3.69 years is a significant shortfall and therefore very significant weight should also be applied in favour of applications that can contribute to increasing this supply.

Committee Report Item No: 8.4

Application No: 23/00429/FUL

Type: Full

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

7. Officer Opinion:

Key Issues:

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

7.1. Principle of development

7.2. Amenity

7.3. Highways

7.4. Planning balance & recommendation

7.1. Principle of development

The "tilted balance" is currently engaged, as described above at section 6.2, and weighs heavily in favour of residential development. The degree to which the Council is unable to demonstrate a 5-year supply is also material and there is currently a significant housing supply shortfall. Significant weight should be applied in favour of applications that can contribute to increasing this supply. It is also relevant that the conversion of the house to a HMO has been established as lawful, as has the single storey extension built at the rear of the building through a Certificate of Lawful Development application (see Relevant Planning History above at section 2). The use of the site as a smaller HMO constitutes a particularly strong fallback position in this case. The site of the proposal is not allocated for any particular use in the DCLP1. The site is located in an established residential area, reasonably close to local amenities and public transport and so could be argued to represent a sustainable location for residential development the provision of which is to be given significant weight. The proposal is therefore acceptable in principle in my opinion, provided that the requirements of relevant local and national planning policies and other material considerations can be met. A discussion of these follows.

7.2. Amenity

Saved policy H13 Residential Development – General Criteria requires development to create a satisfactory form of development and relationship to nearby properties [and] a high quality living environment". Saved policy GD5 Amenity prohibits "unacceptable harm to the amenity of nearby areas" from the effects of loss of privacy or light, massing, emissions, pollution, parking and traffic generation. This policy position is reinforced by the paragraph 130 of the NPPF, which states that "planning policies and decisions should ensure that developments [create] a high standard of amenity for existing and future users".

All bedrooms would meet the Council's Housing Standard's document 'Amenities and Space Guidance for Houses in Multiple Occupation' and the internal changes requested by the Housing Standards Officer have been provided. Main habitable rooms would have adequate levels of light and outlook, and residents would have access to some outdoor shared amenity space. Although this is fairly small, it has the potential to be useful and a landscaping condition is recommended below to ensure it

Committee Report Item No: 8.4

Application No: 23/00429/FUL

Type: Full

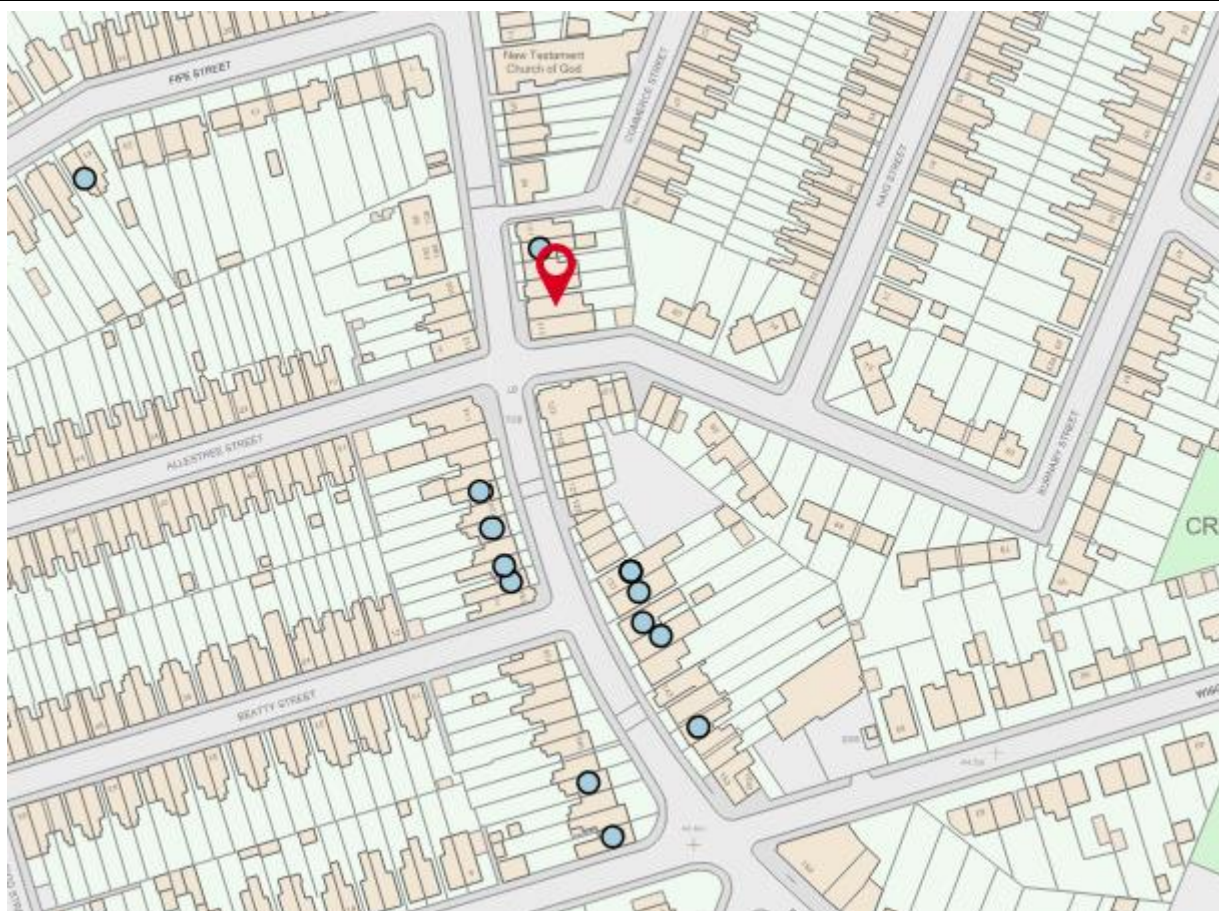
is of a usable standard and is maintained as such. The site is also within walking distance of Alvaston Park which goes some way to justify the otherwise small shared internal and external spaces. No objections have been raised to the proposed development by the Council's Housing Standards team in terms of the internal spaces provided, layout, or fire safety precautions and it is considered that the development would be capable of providing a reasonably high-quality living environment for future occupants. No physical changes to the building's exterior are proposed and there are no significant implications for visual amenity.

The proposed development would intensify the existing use through the introduction of additional occupants to the building. To determine whether this increase would accord with policy, the test is whether or not the intensification of the proposed use could justifiably be described as constituting "unacceptable harm", and whether the increase in activity would result in a significant reduction in standards on amenity for occupants of the house itself, and occupants of the surrounding neighbourhood. My opinion is that it would not, for the reason that the amount of additional accommodation would be proportionally low. Although additional activity and, possibly, increased parking pressure and traffic may result, again the effect of two or three additional people living in the building would be minimal with regard to these issues. According to the Council's register of licensed HMOs, which records licences issued for HMOs of five occupants or more, there are a cluster of HMOs to the south of the site, although fewer elsewhere (see map below). It may be reasonable to argue that there is currently a proliferation of large HMOs locally, or that this particular conversion would significantly alter the area's character, although in the absence of a specific policy on HMOs and the number that would constitute a proliferation it may be a difficult argument to sustain. However, the use of the building as a HMO has been established as lawful, and the impact of additional occupants would be relatively minor.

Committee Report Item No: 8.4

Application No: 23/00429/FUL

Type: Full



Licensed HMOs in the immediate area shown as . Application building shown as .

A management condition is recommended below limiting the number of occupants to eight in the interests of residential amenity. Overall, it is considered that the development would not have any overriding adverse impact on residential amenity, or the general character of the area. Consequently, the proposals would comply with saved policies GD5 and H13 of the City of Derby Local Plan Review and policies CP3 and CP4 of the Derby City Local Plan – Part 1.

7.3. Highways

Adopted policy CP23 Delivering a Sustainable Transport Network seeks to ensure that new development provides appropriate levels of parking. Paragraph 110(b) of the NPPF encourages local planning authorities to ensure that safe and suitable access can be achieved for all users.

It is acknowledged that there is pressure for on-street parking in this area. However, the site is in a sustainable location, reasonably close to the city centre, local shops and services, and to public transport links. Although the scheme could increase demand for on-street parking spaces in nearby streets, it is the view of the Highway Authority that it would not be possible to argue that the presence of two or three additional residents beyond the fallback position, even ones owning cars which is by no means a given, would lead to “unacceptable impacts” on highway safety or in combination with surrounding land uses would result in an unacceptable residual cumulative impact

Committee Report Item No: 8.4

Application No: 23/00429/FUL

Type: Full

upon the surrounding highway network. No cycle parking or bin storage is shown on the site plan. Given there should be available space to provide both on the site and the lack of vehicle parking capacity in the vicinity, a condition on the subject is recommended below. I conclude that the proposal would meet the requirements of adopted policy CP23 of the Derby City Local Plan – Part 1 and paragraph 110(b) of the NPPF.

7.4. Planning balance & recommendation

The occupation of the application site by eight people is likely to result in an increase in activity, parking demand and traffic generation compared with the existing use as a six-occupant HMO. The application of the tilted balance effectively raises the bar for refusal of residential development, meaning the test for a refusal of this proposal is whether the adverse effects of granting permission would “significantly and demonstrably outweigh the benefits” of doing so. The benefit in this case is a small increase in residential accommodation in the context of a significant shortfall. The adverse effects would be those identified above insofar as they apply to an additional two people beyond the existing position of a six-occupant HMO. My opinion, as outlined above, is that the adverse effects attributable to the development would be minor and would not significantly or demonstrably outweigh the benefits inherent in increasing the City’s housing supply by even a small amount.

Overall, the proposal is considered to be acceptable with regard to character, amenity and highway safety. It is considered that all relevant planning matters have been adequately addressed and the proposal reasonably satisfies the requirements of the adopted Local Plan policies as included within this report, with the tilted balance being taken into consideration.

8. Recommended decision and summary of reasons:

8.1. Recommendation:

To grant planning permission with conditions.

8.2. Summary of reasons:

The proposed intensification of residential use may result in increased activity, parking pressure and traffic in the vicinity. However, these adverse effects would not outweigh the benefits of increasing the City’s residential accommodation by even a small amount especially when the fallback position of a six-person HMO via permitted development rights is taken into account. The proposal is therefore considered to be acceptable in principle and with specific regard to the provision of a high-quality living environment, impacts on residential amenity and the local highway network and on the character and appearance of the site and wider area.

8.3. Conditions:

1. Standard three-year time limit condition

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

Committee Report Item No: 8.4

Application No: 23/00429/FUL

Type: Full

2. Standard approved plan reference condition

Reason: For the avoidance of doubt.

3. Cycle and bin storage provision

Reason: In the interests of sustainable transport and visual and residential amenity and to ensure cycle and bin storage is retained for the life of the development.

4. Landscaping and provision of outdoor amenity space condition.

Reason: In the interests of the residential amenity of future occupiers and to compensate for lack of internal shared space.

5. Restriction to eight occupants

Reason: In the interests of residential amenity.

8.4. Informative Notes:

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

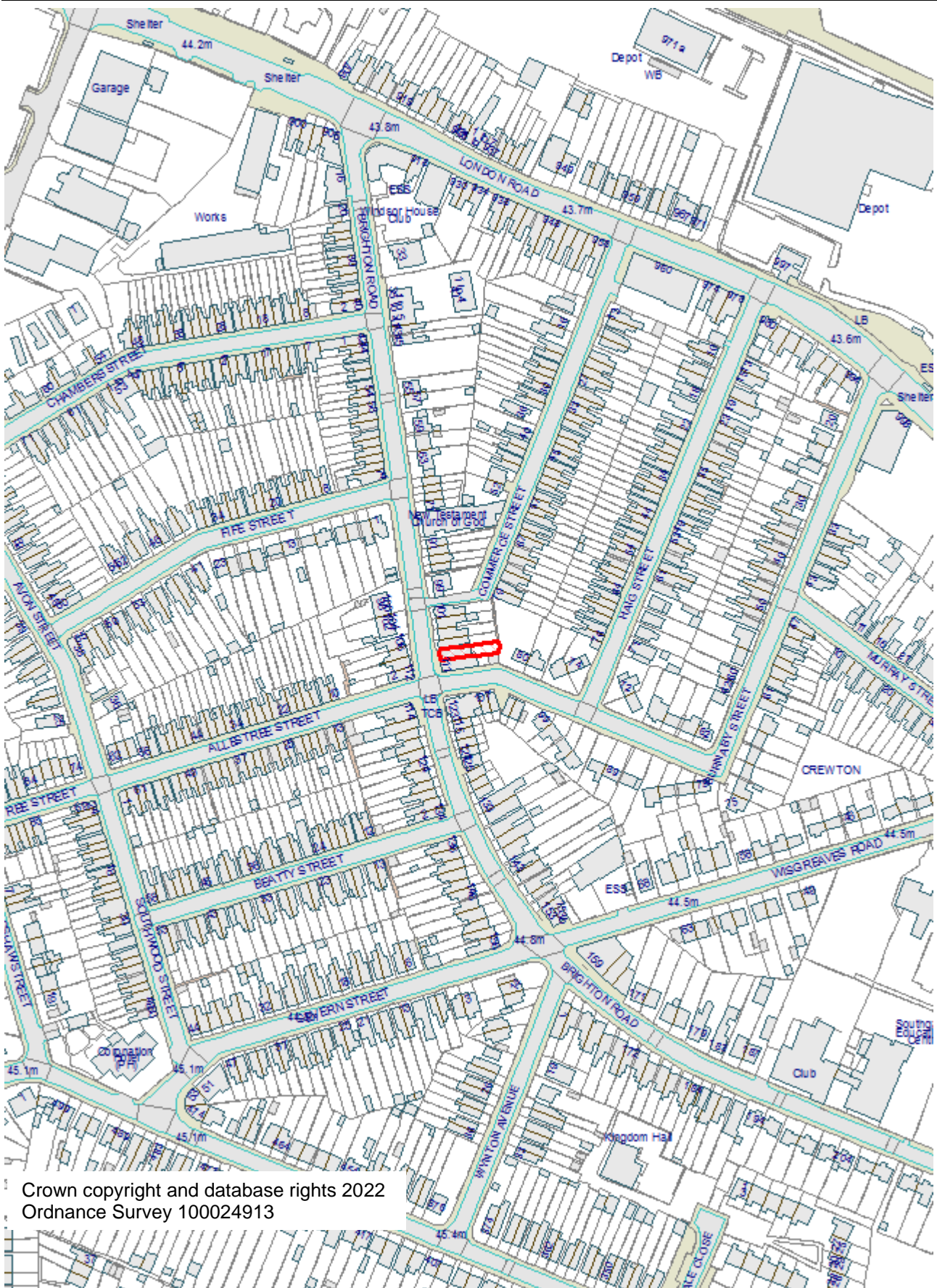
8.5. Application timescale:

The determination period has ended, an extension has been sought from the agent.

Committee Report Item No: 8.4

Application No: 23/00429/FUL

Type: Full



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Ordnance Survey 100024913

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

1. Application Details

1.1 Address: Land on The West Side of Vicarage Road, Mickleover.

1.2 Ward: Mickleover

1.3 Proposal:

Change of use of barns into 3 no. dwellings, together with erection of 6 dwellings and associated ground works.

1.4 Further Details:

Web-link to application:

<https://eplanning.derby.gov.uk/online-applications/PLAN/22/01233/FUL>

Brief description

Planning permission is sought to redevelop this site which covers an area of some 0.64ha. The site is situated on the west side Vicarage Road opposite the Mickleover Library. The site is located in the Mickleover Conservation Area and the grade II listed Manor House, which is also in the applicant's ownership, sits outside of the application site boundary.

The site is served by 2 points of vehicular access off Vicarage Road. The existing barns occupy the south-eastern part of the site to the south of the Manor House and a separate access would serve the proposed barn conversion and a garage block. A vehicular access to the north would serve the proposed new dwellings.

The layout of the application, [as amended](#), seeks permission to convert the existing barns to 3 residential units together with the erection of a detached garage block which would stand perpendicular to the southern site boundary. To the west of the garage block it is proposed to erect 2 dwellings which would be served off a vehicular turning area.

The northern half of the layout would accommodate 4 dwellings laid out diagonally across the site, arranged around a split internal access road. The site layout was revised in order to accommodate key views across the site. These include views of the grade II* listed church of All Saints and Mickleover Manor from the north-west corner when entering by foot. The amended layout also affords views towards the listed farmhouse when entering at the same point and kinetic views to the south-west towards the church from the public footpath crossing the site.

As amended, the proposed new dwellings would be bungalows and a single 2 storey dwelling which would occupy plot 9. The proposed bungalows would include garages, the majority of which would be attached. The overall scheme is designed with a simple elevation form, clean lines and pitched roofs would be complemented by feature chimneys.

It is important for members to note that, in addition to this planning application, there is an accompanying application for listed building consent. This application for listed building consent deals specifically with the proposed conversion of the barns into 3 dwellings and the detailed internal/external changes to the buildings' fabric to facilitate that conversion. It is proposed to deal with the application for listed building consent separately given that the conversion is welcomed and there are no in-principle

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

objections. The agent has responded recently to various detailed points about the conversion, and I am confident that solutions/amendments can be agreed in due course, to secure a sensitive scheme. Safeguarding conditions would also be used, as necessary.

Procedurally, there is no issue in dealing with applications for planning permission and accompanying listed building consents separately.

2. Relevant Planning History:

Nothing of relevance to this proposal.

3. Publicity:

- Neighbour Notification Letter
- 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 consultation process has generated 6 objections to the proposed development, and these include the following concerns:

- The impact of the development on the footpath that runs along the northern boundary and serves Chantry Close.
- The impact of the development and additional traffic to the site.
- The arrangements for boundary treatment and plans for the existing vegetation on site and the impact of this vegetation on sight lines that have been designed to safeguard key views through the proposed development.
- The site access arrangements, and the overall safety arrangements for pedestrians and vehicles.
- The Civic Society considers that this development is far too intensive for the size of the site and will inevitably cause irreversible harm to the setting of the listed 18th century manor farm house.
- Councillor Pattinson has commented on the application and, amongst other things, raises issues about the implications for the character of the area, housing

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

delivery, traffic safety and parking issues. He also formally requested that it be considered by committee.

5. Consultations:

5.1. Highways Development Control:

Recommendation: The Highway Authority has No Objections to the proposals, subject to conditions.

Observations: These observations are primarily made on the basis of the following submitted information:-

Drawing 01005 Rev P5

Transport Technical Note (TTN)

Drawing 2106861-001 Rev A

Drawing 2106861-002 (within the TTN) For clarity and avoidance of confusion, the internal roads within the proposed development will remain as private drives and will not be suitable for future 'adoption' by the Highway Authority.

Vicarage Road is an un-classified road, is subject to a 30mph speed limit and a "no waiting at any time" (double yellow lines) parking restriction across the entire site frontage. There are no recorded Road Traffic Collisions in the vicinity of the site in the last 5 years. The site falls out towards the highway.

Drawings 001 and 002 show alterations to the western kerb line to provide suitable visibility and are therefore of interest to the Highway Authority, these having been raised as potential issues at pre-application stage.

The site has been the subject of a historic pre-application enquiry, where issues of limited visibility of and for emerging vehicles were raised as concerns.

The site is within a sustainable location with easy access to local shops in the nearby Local District Centre, and to public transport opportunities. The applicant/developer proposes therefore to widen the footway fronting the development by approximately 0.6m to permit acceptable visibility splays to be achievable. The drawings indicate that the minimum carriageway width along Vicarage Road will be reduced to 6.3m, and that refuse collection vehicles will be able to access Holly End Road without undue issues.

Delivering Streets and Places (Detailed Design Guidance – Place and Movement) indicates that the standard carriageway width for roads with a bus service is 6.0m.

The Highway Authority considers that (in general agreement with the conclusions of the TTN) the proposals are acceptable and will not have a significant safety or volume of traffic impact upon the adjacent highway network.

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

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

Given that the proposed application site is in a sustainable location and well served by local transport links the Highway Authority considers that it is unlikely that the proposed development will have a significant impact on the highway.

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

Condition 1: No development shall commence unless or until a Construction Management Plan has been first submitted to and approved in writing by the Local Planning Authority. Such a plan shall consider (but not be limited to), measures to prevent contamination of the highways (wheel washing, sweeping etc), parking for materials deliveries, parking for construction personnel and operatives, delivery times and the routing of vehicles associated with the operations. The construction works shall thereafter be carried out in accordance with the approved plan.

Reason: To ensure that suitable arrangements are provided for the construction work to be undertaken without undue effect upon the adjacent highway network, and in the interests of highway safety.

Condition 2: No part of the development hereby permitted shall be occupied until a Travel Plan has been submitted to and approved in writing by the local planning authority. The Travel Plan shall set out proposals (including targets, a timetable and enforcement mechanism) to promote travel by sustainable modes which are acceptable to the local planning authority and shall include arrangements for monitoring of progress of the proposals. The Travel Plan shall be implemented in accordance with the timetable set out in that plan unless otherwise agreed in writing by the local planning authority.

Reason: To promote sustainable travel.

Condition 3: The Development hereby permitted shall not be occupied unless or until the highway improvement works, shown for indicative purposes on drawings 2106861-001 Rev A and 2106861-002 have been carried out to the satisfaction of the Local Planning Authority and the Specification of the Highway Authority.

Reason: To enable vehicles to enter and leave the public highway in a slow and controlled manner and in the interests of general Highway safety.

Condition 4: No part of the development hereby permitted shall be brought into use until all drives and any parking or turning areas are surfaced in a hard-bound material (not loose gravel) for a minimum of 5.5 metres behind the Highway boundary.

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

Condition 5: No part of the development hereby permitted shall be brought into use until the access driveways are constructed with provision to prevent the discharge of surface water from the site to 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.

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

Condition 6: No part of the development hereby permitted shall be brought into use until the visibility splays shown on drawings 2106861-001 Rev A and 2106861-002 are provided.

Condition 7: No gates shall be erected at the access to the development from the public highway.

Reason: In the interests of Highway safety.

A range of informative notes are also recommended, and these have been updated. The application has been re-consulted upon as a result of amendments to the proposal, but this original consultation of September 2022 remain the substantive comments of colleagues.

5.2. Conservation Area Advisory Committee:

Welcome conversion of existing barns. Suggested historic building recording undertaken if permission granted for this part of the proposal. Object still on previous grounds (Oct 2022 CHAC) in terms negative impact on setting of listed buildings and proposals do not preserve or enhance the character or appearance of the conservation area. The setting of the listed buildings are irreparably harmed and there is the loss of an important piece of open space within the conservation area through intensive layout of new dwellings. One member thought might be possible to build couple units to north-east corner. Objection.

5.3. Built Environment:

The latest relevant comments are included below. Previous comments are also included on the application web-pages and can be accessed via the link in Part 1.4.

General site proposals

The proposal is for a freestanding garage block associated with the barn conversions and main former farmhouse as well as the erection of six linked dwellings. Plots 4 and 5 and 6 and 7 are proposed to be bungalows with 8 and 9 proposed to be two storey houses.

The proposals develop a key green open space which in the past was a croft and pasture used in relation to the farm. It now forms an important part of the character and appearance of the Micklover Conservation Area. Early maps show another farm outbuilding running along the southern boundary (which survived, seems to have been demolished since it was listed and is seen on the 1999 google earth photo) suggest a rethink as to whether the garage block or development could be reinstated along its footprint. The green open area as well as part of the character of the conservation area also contributes to the setting of the nearby listed buildings, principally the Manor Farmhouse and barns but also the Church and Micklover Manor. There is therefore a harmful impact as proposals impact negatively on the setting (as part of significance) of these. There are key views across the site from Vicarage Road which have been highlighted, there are also kinetic views from the public footpath (Mickleover 10) which runs northwards through the site from alongside Manor Farmhouse and runs through to Chantry Close. The views of the Church and to Micklover Manor will be obstructed

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

by the proposal. There are also views from the public footpath (Mickleover 9) which runs outside the site along the northern boundary across the site to Manor Farmhouse.

There is strong concern about the principle of development on this area of land with the exception of the area where there was previously a building. The proposed new development is therefore inappropriate in terms of its layout, size, scale, massing and detailed design including incongruous chimney features and buff brick which is alien in the immediate historic context of the listed walls and buildings. The above comments are still relevant.

Interim conclusion – Still relevant There is a degree of harmful impact on the significance of the listed barns as outlined above. The most harm is as a result of the proposed changes by the insertion of staircases to the west barn and the removal of the first floor to unit 2, the impact on the west elevation of the west barn and proposed landscaping. There is a benefit in getting a use into these barns to ensure their repair and long-term retention.

There is a high level of harm on the character and appearance of the conservation area as a result of the development of the former farm croft. As an important piece of open space within the conservation area the proposal to develop this area does not preserve or enhance the character or appearance of the conservation area. The proposal also impacts negatively on the setting of the listed Farmhouse and barns, Church and Mickleover Manor. In terms of the submitted assessment on Heritage Impact (within the Archaeological assessment which also covers impact on the CA and the setting of Listed buildings) there is a difference in view on the magnitude of impact, and therefore significance of effect relating to the impact on the conservation area which has been assessed as being slight in the document when the impact looks to be much more impactful. There is no impact on the war memorial as it can not be seen or experienced from the site.

Policies - The Planning (listed building and conservation areas) Act 1990 section 16, 66 and 72 as regards the statutory duties regarding listed buildings and conservation areas is relevant here. As is E18 and E19 of the saved Local Plan Review (2006), CP20 of the Local Plan – core strategy (2017). Section 16 on Conserving and enhancing the historic environment of the NPPF is also 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) 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: There is harm as a result of the conversion of the listed barns and comments above highlight what is needed to reduce this harmful impact. Suggest amendment to scheme. In terms of the development of the current green open space there is strong concern as it is important within the conservation area and contributes positively to its character and appearance. Where there is this level of harm, this harm

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

should be weighed against the public benefits of the proposal. This weighing is undertaken by the Development Management Case Officer.

5.4. Land Drainage:

The latest comments from colleagues are as follows:

The site will require a sustainable drainage system. It is unlikely that this will be provided by a soakaway, as the Soilsmap map shows the soil type as being 'Slightly acid loamy and clayey soils with impeded drainage'. This can be confirmed by a site investigation. The site will need to have its run-off restricted to greenfield rates, which will be found to be approximately 2 l/s. The necessary storage can be provided by an open pond located in open space, the use of permeable paving with additional underground storage or as a last resort underground tanked storage.

The site requires the submission of calculations for its sustainable drainage, drawings showing the exceedance flow paths, details of the control structure controlling the site run-off, details of the point of discharge, etc. This could be controlled by a condition, but the applicant must demonstrate that sustainable drainage on the site can be achieved before planning permission can be granted.

5.5. Derbyshire County Council Archaeologist:

The latest comments of the Archaeologist are as follows:

The Desk Based Assessment has identified a high chance of archaeology being present on the site dating to the medieval period. The proposed development area also encroaches on what might have been part of the graveyard of All Saints' Church. Previously, my colleague has previously advised that an archaeological remote sensing survey (such as GPR) be undertaken possibly followed by evaluation trenching, depending on the results, predetermination and in my view this recommendation is still valid.

These works should be undertaken in compliance with a WSI prepared by the professional archaeological contractor who will undertake the work and implement in the field, the WSI must be approved by this office in advance of its implementation.

5.6. Derbyshire Wildlife Trust (DWT):

The latest comments from DWT are as follows:

Response

We have reviewed the results of the third nocturnal bat survey at the above site and the submission of Addendum Report (Eyebright Ecology, July 2022). The results of the final bat survey on building B1 confirm the roost status and will inform an application for a European Protected Species Licence from Natural England. As such we refer to our previous correspondence relating to this issue and have no further comments to make regarding the impacts on bats.

Outstanding issue

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

This leaves the outstanding issue in relation to the loss of the neutral grassland within the development site that has not yet been addressed by the on-site mitigation measures.

Recommendations

The Council is recommended to request further information from the applicant with respect to this outstanding issue. It may be possible for the development to make an off-site contribution to support the management and enhancement of grassland habitats elsewhere within Derby (e.g., Mickleover Meadows Local Nature Reserve or Millennium Wood Local Wildlife Site). 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.

Earlier comments from DWT dated 10 October 2022 can be accessed via [this link](#) and it deals with proposed biodiversity net gain in the context of DEFRA's trading metric.

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)

GD5	Amenity
H13	Residential Amenity – General Criteria
E18	Conservation Areas
E19	Listed Buildings and Buildings of Local Importance
E20	Uses Within Building of Architectural or Historic Importance
E21	Archaeology

Saved CDLPR Policies

CP1(a)	Presumption in Favour of Sustainable Development
CP2	Responding to Climate Change
CP3	Placemaking Principles
CP4	Character and Context
CP6	Housing Delivery
CP19	Biodiversity
CP20	Historic Environment
CP23	Delivering a Sustainable Transport Network

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:

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

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

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

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

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

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

6.2. Applications involving the provision of housing:

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

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

Policy CP6 sets a housing requirement of 11,000 new homes over the 17 year Plan period (647 dwellings annually). However, in December 2020, Government amended its 'Standard Method' for calculating Housing Need to include a 35% uplift in the top 20 largest urban areas in England which includes Derby. The standard method housing need calculation for Derby City now stands at 1,266 dwellings a year and this is significantly higher than the CP6 requirement. Therefore, the housing requirement in Policy CP6 is out of date.

A further consequence of the significant increase in housing requirement, brought about by the change to the standard method, is that the Council can no longer demonstrate a 5 year supply of housing land as required by the NPPF (NPPF paragraph 74 (footnote 39) refer). As of April 2023 the supply of deliverable sites is sufficient to provide 3.69 years of dwellings against the annual 1,266 requirement.

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

Paragraph 11d of the NPPF requires that where there is no 5 year supply this means granting planning permission unless –

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

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

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

Other material considerations to weigh in the planning balance are that the Council's housing needs have increased significantly and as such the benefits of delivering housing carry greater weight. Also, the degree to which the Council is unable to demonstrate a 5 year supply is material. A housing land supply of 3.69 years is a significant shortfall and therefore very significant weight should also be applied in favour of applications that can contribute to increasing this supply.

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

7. Officer Opinion:

Key Issues:

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

7.1. Development Plan

7.2. Heritage

7.3. Highways & Access

7.4. Archaeology & Ecology

7.5. Conclusions

7.1. Development Plan

The starting point for all decisions is the Development Plan. The relevant policies are included in Part 6.1 and, as this proposal involves the supply of housing, the policy position included in Part 6.2 should be fully considered. In that context it is important to stress that, as this proposal involves the provision of housing, the application is being considered in terms of its accordancy with NPPF paragraph 11d and other material considerations.

This does not mean that the policies of the Local Plan are ignored but that their requirements can be considered, and given weight, where they accord with the policies of the NPPF.

Other material considerations to weigh in the planning balance are that the Council's housing needs have increased significantly and as such the benefits of delivering

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

housing carry greater weight. Also, the degree to which the Council is unable to demonstrate a 5 year supply is material. A housing land supply of 3.69 years is a significant shortfall and therefore very significant weight should also be applied in favour of applications that can contribute to increasing this supply.

It is also important to note that, as the site is located within the Mickleover Conservation Area and within the setting of a listed building, the Planning (Listed Building and Conservation Areas) Act 1990 section 16, 66 and 72 as regards the statutory duties are engaged.

The detailed components of the scheme are addressed below.

7.2. Heritage

The specialist comments of my colleague in relation to the impact of the proposal on the listed building and other heritage assets are included in Part 5.3. I don't propose to repeat those comments, but the conclusions are as follows:

..."There is harm as a result of the conversion of the listed barns and comments above highlight what is needed to reduce this harmful impact. Suggest amendment to scheme. In terms of the development of the current green open space there is strong concern as it is important within the conservation area and contributes positively to its character and appearance. 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".

Weighing the "less than substantial harm" to heritage assets against public benefits is a policy test required under paragraph 202 of the NPPF.

In this case the public benefits, that are required to be weighed against the identified less than substantial harm, are as follows:

1. The development would provide new residential accommodation in a highly sustainable location. The site is located opposite the library and very close to the Mickleover District Centre which offers a range of shops, services and amenities.
2. The delivery of new residential accommodation would contribute to the challenging housing requirements of the City Council as outlined in Part 6.2 and the 'tilted balance' policy context.
3. In addition to the locational merits of the site, the proposed new build component of the development is, in my opinion, well designed and would afford new occupants a high standard of internal/external accommodation to enjoy.
4. In terms of the construction phase the agent has indicated that a local building firm has been appointed should they be successful with planning – they use local trades ('local' meaning within Derbyshire) and estimate that over the life of the development will create circa. 50 jobs (i.e. groundworkers, joiners, electricians, plumbers, kitchen fitters etc.). As well as using local trades, the Principal Contractor and sub-contractors will seek to utilise apprenticeship schemes where possible.
5. The agent has indicated that, in terms of initial interest, that, due to the location of the site and the easy access to amenities, and given the housing stock proposed, they are expecting high demand. They have already had 5 local enquiries off the back of

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

the planning application having been submitted – stating that they have not done any marketing or advertising to-date due to not having the planning certainty. The enquiries so far have related to the bungalow accommodation.

6. The agent has also estimated that the investment will be in the region of £2.5m.

In terms of the urban design quality of the proposed development, I also consider that the proposed layout and landscaping quality compliment the scale and design of the new dwellings. The modest scale of the proposed development would also be commensurate with the scale of existing neighbouring properties to the east and north of the site on Vicarage Road and Chantry Close.

7.3. Highways & Access

Part 5.1 of your report includes the specialist advice of colleagues in Highways Development Control. My colleagues highlight that the site is within a sustainable location with easy access to local shops in the nearby Local District Centre, and to public transport opportunities.

In terms of on-site detail, the applicant/developer proposes to widen the footway fronting the development by approximately 0.6m to permit acceptable visibility splays to be achievable. The drawings indicate that the minimum carriageway width along Vicarage Road will be reduced to 6.3m, and that refuse collection vehicles will be able to access Holly End Road without undue issues.

Colleagues conclude that the Highway Authority considers that (in general agreement with the conclusions of the TTN) the proposals are acceptable and will not have a significant safety or volume of traffic impact upon the adjacent highway network.

Given that the proposed application site is in a sustainable location and well served by local transport links the Highway Authority considers that it is unlikely that the proposed development will have a significant impact on the highway.

As a result, no objections are raised on highways grounds and, subject to a number of safeguarding conditions to control highways details, policy CP23 of DCLP1 would be met.

In terms of Public Rights of Way (PRoW) and access, Footpath 10 (Mickleover) runs through the site from Vicarage Road in a north-westerly direction and connects with Footpath 9 which sweeps around the northern site boundary. I understand that, whilst Footpath 10 has been largely inaccessible in recent years as a result of restricted access into the site, the footpath has never been formally extinguished. The route of Footpath 10 largely sits on the internal access road that sits between plot nos. 4 and 5 and connects to the pedestrian gate adjoining Chantry Close which is annotated on the amended site layout plan. Therefore, this footpath connection would be restored, and the Council's PRoW officer is satisfied with that arrangement. In my opinion, this is a positive feature within the amended site layout.

7.4. Archaeology & Ecology

Archaeology

The specialist comments from the Archaeologist are included in Part 5.5 and, at the time of writing, dialogue is ongoing with the applicant's consultant with regard to the

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

preparation of a Written Scheme of Investigation (WSI) and potential remote sensing survey. This is needed in advance of any decision as we are advised that this is all the more important given the possibility that a medieval and later graveyard might be present on the site.

I am advised that the application is accompanied by a Desk Based Assessment (DBA) on archaeological potential, which is a good piece of work, and this has provided the consultee with useful information on potential below ground archaeological impacts.

Further work is being completed, and an update on this issue will be provided in advance of the meeting, or orally at the meeting.

Providing the additional investigation work and its output are agreed by the Archaeologist, I am satisfied that suitable safeguarding conditions can be attached and, therefore, saved policy E21 of the CDLPR would be met.

Ecology

The accompanying ecological information and proposed on-site mitigation package has been assessed by officers at DWT. The application has also been supplemented by additional work relating to protected species and the remaining issue of concern for DWT is that the proposed development would involve the loss of existing grassland on-site and the proposed mitigation on-site results in 4.66 habitat units on site post development.

Most of this mitigation (some 80%) is achieved through planting trees, together with some retention of grassland and establishment of gardens as part of the properties. Although the habitat units on site post development is slightly more than the pre-development baseline the inability to satisfy the trading rules of the metric mean that with respect to grassland loss a net gain for biodiversity cannot be achieved under the current scheme.

It is important to note that whilst the Council are gearing up for the introduction of the mandatory Bio-diversity Net Gain (BNG) regime in November of this year (for major projects) the current starting point for ecological enhancement is policy CP21 which spells out the Council's ambitions for biodiversity and geodiversity enhancement.

It states..."all development should ensure the protection, conservation, and where possible, *enhancement* of biodiversity".

In this case the proposal would provide a net gain of some 0.9 habitat units and, therefore, it meets the requirements of policy CP21, as it provides enhancement. I acknowledge that in line with the trading rules of the metric this is of concern to DWT but, in my opinion, the current Development Plan position is met.

In this context I am satisfied that, subject to the conditions outlined in DWT's latest response, the proposal is acceptable on ecology grounds.

7.5. Conclusion

The application has drawn objections on heritage grounds and these concerns have also been voiced by CHAC and the Derby Civic Society. Members will be familiar with the heritage policy tests which are engaged once a level of "less than substantial harm"

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

is reached and the weighing up process that needs to be carried out with the public benefits of the proposal within the umbrella of the tilted balance referred to earlier.

The public benefits are included in Part 7.2 and, in my opinion and judgment, these public benefits outweigh the “less than substantial harm” identified to the setting of heritage assets in this case. I do, however, feel that this case is finely balanced.

The proposal, as amended during its life, would provide high quality living environments for future occupiers and the site layout would include Footpath 10 again through the site and key views to the Manor House and neighbouring Church would be accommodated.

The site is located in a highly sustainable location in easy reach to a range of local amenities for future residents. The majority of the new dwellings would be bungalow accommodation and I anticipate that this would be attractive to people in the local area who are seeking to downsize to a self-contained accessible location.

Overall, there are no objections to the proposed development on access and highways grounds, subject to conditions, and further work is being progressed to address the archaeological issue. The proposal provides some uplift in bio-diversity, in line with DCLP1 policy CP21, and I am satisfied that improvements to the site layout enhance the design quality of the scheme. Therefore, on balance, and bearing in mind the terms of the ‘tilted balance’ I recommend that permission be granted accordingly.

The conditions listed below are in an abbreviated format and will be fleshed out and properly worded before any decision is issued.

8. Recommended decision and summary of reasons:

8.1. Recommendation:

To grant planning permission with conditions.

8.2. Summary of reasons:

The proposal, as amended during its life, would provide residential accommodation in a sustainable location in close proximity to the Mickleover District Centre and other amenities. The proposal would result in “less than substantial harm” to the setting of heritage assets and this level of harm has been considered against the identified public benefits of the proposal. In this case it is considered that those public benefits outweigh the harm, albeit the amended proposal is finely balanced.

Overall, there are no technical objections to the proposed development on access and highways grounds, subject to conditions. The proposal provides some uplift in bio-diversity, in line with DCLP1 policy CP21, and the Local Planning Authority is satisfied that improvements to the site layout enhance the design quality of the scheme.

8.3. Conditions:

1. Standard time limit condition.

Reason: To accord with statutory provisions.

2. Standard approved plans and details condition.

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

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

3. Pre-commencement condition requiring a construction management plan or construction method statement.

Reason: In the interests of safe operation of the highway in the lead into development both during the demolition and construction phase of the development and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

4. Pre-commencement condition requiring a construction environmental management plan

Reason: In the interests of safeguarding biodiversity interest on-site and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

5. Pre-commencement condition requiring potential archaeological work/mitigation.

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

6. Pre-commencement condition requiring a surface water drainage scheme.

Reason: In the interest of providing a sustainable drainage scheme and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

7. Condition tying the permission to the highway improvement works, shown for indicative purposes on drawings 2106861-001 Rev A and 2106861-002.

Reason: To enable vehicles to enter and leave the public highway in a slow and controlled manner and in the interests of general Highway safety and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

8. Pre-occupation condition to control the surfacing material on the access.

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

9. Pre-occupation condition to control the design/content of a landscaping scheme and the biodiversity component of the layout.

Reason: To ensure that the proposed layout is of a high quality design and form and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL

10. Management condition to control the maintenance arrangements for the landscaping and biodiversity component of the layout.

Reason: To ensure that the proposed layout is of a high quality design and form and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

11. Condition requiring protected species (bat) mitigation as outlined in the submitted Ecological Impact Assessment.

Reason: To ensure the proposal accommodates the necessary level of protected species mitigation and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

12. Condition requiring the submission and approval of all surface and external materials.

Reason: To ensure that the overall design is of a high quality and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

8.4. Informative Notes:

A range of informative notes are also recommended from Highways Development Control colleagues.

8.5. S106 requirements where appropriate:

None.

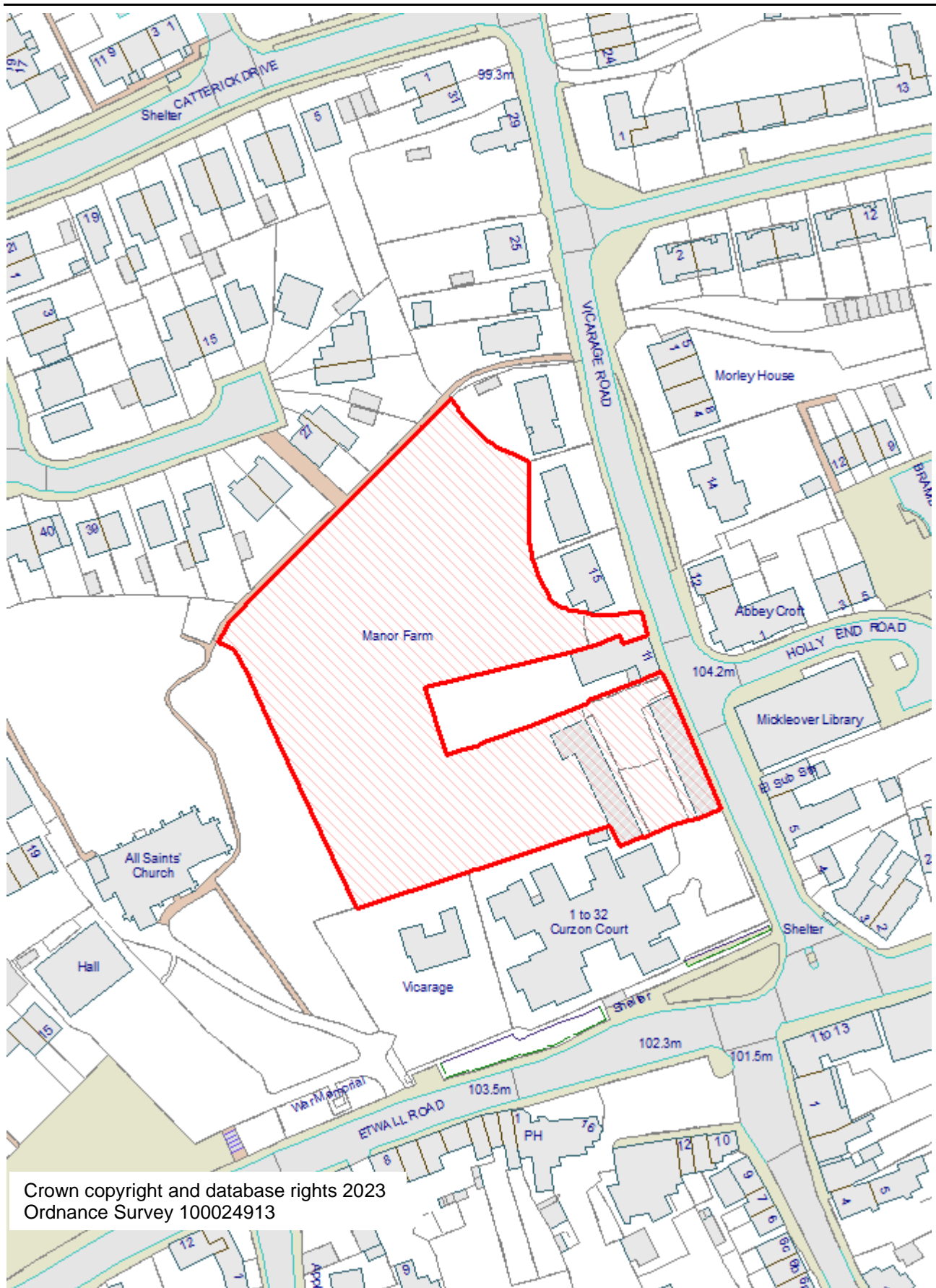
8.6. Application timescale:

To be reported orally.

Committee Report Item No: 8.5

Application No: 22/01233/FUL

Type: FULL



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Committee Report Item No: 8.6

Application No: 23/00822/FUL

Type: Full

1. Application Details

1.1. Address: 26 Highfield Road, Derby DE22 1GZ

1.2. Ward: Darley

1.3. Proposal:

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

1.4. Further Details:

Web-link to application:

<https://eplanning.derby.gov.uk/online-applications/PLAN/23/00822/FUL>

Brief description

26 Highfield Road is a residential plot on the west side of the street and flanked by residential plots to the north and south. A three-storey semi-detached house stands towards the site's eastern boundary with the remainder of the site in use as garden space. The boundaries of the Strutts Park Conservation Area and the Derwent Valley Mills World Heritage Site Buffer Zone lie approximately 70 metres to the south of the site and the extents of the two areas are roughly aligned at this point. The locally listed Provost House stands approximately 30 metres to the south-east on the opposite side of the street, and the grade II listed 48 & 50 Kedleston Road stands at the junction of Highfield Road and Kedleston Road approximately 120 metres to the south.

Permission is sought for a change of use of the site from a house in multiple occupation (HMO) housing six occupants in six bedrooms in Use Class C4, to a HMO housing eight occupants in eight bedrooms via conversion of the existing ground floor living room and dining room to bedrooms. See application documents for details.

Relevant Planning History:

Application No:	23/00049/CLP	Type:	Certificate of Lawful Development
Decision:	Approved	Date:	9.3.2023
Description:	Single storey extension to dwelling house		

Application No:	23/00047/CLP	Type:	Certificate of Lawful Development
Decision:	Approved	Date:	27.2.2023
Description:	Change of use from dwelling house (Use Class C3) to a house in multiple occupation for a maximum of six occupants (Use Class C4)		

Application No:	22/01168/FUL	Type:	Full
Decision:	Refused	Date:	23.11.2022

Committee Report Item No: 8.6

Application No: 23/00822/FUL

Type: Full

Description:	Change of use from dwelling house (Use Class C3) to an eight bedroom (eight occupant) house in multiple occupation (Sui Generis) together with a single storey rear extension
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2. Publicity:

- Neighbour Notification Letter
- Site Notice

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

3. 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.

15 objections, including one each from Councillors Martin, Repton and Swan, have been received and raise the following concerns:

- Similarity to previously refused application;
- Work on site has already commenced;
- Inadequate communal facilities;
- Increased demand for on-street parking, increased congestion;
- Harm to the character of the building and surrounding area, including the nearby Strutts Park Conservation Area, World Heritage Site Buffer Zone;
- Increased activity and disturbance;
- The loss of a relatively large single-household dwelling and the proliferation of similar developments nearby;
- The potential behaviour of residents;
- Overdevelopment of the site;
- The quality of accommodation to be provided with regard to available space and overcrowding;
- The potential for ad-hoc bin storage;
- The impact of the permitted change to six occupants has not been assessed;
- Consideration should be given to retention of the building's historic features;
- Lack of benefit to the local community

Committee Report Item No: 8.6

Application No: 23/00822/FUL

Type: Full

- In-principle opposition to the use of the building by multiple households.

4. Consultations:

4.1. Highways Development Control:

In highway terms, the proposals are much the same as those for historic application 22/01168/FUL which was refused by Members at Committee (on amenity grounds).

There have been no policy or highway standards changes since refusal which would alter the view of the Highway Authority ~ aside from the fact that the development now has lawful use of 6 occupants.

As the site is already in occupied use for 6 persons, the only consideration that can be given is in respect of the two occupants.

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

This shows that for a 1 room non-owner occupied flat (which is the best equivalent to a room in a House in Multiple Occupation) that the average car ownership is 0.3 vehicles. As such, for two additional occupants, this would equate to 1 vehicle, (this is by no means a given).

It is acknowledged that on-street parking is at a premium in this area; however, there is also unrestricted on-street parking in the vicinity and the site is in a sustainable location, within walking distance to the City Centre shops and amenities; and is therefore in close proximity to local transport links.

Para 111 of the National Planning Policy Framework states that “Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

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

Whilst the scheme would potentially increase demand for on-street parking spaces, it remains the view of the Highway Authority that it would not be possible to argue that the scheme would lead to ‘unacceptable impacts’ to highway safety.

4.2. Resources and Housing (HIMO):

There is... sufficient kitchen, communal and bathroom provision as required in a HMO.

Relevant Policies:

4.3. Relevant Policies:

Committee Report Item No: 8.6

Application No: 23/00822/FUL

Type: Full

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

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

CP1(a)	Presumption in Favour of Sustainable Development
CP3	Placemaking Principles
CP4	Character and Context
CP6	Housing Delivery
CP20	Historic Environment
CP23	Delivering a Sustainable Transport Network
AC9	Derwent Valley Mills World Heritage Site

Saved CDLPR Policies

GD5	Amenity
H13	Residential Development – General Criteria
E18	Conservation Areas
E19	Listed Buildings and Buildings of Local Importance

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

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

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

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

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

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

6.2. Applications involving the provision of housing:

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

Committee Report Item No: 8.6

Application No: 23/00822/FUL

Type: Full

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

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

A further consequence of the significant increase in housing requirement, brought about by the change to the standard method, is that the Council can no longer demonstrate a 5 year supply of housing land as required by the NPPF (NPPF paragraph 74 (footnote 39) refer). The current supply of deliverable sites is sufficient to provide 3.69 years of dwellings against the annual 1,255 requirement.

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

Paragraph 11d of the NPPF requires that where there is no 5 year supply this means granting planning permission unless –

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

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

Other material considerations to weigh in the planning balance are that the Council's housing needs have increased significantly and as such the benefits of delivering housing carry greater weight. Also, the degree to which the Council is unable to demonstrate a 5 year supply is material. A housing land supply of 3.69 years is a significant shortfall and therefore very significant weight should also be applied in favour of applications that can contribute to increasing this supply.

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

5. Officer Opinion:

Key Issues:

Committee Report Item No: 8.6

Application No: 23/00822/FUL

Type: Full

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

7.1. Principle of development & history

7.2. Amenity

7.3. Highways

7.4. Other matters

7.5. Planning balance & conclusions

7.1. Principle of development & history

A full application (22/01168/FUL) for the use of the site as an eight-occupant HMO and a single storey extension to the rear of the house was refused by this committee in November 2022 for the following reason:

“In the opinion of the Local Planning Authority, the proposal would have a detrimental impact on the character of the immediate area and the residential amenities enjoyed by existing neighbours; in terms of increased activities, associated disturbance and the over-intensification of the use of this dwelling house. The proposal would also serve to increase pressure on existing on street parking levels on surrounding highways which would also, as a result, detrimentally impact on neighbouring amenities. The proposal is therefore contrary to saved policy GD5 of the adopted City of Derby Local Plan Review and the over-arching guidance in the National Planning Policy Framework which seeks to protect the amenities of individuals who are affected by the development of land and buildings”.

The principal difference between that application and this one is that the conversion of the house to a HMO with a maximum of six occupants has since been established as lawful, as has the single storey extension built at the rear of the building through two separate Certificate of Lawful Development applications (see Relevant Planning History above). The use of the site for a six-occupant HMO constitutes a particularly strong fallback position in this case, particularly as it is understood that conversion works are significantly advanced. The previous refusal is also a material consideration and of the issues raised during the course of the previous application, focusses on the character and amenity impacts of the proposal resulting from activity, disturbance, and parking pressure. The assessment of this proposal hinges on the impact of an additional two occupants in the property, on the residential amenity of the local area. In the terminology of the previous reason for refusal, whether or not the increased activities, associated disturbance, and increased parking pressure on surrounding highways resulting from an additional two occupants would result in an over-intensification of the HMO use with an unacceptably detrimental impact on the character of the immediate area and the residential amenities enjoyed by existing neighbours. The ability of the building to accommodate an extra two occupants is also material, as are the implications of the proposal for nearby heritage assets.

7.2. Amenity

Committee Report Item No: 8.6

Application No: 23/00822/FUL

Type: Full

Saved policy H13 Residential Development – General Criteria requires development to create a satisfactory form of development and relationship to nearby properties [and] a high-quality living environment". This policy is reinforced by the paragraph 130 of the NPPF, which states that "planning policies and decisions should ensure that developments [create] a high standard of amenity for existing and future users". Saved policy GD5 Amenity prohibits "unacceptable harm to the amenity of nearby areas" from the effects of loss of privacy or light, massing, emissions, pollution, parking and traffic generation.

Concerns have been expressed around the proposed use of the site in terms of the concentration of people it represents and the consequent implications for the living environment that would be created and the potential for overdevelopment of the site and harm to the character of the street through changes to its social composition and increased activity associated with the proposed development. It is also suggested that the last of these would negatively affect the setting of the nearby heritage assets. The house is relatively large one and the individual rooms are also sizable. Main habitable rooms would have adequate levels of light, outlook and ventilation, and residents would have access to outdoor shared amenity space which is again reasonably large.

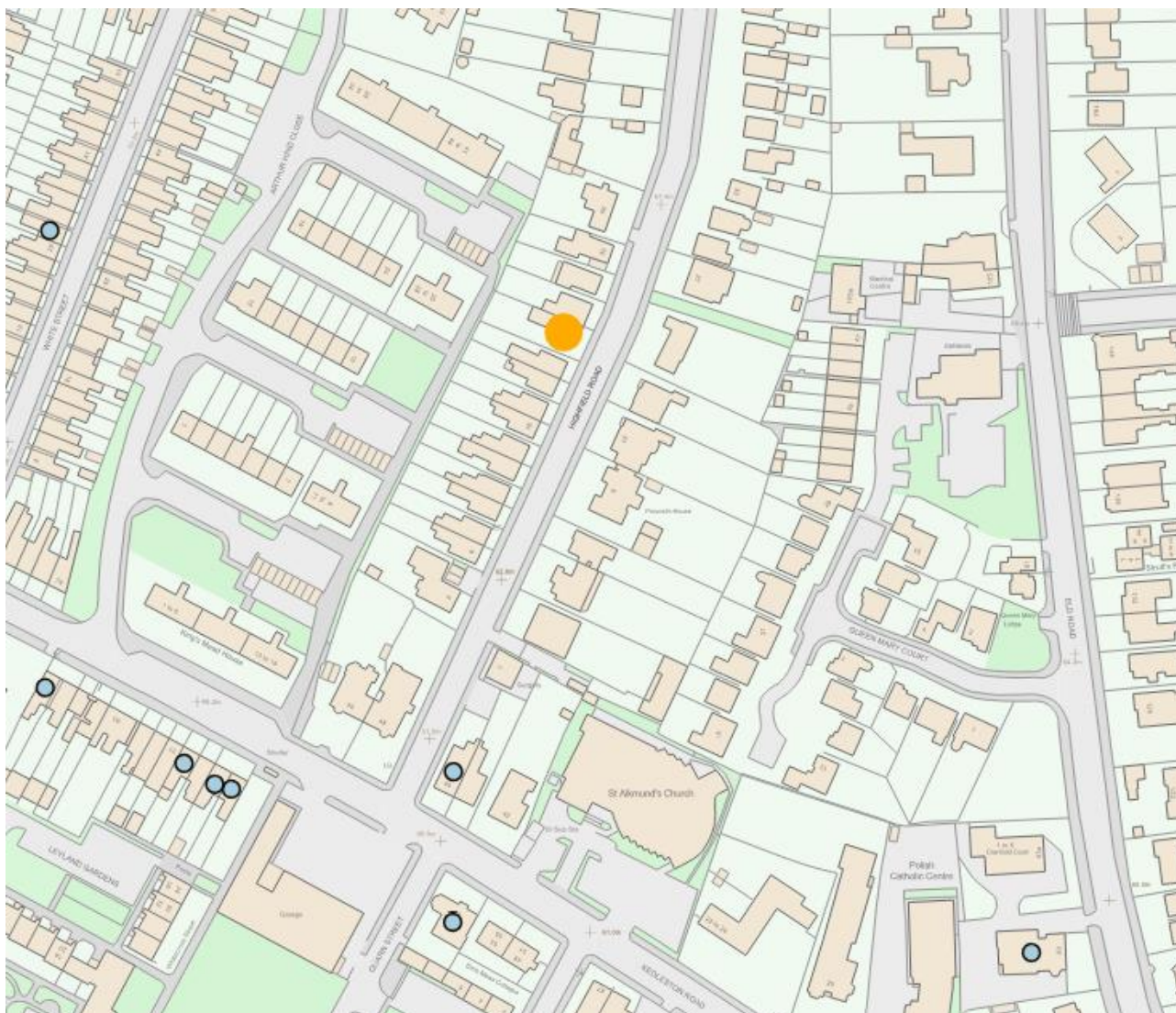
No objections have been raised to the proposed development by the Council's Housing Standards Team and it is considered that the development has the capacity to provide a high-quality living environment for the future occupiers as required by local and national policy. The proposed development would intensify the existing use of the site and it is likely that activity levels, vehicle movements, noise and parking demand would all increase, although the amount of additional accommodation would be proportionally low. Although additional activity and likely increased parking pressure and traffic may result, the effect of two additional people beyond the fallback position (a six-occupant HMO) living in the building would be minor with regard to these issues. I see no reason to assume that the social cohesion of the street would be adversely affected or that community safety would be harmed by the proposed use of the building. Given that no external changes to the building or to the wider site are proposed, to argue that the setting of the nearby listed buildings, conservation area or the World Heritage Site would be significantly affected by intensified residential use of the dwelling would not be a sustainable position in my opinion.

On the subject of the area's character, according to the Council's register of licensed HMOs which records licences issued for HMOs of five occupants or more, there are a small number of licensed HMOs in the immediate area (see map below). It would therefore be difficult to reasonably argue that there is currently a proliferation of large HMOs locally and therefore that this particular conversion would significantly alter the area's character. Regarding the question of precedent, each individual planning application is judged on its merits and any future proposals for similar development would be subject to the question of the cumulative impact of such developments. In this particular case the evidence for harm arising from cumulative impact of large HMOs in this location is not strong.

Committee Report Item No: 8.6

Application No: 23/00822/FUL

Type: Full



Licensed HMOs in the immediate area shown as . Application building shown as 

A condition is recommended below limiting the number of occupants to eight in the interests of residential amenity. My overall opinion is that the implications of the proposed works for visual and residential amenity and the historic environment are acceptable, and that the proposal would comply with local and national policy, with particular reference to saved policies H13, GD5 and E18 of the City of Derby Local Plan Review, adopted policies CP3, CP4, CP20 and AC9 of the Derby City Local Plan (Part 1) and sections 12 & 16 of the NPPF.

7.3. Highways

Adopted policy CP23 Delivering a Sustainable Transport Network seeks to ensure that new development provides appropriate levels of parking. Paragraph 110(b) of the NPPF encourages local planning authorities to ensure that safe and suitable access can be achieved for all users.

Committee Report Item No: 8.6

Application No: 23/00822/FUL

Type: Full

It is acknowledged that on-street parking is at a premium in this area. However, the site is in a sustainable location, reasonably close to the city centre, local shops and services, and to public transport links. Although it is also acknowledged that the scheme could potentially increase demand for on-street parking spaces in nearby streets, it is the view of the Highway Authority that it would not be possible to argue that the presence of two additional residents beyond the fallback position of 6 occupants, even ones owning cars, which is by no means a given, would lead to “unacceptable impacts” on highway safety or in combination with surrounding land uses would result in an unacceptable residual cumulative impact upon the surrounding highway network. No cycle parking or bin storage is shown on the site plan. Given that there should be available space to provide both on the site and the lack of vehicle parking capacity in the vicinity, a condition on the subject is recommended below. I conclude that the proposal would meet the transport requirements of adopted policy CP23 of the City of Derby Local Plan (Part 1) and paragraph 110(b) of the National Planning Policy Framework.

7.4. Other matters

Of the matters raised in responses to publicity not already addressed, the behaviour of future residents of the building are outside the scope of this assessment. The identification and protection of historic buildings is controlled via national and local listing processes and more information of which can be found on the Council’s website and via Historic England.

7.5. Planning balance & conclusions

The occupation of the application site by eight people is likely to result in an increase in activity, parking demand and traffic generation both compared with the fallback position of a six-occupant HMO. The application of the tilted balance effectively raises the bar for refusal of residential development, meaning the test for a refusal of this proposal is whether the adverse effects of granting permission would “significantly and demonstrably outweigh the benefits” of doing so. The benefit in this case is a small increase in residential accommodation in the context of a significant shortfall. The adverse effects would be those identified above insofar as they apply to an additional two people beyond the fallback position of a six-occupant HMO.

My opinion, as outlined above, is that the adverse effects attributable to the development would be minor and would not significantly or demonstrably outweigh the benefits inherent in increasing the City’s housing supply by even a small amount.

Overall, the proposal is considered to be acceptable with regard to character, amenity and highway safety. It is considered that all relevant planning matters have been adequately addressed and the proposal reasonably satisfies the requirements of the adopted Local Plan policies as included within this report, with the tilted balance, and the reason for refusal of the previous application for planning permission on the site being taken into consideration.

8. Recommended decision and summary of reasons:

8.1. Recommendation:

To grant planning permission with conditions.

Committee Report Item No: 8.6

Application No: 23/00822/FUL

Type: Full

8.2. Summary of reasons:

The proposed intensification of residential use may result in increased activity, parking pressure and traffic in the vicinity. However, these adverse effects would not outweigh the benefits of increasing the City's residential accommodation by even a small amount especially when the lawfully established fallback position of a six-person HMO is taken into account. The proposal is therefore considered to be acceptable in principle and with specific regard to the provision of a high-quality living environment, impacts on residential amenity and the local highway network and on the character and appearance of the site and wider area.

8.3. Conditions:

1. Standard three-year time limit condition

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

2. Standard approved plan reference condition

Reason: For the avoidance of doubt.

3. Cycle and bin storage provision

Reason: In the interests of sustainable transport and visual and residential amenity and to ensure cycle and bin storage is retained for the life of the development.

4. Restriction to eight occupants

Reason: In the interests of residential amenity.

8.4. Informative Notes:

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

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

8.5. Application timescale:

The agreed determination period has been extended until the 14th of September.

