

## **Committee Report Item No: 2**

**Application No:** DER/03/09/00331 & 00332

**Type:** LBA and Full

1. **Address:** The Hippodrome, Green Lane and Crompton Street Car Park
2. **Proposal:**  
Partial demolition of the Hippodrome and formation of multi-storey car park, erection of retail unit, retail kiosk, offices and 3 apartments (as amended).

3. **Description:**  
The applications seek listed building consent and planning permission to substantially alter the existing Hippodrome building and adjoining surface car park to create a multi-storey car park, including the erection of a retail unit, retail kiosk, offices and 3 apartments. The proposed residential accommodation would front Crompton Street.

Both applications have been with the City Council since April 2009 and during that time there has been extensive consultation, re-consultation and ongoing dialogue about the proposals and the appropriate policy tests with regards to the proposed substantial alterations to a listed building. The application is accompanied by a number of documents which include structural reports, statements relative to PPG15 and PPS5 policy criteria, Transport Assessments, Design and Access Statements and other relevant information. Various documents have been expanded upon and amended during the life of the applications as a result of ongoing consultations. The following links provide Members with access to the application details on the Council's web-pages:

<http://eplanning.derby.gov.uk/acolnet/planningpages02/acolnetcgi.gov?ACTION=UNWRAP&RIPNAME=Root.PgeDocs&TheSystemkey=87686>

<http://eplanning.derby.gov.uk/acolnet/planningpages02/acolnetcgi.gov?ACTION=UNWRAP&RIPNAME=Root.PgeDocs&TheSystemkey=87687>

The Hippodrome is a grade II listed building and adjoins residential properties and an open car park at the junction of Green Lane and Macklin Street. To the north of the site on Macklin Street are commercial properties which lie to the south of the Becket Well Mixed Use Regeneration Opportunity area.

Members will be fully aware that the building is currently fenced off as a result of damage to the building that has resulted in the loss of a significant part of the south elevation (overlooking the Crompton Street car park) and a substantial part of the rear elevation. In excess of half the roofed area of the building has also been lost. The applications propose further demolition works to facilitate the proposed development.

A number of structural reports and assessments accompany the applications. It is suggested that the upper balconies were unsafe even before the recent damage and major redesign and structural strengthening would be needed to bring the balconies up to modern standards. Much of the more unique historic interest of the building has been lost, most notably the fly tower and its equipment.

The Design and Access statement accompanying the application notes that *"Given that reuse as a theatre (or at the very least, entertainment use) is not a viable option, two key problems still affect the ongoing use of the site. The existing walls were designed to suit a theatre use and have limited openings (except to the back stage*

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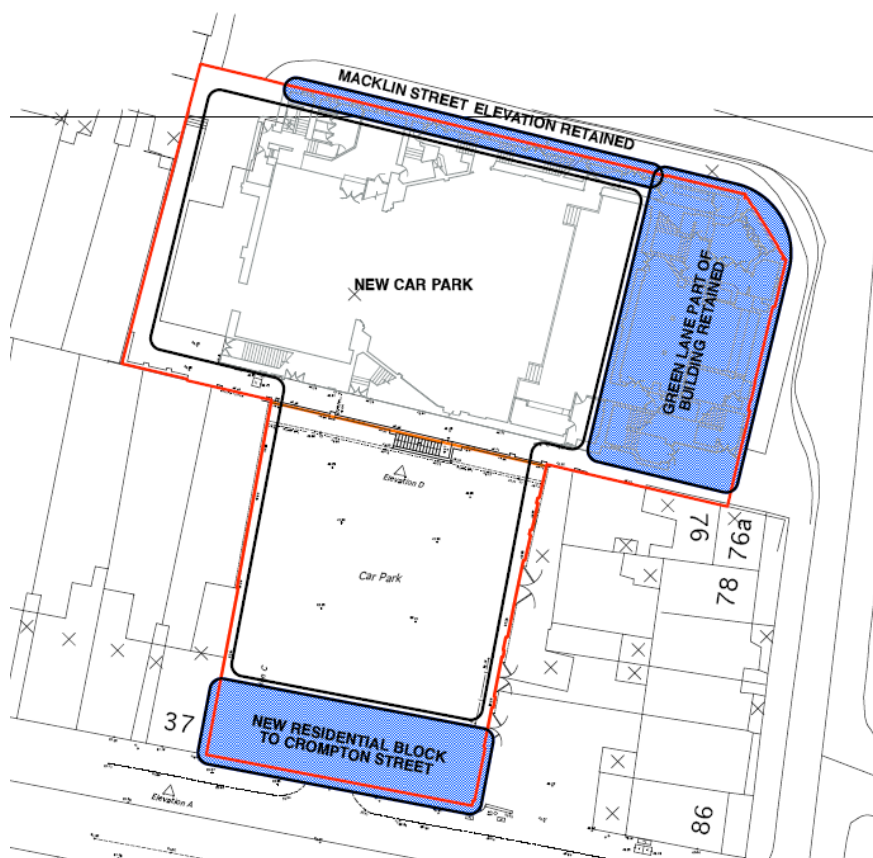
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*WCs and changing rooms area) that do not readily lend themselves to the reuse of the building for many of the more obvious mix of city centre uses. Some 9% of the Macklin Street wall to the auditorium element of the building is currently openings. This compares with a requirement for approximately 16% openings for a residential development built to modern standards and 20% for a modern office development. Even if the elevations could be redesigned with additional windows the possible uses of the site are not considered to be economically viable. Assessments for reuse as office and residential have been conducted - prior to the current economic downturn - and shown to be unsustainable even in that more benevolent economic climate. It is reasonable to presume that this will not change in the foreseeable future."*

The applicant seeks to retain those parts of the building that have not been lost; retain those elevations of the building which contribute to the local street-scene; find a use for the main part of the building that will allow the retained elements to be retained in as unaltered form as possible; repair the urban fabric of Crompton Street; and contribute to the regeneration of the immediate area.

The largely intact section of the building fronting Green Lane exists principally across four floors including the main ground floor entrance level. There is also the later addition of the projection room up at roof level. It is proposed to remove the projection room as it is in poor condition; it was a later addition to the building and access to it would not satisfy modern legislation regarding means of escape in case of a fire or access for all.

The plan below is reproduced to give Members an overall indication of the principal components of the proposed redevelopment scheme and the retained elements of the existing building.



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The proposed central opening off Green Lane affords level for level access into the ground floor of the building. It is proposed to use the ground floor space as a coffee shop. The remainder of the ground floor is given over to an entrance foyer for the first and second floors; a newsagent kiosk and a staircase / lift serving the proposed development on the rest of the site. The entrance foyer is considerably larger than that normally associated with a small amount of upper floor commercial space. Access for all is provided for by means of a proposed lift inserted in the existing stairwell. The kiosk is accessed directly from the main pedestrian route in and out of the car park. The upper floors form two small office suites capable of being utilised as one unit or as two separate units as required.

Given the residential nature and scale of Crompton Street, the proposals include the provision of two storey residential accommodation to this section of the site. Behind the proposed Crompton Street residential block lies the multi storey car park with three floors above ground. The structure of the car park has been designed to achieve as low a floor to floor height as low as possible (2.5m).

The proposed elevations have been designed with principally solid brick walls extending from Crompton Street towards the Hippodrome with louvered sections of cedar cladding. Amendments to the design and layout of the proposed car park include the following components:

Revisions to the elevations on the proposed Crompton Street frontage to include the single vehicular egress from the proposed car park onto Crompton Street. The proposed egress would be sited on the left hand side of that elevation and the fenestration would be amended to accommodate the internal reconfiguration of the proposed car park. Part of the proposed pitched roof would be stepped down at ridge level and the proposed end gable would be retained. The internal amendments include the removal of a one bed flat that previously occupied part of the Crompton Street frontage and the inclusion of internal ramps, from the proposed levels 10 and 11, which would channel into the single egress onto Crompton Street. The internal reconfiguration of the proposed car park would involve the loss of 20 spaces. The provision of a single point of access from Macklin Street and the removal of the egress point that has been re-designed for Crompton Street. The Macklin Street kerb line would be re-modelled to widen the street and accommodate the proposed left turn access lane.

#### **4. Final Comments from Applicant**

The applicant's conservation consultant has submitted an overarching summary bringing together his concluding comments. This statement of case offers commentary on the points of substance raised by English Heritage and other objectors and is reproduced in totality below:

##### **Background**

This Planning Application relates to the conversion of the derelict shell of the former Hippodrome Theatre to retail and office units, a multi-storey car park, and new housing on Crompton Street. It was submitted in December 2008 and is still not determined.

The reasons for the derelict state of the building are now common knowledge. The building suffered from lack of maintenance and accumulating structural defects for

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many years due to under-use, following its failure as a theatre 50 years ago and subsequently as a bingo hall in 2006. The roof suffered serious storm damage in Summer 2007 whilst the building was being stripped of asbestos in preparation for a new tenant, and this was aggravated by fire damage to the stage and auditorium in Spring 2008. Stabilisation work to the roof in compliance with an Urgent Works Notice resulted in its partial collapse, and subsequent extensive demolition work was carried out under the direction of Derby City Council.

At the date of submission the building was already derelict. The Application has been under consideration for 18 months and during that time the structure has deteriorated further due to natural weathering and is now in a critical condition. It is now **ESSENTIAL** that the Application is determined as quickly as possible, so that the structure can be made safe and converted to viable usage.

Processing of the Application has been time-consuming due to the Grade II Listed status of the building and the need to satisfy the Planning Authority and English Heritage of the merits of the Application, requiring further extensive submissions and structural appraisals in particular. Widespread professional input has demonstrated the extremely poor condition of the remaining structure, and the difficulties of preserving it or even working within it are now beyond reasonable doubt.

In addition, the Application has had to cope with a great deal of adverse public comment, mostly based on misinformation, which has had to be addressed through further statements. In particular, allegations had arisen that the condition of the building was attributable to deliberate harm or neglect by the owner in the hope of obtaining consent for demolition; this has been formally considered in court and accepted by the City Council as being totally unfounded. The Applicant has consistently striven to find a new viable use for the building and continues to do so with the derelict shell.

### **Compliance with Conservation Policy**

At the time of submission the Application was being considered within the scope of the DoE Planning Policy Guidance Note 15 ('PPG15'). This has been replaced recently by Planning Policy Statement No 5 ('PPS5') against which the Application must now be judged. The introduction of PPS5 clarifies many points within PPG15 which were somewhat unclear and strengthens the argument for the Application.

**Policy HE 9.1** requires clear and convincing justification for any *loss affecting a designated heritage asset*. The Applicant and his professional advisers consider that more than enough justification has been given, in the form of the numerous reports and structural assessments submitted over the past 18 months. The Applicant has worked closely with the Planning Officer to ensure that every objection or query received in response to the Application has been considered in detail and answered. Furthermore, the greater emphasis in PPS5 on the alternative public benefits to be weighed against any loss (- see Policy HE 9.2 (i) below -) now adds strength to the justification.

It is fundamental to this Application, or to any other proposal for the future use of the building, to understand that for structural and safety reasons further loss **will be inevitable** in the process of stabilisation and conversion, due to the precarious nature of the structure in its current half demolished and collapsed state. Debate as

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to whether this loss should or should not be allowed is purely academic. Otherwise the proposed scheme keeps further loss to a minimum.

**Policy HE 9.2** applies where the application will lead to *substantial harm to or total loss of significance*.

Clearly the current Application does not lead to **total loss of significance** since the proposed scheme would still retain many elements of value, especially the frontage building on Green Lane and the elevation to Macklin Street. The repair and reuse of the frontage building would indeed represent a positive conservation gain.

Whether or not the current Application causes **substantial harm** is debatable. As previously stated, the main features of the building which will be lost under the current Application (- notably the proscenium arch and the balconies -) have already been badly damaged and are beyond economic repair. They are already effectively 'lost'.

All the advice received from the Applicant's consulting engineers, building consultants, scaffolding specialists, demolition specialists and Health and Safety consultants confirm that it is not practicable or possible to retain or repair these areas since there is no method of safe access available that does not avoid their further demolition. The District Valuer's report states that *'The property as it stands today is largely a shell and has been significantly damaged. At the date of my inspection only the front (approximately one quarter) portion of the building with a frontage on to Green Lane and Macklin Street appeared to be salvageable.'*

The Applicant therefore submits that **no** substantial harm will be involved over and above that which has already occurred or will follow as the inevitable aftermath of the collapse and partial demolition. Even accepting that Policy HE 9.2 **is** deemed applicable, the criteria of the policy have been complied with, as outlined below.

**Policy HE 9.2 (i)** states that planning authorities should refuse consent *'unless it can be demonstrated that the substantial harm to or loss of significance is necessary in order to deliver substantial public benefits that outweigh that harm or loss'*. Under PPS5 such a demonstration now constitutes an acceptable justification in its own right.

The wider townscape and public benefits of the proposed scheme have been illustrated in the various submissions already made by the Applicant over the past 18 months. It would remove a growing threat to public safety; remove an eyesore which is blighting the area; bring new life to the Green Lane frontage by creating new shops and business premises; help reinstate the frontage of Crompton Street with new housing; and enable the new Green Lane traffic circulation system to be implemented in the near future. The scheme would also provide much needed car parking, as identified in the Derby Cityscape Masterplan.

In addition, the Practice Note to PPS5 includes a provision permitting harm or loss where *'a case can be made..... on the grounds that the designated heritage asset is genuinely redundant itself and is preventing all reasonable uses of the site in which it sits'*. The Hippodrome Theatre became redundant as a theatre in 1959 and any attempts to revive it as a theatre have failed, even before the building was severely damaged by storm in 2007 and fire in 2008. It has only survived into the 21st century through partial and uneconomic use as a bingo hall, making little or no use of its

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design as a theatre. Its continued existence without adaptation prevents an alternative use offering the advantages already described.

**Policy HE 9.2 (ii)** lists four criteria (a-d) which have to be demonstrated in order to justify harm or loss where the public benefits outlined above are deemed insufficient justification in their own right.

Policy HE 9.2 (ii) a requires a demonstration that *'the nature of the heritage asset prevents all reasonable uses of the site'*.

In respect of its structural condition alone this is patently obvious, as has been demonstrated in numerous reports already forwarded and prepared by the Applicant's property agents, structural engineers, asbestos specialists, scaffolding specialists, Health and Safety Consultants, and the Health and Safety Executive. The building is in such a delicate condition that it is highly dangerous to enter the site at all, let alone work on it or convert it to new use.

Since the interior of the building is too dangerous to enter stabilisation can only be done from the outside by long-reach machine, precluding temporary shoring, propping or delicate internal operations which might otherwise allow more fabric to be retained. The building is seriously contaminated by asbestos and asbestos dust which needs to be sealed in and removed by remote operation. Further loss will therefore be inevitable in order to create a safe working environment.

Policy HE 9.2(ii) b requires a demonstration that *'no viable use of the heritage asset itself can be found in the medium term that will enable its conservation.'* This refers to a period when market conditions are poor, and where the building might be 'mothballed' or put to temporary use until such time as economic conditions improve and market demand might emerge, although this would still not ensure the re-use of the building (see here the last paragraph of notes on Policy HE 9.3 below).

It would be totally unrealistic to require the building to remain any longer in its present deteriorating state in the hope of a market recovery, and totally unrealistic to consider stabilising and mothballing it, which in any event would require the further losses already under consideration, with no immediate gain and at huge financial cost. Neither is there any conceivable temporary use for the collapsed structure as a 'holding exercise'. The structure has reached the point where huge resources are needed, and can only be justified through conversion to long term use.

The possibility of finding a longer-term use is dealt with under Policy HE 9.3 below.

Policy HE 9.2 (ii) c requires a demonstration that grant funding is not available to save the building. The policy guidance relates primarily to intact historic buildings which might attract heritage funding for their intrinsic historic value per se. In the case of the Hippodrome Theatre the original heritage value has been much reduced, and will be further lost through inevitable stabilisation work, leaving scope only for an extensive rebuild, which has been variously estimated to cost between £14.5 and £16 million. Any conservation grant aid towards its restoration can therefore be assumed to be non-existent or insignificant.

The Heritage Lottery Fund (as the only potential funder for a scheme of such magnitude) has advised that grant aid could only be offered to a scheme which was acceptable to the HLF, and on condition that the proposers contribute 25% of the cost. The City Council has declined to contribute towards the building for theatrical

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use. However, only a potential developer of the building is in a position to explore and test the various sources of grant aid which might be available for an alternative use and determine its viability.

The policy also requires a demonstration that charitable or public ownership is not possible. This possibility has been pursued as far as it reasonably can, as demonstrated in the reports produced already. Attempts to find new charitable uses to save the building per se are barely relevant in this instance since it has been substantially lost. Derby City Council has no interest in the building, and whilst the owners have been receptive to all serious expressions of interest in it for theatrical use all attempts to raise funding for such use appear to have failed.

Policy HE 9.2 (ii) d requires a demonstration that *'the harm to or loss of the heritage asset is outweighed by the benefits of bringing the site back to use.'* This has been covered under HE 9.2 (i) above and needs no more explanation.

**Policy HE 9.3 requires appropriate marketing** to try to find if there is an appropriate and viable use for the building as it now stands. The Applicant has submitted reports showing that the building was known to be available as early as 2003 when proposals emerged to revive it as a theatre; however this and other proposals failed to materialise, even in a better economic climate and with the building in intact condition.

Further marketing on a national scale was carried out by the owners during the period April 2007 to January 2008, with no expressions of interest received. In response to reservations from English Heritage further marketing was commenced in December 2009 and still continues, but with total lack of serious interest, and in an era of economic decline. It falls to the Planning Officer and the Planning Committee to decide whether the marketing carried out has been 'appropriate' in its form and duration.

The extreme difficulty of attracting any interest in the building has been described in various reports from reputable Property Agents, who describe the building as being 'unmarketable' due to its condition and the risks and unknowns involved. The District Valuer has judged that only the frontage building is salvageable. The threat of a still valid but suspended Enforcement Notice (which would be transferable to a new owner) is a major if not conclusive deterrent.

Moreover, marketing is of little relevance. The guidance of the Practice Note to PPS5 states that *'No-one is obliged to sell their property. The purpose of marketing is to demonstrate that no viable use for the asset can be found. The aim is to reach all potential buyers who may be willing to find a use for the site that still provides for its conservation to some degree. If such a purchaser comes forward there is no need to sell to them, but redundancy will not have been demonstrated'*. Marketing has not produced an alternative solution to this problem and there is no prospect of it doing so.

### **Responses from consultees**

The Applicant has paid particular attention to the views of English Heritage, as the main consultee to this Application. English Heritage's main (if not only) concern has been that the building should be adequately marketed, not to test the viability of its restoration as a theatre but to test whether another use might be found which

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preserves the structure more sympathetically. However, this concern has now been finally removed through the latest marketing campaign.

There are no stipulations as to the type and duration of marketing, and what constitutes adequate marketing is a matter for the Planning Authority to decide. Six months is the generally accepted minimum period, at a reasonable asking price and free of restrictions. Even prior to the current marketing initiative commencing in December 2009 the Applicant was advised by expert Counsel that the marketing even up that point would be regarded as adequate.

Nevertheless, and in response to English Heritage's concern, the building has since been marketed for a further 7 months with no restrictions and at no asking price, and there has been no interest of any substance. In response to English Heritage's advice that the building be marketed by nationally recognised property agents all such agents approached have advised that the building is 'unmarketable' for reasons already given.

The suggestion has been made by English Heritage that Derby City Council should consider Enforcement Action as alternative strategy for dealing with the Hippodrome Theatre, in order to secure its 'reinstatement', based on the incorrect assumption that the owners carried out unlawful damage. The availability of Enforcement Action is not a valid reason for a refusal of planning permission, even if there were any truth in that assumption. Moreover, should Enforcement Action be instigated the Council would need to bear in mind that the current state of the building is at least partially attributable to its own actions in carrying out possibly avoidable demolition work without the agreement of the owner.

Neither is the availability of Compulsory Purchase (as also suggested by English Heritage) a valid reason for planning refusal. The Council has no use for the building and discussions with the Council's officers have confirmed that the local authority is opposed to any Compulsory Purchase action.

It should be noted that English Heritage's advice is restricted to specific conservation aspects of this Application. Quite correctly, it has not attempted to look at the Application 'in the round' and weigh up the overall planning losses and gains, which is the role of the Planning Authority.

Views have also been received from the Theatres Trust but concentrate on the provision of live theatre in Derby. Much of the Trust's views and recommendations are also unhelpful and misleading as they are based on misinformation as to how the building comes to be in its present state. The Applicant is conscious of the public enthusiasm for new theatre provision in Derby, as supported by the Theatres Trust, but no realistic proposals or offers have been forthcoming.

### **Conclusions**

1. The building is now in a fragile condition and deteriorating. This Application has been under consideration for 18 months and a decision is now needed **urgently** in order to allow the issue to be resolved.
2. Under planning law the Council must base its decision on the condition of the building as it now stands and disregard the circumstances preceding its dereliction. Even if they were relevant, Enforcement or Compulsory Purchase actions as suggested by English Heritage are not reasons for refusal. Neither



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are they courses of action which the Council's Officers would recommend to the Elected Members.

3. The new PPS5 now allows full or part demolition if a building is redundant (as in the case of the Hippodrome Theatre) and preventing beneficial use of the site in the wider public interest. None of the objectors to the Application (including English Heritage) are in a position to be able to weigh up the loss against the wider public gains, which is the role of the Planning Officer and Committee.
4. Attempts to market the building in order to find possible better alternative uses (which are still ongoing) have failed to produce any viable alternatives, and the marketing advice received is that the building is unmarketable. 'Mothballing' the building until market conditions improve is not an option. The economic climate is depressed and is expected to remain so for several years.
5. Even if further marketing of the building generated interest, PPS5 now makes it clear that there would be no obligation to sell the building, the purpose of marketing being merely to test market interest and the validity of the Applicant's argument.
6. The proposed scheme maximises retention of the surviving fabric as far as is practicable, and offers positive conservation gains in respect of the repair and reuse of the frontage building. No further significant loss is involved other than the inevitable loss which will be required for the stabilisation work. The scheme has been submitted with the tacit support of the Chief Planning Officer as being a realistic and acceptable solution to this problem.

The Applicant and his professional advisers are therefore totally confident that the arguments in favour of the scheme have been more than adequately proved.'

In highlighting all the relevant policies and planning requirements that he feels have been addressed or answered the applicant draws the following summary:

- **'Deliberate Neglect** - there is no evidence whatsoever of neglect. The new PPS5 guidelines now demands clear evidence of such, not just an assumption as set out in the now obsolete PPG 15 rules. This was to combat abuse.' I have demonstrated 'the numerous measures that were undertaken to protect and repair the building.
- **Deliberate Demolition** - there is no evidence whatsoever of this. The Council accepted that this is not the case, as did the judge His Honour Mr David Pugsley at the recent court proceedings.
- **Need for Marketing** –The building has been marketed for the last 3 years professionally and exhaustively and is in fact still being marketed. You are in receipt of a considerable amount of evidence relating to marketing and sales particulars. However English Heritage requested that we continue to market the building through a reputable agent/charted surveyor. Savills and Matthews & Goodman, large firms of estate agents /charted surveyors were approached as per the English Heritage requirement. Both have stated that the building is unmarketable and that they would be unable to find a purchaser. The reasons stated are:

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1. The damage within the structure is considerable and the costs of repairs cannot be accurately quantified because it is not possible to enter the building on health and safety grounds.
  2. The Enforcement Notice hanging over the building that is enforceable against any new owner.
  3. The prohibitive costs of between £14m and £25 for renovation due to the buildings listed status and extent of repairs.
  4. The considerable cost of asbestos removal. (Please find attached the latest Asbestos Removal Report by a reputable independent assessor.)
  5. Any future value once the building has been renovated will have a considerable deficit.
  6. Bank funding will not be possible.
  7. The councils own valuation report has stated that the building would be extremely difficult to sell. (Please refer to the recent valuation that was demanded by Mr Justice David Pugsley for the recent court proceedings.
- **Future Uses** - We have explored all avenues through Savills, you are in receipt of their feasibility study. Theatre use is costs prohibitive as is residential, offices, community use, conference facility, museum and any other normal reuse.
  - **Policy & Design** - the proposed scheme meets all policies, planning design and the Council's requirements for a 500 space car park as set out in the UDP.
  - **Owners Responsibility and Change of Use** - change of use to a car park is the most viable proven option and the owner is not obliged to turn the building back into a theatre.
  - **Highways** - Highways have supported the scheme and there are no outstanding objections.
  - **Condition of Building** - There is a difference of opinion between the Council's engineer and the owners engineer as to the structural condition of the building. However it is accepted by everyone that unless a speedy conclusion is reached there will be major deterioration with a possible catastrophic collapse. Independent engineers instructed by my agents have stated that the arch and balconies cannot be saved due to their present ruinous condition and whatever future works are carried out there will have to be substantial demolition in order to make the building safe and carry out further repairs. With the present condition of the building there is a detrimental impact on the neighbourhood, businesses, houses and the surrounding area. In conversations with the councils engineer and the possibility of retaining what is left of the arch and balconies he stated that anything is possible if you throw enough money at the problem. However he also said that it is questionable and would be very difficult to retain the arch. He went on to say that he thought that the balconies were possible of saving however this to would be extremely difficult and costly and that significant and substantial further demolition would be needed in order to make the building safe to work in.

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- **Funding** - Regrettably supporting bodies who wish to turn the building back into a theatre are prohibited from doing so because renovation costs are estimated to be between £14-25m. It has been offered to the Derby New Theatres Association who have stated that they would like to buy the building but have no funding. The DNT have been offered the building at least 6 times. The Hippodrome Restoration Fund have been contacted and offered the building in excess of 10 times via, email, telephone, posted letters and hand delivered letters. You have the proof on file. We have explored Lottery Funding who has stated that for any funding to be considered the applicant must put in place at the first stage 25% of the total funding in order to be considered. They have stated that this project would not meet their criteria for funding. English Heritage and the Theatres Trust have offered no help with the funding whatsoever. Nor has any other funding organisation. No one has come forward to purchase the freehold, or lease the property, nor offered financial aid with any project whatsoever. The building has had more publicity with regard to the financial problems and need for funding because of the controversy attached to it. Radio, TV, newspapers, House of Lords, House of Commons, theatrical and architectural magazines, the web, Face book, twitter, you tube and court proceedings have all ran articles on it or discussed its future. If there really was a potential purchaser or funding body they would have come forward. My agent continues to advertise the property for sale.
- **CPO** - the Council has been invited to purchase the property but have declined the offer due to lack of funds. ENFORCEMENT NOTICE. The council are fully aware of my present unfortunate financial position brought on by the considerable investment in this building which will not be recoverable regardless of the outcome of this application and my complete inability to pay for any works that an enforcement notice demands. Therefore under the circumstances the Council would have to proceed with the CPO. Also I have a possible case against the Council. It was the Council's engineer and Dangerous Structures Officer that carried out the unnecessary partial demolition to the building when attempting safety works after the collapse. There admission to this is on record.
- **Conclusion** - The only argument now put forward by the conservation team, Theatres Trust and English Heritage is one of lack of Marketing and possible funding. Their opposition to the scheme is now in light of the overwhelming evidence on record extremely weak at best and in my submission there are no planning issues that would stop the Council authorising the planning permission. It is regrettable that the people who passionately wish that the building be returned to a theatre are unable to do so due to the enormous cost of reinstatement. The consultation relating to this building has gone on for approaching 2 Years and unfortunately the building is deteriorating. All future uses were discussed with the council at length before the application was submitted. Those consultations with the council, architects and agents were exhaustive and the present scheme was proven to be the only viable option going forward, not to mention the public advantage produced by the present scheme as highlighted in your UDP. Therefore I urge the planning Department to support this scheme and support the application.

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Any further observations from English Heritage or other consultees will be reported orally at the meeting.

### **5. Relevant Planning History:**

The former Hippodrome Theatre on Green Lane, Derby, was listed grade II in 1996. It is a rare surviving example of a cinema-theatre built during the cross over period, in 1914, before cinemas became increasingly more popular than variety theatres from the 1920s. The building was used as a bingo hall from the early 1960s up until January 2007, when Walker Bingo vacated the building. In 2006 planning permission was granted conditionally for the change of use of the bingo and social club to a theatre, code no. DER/06/06/00938. The applicant was the Derby New Theatre Association and the permission was not implemented. It expired on 6 October 2009.

The current owner, Mr Anthony, purchased the building in March or April 2007. At this time, the Council's attention was drawn to the fact that there were holes in the roof and hatches left open that were allowing water ingress. The owner was advised at that time of the Council's powers to take action if the building was not made wind and watertight.

In response the Council was contacted by Savills in July 2007, acting on behalf of the new owner, to state that surveys were being carried out and the intention was to apply for listed building consent for total demolition of the building.

No application was submitted but on 17 October 2007 the Council's Building Inspectors were called to site by Savills and were told that the building was in imminent danger of collapse and should be demolished without the need for listed building consent. After an external inspection the inspectors disagreed with this and resolved to enter the building for an internal survey. This was not possible at the time because of high levels of airborne asbestos tested by the owner's asbestos contractor.

On 8 January 2008 when particle levels were considered to be safe to enter, the Council's consultant engineer surveyed the building and, although considered it to be in a very poor state of repair, produced a report to say that it was structurally sound. In particular, loose ceiling timbers under the flat roof were falling into the auditorium, but these had rested on substantial steel lattice beams that formed the main structure of the roof. The Council warned the owner at that time that immediate demolition without listed building consent would constitute a criminal offence.

As the owner did not appear to be taking action to adequately protect the building the Council determined that an urgent works notice was necessary to protect and prevent further deterioration of the building, however just after the owner was notified of the Council's intention notification a fire broke out in the auditorium on 8 February 2008 the main damage from which was contained within the orchestra pit. As a consequence the Council's consultant engineer re-surveyed the building on 21 February and produced a report advising that the building remained structurally sound and recommending service of an urgent works notice.

A revised urgent works notice enabling the Council to carry out works including works to the roof to make the auditorium space safe to work within to carry out repairs was served on 10 March 2008.

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The owner on the 28 March 2008 proceeded to carry out the works himself but without obtaining formal consent or prior agreement on a method statement for such works. As a consequence of those unauthorised works the flat roof collapsed, leaving the building posing an immediate danger to the public and neighbouring properties and requiring emergency works. Immediate works were carried out by the owner's contractors under the direct supervision of the Council officers for the purpose of ensuring the danger to the public was removed. The works carried out were considered to be the minimum necessary to remove the immediate danger and arose as a direct consequence of the unauthorised works carried out by the owner.

On 2 April 2008 the owner gave notice to the Council that he intended to immediately demolish the building without listed building consent on the grounds that it was dangerous. The Council applied to the High Court for an injunction to stop this which was granted on the 25 April 2008. That injunction is still in place.

On 9 April 2008 an application for listed building consent, under code no. DER/04/08/00581, was submitted by Mr Anthony to demolish the Hippodrome. The application was publicised by means of site notices and press adverts and the amenity societies and other consultees were consulted. The application was withdrawn on 9 June 2008 and details of the application process are referred to in the comments of the Council's Built Environment Team in part 8.2.

The Council has since carried out works, under urgent works powers for listed building, that were considered to be urgently necessary for the to make the building safe and in terms of the Green Lane elevation weather tight.

An enforcement notice to rebuild the walls and roof of the Hippodrome and reinstate plasterwork both damaged from the collapse and removed prior to the collapse was served on the owner on the 13 October 2008. When the owner indicated that he intended to submit planning and listed building consent applications for re-use of the building as a car park, in order to allow him to raise the funds for the application fees and associated costs, the enforcement notice was withdrawn in January, on the understanding that it may be reinstated if the applications were refused.

The owner was subsequently prosecuted by the Council for carrying out the unauthorised works that led to the collapse without having consent. He pleaded guilty on the basis as accepted by the court and the Council that the resultant damage that he had carried out the unlawful works in an inappropriate manner but that the damage that resulted had not been intentional. In consequence having specific regard to his current financial position he was given a conditional discharge.

Prior to the submission of the applications subject of this report a formal pre-application consultation was undertaken by the City Council to gauge the opinions of interested parties about the proposed partial demolition of the hippodrome and its conversion into retail, offices, multi-storey car park and residential floorspace. Whilst the pre-application consultation was not a statutory application process a number of consultees were consulted about the proposal and over 100 interested parties, which included members of the public from across the city, local businesses and other interest groups, were given an opportunity to comment on the proposals. The pre-application consultation was also made available on the Council's web-pages.

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Please refer to the comments of the Councils appointed structural engineer in part 9.11 of this report, which includes reports discussing the existing structural condition of the building.

### **6. Implications of Proposal:**

#### **6.1 Economic:**

Approximately 31 full time equivalent jobs would be created by the proposal.

#### **6.2 Design and Community Safety:**

The comments of my colleagues in the Built Environment Team, which comprise various sets of comments provided during the life of the applications, are reproduced in full later. The comments of the HSE and the structural engineer are also included with regard to existing structural and building safety issues.

#### **6.3 Highways – Development Control:**

Initial comments were made on this application on 19 May 2009 and 4 February 2010. After further discussions/meeting and various telephone conversations with the applicants highway consultant and architect regarding the access and egress to the proposed car park the following extra comments are offered on consultants drawing Nos 1719.SITE.31C and 1719.SITE 33D.

##### **Macklin Street**

Regarding the vehicular access on Macklin Street as shown on the latest submission, by the Architects, Drawing No. 1719.SITE.31C we are in support of this access arrangement. This access will need tracking to allow all moves into the site i.e. left hand and right hand turns as Macklin Street will become two way as a result of the Connecting Derby Scheme. We do not wish to encourage drivers to use Macklin Street/Green Lane and St. Peters Churchyard junction as a turning facility to then return along Macklin Street and enter the car park. A dropped and tapered kerb access arrangement will be required at this entrance. It is considered it will still be difficult for vehicles to negotiate the 90° bend inside the car park, tracking of this will need to be proved.

##### **Crompton Street**

As a more acceptable highway solution we, as Highway Development Control, are satisfied that the exit to the car park is via Crompton Street.

This gives better options for drivers and pedestrians as it will give drivers the choice of accessing the car park from Green Lane or Macklin Street from the new Ring Road and exiting the car park onto Crompton Street and then having the option of turning left or right to eventually join the Ring Road. This option would allow the traffic to travel in two opposite directions to the Ring Road which would have less impact at any one junction and alleviate possible queuing onto the 'new' roundabout at Burton Road.

Visibility at this egress will need checking for vehicles exiting the site and pedestrians using Crompton Street.

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### **Macklin Street/Green Lane/St Peters Churchyard Junction**

Previously the consultant submitted a 'table top' design at the above junction, on Drawing ref. No. B6622a-101 regarding the table top I can confirm that in principle, this feature should be incorporated. However, we will need to know where accesses are for pedestrians using the car park and the shops/units fronting Green Lane as the feature may need extending further up Green Lane. Details of the type of materials used in the construction will need to be agreed by our Urban Design Section as it will need to be in keeping with the City Centres palette of materials.

### **Recommendation:**

No highway objections subject to the following;

Design details will need to be submitted and approved regarding any works carried out in the highway under agreement.

Liaison is required with the Councils Parking Services Section regarding parking requirements within the City including the loss of on-street parking and provision for motorcycles and cycles within the development.

Integral, safe and secure cycling provision is to be provided for the residential development.

106 contributions will be requested to improve public transport facilities in the city due to the change in land use of this site.

Traffic Regulation Orders and Residents Parking Schemes will be required to be amended at the developer's costs. This may be in the region of £6000

The City Council will be seeking monies for loss of car parking revenue as a result of the reduction of pay and display car parking provision in the area.

### **Conditions:**

1. No development shall commence on any part of the application site unless or until access, footway and junction improvement work has been provided to the frontages of the development on Green Lane, Macklin Street and Crompton Street as shown for indicative purposes only on the attached plans 1719.31C, 1719.33D and B6622a-101 to the satisfaction of the Local Planning Authority.
2. No part of the development hereby permitted shall be brought into use until provision has been made within the application site for parking of cycles and motorcycles in accordance with details submitted to and approved in writing by the Local Planning Authority. The cycle stands and motorcycle bays shall be located near to the main entrance to the development, and that area shall not thereafter be used for any purpose other than the parking of cycles and motorcycles.

### **Reasons:**

1. In the interests of highway safety
2. To promote sustainable travel.

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### **Highways – Land Drainage:**

The application has been forwarded without any information regarding how the drainage of the site will be achieved. Our policies GD8 and GD3 require that information on drainage is provided and now is undertaken in accordance with PPS25. Without any information in this respect I cannot judge if the development will be carried out in accordance with these policies.

Therefore I object to the application. If you wish to proceed with granting the application I would advise that the approval is conditioned to include:

- 1) No development should take place until both foul and surface water sewerage scheme have been approved by the local planning authority. The surface water drainage shall include Sustainable Drainage features.
- 2) Runoff from a from the development shall be outlet at a rate not exceeding the present or pre-developed rate with the one in thirty year rainfall event retained below normal ground level, the one in 100year plus climate change rainfall event to be retained on the development. Calculations to that end are to be approved by the local planning authority including that habitable rooms do not flood with the limiting device in place. The route of outflow from a rainfall event that exceeds that amount shall be made known to the Local Planning Authority.
- 3) A drainage statement from the Sewerage Undertaker to be forwarded before commencement of the development.
- 4) A geotechnical study is made that includes the permeability of the subsoil and results forwarded before commencement of the development.

### **6.4 Disabled People's Access:**

The comments of my Access Officer are as follows:

Accessible approaches required to pedestrian entrances to car park, retail units and upper floor entrance to commercial space. Platform lift to be installed to commercial space not installed at later date. 6% of car park capacity to be designated as disabled people's parking.

### **6.5 Other Environmental:**

None

## **7. Publicity:**

Neighbour Notification Letter	132	Site Notice	
Statutory Press Advert and Site Notice	YES	Discretionary Press Advert and Site Notice	
Other			

*We undertook pre-application publicity in January 2009 and wrote to all those respondents and the immediate neighbours again for this application. During the course of the application it was necessary to re-advertise with letters, site notices and press notices as a result of amended and additional information being received. All*



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*this publicity exceeds the statutory requirements and the requirements of the Council's adopted Statement of Community Involvement.*

### **8. Representations:**

As of 18 June we have received 87 representations for the planning application. 3 Comments, 12 in favour of the proposal and 72 against.

For the Listed building application we have received 83 representations. 4 comments, 11 in favour and 68 against the proposal.

A number of concerns had been raised by the public representations regarding the owner and making unsubstantiated claims of how the damage to the Hippodrome occurred, these are not material to consideration of the applications and therefore have not been reproduced below.

A petition with approximately 300 signatures has been received. This states that the building is in a poor condition, is causing contamination from vermin and should be completely demolished.

#### **In support**

- Development of the site is needed because the site is becoming deprived.
- The dilapidated building should be removed and additional car parking provided as this can be very difficult to find in the city centre.
- There is no point keeping the building which has not been used as a theatre for 50 years.
- Decision makers should be considerate to the views of city dwellers who do not like having to look at a building in such a bad state of repair.
- The owner should not be portrayed as a bad man when he is only trying to improve the area.
- The stress of trying to find parking space leads to people shopping elsewhere. This proposal would attract more people to the area and help encourage business.
- The site should be cleared and redeveloped as it houses drug addicts and make the area unsafe.
- If everyone is 'stuck in the past' there would be no improvements and Derby desperately needs these. Take account of what local people want and 'put Derby on the map' for the right reasons.
- The building is ugly and useless and should be pulled down.
- The proposal makes an efficient use of a redundant Brownfield site in a sustainable urban location.
- It would be great to see this area of the city improved. If the City Council does not have the funds to do so, private investors should be allowed to.
- This part of the city centre is an absolute disgrace and the proposal represents a wonderful opportunity to completely regenerate the area.

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- Objectors were silent for many years whilst the building was a redundant decaying bingo hall. Now it is time to be pragmatic and look forward. Preserve what it left and redevelop the site.

### **In objection**

- The venue is important to Derby's cultural Heritage.
- Derby has a woeful provision of theatre and this building represents the best workable theatrical venue for Derby.
- There is no evidence that Derby needs another car park.
- Allowing this proposal, suggests that damage to a Grade 2 Listed Building doesn't warrant restoration.
- Disagree with the structural analysis of the building provided by the applicant's engineers.
- The application has taken too long to process and the Enforcement Notice should be reinstated.
- There is no need for the additional retail units as many units in the area are vacant already.
- A new car park will increase traffic in the area and make access for nearby residents very difficult.
- Encouraging another multi storey car park will be contrary to the Council's road traffic strategy.
- Whatever remains of the theatre is still of architectural merit.
- The building has not been marketed at a realistic price.
- Green Lane is of historical significance to Derby and should be preserved.
- The applicant should be required to restore the building to its undamaged state before any applications are considered.
- The proposal will result in the loss of Derby's only Grade 2 Listed theatre.
- The applicant should not be able to profit from the damage to a Listed Building.
- Theatres are vulnerable buildings and many historic venues have been lost throughout the country. The city should resist this proposal.
- The applicant has attempted to wear down the Council with repeated amendments.
- The proposal will increase traffic in Green Lane and this will add to problems for pedestrians in the area.
- The proposal is contrary to the City council's policy to take traffic out of the city centre.
- Much of Derby's architectural heritage has already been lost and this building should not be allowed to go the same way.

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- Following changes to the original proposal the traffic statement should be re-assessed as it appears not to meet the criteria set out by Highways Development Control.
- The 'flat head' of the new opening on Crompton St is visually unacceptable.
- Marketing of the building has not been undertaken in a professional or adequate manner or by an independent agent.
- The proposed highway arrangements are contrary to the environmental statement with Connecting Derby and the requirements there in.
- The Council should compulsory purchase the theatre and then give it to English Heritage to seek funding as a community theatre.
- The submission of additional material is a delaying tactic to slow down the planning process and allow the building to further deteriorate.
- The argument promoted by the applicant's advisor that the Listed Building should be judged on its state and condition at the time of the application is incorrect.
- The building is inadequately protected by fencing since the original damage occurred, allowing further vandalism and damage to take place.
- Derby has suffered from 'Civic Vandalism' since the end of the war and the Council must do what is necessary to preserve the Hippodrome theatre.
- The Hippodrome is the only potential large scale theatrical venue in Derby.
- Local businesses have little faith in the Council to provide a solution to the decline of the area and this would be the only reason to support any proposals.
- The proposal prevents fire escape from 80 and 80a Green Lane. It also makes collection of rubbish from Macklin Street difficult.
- There is no evidence of drug use in the area.
- The proposal may not fit in the wider plans for the Debenhams/Duckworth Square area.
- The owner has a duty to preserve a Listed Building
- The restored theatre would be a valuable venue for amateur theatre.
- The proposed car park is in a high density residential area but would stand empty at night wasting valuable electricity and illuminating the surrounding houses. This would be undesirable and create mischief in the empty space.
- The proposed building will be out of keeping with the street scene and will dominate the area.
- The proposal will diminish the interesting character of the area which is being considered for Conservation Area protection.
- There is no provision within the proposal for emergency services vehicle access or wheelie bins.

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- The Council is so embarrassed about the state of this area it has stopped marketing 'The Lanes' of Derby.
- The proposal only seeks to preserve the façade of the building where as the Planning (Listed Building and Conservation Area's) Act 1990 requires the decision maker to have special regard for preserving all the features of architectural or historical interest in any proposal.
- The proposal is crass and insensitive.
- The site should be turned into a public park for the citizens of Derby.
- The proposal is contrary to stated objectives of the City Council to preserve the built heritage of the city and the cultural development of the city.
- There is insufficient parking provision for the proposed residential units. This will create problems with access for emergency vehicles.
- This proposal fails to achieve the English Heritage requirements for demolition of a Listed Building as it does not provide a development of significant cultural value to the city.
- The restoration of the theatre would encourage tourism and regenerate this area of the city unlike this proposal.
- English Heritage and The Theatre's Trust have confirmed that the building is structurally sound and buildings in a much worse condition have been restored successfully.
- The building should be restored to provide relief from the 'neo-brutalism' of much modern architecture.
- The applicant has not investigated or demonstrated that there is any real alternative to demolition.
- The proposal will increase traffic in the area and is close to an AQMA. This will have an impact on the sensitive receptors in the area including hundreds of children who use the Green Lane dance centre, residents, workers and shoppers.
- Climate change must be taken seriously. The Council should be seeking to reduce the number of cars in the City and encourage the use of public transport.
- The cost of restoring the Hippodrome would be much less than obtaining another site and building from scratch a new large scale theatrical venue. Such a restoration would uplift this whole quarter of the city.
- There are inaccuracies in the applicant's documentation regarding the Derby New Theatre Association and the possible purchase of the Hippodrome by them.
- The proposal will block light from rear window of 80 and 80a Green Lane. It will also affect privacy and access for these properties.
- The Architectural Heritage Fund may be able to assist with the cost of the building's restoration.

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- The Council has not pursued the repair of the building with sufficient vigour and the withdrawal of the Urgent Repairs Notice is inexplicable and should be reversed immediately.
- The proposal fails the tests in PPG15.
- This old building has many memories for Derby people and is steeped in history of the performing arts and should not just be pulled down.
- Does 'Listed' status mean nothing?
- Theatre goers should not have to travel to Nottingham so see large theatrical productions.
- The proposal does not accord with the Becket Well Area Policy in the CDLPR which supports sustainable development and strengthening cultural functions. Restoration of the theatre does.
- The Council is too keen on knocking down historic buildings. We should be proud of our history and show it off.
- A restoration fund has been established to lobby for the restoration of the theatre.
- Derby is well served by public transport and does not need another multi storey car park.

### **Comments**

- Artist's impressions of how a restored theatre may look are just a thespians dream. The reality is that nearby residents have to live with vermin. The welfare of people and businesses are being affected and this should be the first consideration of politicians, not the whims of dreamers.
- The building is in a poor state of repair, is an eyesore and contains asbestos. The situation should be quickly resolved.
- This proposal may be the only practical option now.
- It is time to get the whole mess sorted out as it has gone on for far too long.

*These representations have been made available in the Council Chamber Foyer.*

## **9. Consultations:**

### **9.1 Building Consultancy:**

Please refer to the comments in part 6.4 of the report.

### **9.2 City Development & Tourism:**

It is important for Members to note that the comments of the Council's Built Environment Team are reproduced in full. Please note that there are some references to PPG15 which was extant guidance at the time of writing and which has since been superseded by PPS5. A summary table comparing the key policy criteria of both PPG15 and PPS5 is appended to this report as **Appendix 1**.

*Please note this is the only appendix to this report. Other consultees refer to appendices which can be accessed by the web links at the start of this report.*

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### **1) Built Environment Team comments of May 2009**

The Hippodrome Theatre is a grade II listed building, located just outside the boundary of the City Centre Conservation Area. It was built in 1914, and is a rare surviving example of an early transitional building type, and a model for the first types of cinemas that were to become popular in the 1920s. It was first used as a cine-theatre, then as a cinema only in the 1930s, when alterations were made to accommodate this. These include the projection box on the Green Lane elevation, the steel canopy and several internal alterations, including the boxes to the left and right of the proscenium arch. From the 1960s the theatre was used as a bingo hall, a use which ceased finally in 2007. The building has stood empty since then.

Its special character is derived from a combination of its historic and architectural interest, which includes its original layout, with entrance, foyer, auditorium and backstage, historic alterations of significance which illustrate the adaptation of the building to different uses, elaborate plasterwork which was particularly characteristic of the period, and imposing facades. These are all important elements of the building's character and any alterations that change relationship of spaces and/or remove historic features need to be considered in balance when looking at the optimum viable future use of the building, and to which we refer within this consultation response.

At the end of March 2008, the owner's contractors carried out works to the flat roof of the auditorium, which resulted in its collapse and subsequent further demolition work to the fly tower and auditorium roof and walls to make the building safe. The backstage and auditorium sections, including the upper and lower balconies, remain without a roof and open to the elements.

A listed building consent application for total demolition was submitted in April 2008, but withdrawn in June 2008 following the receipt of consultation responses, in particular that from English Heritage, whom the Secretary of State directs local authorities to consult with on all applications for the total or substantial demolition of listed buildings. The comments provided by English Heritage in their letter dated 23 May 2008 include reference to the criteria in paragraphs 3.17 – 3.19 in Planning Policy Guidance Note 15, against which the application had to be considered. The advice states that 'Although recently damaged internally by fire, and by partial demolition, the building is still of intrinsic architectural and historic interest. It is also an important part of Derby's built heritage, and makes a significant contribution to the local townscape.'

An enforcement notice to rebuild the walls and roof of the Hippodrome and reinstate removed plasterwork was served on the owner on the 13 October 2008. When the owner indicated that he intended to submit planning and listed building consent applications for re-use of the building as a car park, in order to allow him to raise the funds for the application fees and associated costs, the enforcement notice was withdrawn in January.

The listed building consent and planning applications include neither the rebuilding of any of the elements that had been lost due to the collapse, nor total demolition, however it does include further substantial demolition of the

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auditorium, including the balconies, part of the roof structure of the Green Lane frontage, former bar areas behind the auditorium, and the proscenium arch and stage. The orchestra pit had been destroyed during a fire in February 2008.

The proposal includes the insertion of a multi-storey car park from the existing basement level up to nearly the original height of the flat roof over the auditorium, and extending back into the existing surface car park fronting Crompton Street. The car park height will be hidden from Macklin Street by a reinstated mono-pitch slate roof and by a new two storey terrace of three dwellings, of a similar height and style to adjacent properties.

Apart from the further demolition works and insertion of the multi-storey car park, the works to the listed building itself include retention of most of the entrance foyer and offices section of the building fronting Green Lane, the removal of the steel canopy over the ground floor and the projection room at roof level, incorporating a ramped entrance on the Macklin Street elevation through an existing doorway, utilising the corner entrance for access to the upper floor commercial space, and providing an entrance on the Green Lane elevation for access to separate retail space. Lifts are to be provided, one within the stairwell of the main foyer staircase, which is to be retained. A modern, discrete canopy is to be inserted over the pedestrian entrance to the car park, at the left of the Green Lane elevation.

In general, the original materials that are retained and repaired are to be refurbished to match existing. Proposed new materials include red brick, colour coated metal panels and louvres of either cedar or coated metal.

The comments below not only relate to the information in the applications, but also include recommendations for further professional advice to assist the authority in making a decision on the application based on the criteria in Planning Policy Guidance Note 15, which is discussed below.

### **Policy Background:**

According to PPG15, the Secretary of State requires that local planning authorities address the criteria in paragraphs 3.17 to 3.19 (i, ii and iii), in addition to the general considerations set out in paragraph 3.5, in regards to alterations to listed buildings. In particular, criterion 3.19(i) states that 'where a building has been deliberately neglected in the hopes of obtaining listed building consent for demolition, less weight should be given to the costs of repair'. In addition, the City of Derby Local Plan Review states that:

*'Permission will only be granted for demolition or significant alterations where the scheme would result in substantial benefits to the community significantly outweighing the loss and where there is clear evidence that all reasonable efforts have been made to sustain existing uses or find viable new ones and that preservation in some form of charitable or community ownership is not possible or suitable.'*

Section 16 of the Planning (Listed Building and Conservation Areas) Act 1990 states that it is the duty of the local planning authority when considering whether to grant listed building consent to:

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*'have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'*

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 also states that it is the duty of the local planning authority, in respect to listed buildings in the exercise of planning functions, to have special regard to preserving the building and its setting's special interest.

### **Items covered in the applications:**

#### **Design and Access statement**

The Design and Access statement is a thorough exploration of the site context and history, with justification for the form of new build. This is supported by the PPG15 statement in support of redevelopment, with appendices. Both the alterations to the listed building, which require listed building consent, and the development within the site and change of use, which require planning permission, are covered in these statements and each is discussed in turn below as laid out in the justification statement. In response to the background information and conclusions in the D&A, the following comments are made for the purposes of clarification:

1.02 As already stated in pre-application advice given, there is no evidence for statements given regarding the state of repair of the building for the many years before it ceased use as a bingo hall. The fire that broke out in the auditorium in February 2008 damaged some of the surfaces but the only major loss, as confirmed by the fire inspector at the time, was of the structure of the orchestra pit.

1.09 Furthermore, as stated in pre-application advice, although further demolition works are stated as necessary for enabling works to re-use the building, including what is described as the unstable roof and balconies, this is incorrect according to advice received from the Council's consultant engineer.

2.02 The applicant has been previously advised that the rejection for listing of the Hippodrome in 1992 is not relevant to the consideration of this application, as the building was listed in 1996 and remains so.

2.03 There is little evidence of a gradual decline of the Hippodrome because of the changes in use – these just showed how, over a period of 90 years, changes in popular entertainment meant that the building had to be adapted to different uses, which it was, and successfully over long periods of time.

2.04 The configuration of seating in the theatre, based on advice from the Theatres Trust and English Heritage, is not unusual for a theatre of this age, and there are similar theatres across the country that are in use. The statement that they could not be reused without major re-design is not fully justified. Finally, although very vulnerable and damaged, much of the historic interest of the building is still evident in the proscenium arch wall, the layout of the building, and the balconies. Elements that have been lost are well recorded and could be reinstated.

#### **PPG15 Statement – General Justification in Support of Redevelopment**

The history and description of the features, alterations and special character of the building given in the supporting justification statement are accurate.



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### **INTRODUCTION**

This has not been altered since the pre-application submission so the previous comments still apply. It must be noted that the statement 'Substantial parts of the theatre are already missing due to recent fire and collapse' in the introduction is incorrect, as the fire damaged some of the surfaces but the only major loss, as confirmed by the fire inspector at the time, was of the structure of the orchestra pit.

### **ALTERATIONS**

For the same reasons given above, inclusion of the fire in the statement 'The catastrophic damage resulting from the recent fire and collapse' is incorrect.

### **PLANNING CONTEXT – *relevant to section 3.5 of PPG15***

Based on advice given by the Council's consultant engineers, there are factual errors in this section which are taken in turn below:

As stated before, the statement that the theatre was rejected for listing in 1992 is not relevant, as the fact remains that it was listed in 1996 and remains so.

*'Methods of propping the roof internally to prevent further collapse of the roof timbers were explored by scaffolding specialists but were deemed to be too dangerous'* – No evidence has been given to support this assertion and our engineers were not given time prior to the fire to assess this on behalf of the Council, after designing an internal propping scheme.

*'External attempts to stabilise the roof under an Urgent Repairs Notice, by the owners and Derby City Council, resulted in the collapse of the flat roof, the partial loss of the south wall, and the removal of the fly tower: the work has removed any danger to the public, but the rest of the building has remained in its collapsed and dangerous state and barriers have been erected along Macklin Street to provide a safety margin'* - It must be noted that the works executed and the equipment used to do so were not part of any agreed methodology with the Council in relation to the Urgent Works Notice, and were unauthorised. The Council's consultant engineers also advise that the building is not in a dangerous state. The exclusion zone created by the barriers is to prevent injury to the public of any falling debris.

*'The structural lattice beams which span the clear width of the auditorium to support the pitched roof and balconies have either failed or are seriously weakened, and their removal without destabilising the side walls is expected to be a major challenge in any future building or clearance operations'*. The lattice beams are no longer part of the structure of the building, having fallen into the auditorium during the roof collapse, and there is no evidence that the removal of the two remaining beams that are resting on the rubble and balconies would destabilise side walls.

Whilst it is true that the building is deteriorating, this could be addressed by providing a temporary roof cover until work on an approved scheme can commence. However, the appearance of the building, the requirement to open up Macklin Street to traffic (which could be done by scaffolding the Macklin Street elevation) and the need for a speedy resolution is not relevant to the

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criteria within PPG15 which requires the local authority to assess whether the proposal is the optimum viable use for a listed building.

### **THE PROPOSED DEVELOPMENT**

The redevelopment of the former theatre for use as a car park would involve the retention of, as stated, the main features of value in the front section. However, the unauthorised work that resulted in the partial demolition of the building, and the further demolition work required in the auditorium and backstage area, would divorce the front and rear sections of the building from each other. This would result in further loss of its original character by the removal of remaining historic features, and would therefore have a detrimental impact on the character of the building.

The statement mentions the projection room on the Green Lane elevation as being the subject of future negotiations and conditions. The feature is of some historic value and an important physical piece of evidence regarding the evolution of theatre and cinema. It may be that loss of the original character of the building internally, with the proposals for demolition of the auditorium and backstage, would further dilute this as part of the character of the building as a whole, but as discussed below the justification for this demolition is in itself not sufficient and it's worth noting at this stage that removal of the projection room would have to be agreed as a necessary alteration for the benefit of the viable future use of the building.

*'This work would retain the main elevation to Macklin Street, which is now the only feature of value which can be confidently regarded as being salvable.'* On advice from the Council's consultant engineer, as well as a national specialist plasterwork firm, we disagree with the statement that, in regards to the rear section of the building, the Macklin Street elevation is the only feature of value which is salvable at this point in time. The Council has already accepted by the service of an enforcement notice that in engineering terms the building can be reinstated to its former state prior to the collapse of the roof and that it was appropriate to have plasterwork reinstated.

Consultation is required with the Council's consultant engineers, Abacus Design Ltd, who are familiar with the building and have previously provided detailed reports for the injunction proceedings, to address the submitted reports in regards to the state of repair of the building. Based on advice given at pre-application stage by English Heritage, it is understood that an assessment by a conservation accredited structural engineer, experienced in historic buildings, will be sought as well.

### **PLANNING POLICY GUIDANCE NOTE 15 – *relevant to sections 3.5, 3.17-3.19***

The statements in this section have been copied below with commentary, for direct comparison, with the comments made on the pre-application submission.

*'In respect of the Hippodrome Theatre any decisions as to its future use need to be based on a realistic understanding of its present condition and limitations, and in reality the appropriate starting point is the building once made safe, since further fabric will inevitably be lost in the stabilisation process*

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*which will be needed in advance. This is an important distinction: since the interior of the building is too dangerous to enter, and certainly to work within, stabilisation can only be done from the outside by long-reach machine, precluding temporary shoring, propping or delicate internal operations which might otherwise allow more fabric to be retained.'* Professional advice has been taken from engineers and experienced contractors recommended by English Heritage. This advice was that the building could be refurbished in a safe manner without the need for further significant demolition. It is true that a realistic approach needs to be taken. However as previously stated, this does not exempt the applicant from providing a thorough appraisal of all of the options for re-use of the building. We do not believe this has been carried out. We consider the work that was carried out that caused the collapse of the roof to be unauthorised, and would therefore expect the assessment to begin with the feasibility of rebuilding the roof structure having regard to the advice that it is possible to safely restore the building without substantial further demolition.

*The condition of the building and strategies for trying to retain the structure without further loss have been the subject of detailed analysis by the Applicant's Engineers, consulting engineers for the City Council and no practicable way has been found to avoid further losses. The building is exposed to the elements, with no practicable way of protecting it, and is deteriorating.'* There may be some amount of removal of dangerous elements internally which amount to further losses, but in accordance with pre-application advice given and based on professional advice, we would disagree that the extent of further demolition required for the use would be the minimum necessary to bring the building back into any use, in terms of making safe works. A scheme for scaffolding and temporarily covering the roof has been explored by the Council and has not been deemed to be impracticable, and therefore the last sentence is considered to be incorrect.

*Appendix 6 of this report is a Structural Engineer's method statement for stabilizing the structure in order to provide a safe working site, for whatever purpose. It includes shoring the Macklin Street elevation, further removal of roof material (including the pitched roof over the auditorium), further reduction or shoring of the stage walls, the removal of the balconies, and the removal of the stage fire wall. This work is included in the present Listed Building Consent Application but otherwise would form work to be carried out in compliance with other Health and Safety legislation.* Advice received from our engineers to date does not include in 'making safe' works, the removal of the elements described above. Also of note are English Heritage's pre-application comments on the scheme, which gives evidence of the historic development of cantilevered balconies in theatres.

*There is no requirement under planning law to restore a listed building to its previous form where it has suffered from accidental damage.* Whilst this can be the position with unattributable fire damage it is not the position where damage is caused, whether by intention or not, as a direct consequence of works or other acts being carried out by the owner or other parties to a listed building, as happened in these circumstances. The applicant is aware of the fact that the Council considers the works that resulted in the collapse of the

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auditorium roof to be unauthorised. Therefore, this statement is not relevant. Although the authority must consider the state of the building as it exists when considering a formal application, it also needs to consider the potential in terms of repairs to the building, the reasons why the current state exists and enforcement action actual, or likely, as well. With this in mind, the Council has already served an enforcement notice in regards to unauthorised works, to reinstate historic features and to rebuild the roofs and walls. This has been withdrawn for the moment to allow the applicant to raise funds for the proposed application.

This entire section, in particular Appendix 6 should be assessed by a consultant engineer, preferably with a report from a specialist health and safety expert experienced in demolition work with listed buildings.

*7.1 The importance of the building (PPG15 paragraph 3.5(i)):* We would disagree with the making safe measures as described above, subject to assessment by the Council's engineer. Therefore it has not been proven that further significant elements of the building's interior that remain would have to be removed. To reiterate from above, on advice from the Council's consultant engineer, and a national specialist plasterwork firm, we disagree with this statement that, in regards to the rear section of the building, the Macklin Street elevation is the only feature of value which is salvable at this point in time. The Council has already accepted by the service of an enforcement notice that in engineering terms the building can be reinstated to its former state prior to the collapse of the roof.

Particular attention should be paid to English Heritage's consultation response to the previous application for total demolition which noted that 'although recently damaged internally by fire, and by partial demolition, the building is still of intrinsic architectural and historic interest'.

*7.2 The particular features that justify its listing (PPG15 paragraph 3.5(ii)):* For the same reasons above we do not believe that there is a structural justification for further demolition which would remove some of the remaining historic features.

*7.3 The setting of the building and its contribution to the local scene (PPG15 paragraph 3.5 (iii)):* We do agree with the statement that the most important elevation in regards to the local scene is the Macklin Street and Green Lane elevations.

*7.4 The condition of the building and relative costs of repair and maintenance (PPG15 paragraph 3.19(i)):* There are allegations in this statement which have been demonstrated in the past as being incorrect in the owner's engineer's statements, both through production of historic reports and through the injunction proceedings. Through discussion with the former handyman on site who worked at the Hippodrome for about 25 years until 2005, it does appear true that there are some areas of inherent design flaws with the rainwater goods system and the small area of flat roof over the stairwell to the left hand side of the Green Lane elevation, however there is no proof of the many years of lack of maintenance claimed.

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We suggest that the fact that no steps had been taken to undertake any repairs, or undertake any work to make safe before repairing, should be taken into consideration. It is understood from speaking to the former handyman that the building had actually been well maintained up until the early part of this decade.

We would suggest that the Council's engineer comment on the description used for the 'pronounced sagging' of the balcony. This description of the lower balcony was agreed through the injunction proceedings, along with the statement that the balconies are inherently weak, to be untrue. Again, please see English Heritage's comments in the letter dated 20 February 2009 in response to the registered pre-application documents regarding the design of the balconies, common to theatres of that age (see attached). The 2002 report mentioned in regards to the state of repair of the roof did not state that it was 'unfit' but rather that a number of repairs were required. There is a substantial difference. To quote from English Heritage's consultation comments on the previous application once again, 'the report concludes that the building is generally structurally sound; whilst highlighting the need for re-roofing the photographs demonstrate only localized staining to roof timbers and a small area of plain plaster loss associated with the staining presumably as a result of water ingress'. Advice given by the English Heritage Chief Structural Engineer in pre-application consultation comments concludes that there is no reason to accept that there are significant inherent structural weaknesses in the building.

The Theatres Trust have advised that there are many theatres in the country with steep upper balconies that remain in use, whose stepping arrangement can be easily adapted to meet modern requirements. This is a common alteration. No weight should be given to the justification of non-compliance with the Disability Discrimination Act. We are aware that many similar buildings have been shown to be capable of adaptation. The concrete content has been commented on and the subject discussed during injunction proceedings, in particular by English Heritage's Chief Structural Engineer, as being a typical historic content, used in buildings up until late in the previous century. None of the items in this section, in our opinion, justify the further demolition and, based on advice to date we would disagree with the assessment.

Appendices 5-7 supporting the above includes the Workman and Partners LLP report 2002 (Appendix 5), which was submitted with the application for total demolition in 2008. At the time it was noted that this report does not point out any inherent structural weaknesses but rather makes general recommendations for roof repairs as an overview report. This remains the case. Appendices 6 through 10 are reports produced by HSP Consulting in June and August 2007, regarding the state of repair of the roof, based on previous reports and inspection, and concrete analysis, a report by a Chartered Surveyor from July 2007, a post fire structural survey report from HSP and a Health and Safety report from E C Harris post roof collapse. The Council's consultant engineer has produced survey reports which contradict the findings of the structural survey reports and supporting documents submitted with this application, and the Council were successful in obtaining a High Court injunction based on statements from Jerry Gilbert of Abacus

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Design Ltd and the English Heritage Chief Structural Engineer which are still relevant, in relation to subsequent reports included in the appendices. As stated before, Abacus should be consulted for comment on these appendices. The Health and Safety report in particular, which is quoted directly, has been directly refuted during the injunction proceedings and it was noted that the author made assumptions regarding structural stability of the building but did not provide evidence of any structural or civil engineering qualifications.

Appendix 11 is the structural engineer's report outlining the work required to allow safe access as a starting point for any work to the building. As discussed before, based on previous advice from both the Council's consultant engineer and the English Heritage Chief Structural Engineer, it is unlikely that this level of demolition is the minimum necessary to make the building stable for future use. Shortly after the collapse of the roof, in early April 2008, advice was taken from a demolition contractor experienced in stabilising historic buildings in a poor state of repair, who is a member of the National Federation of Demolition Contractors, and who was recommended by English Heritage. The contractor reported that there was a method of making the building safe and allowing accessing to carry out further work, without requiring any further significant demolition. Making safe work would include removal of loose fabric. Abacus Design should be consulted on this report.

In regards to cost, the Chartered Surveyors report, Appendix 8, appears to be based on quite a few assumptions and several comments about 'concrete sickness' have already been refuted during injunction proceedings. The conclusion in this report is that demolition and reconstruction may be required due to concrete sickness throughout the building. This was addressed by English Heritage during injunction proceedings and accepted by the court that the concrete content was typical of the age of building, that the term 'concrete sickness' is a misleading layman's term and that the building is not constructed of a concrete frame. Costs are therefore based on incorrect assumptions, and further advice is required on this. In particular, the quote from the Alexander's report included within the main body of the justification statement, which concludes that the potential costs of repairing the building to bring it up to standard in terms of structural and safety compliance, does not discuss the listed building status. Neither does it refer to the fact that it is recognised that rescuing listed buildings at risk is inherently uneconomic, but that the status allows opportunities for access to funding that could potentially bridge the gap between cost of repairs and value.

The Locum report referred to in this section is largely irrelevant as it looked at the theatre as part of one entire option for theatre use in the city, and the figure given is not substantiated. It is noted that the Watts and Partner figure is only for entirely rebuilding the structure and this does not equate to a full options appraisal of rebuilding/repair. The report by Watts and Partners is, again, based on an engineer's report that neither the Council's consultant engineer nor the Court agrees with, resulting in the decision to grant the Council an injunction to prevent further works being carried out by the owner. The Armsons report submitted with the application gives a cost of demolition and complete rebuild as a theatre as between £12.5m and £14.4m pounds,

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lower than the original Watts and Partners report because of the current decrease in construction costs. The costings study carried out is a good starting point for an options appraisal, and can be checked, but the lack of a full appraisal means that the costs involved to bring the building back into any use can't be automatically ruled out as prohibitive, nor has the value of continued use of this nationally and locally important building been discussed in regards to weighing up the costs. Some of the options in this report will be based on the advice given by HSP Consulting in Appendix 11, regarding the stabilisation required to bring the building back into use. Therefore, the options explored are incomplete. The conclusions reached in this report appear to be subjective, and some of these have already been refuted during court proceedings, and it is likely that we will disagree with some of the recommendations.

The paragraph discussing the potential for local or regional funding is brief and dismisses this as a possibility, although it does not discuss potential funding as part of a package of combined grants and loans which is often necessary for projects involving a listed building at risk. It has not been demonstrated that it would not be possible to find a user for the building that might be eligible for and attract public funding, through a viable business plan. It is not clear why 'social use' can be completely ruled out.

Finally, less weight should be given to the costs of repairs as this is one of the rare cases in section 3.19 of PPG15 where it is clear that the building has been neglected.

*7.5 The efforts made to sustain the existing use or secure an alternative use (PPG15 paragraph 3.19(ii)):* To re-iterate, the works that were carried out by the owner's contractors that resulted in the loss of the auditorium and backstage roofs were unauthorised, and therefore this application would not only include consent for a building without a roof, but also further substantial internal demolition of the stage walls and the balconies. Therefore, this criterion is very relevant and a full study of the feasibility of various types of uses is required to arrive at the optimum viable use. It is worth noting again English Heritage's consultation response for the previous application for total demolition, when the building was essentially in the same condition as it is now. The previous loss of substantial sections of the building at that time, as now, was not considered to be a justification for further demolition works without an appropriate cost exercise of various rebuilding and repair options to restore what has been lost. This exercise has now, to some extent, been undertaken but not exhaustively, and not as part of a full options appraisal.

### **Theatre Use**

It has been demonstrated that theatre use has been explored to some extent, as it is stated that the New Theatres Association were unable to create a viable business case, but no mention is made of this option being explored with other end users. As mentioned before, the Locum report has been quoted out of context as it is a part of an overall scheme to provide three different auditoria in the city for performance spaces, and in fact demonstrates that a viable, if not *optimal*, use could be explored with a further feasibility study in the context of that proposal. It is noted that Appendix 14 is not a report from

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the Derby New Theatres Association on their failure to re-establish the Hippodrome as a theatre, but rather a report from Rubix Property Professionals and it therefore cannot be substantiated without consultation with a representative from the DNTA. No real evidence has been submitted to support the claims in the final paragraph of this report to show that opportunities for grants or other funding sources have been explored for reuse of the building as a theatre, or for any other use. The report states that pursuing this further is not conscionable as it would cause further delay and therefore further deterioration of the building.

The alleged lack of any serious interest for use does not negate the need for a full study of whether other uses than the one proposed, including any other type of charitable or community use, could be the optimum viable use that is compatible with the historic building. These alternative uses may not result in the severance of the use of the auditorium and backstage section from the use of the front of the building. This paragraph in itself cannot be considered a full exploration of other interested parties; the fact that the building has been known to be available does not equate to an active scoping of potential groups who might be willing to take the building on as a project. Other outside factors in the changing market may mean that it is now more marketable for a community use and may be able to attract Government funding.

It is true that a rebuilt auditorium would in a large part be a replica of the original, but the applicant has failed to demonstrate that any alterations to the original structure in regards to modern Building Regulations, Health and Safety Regulations and DDA requirements would be unacceptable in regards to the intrinsic historic character of the building. For instance, there is an assumption within the Savills report that inaccessibility of the building means that its original 1800 seating capacity would in reality, if restored, be closer to 1000. This does not take into account a full assessment of modifications that could be made to improve accessibility and use of the balconies, including reconfiguration and remodelling of the seating which is frequently done in other listed theatres. Neither has it been recognised that some flexibility is allowed in legislation in regards to historic buildings on a case by case basis. In addition, in regards to what elements may need to be rebuilt rather than repaired, we would again refer to the fact that the Council's engineer's advice is that further substantial internal demolition is not required. Again, as previously stated, the Council has already served an enforcement notice, taking advice from engineers and plasterwork specialists, in recognition of the fact that historic fabric has not been irretrievably lost but that the structure could be rebuilt, and some fabric repaired.

In response to the comments regarding the possible funding sources, our opinion is that Appendix 14, the report on the Derby New Theatres Association's involvement, is not sufficient evidence to support the statement that funding sources have been exhausted. The statement states in section 7.4 that *'identifying sources of funding would normally be the responsibility of a prospective purchaser / developer with a specific proposal in mind, rather than the vendor. It is understood that approaches to the Heritage Lottery Fund have been refused or not pursued (see Appendix 14), and any financial support*



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*from the Theatres Trust would be confined to feasibility studies and other minor costs. Preliminary enquiries suggest that as only a Grade II listed building outside a Conservation Area any grant aid from English Heritage would be unlikely or only minor.'* Section 3.19(ii) of PPG15 states that, within an application for listed building consent for substantial demolition, it must be demonstrated by the applicant that real efforts have been made to find compatible alternative uses. The onus is clearly, then, on the applicant to provide a full appraisal of options that arrives at the optimum, appropriate use of the building, a conclusion that will have been reached by, at the same time, exploring the potential grant and loan possibilities for different uses. It has not been demonstrated that further demolition and use of the majority of the building as a multi-storey car park is the most appropriate alternative use to the original theatre and subsequent bingo hall use.

### **Other uses and other considerations**

It has been demonstrated that it is likely that use as a bingo hall will not be viable, due to the failure of the previous business; although dismissal of this use cannot be done until the unrestricted freehold of the building is offered on the open market, which hasn't been carried out. We would suggest that independent advice be sought in regards to the values demonstrated in the Savills report in Appendix 17.

In regards to the marketing of the building to date, the pre-application advice still applies. PPG15 para 3.19ii states that applicants for substantial demolition of a listed building must meet the test of justifying '*the adequacy of efforts made to retain the building in use. The Secretaries of State would not expect listed building consent to be granted for demolition unless the authority (or where appropriate the Secretary of State himself) is satisfied that real efforts have been made without success to continue the present use or to find compatible alternative uses for the building. This should include the offer of the unrestricted freehold of the building on the open market at a realistic price reflecting the building's condition (the offer of a lease only, or the imposition of restrictive covenants, would normally reduce the chances of finding a new use for the building).*'

There is clear guidance on this from English Heritage, for instance in the guidance note on 'Enabling Development', which is also applicable to any case where financial viability is the key issue. Active marketing is a vital part of the guidance as opposed to e-marketing and letters, and as frequently mentioned in the statement and supporting documents, reliance on mention of the building in the local press. The other option to offer on the open market, in response to the need to avoid speculative purchase, is if a building preservation trust or other charitable organisation have been identified as end users and therefore it may be considered that open marketing is not required. The onus is not, as stated, on the City Council to propose a public use, but rather for alternative uses to come from either exploration of Building Preservation Trusts or other organisations purchasing the building, or alternative uses identified through the marketing process. A recent example of the testing of this requirement is given in English Heritage's letter of 20 February 2009 (pre-consultation), of the Smithfield Market public inquiry.

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Conservation Area Consent, subject to the same criteria in PPG15 for demolition of unlisted buildings in conservation areas, was refused because of lack of marketing, even with evidence on paper from the applicant of a possible lack of viability.

In the marketing statement, mention is made of potential purchasers who approached Top Ten Holdings. These offers made cannot be substantiated as it was not offered on the open market. There is a significant amount of detail regarding the problems faced by the owner in finding a potential user, including the presence of asbestos and the state of repair of the building. The presence of asbestos may have affected the desirability of the building as a potential purchase but the majority of the asbestos identified in the survey could be either safely left in situ, enclosed or removed. The Council's consultant engineers also noted that the building had suffered from water ingress but this was not considered to be beyond repair, as evidenced by the Council's service of an Urgent Works Notice in March 2008. Although the Marketing Statement offers a detailed analysis of the potential difficulties of finding an end user, it remains a fact that the building was not offered on the open market either during ownership by Top Ten Holdings or by the current owner. Therefore the authority is unable to assess whether potential purchasers were unable to go beyond offer stage because funds could not be accessed for a reasonable purchase price, or because the purchase price given by the current owner was unrealistic. The evidence of marketing given is as follows:

A copy of mail merge letters to potential purchasers from Rubix dated April and July 2007 welcoming any offers. This does not equate to offering the building up on the open market at a realistic price.

Letters from prospective purchasers during this period. However, there is no evidence from the marketing information supplied of how the building was presented in regards to its state of repair, e.g. what information lead the person from Bournston to say 'from what you have described to me it is also pretty clear that the refurbishment costs of what is existing would be astronomical' in the later dated 20 July 2007. The Council is unable to assess what the costs of the, for instance, asbestos removal were presented as. We need to be satisfied that the information supplied to prospective purchasers was comprehensive, accurate and supplied by a suitably qualified person.

- Letter from Top Ten Holdings. No evidence is given of any serious options appraisal to warrant the opinion given in this letter that there were serious limitations to any alternative use of the building. There are many theatres in alternative uses that are able to provide reasonable disabled access in line with the legislation, and the problems with the upper balcony are not specified. Stating that the exposure in the local press was sufficient marketing, in the absence of openly marketing, because there was no way that potential purchasers would be unaware of the availability, does not equate to active marketing.

We therefore suggest that this PPG15 criterion has not been met by the applicant in regards to the building as it was between 2003 and the purchase

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by the current owner in January 2007, as the Council is unable to ascertain if the building was marketed to the potential purchasers at a realistic price. Also, the fact remains that a buyer was found, and that the current owner purchased the building with an alternative use in mind, evidence that this scenario was possible. More importantly, the PPG15 criterion specifically relates to the offer of the unrestricted freehold of the building on the open market at a realistic price reflecting the building's condition *under current ownership*. Under the current ownership, marketing to find a use that may not involve substantial demolition or total demolition, has not been demonstrated.

In response to the comment that the need to market the building is not a requirement, but rather a consideration, it has not been demonstrated through a full options appraisal that marketing would not result in alternative options arising, or that a group with a charitable status may be an appropriate potential purchaser. This also ties in with previous comments regarding the potential disagreement with the works required to bring the building back into use, and impact of this on costs. Again, referring back to the fact that English Heritage still considers the building to be of merit, and the professional advice that many of the surviving historic features could be restored and replicated, we would disagree with the point that the historic character of the building will need to be further reduced, and that it has been substantially reduced already. In regards to a delay in the resolution of the problems created by the current state of the building, that in itself does not negate the requirements set down in the legislation that the Council must have regard to when considering applications of this type. The agent has also been reminded that the onus is on the owner to protect the building from further deterioration whilst statutory processes are carried out. Professional advice given by local and English Heritage engineers and experienced contractors is that the building could be supported by scaffolding and a temporary roof cover provided which would halt deterioration for some time whilst uses for the building are explored and the building marketed.

*7.6 The merits of any alternative proposals:* It is difficult to fully comment on the proposed multi-storey car park use in full as pre-application advice is still relevant. As stated in this advice, subject to further specialist advice on the information supplied, justification for further demolition in respect to the criteria in paragraph 3.19 of PPG15 has not been made. The merits of the proposal certainly include the restoration of external features on Green Lane and Macklin Street and internal decoration in the front section, bringing back activity to the ground floor level, and avoiding the need for fenestration on the Macklin Street elevation. However, without justification it is difficult to weigh up the benefits of this against the harm to the character of the building created by the loss of further internal features, the severing of the relationship of the theatre foyer with the auditorium and backstage section, and the large structure required over the existing surface car park, which would have a detrimental impact on its setting. It should be remembered that the requirements for car parking in this area should be given little weight as the requirements in PPG15 in regards to listed buildings override these.

To summarise, it has not been demonstrated that this should be considered to be the best use of the building. Paragraph 3.9 of PPG15 states that, when

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judging the best use, the aim should be '*to identify the optimum viable use that is compatible with the fabric, interior, and setting of the historic building. This may not necessarily be the most profitable use if that would entail more destructive alterations than any other viable uses*'. We do not believe that it has been demonstrated that real efforts have been made to continue the present use or find compatible alternative uses, nor that these efforts have been proven to be without success. Given its previous use as a theatre and a bingo hall, the views of the community are particularly relevant. The comments received on the previous application to demolish, and those on the registered pre-application documentation, would seem to indicate that many believe that some form of charitable or community ownership is possible and/or suitable. Therefore we would suggest that the optimum viable, compatible use may not be the one that is proposed.

It must be noted that speed is not a consideration as the building could be temporarily secured and protected from the weather, and, based on engineering and specialist contractor advice, the Macklin Street elevation could be scaffolded to allow the street to be opened up for vehicular traffic.

### **SUMMARY**

See **Appendix 1** with table of PPG15 requirements in relation to proposals for the substantial demolition of listed buildings.

The historic assessment of the building is thorough and accurate, but there are still many points made within the statements that we disagree with, have already been addressed and dismissed through the injunction proceedings or cannot be substantiated, and also those that fall outside our remit and should be assessed by relevant professionals.

Although costings have been provided for various scenarios for reinstatement and rebuilding, these are not exhaustive and there is still no evidence as to how the proposed alterations and use have been determined to be the optimum viable use that is compatible with the historic building, and is the least destructive. Valuations given are not taken forward into a financial appraisal of different options. Different funding packages to address a conservation deficit have not been fully explored, nor has the possibility of selling the property to a charitable organisation that may be able to attract funding been exhausted as an option. Finally, the exercise of arriving at a viable use through open marketing has not been undertaken. Subject to further professional advice, we would therefore recommend refusal of both planning permission and listed building consent in accordance with sections 16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and advice in PPG15 and the City of Derby Local Plan Review Policy E19, principally on the following grounds:

It has not been demonstrated that all reasonable efforts have been made to find alternative uses. Too much weight appears to have been given to the attempts by one group, the Derby New Theatres Association to find backing for restoration of the building for theatre use. The potential of other community groups interested in the rescue and reuse of the building, as a theatre or otherwise, has not been explored.

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It has not been demonstrated that the offer of the unrestricted freehold of the building on the open market at a realistic price reflecting the building's condition under current ownership has been made, for a use that may not involve substantial demolition or total demolition.

A large part of the justification, most significantly the requirement to carry out further substantial demolition to the building for any use, is based on older reports which have been addressed in the past, by English Heritage, our consultant engineers and by the High Court, as being incorrect or unsubstantiated. It's likely that we will disagree with this conclusion and that further loss of historic features is not required to make the building safer.

In accordance with section 3.19(i) in PPG15 the cost of any repair should be given minimal weight considering the apparent deliberate neglect of the building.

Speed of action required in regards to the deleterious impact of the partially demolished building on the surrounding area, its further deterioration and the need to open up Macklin Street to vehicular traffic should not be a relevant consideration as this is not a justification for substantial demolition and other significant alterations to a listed building.

The statement that 'there is no planning requirement that the building be restored to its previous form following accidental damage' is irrelevant, because the damage that occurred was due to unauthorised works and is not considered to be accidental in regards to case law.

Finally, It should be remembered that the duties of a local planning authority when considering applications for substantial demolition and alterations to listed buildings take precedence over issues of compatibility or otherwise with local plan policy. Even if some benefits in regards to the fabric and appearance of some parts of the building may be provided, the loss of further features and the harmful effect on the character and setting of the building, of the insertion of the car park within and to the rear, have not been justified.

### **2) Built Environment Team comments of March 2010**

Additional information for these applications has now been submitted, in regards to the consideration of the current state of the building, the proposed change of use, and the marketing requirements and action. Two documents have been submitted, one by Charles Mynors (Barrister) and Lindsay Cowle (Conservation Consultant), and a further Marketing Report from Andrew Rutherford on behalf of the applicant.

#### **Basis of the planning application:**

In response to the suggestion by Mr Mynors that the effect of the current proposal may only be considered on the basis of the building as it now exists, we would in terms of the listed building application reiterate and support in totality the views and comments of English Heritage in their response of the 12 February 2010.

Whilst the current state of the building is clearly relevant and cannot be ignored it would be wrong, as Mr Mynors appears to suggest, to ignore other factors that may impact or relate to the condition of the building. Highly

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material is the fact that the Council has authorised and sought to take enforcement action and remains in the position to do so, both in terms of the damage caused to the building due to the unauthorised works that the owner carried out (which resulted in much of the present damage and to which the present state of the building is largely attributable), and also in relation to the damage that had been caused to the building prior to the collapse of the roof whilst in the custodianship of the current owner.

PPG15 paragraph 3.19 specifically recognises that in considering applications involving total or substantial demolition, issues of repair and deliberate neglect are matters that should be considered in considering the proposal, and in this regard is a policy that clearly would be in conflict with Mr Mynor's submission.

Mr Mynors refers to the case of Tonbridge School Chapel (1993) as firmly supporting his point. That case however is significantly different than the present case in that;

- the state of the building, which was a shell with four walls, had in that case arisen due to fire damage thought to be caused by an electrical fault, and not due to damage in any way attributable to the acts of the owner
- there was no possibility of taking enforcement action against the owner to repair any of the damage that had been caused and no attempt had been made to do so in the three years after the fire, in fact planning permission had already been granted for the proposed development.

It was in that different context that Tonbridge case was decided. It is perhaps also worth noting that the existing PPG15 guidance was published the year following the case and was therefore not available for the judge to consider.

If one was to accept Mr Mynor's submission as correct the inevitable consequence is that it would enable an owner of any listed building, prepared to run the risk of prosecution, for in some case potential long term gain, to carry out unauthorised works to a building in the knowledge that they would almost certainly be able to secure retrospective consent for those works, or to use this to argue that the building was so devalued as to justify other works to the building that would not have been justified bar for the unauthorised damage. It would also as a consequence render enforcement action in such situations redundant, and undermine the protection and preservation that the legislation is intended to provide.

### **Change of use:**

We have commented on the change of use, based on PPG15, in previous consultation responses and have nothing further to add to this.

### **Marketing requirements, action and the Marketing Report:**

Much of the information submitted in the Marketing Report had already been submitted with application, and therefore covered in our consultation response. We note that the additional statement at the end of the report is given which states that Mr Rutherford has now been instructed to maintain the property on the open market, which had been underway since November 2009 and 'For Sale' boards erected on site. We would suggest that the case officer

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consider obtaining specialist advice on the suitability of the marketing exercise, having regard to section 3.19 of PPG15. However, we understand that English Heritage, the Government's national advisor for the historic environment, has sought specialist advice from its Development Economics Director, who will have the relevant experience nationally to advise.

Recommendation: Previous consultation recommendations remain unchanged following the latest submission – recommend refusal as contrary to PPG15 and Policy E19 of the CDLP.

### **3) Built Environment Team comments of April 2010**

We have been asked to comment further on the planning and listed building consent application following publication of Planning Policy Statement 5: Planning for the Historic Environment. This PPS was recently published and cancels both PPG15: Planning and the Historic Environment, and PPG16: Archaeology and Planning. In our initial consultation a table was created with a summary of the PPG15 requirements for submission with an application for substantial demolition of a listed building. Sections 3.16 to 3.19 in PPG15 relating to these requirements are restated in Policy HE7.6 and Policy HE9 of PPS5, with amended terminology. In the table below the new criteria is compared with the old, and notes on previous comments have been added in italics to address the change in phrasing. (For Member's reference the aforementioned table is appended to the report as **Appendix 1**).

*PPS Policy HE9.1, superseding section 3.16 of PPG15: 'There should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be. Once lost, heritage assets cannot be replaced and their loss has a cultural, environmental, economic and social impact. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Loss affecting any designated heritage asset should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional.'*

To summarise, we still consider that the proposal would result in substantial harm to the grade II listed building itself, and its setting, and do not believe that a clear and convincing justification has been submitted.

## **9.3 CAAC:**

### **1) Comments of 14 May 2009**

The Committee very strongly object to the proposal and recommended refusal of both applications. The Committee was not convinced by the arguments put forward that the building is sufficiently structurally unsound for it to be demolished and considered that there is a lack of an adequate options appraisal looking at restoration and reuse, potential funding sources, and a lack of evidence of active marketing. The proposed change of use to a car park with retail and offices therefore has not been proven to be the optimum viable use that is compatible with the building. Committee believe overall that there is insufficient evidence, within these applications, to meet the criteria as set out in PPG15.

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### **2) Comments of 13 May 2010 – The applications were reported back to CAAC on the basis of the amended drawings submitted**

The Committee regarded the amended plans submitted in order to reconfigure the traffic flow to have no impact on its original recommendation to refuse consent for both the planning and listed building consent applications, on the grounds that the further substantial demolition required was not justified.

#### **9.4 English Heritage:**

English Heritage is the Government's advisor on the historic environment and it is their statutory role to provide independent and authoritative advice to local planning authorities on applications for listed building consent and planning permission. The applications have been the subject of detailed scrutiny by English Heritage at a regional and national level at both the pre-application and application stages. Given the nature of the proposals and the importance of the comments of English Heritage their comments are reproduced to enable Members to scrutinise the progress of the applications from their submission to date. Whilst the comments of English Heritage are a lengthy contribution to this report it is my opinion that their contribution should be fully reported given the iterative nature of the application process.

##### **1) Comments of May 2009**

Both applications for listed building consent and planning permission largely repeat the arguments, and present the same information, as was contained in the previous application for total demolition and the formal pre-application consultation.

The majority of statements made are unsubstantiated and in some cases we refute the analysis - for example the Hippodrome does not have an inherent structural weakness. It remains the case that the tests for demolition as defined in PPG15 have not been met. The site has not been marketed, nor have accurate costs for repair of the building been submitted nor is there any genuine consideration of the possibility of grant aid or alternative less damaging options for the site. Specialist conservation engineering advice from Terry Girdler challenges the apparent pre-disposal to demolition in the engineering information provided and confirms the speculative nature of the most recent structural inspections. He further confirms that there are safe methods of working which can be used to progressively stabilise the building, contrary to information provided in support of demolition. The tests detailed in PPG15 must be vigorously applied to any proposal for the demolition of a listed building and they cannot be disregarded, fudged or applied on a pick and mix basis.

We also believe that this is one of those rare cases where the circumstances surrounding the buildings current condition are such that your authority must consider the advice in para 3.19, that the costs of repair must be given less weight where the building has been deliberately neglected in the hope of obtaining consent for demolition.

It is the clear view of English Heritage that the case for demolition of a significant part of the listed building has not been made. We thus recommend



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refusal of both applications for listed building consent and planning permission.

### **2) Comments of 3 June 2009 – In response to an e-mail received questioning the stance of English Heritage in relation to the applications**

I am writing to confirm my recent email regarding an electronic message received from Mr. Peter Stanley which has been posted on the City Councils website in relation to the above applications for planning permission and listed building consent.

In Mr. Stanley's message he states that 'It cannot be a theatre, English Heritage has conceded this, the costs are prohibitive.' All aspects of consultation and negotiation regarding the Hippodrome Theatre both prior to and including the current applications have been dealt with by the East Midlands regional office of English Heritage with my involvement throughout - I can confirm that we have no knowledge of Mr. Stanley and therefore do not understand on what basis he is able to make the above statement.

I believe that our current letter of advice on the above applications is clear and that far from supporting the proposals for demolition as Mr. Stanley suggests it clearly recommends refusal of both applications on the grounds that the tests for demolition in PPG15 have not been met. With regards to costs we have consistently challenged the costs of approx. £18m for rebuilding quoted by the applicant and reiterated our view that accurate costs for the repair of the structure are required as essential to consideration of the tests for demolition in PPG15.

In conclusion the statement made by Mr. Stanley does not reflect the view of English Heritage on these applications and we would ask that this issue is highlighted in your report to Committee. Our recent detailed letter of advice represents the considered view of English Heritage on the proposals contained in both these applications.

### **3) Comments of 19 June 2009 – In response to additional structural evidence submitted by the applicant's appointed consultant**

The argument raised in this letter - that the structural condition of the Hippodrome is such that only the foyer and façade can be retained - has been addressed in some detail by Terry Girdler acting on our behalf previously. The argument is considered and dismissed in our substantive response to the relevant applications (our letter of 26 May 2009) and Terry Girdler's accompanying report which was sent to your authority (Conisbee report dated 23 May 2009).

However I have asked Terry Girdler to specifically consider the additional information supplied. I attach a copy of his response for your authority's information. In summary Mr Girdler repeats the conclusions made in his earlier report and dismisses the conclusion made by BWB that retention of the façade and foyer area only is feasible as a 'an extraordinary quantum leap in engineering logic.'

We do not believe that the additional information provided gives us any cause to change the advice provided in our substantive response on these

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applications, therefore we would refer your authority to this advice in making your decision. As concluded in our letter of 26 May 2009 the applications for substantial demolition of this Grade II listed building fail to meet the criteria for demolition detailed in PPG15. The condition of the building is one consideration amongst these criteria and does not over-ride the need for the other tests to be fully met. We continue to recommend that both the applications for planning permission and listed building consent are refused.

### **4) Comments of July 2009 – In response to an additional PPG15 statement submitted by the applicant's appointed consultant**

English Heritage discusses the significance of the Hippodrome Theatre in some detail in our letters of 17 February 2009 and 20 May 2009 which respond to requests from your authority for formal pre-application advice and to this application respectively. We would refer your authority to this analysis rather than repeating it here.

Your authority has referred additional information to using support of the above application in the form of a 'Supplementary statement to accompany PPG15 statement in support of redevelopment' by Mr Lindsey Cowle, acting on behalf of the buildings owner, Mr Charles Anthony.

This statement contains arguments concerning the interpretation of PPG15 and represents the structural engineering evidence provided in support of the pre-application and current application, whilst questioning the advice provided by Terry Girdler on the basis that he has a limited knowledge of the building. It is perhaps unsurprising that the arguments presented seek to disagree with all comments and representations made by English Heritage and other consultees which question the justification for the current scheme.

Our *Charter for English Heritage Planning and Development Advisory Services* details the remit of English Heritage and the basis on which we provide our advice. It confirms that before providing advice English Heritage gives careful consideration to the issues involved and that we expect to publicly uphold the advice given. Significantly we state that we will not change that advice unless material circumstances relating to a case change.

The supplementary statement does not present new evidence related to the criteria for demolition in PPG15, highlighted as absent or incomplete in our previous letters of letters of 20 May 2009 and 19 June 2009. English Heritage believes that no exceptional circumstances apply to this case which would justify the view that marketing is not necessary and we would like to confirm our confidence in the soundness of advice provided by Terry Girdler: We would therefore refer your authority to our previous letters and attachments when determining this application and would repeat our recommendation that this application be refused on the grounds that the criteria for considering demolition cases in PPG15 have not been addressed either adequately or, in some areas, at all.

The additional information submitted consists of a document written by Lindsay Cowle acting on behalf of the agent which questions and refutes many aspects of the contents of our substantive letter of advice on this application,

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alongside consultation responses from the Theatres Trust, your own Conservation Department and Abacus Design.

It is perhaps unsurprising that the applicant's agent disagrees with elements of our advice which are not interpreted as supporting the applicant's proposals. It can be inferred that it is the position of those acting on behalf of the applicant to present arguments in support of what is proposed.

English Heritage is the Government's advisor on the historic environment and it is our statutory role to provide independent and authoritative advice to local planning authorities on applications for listed building and planning permission where relevant under circular 01/2001. Our Charter for English Heritage Planning and Development Advisory Services confirms that our advice is shaped by legislation and based upon Government guidance and policy; it further states that 'we expect to uphold publicly the statutory advice provided by English Heritage to local planning authorities'. In provided detailed advice on this case to date input has been sought and gained from our own legal team regarding all issues. The advice provided by English Heritage is not simply the thoughts of one individual but rather represents the corporate advice of English Heritage. Our 'Charter' also notes that unless material circumstances change we will not alter our advice - this is of particular relevance when considering the points raised in the document now submitted.

The document prepared does not address the omissions relating to the tests for demolition found in PPG15 highlighted in our previous written advice by providing any new information or evidence. The document appears to consist of a both a restatement of arguments and evidence already presented at both pre-application and application stage (on which we have commented extensively in our letters of 2 February, 20 May and 19 June 2009) and an enlargement of arguments which seek to explain why marketing of the buildings is not necessary in the view of the documents author. The document also disagrees with structural advice provided by Terry Girdler on behalf of English Heritage on the grounds that Mr Girdler does not have sufficient knowledge of the building. The document applies a similar approach to advice provided by the Theatres Trust, Abacus structural engineers and the City Council's own Conservation team - no doubt they will provide their own responses to this additional information respectively.

We are disappointed that the additional information does not provide any new evidence to address significant concerns regarding the justification for demolition highlighted repeated in our previous advice. We do not believe it to be either necessary or useful to respond to the document on a point-by-point basis; however we note that the document focuses on two issues with regards to our advice:

Marketing of a listed building where demolition is proposed is not always essential and is not needed in this case;

Professional advice provided by English Heritage concerning the structural evidence submitted in support of demolition should be disregarded on the basis that the structural engineer acting on our behalf does not have a sufficient knowledge of the building;

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With regards to the first point, four examples are cited where it is stated that marketing has not been considered essential where the demolition of a listed building was proposed. We would question the relevance of some examples including the Round House complex in Derby, which I am very familiar with. As acknowledged, over-whelming conservation benefit was weighed against the need for, in the case of the Round House, a limited amount of demolition which is not comparable with the substantial demolition proposed here, nor can it be argued that the scheme delivers over-whelming conservation benefits - half of the building will be lost irrevocably. The area to be lost is key to the buildings overall special interest in terms of form and function and the retention of the foyer and two decorative facades can not be seen as justifying or outweighing the harmful impact of that loss.

However it is fair to recognise that in exceptional circumstances the need for marketing has not been considered to be relevant to the needs that are driving proposals for demolition. In our experience such cases arise where the justification is led by the overwhelming community benefit that is perceived to arise from development proposals which are, sadly, dependent upon the need for demolition of a listed building or a substantial part of it. The additional information provided refers to a case in relation to an airport and this would be an example where marketing is not relevant as the sole justification for demolition relates to the wider community benefit that could be delivered by the airport. It must be stressed that, in our national experience, such cases where marketing (and indeed the other tests for demolition) are not considered relevant are extremely limited and arise from exceptional circumstances.

It is the considered view of English Heritage that no such exceptional circumstances apply to the Hippodrome. It cannot be argued that provision of a car-park and flats delivers any community benefit to the residents of Derby which would 'decisively outweigh the loss resulting from demolition' (PPG15 para 3.17). What is proposed is a commercial development which, whilst seeking to preserve some elements of the listed building is, presumably, financially viable and will deliver the applicant some form of developer profit.

The additional information dismisses the recent Smithfield inquiry result as irrelevant to the Hippodrome as it was, in the author's view, obvious that alternative developers would be found. However the developers in this case were making exactly the same claims as the applicant - that no other development was viable and that marketing was therefore not relevant or necessary. Only genuine marketing can demonstrate if this is an accurate assessment or not. We therefore remain of the view that marketing is an essential part of the PPG15 tests in the majority of cases and must be applied in this case in order to establish if alternative less damaging proposals can be identified, verifying, or otherwise, the applicants claims that this is the only solution for the Hippodrome. As we are reminded in PPG15 the Secretaries of State would not expect consent for demolition to be given for any listed building 'without clear and convincing evidence that all reasonable efforts have been made to sustain existing uses or find viable new uses, and these efforts have failed.' (PPG15 para 3.17). It is the repeated view of English Heritage

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that, in this case, such clear and convincing evidence has not been provided and that marketing is thus essential.

We would also draw your authority's attention to the other issues we highlighted in relation to the other tests for demolition in PPG15 which are also very relevant, including the lack of any detailed costs for the repair of the building outside the £18m quoted for its replacement. These points are all detailed in our letters of 20 May and 19 June 2009, however they remain to be addressed by the applicant with relevant additional evidence.

In response to the second point we consider the dismissal of the advice provided by Terry Girdler on behalf of English Heritage on the grounds that he does not have sufficient knowledge of the building to be unfounded. As your authority is aware Terry Girdler has visited the Hippodrome on four occasions in order to carry out a professional inspection aimed at delivering advice to the City Council and English Heritage concerning the structural condition of the building. Terry Girdler has been advising on the conservation of historic buildings since 1975 and has held the position of Chief Structural Engineer at English Heritage until this year. He is one of a relatively small number of structural engineers who is conservation accredited. As you know Mr Girdler's advice concerning the structural condition of the Hippodrome was subject to scrutiny at the same time as the applicant's structural advisor as part of the recent High Court hearing - we would suggest that the outcome of that hearing speaks for itself in demonstrating how Mr Girdler's advice has been received.

In conclusion the additional information provided provides no new information which would lead English Heritage to change the substantive advice it has previously given to your authority. We would therefore refer your authority to our previous letters of advice in addition to this letter in determining the applications for planning permission and listed building consent.

We believe that this letter addresses the two main issues highlighted in the additional information which could be of concern to your authority in determining the application. However if there is any further issue of policy in relation to PPG15 on which you would like our advice please do contact us.

### **Recommendation**

We repeat our view that the case for demolition as detailed in PPG15 3.16-3.19 has not been made and therefore recommend refusal of this application.

### **5) Comments of September 2009 – In response to additional evidence submitted by the applicant's appointed consultant**

English Heritage discusses the significance of the Hippodrome Theatre in some detail in our letters of 17 February 2009 and 20 May 2009 which respond to requests from your authority for formal pre-application advice and to this application respectively. We would refer your authority to this analysis rather than repeating it here.

Your authority has referred additional information to us in support of the above application in the form of a letter from Mr Lindsey Cowle, acting on behalf of the buildings owner, Mr Charles Anthony and dated 4 September 2009.

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Our *Charter for English Heritage Planning and Development Advisory Services* details the remit of English Heritage and the basis on which we provide our advice. It confirms that before providing advice English Heritage gives careful consideration to the issues involved and that we expect to publicly uphold the advice given. Significantly we state that we will not change that advice unless material circumstances relating to a case change.

The submitted letter again repeats points concerning marketing that have been made by Mr Cowle previously and addressed by English Heritage in our letter of 27 July 2009. However I am concerned that the current letter misrepresents the views of English Heritage and is not accurate in relation to points of fact. Therefore I would refer your authority to our more detailed comments on this matter below.

The current letter does not present new evidence related to the criteria for demolition in PPG15, highlighted as absent or incomplete in our previous letters of letters of 20 May 2009, 19 June 2009 and 27 July 2009. We would therefore refer your authority to our previous letters and attachments when determining this application and would repeat our recommendation that this application be refused on the grounds that the criteria for considering demolition cases in PPG15 have not been addressed either adequately or, in some areas, at all.

Following on from receipt of Mr Cowles 'Supplementary statement to accompany PPG15 statement in support of redevelopment' and our subsequent letter of 27 July 2009 it was our understanding that your authority was not prepared to accept further additional documents from the applicant, unless of course it consisted of real new evidence aimed at addressing the guidance in PPG15 concerning demolition, 3.16-19. However I hope this response will be of use to your authority if addressing statements made in this letter with regard to English Heritage's stated position or provision of advice.

Mr Cowle's latest letter again repeats points concerning marketing that he has made previously, however I am concerned that his letter misrepresents the views of English Heritage and points of fact.

Several of the points made in Mr Cowle's letter of 4 September 2009 relate to his interpretation of English Heritage's advice on this case rather than our actual advice, given in our formal letters of 7 February and 20 May 2009. specifically points 4, 8 and 12.

With regards to point 4 I would refer you to the actual advice contained within our letter of 7 February 2009:

'Whilst the ideal solution for the Hippodrome may be its repair and reuse as a theatre (the original use for which it was designed) this does not preclude consideration of other options for use which would be less damaging than the scheme proposed. Indeed, the Hippodrome has a long history of adaptation to other uses (cinema and bingo hall) which have been compatible with the preservation of its special interest.'

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I believe that your authority will agree that this is somewhat different from stating that English Heritage accepts that restoration back to a theatre use is an attractive but unrealistic option, as stated by Mr Cowle.

With regards to point 8 English Heritage do not believe that 'the recent marketing carried out by the owner has been in accordance with the guidance in PPG15'. Nor is it our position that we question the coverage of the marketing only, as stated by Mr Cowle. I believe that our position on the marketing of the Hippodrome carried out by Mr Anthony to date is clear and has been repeated on several occasions, however for your convenience I reproduce below the comments made in our letter of 20 May 2009:

'If the Marketing Statement (provided in support of the application) is intended to provide evidence that the Hippodrome has been marketed previously and that this essential element of the tests for demolition detailed in PPG15 has therefore been met, it clearly fails to do so. The Marketing Report demonstrates that the freehold of the building has not been actively offered to the open market at a price which reflects its condition and any relevant planning constraints for a period of at least six months. It also demonstrates that the marketing fails to conform with the form and standards of marketing detailed above and we do not believe it represents a genuine effort to find a new owner for the site.'

Point 12 of Mr Cowles letter is simply not correct - no request was made to English Heritage to provide guidance on marketing which was turned down, nor did we at any stage agree that 'the bald requirements of PPG15 (to market the building free of constraints and conditions) was clearly unworkable'. As you will be aware from our repeated advice on marketing contained within our letters we believe that genuine marketing of the structure free of constraints and conditions as advised in PPG15 is essential,

Following our letter of formal pre-application advice I was contacted by Sean Lyle of Maber architects confirming that his client was considering marketing and asking if English Heritage would be able to provide advice on this issue. Whilst referring Mr Lyle to guidance contained within PPG15 and our policy document *Enabling Development and the Conservation of Significant Places* I did confirm that we would be pleased to provide further advice on the marketing of the Hippodrome. My understanding of this is reflected in an email to my colleagues Dr Anthony Streeten and Mike Harlow dated 2 March 2009, which also confirms the advice provided that conditions attached to marketing were not acceptable.

However in a subsequent conversation with Sean Lyle shortly after this date he confirmed that Mr Anthony had decided not to proceed with marketing and that our advice was therefore no longer required. In any case you will be aware that our formal letters discuss the requirement for marketing and the form marketing should take in some detail, thus providing the applicant with clear guidance on what is expected.

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Finally I would like to re-confirm that our substantive advice on these proposals has been produced with the agreement and advice of Mike Harlow, Head of our Legal Department.

### **Recommendation**

Mr Cowle's letter of 4 September 2009 fails to address any of the outstanding areas of evidence associated with the criteria for demolition in PPG15 3.16-3.19. We are disappointed to note that it focuses again on marketing and does not consider the other tests for demolition and the concerns we have repeatedly highlighted concerning the lack of information and assumptions made in this regard.

I hope that this letter addresses areas where Mr Cowle appears to misinterpret and thus misrepresent our consistent advice and clarifies points of fact. In commenting on this letter we have focused on statements that Mr Cowle has made directly in relation to the views of English Heritage - this does not imply that we either agree with or endorse comments made in the rest of the letter.

Therefore we repeat our view that the case for demolition as detailed in PPG15 3.16-3.19 has not been made and therefore recommend refusal of this application.

### **6) Comments of February 2010 – In response to additional evidence submitted by the applicant's appointed consultants in relation to the marketing strategy and an additional justification of case**

We have advised previously on the significance of the Hippodrome Theatre in our letters of 17 February 2009 and 20 May 2009 which respond to requests from your authority for formal pre-application advice and to this application respectively. This advice should therefore be read in conjunction with our previous letters.

We have received additional information in support of the above application, namely a Marketing Report (undated) from Andrew Rutherford and a paper entitled 'Note to accompany planning and listed building consent applications' (undated) from Charles Mynors and Lindsay Cowle, all acting on behalf of the building owner, Mr Charles Anthony.

Our *Charter for English Heritage Planning and Development Advisory Services* details the remit of English Heritage and the basis on which we provide our advice. It confirms that before providing advice English Heritage gives careful consideration to the issues involved and that we expect to publicly uphold the advice given. Specifically we state that we will not change that advice unless there is a material change of circumstances.

The submitted marketing report and accompanying note reiterates points regarding marketing that have been made previously and addressed by English Heritage in our letters of 27 July 2009 and 16 September 2009. This information does not present new evidence related to the criteria for demolition in PPG15, highlighted as absent or incomplete in our previous letters of 20 May 2009, 19 June 2009, 27 July 2009 and 16 September 2009. These letters and attachments should therefore be considered fully when determining this application and we must repeat our recommendation that this application



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be refused on the grounds that the criteria for considering demolition cases in PPG15 have not been addressed either adequately or, in some areas, at all.

I refer to the meeting on 4th January 2009, held with Derby City Council, the applicant's agents and English Heritage, to discuss the current applications. On the request of Derby City Council, we agreed to consider further information relating to marketing. In doing this, we have sought the advice of English Heritage's Development Economics Director who has extensive experience in information relating to marketing. The additional information, now submitted, provides a marketing report written by Andrew Rutherford and described as '*a consolidation document to previous statements along with evidence submitted an explanation of the methodology and approach to the marketing task*'. The accompanying note written by Charles Mynors and Lesley Cowle contains arguments concerning the interpretation of PPG15 and a summary of the marketing action.

In considering this application and the additional information submitted, it remains the view of English Heritage that the proposals do represent demolition of a substantial part of a listed building. We remain of the view therefore that where total or substantial demolition is proposed, the more rigorous criteria set out in paragraph 3.17 and 3.19 of PPG15 apply.

Neither of the documents that have been submitted address the omissions relating to the tests for demolition found in PPG15 and highlighted in our previous substantive written advice by providing any new information or evidence. Both documents consist of a reinstatement of arguments and evidence already presented at both preapplication and again in the application (see our letters dated 2 February, 20 May, 19 June, 29 July and 16 September 2009) and a repeat of arguments which seek to explain why marketing of the building is not necessary in the view of the document's author (refer specifically to our letter of 29th July 2009). In this regard, I would refer you again to PPG15, in particular paragraphs 3.17 and 3.19 and the English Heritage guidance, 'Enabling Development and the conservation of significant places (September 2008), where section 4.7 on marketing discusses the need for a realistic price and period of marketing.

The note prepared by Mr Mynors and Mr Cowle urges the City Council to bear in mind the current condition of the property, the extent of demolition required by the proposals, the non-mandatory nature of PPG15 policy and guidance and to acknowledge the marketing efforts that have been made to-date. We agree that these are all relevant considerations. The note does not, and cannot, go further and say that as a result of taking into account these factors you must conclude in favour of the application.

As regards the condition of the property, its current state cannot be ignored, as this is relevant. Also highly material is the fact that the City Council are in a position to take enforcement steps and that, as we understand it, you had simply deferred consideration of serving an enforcement notice that might lead to the reinstatement of the building, at least in part, until you saw whether the applicant's proposals were acceptable and would make enforcement a redundant exercise. It is obviously highly material to consider, in the exercise

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of the local planning authority's functions generally, that the outcome for the listed building might be very different if an enforcement notice were now served. Indeed, we would urge you to consider all the planning options (the application, alternatives to it, enforcement procedures, urgent works and CPO procedures) in the round. They should not be considered in isolation.

As regards the non-mandatory nature of the guidance within PPG15, this is obviously well understood, as is the principle that if a local authority is to not follow that advice they must have good and understandable reasons why they have not done so. They should, in any event, be aiming for the same policy objectives. To say that the local planning authority has a discretion in these matters is therefore technically correct but misleading, in that it suggests that PPG15 guidance on marketing can be safely ignored. It cannot. To do so, without sound reasoning as to why the policy objectives of the PPG have otherwise been achieved or are overridden by other planning policy objectives, would be a fault.

As regards the marketing efforts to-date, we have commented on these before, and do so further in this letter. In short, we do not believe they match-up to the guidance in PPG15. If one follows the guidance in PPG15 then one can be sure of achieving the policy objective in 3.17 of PPG15 that consent ought not to be given for the total or substantial demolition of any listed building without clear and convincing evidence that all reasonable efforts have been made to sustain existing uses or find viable new uses, and these efforts have failed.

On the marketing report, we do not believe it to be either necessary or useful to repeat our advice or respond to this document on a point-by-point basis, however we would re-emphasise a number of points already made with regard to marketing of the building.

### **Condition of the Property**

With regard to the condition of the property, one of the considerations in PPG15 para 3.19 i, is the condition of the building. The condition of a property has a direct effect upon marketability as when judging the viability of a commercial property, it is important that potential purchasers have clear understanding as to the costs involved so as to enable them to make an offer for the property. We repeat our concerns that no accurate figures providing costs for repair and reinstatement of lost and damaged features have been provided. This lack of information affects the ability of professionals to make a judgement on the viability of the property and the level of offer to make for a property.

### **Asking Price**

The asking price of the property is often critical in determining whether or not a property will attract a purchaser. Too high an asking price would deter a prospective purchaser and render the marketing campaign invalid. There are several cases which support this fact and we would refer you to public enquiry cases of Greenside and Torilla, where both properties were marketed by reputable firms of Chartered Surveyors but at asking prices which did not

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reflect the condition of the building nor the planning constraints upon the sites. The Inspector found that therefore “real efforts” had not been made.

In considering the Hippodrome, the agent, Mr Rutherford states that “all offers will be considered and there is no fixed asking price.” The asking price should be at a realistic price reflecting the condition of the property. It is most unfortunate therefore that the owners did not immediately issue a press release correcting the press articles stating that the owner of the site required £1.2 million for the hippodrome as we believe that some prospective purchasers may have been deterred by this information.

### **Agents**

We would normally expect the marketing of such a property to be carried out by a reputable firm of local/national chartered surveyors who have databases of interested firms of developers/users. Whilst Savills appear to have had some involvement they do not appear to have been instructed to market the property.

### **Marketing**

From the submitted information, the marketing which took place in April 2007 was, we are informed, a direct and focussed campaign to identify “targets.” This is not the same as offering the property to the wider market, as no agent can have complete knowledge of who is in the market for any particular property. We note the sales particulars, did not mention the fact that the building was listed. The report mentions publicity in The Independent, The Derby Evening Telegraph, The Stage. Although articles do draw attention to a property, by themselves they do not constitute a proper marketing campaign. We agree with the statement that the market has changed (for the worse) and that the storm damage to the roof in 2007, fire damage in February 2008 and economic recession have all made the prospects of any new use more difficult. However, again this does not mean conclusively that a buyer is not out there in the market, possibly with public funding, and real efforts need to be made to identify such a buyer.

We note from the on-line application documents, that a letter of objection has been received from the Derby Hippodrome Restoration Fund, dated 8 February 2010. Within the letter, the Fund states they have responded to the marketing website. They have also submitted a possible alternative scheme in the form of a plan which shows a proposal for the restoration of the theatre with additional accommodation above the auditorium to house a roof-top restaurant and conference rooms. They consider this could be a viable alternative and are keen to explore their plans further. In identifying the optimum viable use for the reuse of a building we recommend that this proposal be tested, and would refer you to Government Guidance within PPG15 3.9 which states that *‘in principle the aim should be to identify the optimum viable use that is compatible with the fabric, interior and setting of the listed building.’*

### **Recommendation**

The submitted marketing report and accompanying note again repeats points regarding marketing that have been made previously and addressed by

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English Heritage in our letter of 27 July 2009 and 16 September 2009. This information does not present new evidence related to the criteria for demolition in PPG15, highlighted as absent or incomplete in our previous letters of letters of 20 May 2009, 19 June 2009, 27 July 2009 and 16 September 2009.

For the future of the Hippodrome, we would urge the City Council to consider all the planning options (the application, alternatives to it, enforcement procedures, urgent works and CPO procedures) in the round. They should not be considered in isolation.

The advice in all our previous letters and attachments should also be considered when determining this application and we repeat our view that the case for demolition as detailed in PPG15 3.16-3.19 has not been made and therefore recommend refusal of this application.

### **7) Comments of May 2010**

We have advised previously on the significance of the Hippodrome theatre in our letters of 17 February 2009 and 20 May 2009. Our most recent letter dated 10 February responded to the additional information in support of the above application, namely a Marketing report (undated) from Andrew Rutherford and a paper entitled 'Note to accompany planning and listed building consent applications' (undated) from Charles Mynors and Lindsay Cowle, all acting on behalf of the building owner, Mr Charles Anthony. This advice should be read in conjunction with our previous substantive advice.

As you are aware, Planning Policy Statement 5 *Planning and the Historic Built Environment* of 23 March 2010 (PPS5) has now replaced Planning Policy Guidance Note 15 Planning and the Historic Environment (PPG15) and provides a presumption in favour of the conservation of designated heritage assets, including listed buildings, with substantial harm to a grade II listed building requiring clear and convincing justification and only granted in exceptional circumstances. Policies HE9.1 - 9.3 specifically refer, stating that '*to be confident that no appropriate and viable use of the heritage asset can be found under policy HE9.2 (ii) local planning authorities should require the applicant to provide evidence that other potential owners or users of the site have been sought through appropriate marketing and that reasonable endeavours have been made to seek grant funding for the heritage asset's conservation and to find charitable or public authorities willing to take on the heritage asset*'. This is comparable to the advice within PPG15 extant at the time of the submission of this application and our previous advice to date, which focused in particular on the rigorous criteria set out within paragraphs 3.16-19 of PPG15. PPS5 is accompanied by the Historic Environment Planning Practice Guide (HEPPG) produced by English Heritage and endorsed by Government, which helps to interpret the policies and explains how the policies in the PPS can be applied and how the historic environment should be integrated into and considered during the planning process. In line with the new policy framework of PPS5 our recommendation remains that this application be refused on the grounds that the criteria for considering cases of substantial harm in PPS5 detailed in policies HE9.1-3 accompanied by guidance contained within the Historic Environment Planning Practice Guide, in

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particular paras 96-97 have not been addressed either adequately or in some areas, at all.

### **English Heritage Advice**

In considering your request to update our response in line with PPS5, we would draw your attention to the following policies within PPS5 which are particularly relevant to the consideration and determination of the above application. These policies should be read alongside the other relevant statement of national planning policy, such as PPS1, and the accompanying practice guide. It is important to note that nothing in the PPS5 changes the existing legal framework or the designation of listed buildings and the existing legislation contained within Planning (Listed Building and Conservation Areas) Act 1990 which sets out the basis on which listed building consent may be required, remains.

The submitted '*Note to accompany planning and listed building consent applications*' (undated) from Charles Mynors and Lindsay Cowle challenged the validity of PPG15 with regard to the determination of this application. In our letter of 10 February 2010 our response was as follows:

*As regards the non-mandatory nature of the guidance within PPG15, this is obviously well understood, as is the principle that if a local authority is to not follow that advice they must have good and understandable reasons why they have not done so. They should, in any event, be aiming for the same policy objectives. To say that the local planning authority has discretion in these matters is therefore technically correct but misleading, in that it suggests that PPG15 guidance on marketing can be safely ignored. It cannot. To do so, without sound reasoning as to why the policy objectives of the PPG have otherwise been achieved or are overridden by other planning policy objectives, would be a fault.* In anticipation of a future challenge by the applicant to the new policy framework, we would express the same opinion, in relation to PPS5.

We are of the view that the proposals, which have not materially changed, do represent demolition of a substantial part of a listed building that would undoubtedly cause substantial harm to its significance. The rigorous criteria set out in paragraph 3.17 and 3.19 of PPG15 have now been superseded by Policy HE9.2.

### ***Planning Policy Statement 5 - the Government's objectives***

PPS5 sets out clearly the Government's objectives with regards the historic environment. Paragraph 7 details the Government's overarching aim '*that the historic environment and its heritage assets should be conserved and enjoyed for the quality of life they bring to this and future generations.* Within Annex 2 of PPS5, 'conservation' is defined as '*the process of maintaining and managing change to a heritage asset in a way that sustains and where appropriate enhances its significance.*' Listed buildings are a *designated heritage asset*. To achieve this Government aim, PPS5 details a number of objectives for planning for the historic environment, recognising that the *heritage assets are a non-renewable resource*, (para 7) which once lost cannot be replaced. Conserving this resource is clearly aligned with the

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objective of delivering sustainable development, and given Government priority; *‘to conserve England’s heritage assets in a manner appropriate to their significance by ensuring that:*

- *decisions are based on the nature, extent and level of that significance, investigated to a degree proportionate to the importance of the heritage asset*
- *wherever possible, heritage assets are put to an appropriate and viable use that is consistent with their conservation*
- *the positive contribution of such heritage assets to local character and sense of place is recognised and valued; .... (para 7)*

### ***Specific Policies relevant to this application: Development Management Policies HE6-HE12***

This section of PPS5 provides the generic guidance on decision-making in response to the planning and listed building consent applications. We would advise consideration of Policy HE6 to ensure adequate detail has been submitted to satisfy the policy requirement and allow for a well informed judgement of the proposals. The practice guide provides useful steps to take to ensure the right level of information is required.

### ***Adequacy of efforts to retain the heritage asset and marketing***

To date, we have made substantive comments on the marketing efforts of the building and believe that these do not satisfy the policy requirements of PPS5, nor PPG15 previously. Consistent with guidance formally contained within 3.17 of PPG15, Policy

HE9.1 of PPS5 tells us that *“there should be a presumption in favour of the conservation of designated heritage assets” and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be.....*

*Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Loss affecting any designated heritage asset should require clear and convincing justification. Substantial harm to or loss of a grade II listed buildings, park or garden should be exceptional. (refer also to paras 8 & 85 of the HEPPG). The grounds for justification are clearly set out in HE9.2 for substantial harm or loss, reminding us that local planning authorities should refuse consent ‘unless it can be demonstrated that:*

- i) *the substantial harm to or loss of significance is necessary in order to deliver substantial public benefits that outweigh that harm or loss; or*
- ii) *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 that will enable its conservation, and*
  - c) conservation through grant-funding or some form of charitable or public ownership is not possible; and*

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*d) the harm to or loss of the heritage asset is outweighed by the benefits of bringing the site back into use. (refer also to HEPPG, paras 85, 91 to 97).*

This criteria supersedes paragraphs 3.16-19 within the former policy guidance PPG15 though provides the same level of justification required for substantial harm or loss to a listed building. It is our view that the evidence submitted inclusive of the most recent marketing report and accompanying note, does not meet the above criteria. HE9.3 goes on to state that *'to be confident that no appropriate and viable use of the heritage asset can be found under policy HE9.2(ii) local planning authorities should require the applicant to provide evidence that other potential owners or users of the site have been sought through appropriate marketing and that reasonable endeavours have been made to seek grant funding for the heritage asset's conservation and to find charitable or public authorities willing to take on the heritage asset.*

The purpose of marketing as required by Policy HE9.3 is to demonstrate that no viable use for the asset can be found. Guidance with HEPPG explains this in more detail to help local authorities judge the merits of a marketing campaign. This includes advice on the timing of the marketing, the period and means, the asking price, condition of the site and the extent of land included and nature of the interest being marketed –*to ensure that those marketing efforts have been genuine and given the best chance of succeeding.....Expert advice may be need to properly judge these matters.'* (para 96 of HEPPG).

We would refer you to our letter of 10 February 2010 which re-emphasises a number of points already made with regard to marketing of the building, namely the asking price, agents, marketing and condition of the property. We do not believe it necessary or useful to repeat this advice, which has not changed in light of new policy guidance.

As mentioned in our previous letter, we understand the Derby Hippodrome Restoration Fund have responded to the marketing website and as part of their letter of objection to the application have submitted a possible alternative scheme which they consider to be a viable use for the reuse of the building and are keen to explore this further. In identifying the optimum viable use for the reuse of a building and to comply with PPS5 we would recommend that this proposal be tested, and refer you to PPS5 Policies 9.2 - 9.3.

In addition, we would specifically refer you to HE7.6 of PPS5 which states *that where there is evidence of deliberate neglect of or damage to a heritage asset in the hope of obtaining consent, the resultant deteriorated state of the heritage asset should not be a factor taken into account in any decision.* The Council will have to decide, in light of the now concluded criminal proceedings, and the judges comments, whether any of the damage caused needs to be ignored in order to comply with this policy.

Subject to the above point, the current state of the Hippodrome is obviously a relevant factor in this case. That said, the City Council is in a position to take enforcement steps. We understood that the Council had simply deferred consideration of serving an enforcement notice that might lead to the reinstatement of the building, at least in part, until it had seen whether the applicant's proposals were acceptable and would make enforcement a

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redundant exercise. It is obviously highly material to this application to consider that the outcome for this listed building might be very different if an enforcement notice were now served.

### **Recommendation**

The submitted information to date, inclusive of the marketing report and accompanying note has been comprehensively addressed by English Heritage in our letters of 20 May 2009, 19 June 2009, 27 July 2009, 16 September and 10 February 2010. Whilst our advice has been based on PPG15 extant at the time, in line with the new policy framework of PPS5, in essence our recommendation remains the same. We recommend this application be refused on the grounds that the criteria for considering cases of substantial harm in PPS5 detailed in policies HE9.1-3 accompanied by guidance contained within the Historic Environment Planning Practice Guide, in particular paras 96-97 have not been addressed either adequately or in some areas, at all. We continue to urge the City Council to consider all the planning options (the application, alternatives to it, enforcement procedures, urgent works and CPO procedures) in the round. They should not be considered in isolation.

### **9.5 Theatres Trust:**

The Theatres Trust is a statutory consultee and has been actively involved in the consultation process. The Trust has provided five consultation letters in response to the original submission and supplementary supporting evidence. In its last letter the Trust indicated that the main body of the consultation response is provided in the letters of June 2009 and March 2010. Therefore, both of those letters have been reproduced. The concluding paragraph in the last consultation letter of June 2010 is also reproduced, in the context of the new PPS5, and this essentially re-affirms the position of the Trust.

#### **1) Letter of June 2009**

The *Hippodrome Theatre*, Derby was designed in 1914 by the architects Marshall & Tweedy. It was built as a variety theatre with full theatrical facilities including dressing rooms and an orchestra pit. Theatres built circa 1914 which remain substantially complete are rare in England. *The Theatres Trust Guide to British Theatres 1750-1950* includes details of only 14 examples of various sizes; only 3 of which (Derby included) are statutory listed. The *Hippodrome* is featured on page 53 (extract attached).

#### ***Comparators and architectural and historic importance***

The Theatres Trust's view is that the *Hippodrome* in Derby merits listing particularly when considered in the context of other theatres in England. The *Hippodrome* is, quite simply, one of the most important of the remaining cine-theatres within England. It is a unique example because it illustrates the crossover period when buildings were being constructed for both live theatre and cinema. Most of the later listed examples date from the 1920s and were constructed mostly for cinema but incorporated live performance.

The majority of variety theatres were constructed between 1907 and 1914. There are only a handful of surviving comparators of the same date as the *Hippodrome*. These include the *Chelmsford Regent*, 1913 (Grade II) the *Regent* in Great Yarmouth, 1914 (Grade II); the *Pendle Hippodrome* in Colne,



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1914 (unlisted), and Winchester's *Theatre Royal*, 1913 (Grade II) but they were all built as traditional theatres. Other theatre buildings of this period are in other uses and irreversibly altered to such an extent that they have no special interest. The *Redditch Palace* is the only other hybrid listed variety building of the same date. However its architect, Bertie Crewe, was a theatre designer and intended it to look like a theatre. This makes the survival of the *Hippodrome* important as a hybrid theatre. Its rareness is further amplified because it is not by a well-known architect and is an example of what was once commonplace in local districts.

### *Current condition and restoration*

The Theatres Trust believes that the *Hippodrome Theatre* is perfectly capable of being repaired, restored and rebuilt, Contrary to the PPG15 Statement submitted with the Applications much of the building still survives and there is sufficient information and expertise available, mainly through the Trust, to enable a credible restoration of the 1914 variety theatre. In particular, the Trust has sufficient photographs and archives to enable all the plasterwork detail to the ante-proscenium, the walls and the balconies to be reinstated. Plasterwork is rarely beyond saving. Much of the design was repetitive and indeed there is enough remaining fibrous plaster detail to enable a restoration. To this end we have been in contact with a specialist in the field who confirmed that even in a most extreme example when they had to remove all the plasterwork of a listed building prior to stabilisation, 95% of the original plaster work was able to be reused and reinstated. Appendix 1 shows images of the plasterwork which illustrates this.

There are many examples where theatres and entertainment buildings have had their interiors and exteriors restored or have been practically rebuilt. The Grade II listed *Ritzy Cinema* in Brixton is a good example where the interior was recreated from castings when the whole sidewall collapsed. The cinema operated as the Electric Pavilion until 1954, when it was renamed the 'Pullman' before closure in 1976. A collaboration between Lambeth Council and the management in 1986 ensured the cinema's survival, with the facade being rebuilt and restored to near-original condition, The cinema now thrives as a multi- screen complex with bar and cafe facilities, More recently the *London Hippodrome*, also listed Grade II, which has virtually no internal historic plasterwork remaining, has been granted permission to reinstate its plasterwork, Appendix 2 shows details of this plasterwork. The Trust has been able to provide the architects working on the restoration with enough information to recreate the whole Matcham interior scheme and we would be happy to put you In contact with the project manager.

### *The need for theatre In Derby*

In your recently published Core Strategy issues and ideas document it states on page 41 at paragraph 16.1 that, '*A thriving city should be able to offer a wide range of cultural activities including theatre, performance and exhibition space alongside high quality museums and libraries,*' At paragraph 16.5 on the same page it is stated that, '*The strategy identifies the need for additional performance spaces in the city for both music and performing arts events.*'

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*Planning Policy Guidance PPG15: Planning and Historic Environment*  
The Theatres Trust fails to see how the partial demolition of the Derby Hippodrome would meet the Government's policies for protection. PPG15, Part 1, paragraph 1.1 says that 'It is fundamental to the Government's policies for environmental stewardship that there should be effective protection for all aspects of the historic environment. The physical survivals of our past are to be valued and protected for their own sake, as a central part of our cultural heritage and our sense of national identity. They are an irreplaceable record which contributes, through formal education and in many other ways, to our understanding of both the present and the past. Their presence adds to the quality of our lives by enhancing the familiar and cherished local scene and sustaining the sense of local distinctiveness which is so important an aspect of the character and appearance of our towns, villages and countryside. The historic environment is also of immense importance for leisure and recreation.'

Paragraph 3.17 states that 'There are many outstanding buildings for which it is in practice almost inconceivable that consent for demolition would ever be granted..... the Secretaries of State would not expect consent to be given for the total or substantial demolition of any listed building without clear and convincing evidence that all reasonable efforts have been made to sustain existing uses or find viable new uses, and these efforts have failed; that preservation in some form of charitable or community ownership is not possible or suitable (see paragraph 3.11); or that redevelopment would produce substantial benefits for the community which would decisively outweigh the loss resulting from demolition.'

The Theatres Trust would particularly draw your attention to the pertinent sentence at paragraph 3.17 which states: 'The Secretaries of State would not expect consent to demolition to be given simply because redevelopment is economically more attractive to the developer than repair and re-use of a historic building, or because the developer acquired the building at a price that reflected the potential for redevelopment rather than the condition and constraints of the historic building' We would point out that the plans submitted with this application offer no such justification or reassurance that the extent of demolition of the *Hippodrome Theatre* is in any way desirable or necessary. There is no reasoned evidence that all efforts have been made to sustain the building nor has the building been offered at a reasonable cost to a charity or community trust. Furthermore, there are no substantial benefits to the community outweighing the loss resulting from partial demolition or in the new development. In fact, there is clear benefit to the area and the community in retaining and developing the existing building for community use. The developer has made it perfectly clear that he wishes to redevelop the site for more lucrative development.

Paragraph 3.19 (i) goes on to state that 'Where proposed works would result in the total or substantial demolition of the listed building, or any significant part of it, the Secretaries of State would expect the authority, in addition to the general considerations set out in paragraph 3.5 above, to address the following considerations: the condition of the building, the cost of repairing and maintaining it in relation to its importance and to the value derived from its

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*continued use.'* However, there is no proper financial or options appraisal/assessment (also see below) submitted with this Application. The developer bought the building in April 2007 and it was known to be in a good state of repair as The Theatres Trust visited the building in 2004. Any such assessment should be based on consistent and long-term assumptions. In any case, paragraph 3.19 (i) goes on to state that 'where a building has been deliberately neglected in the hope of obtaining consent for demolition, less weight should be given to the costs for repair'

### *Derby City Council's Local Plan*

City of Derby Local Plan Review: Chapter 9 Environment policy E19 and the City of Derby Local Plan Review — Revised Deposit Autumn 2002 policy E22 both state that proposals for listed building consent *'will not be approved where they would result in the demolition of a statutory listed building.'* The Local Plan Review (page 172) says that *'In considering applications affecting listed buildings, the Council will consider the advice of statutory consultees.'*

### *Application and plans*

As stated above, The Theatres Trust considers that the loss of the auditorium represents the demolition of a significant part of the building and the proposals therefore should be set against the tests for demolition as set out in Planning Policy Guidance PPG15: Planning and Historic Environment and your own policies on listed buildings. However, the statements and the conclusions within the Design and Access Statement (dated 23 March 2009) by Maber and the PPG15 Statement (dated April 2009) prepared by Lindsay Cowle, Conservation Consultant, are mostly unsubstantiated and we dispute the analysis.

On page 17:

Section 1: *'that the proposed scheme preserves all the surviving features of the building salvageable'*. In the Applications the auditorium, balconies or proscenium are not preserved and English Heritage and a plaster specialist have both confirmed that they are salvageable.

On page 18:

Paragraph 5: *'there is no apparent end user'*

There has been no feasibility study undertaken to prove this is the case. Indeed there is a local user group being set up who wish to purchase and use the building.

Paragraph 5: *'The conservation merits of a rebuilt theatre would be limited'*. This is untrue. The repaired building would provide Derby with a theatre of listed status.

Paragraph 7: *'Further marketing to find a theatrical use for the building would be fruitless'*. Proper assessments and an option appraisal have not been undertaken and this statement cannot be substantiated.

Paragraph 8: *'Any viable future usage of the remaining building is almost certain to require a radically different interior'*.

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This is incorrect as there are many other Grade II listed theatres converted to other uses which retain the interior, e.g. *Theatre Royal*, Halifax (a nightclub) and *Solders Green Hippodrome* (a church).

The Applicant's PPG15 Statement makes many assumptions about the current state and the structural stability of the theatre and makes the point that further loss is necessary because it is so unsafe. The Theatres Trust relies on the expert advice of English Heritage in its letter of 26 May 2009. We refer you to the last paragraph on page 7 which states: *'in conclusion we note that no accurate and up-to-date structural engineering assessment of the building by an appropriately qualified and experienced specialist has been provided by the applicant in support of the assertions concerning the condition of the Hippodrome. We further refute the argument that the Hippodrome is inherently structurally flawed'*. The Trust would therefore question the validity of many of the points and assertions made about the condition of the building in which demolition is supposedly necessary. The Trust still contends that the theatre could be rebuilt.

A replacement value of £18.5 million is referred to in Appendix 16 (by Wafts and Partners, May 2008) but they have not provided any substantial financial evidence of how this figure has been reached or any report that gives a rationale for this figure.

The Marketing Statement in Appendix 13 & 15 gives details of the marketing of the building. However, there is no substantial evidence to show that it was marketed at a realistic price for a listed theatre over a period of 6 to 12 months. Therefore the Marketing Statement fails to meet the criteria set out in PPG15.

### *Options appraisal*

It is obviously important to find a long-term use for the *Hippodrome* rather than partial demolition and unsympathetic redevelopment for short-term gain. If the applicants were serious about repairing and restoring the building to a more sympathetic use we would first recommend that they undertake an options appraisal and feasibility study. A feasibility study would tie in with a business plan and we have no doubt that this would then be able to support future applications for funding. The primary purpose of an options appraisal is to investigate options for re-use of the historic building in both physical and financial terms. It normally provides sufficient information to enable Stakeholders to decide whether to commit to the further cost, risk and effort in developing a project. It also indicates principal areas of further work required and is a useful tool to help enlist support from key partners (e.g. funding bodies and the media).

Consider the case of the *Regent Theatre* in Hanley. Stoke on Trent City Council commissioned an independent assessment of performing venues in the Hanley area of the city centre. This included the dilapidated and under-used *Victoria Hall* and the former Gaumont cinema which had been closed for over 10 years. This eventually led to a £23m scheme (£14m from the Lottery) to refurbish the *Victoria Hall* (which opened in November 1998) and transformed the old cinema into the *Regent Theatre* into a major regional lyric

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theatre (which opened in September 1999). Consultants undertook primary market research, analysis of competition in Stoke on Trent, Manchester and Birmingham, community consultation and options appraisal, in order to assess need and impact. The venues are now successfully run by the Ambassador Theatre Group through a service agreement with the Council and have had a major positive impact on the night-time economy community safety and the regeneration of the city centre.

### *Grant funding*

The developer should be advised that grants and funding are available. English Heritage provides grants for a variety of work but expect any work to be sympathetic to the character and Importance of the listed building. Repairs grants are available for buildings of '*outstanding architectural or historic interest*' particularly towards re-roofing, treating dry rot and other structural repairs, but not normally towards decoration or works of regular maintenance. Owners have to show that they would not be able to complete the work without financial help and are usually asked to supply details of assets and income to substantiate their application, another good searchable source is Heritage Link that has a searchable online database, which can be found here: <http://www.heritagelink.org.uk/fundingdirectory/main/fundinghome.php>.

### *Future regeneration*

It is obviously important to find a long-term use for the *Hippodrome* rather than demolition and redevelopment for short-term gain. The best way forward from this point would be to press for further Investigation of financial options and potential cultural and community uses for the building. If this cannot be agreed then we would strongly urge the Council to seriously consider a Compulsory Purchase Order for the building and the adjoining car park. The end result would mean that the Council could potentially end up with a lyric house seating up to 1000, perfect for lyric productions and larger scale entertainment. It is likely that some of the rear of the auditorium would have to be adapted to provide adequate front of house facilities for today's standards and the stage house would need to be rebuilt. Further aspirations could include a new extension for a second auditorium and more ancillary accommodation on the car park.

This is achievable and there are plenty of precedents where this has been done successfully. The *Hippodrome* has the added advantage of a superb location and a well-known and interesting history. But its most important feature is its superb sightlines resulting from its original configuration. In our view, an experienced theatre operator would then be Interested or able to take this on, particularly as the end result would be to create a theatre with a stage and fly tower with proper flying facilities, able to present larger touring musicals and entertainment, comparable with the other major cities such as Nottingham, Sheffield and Bradford.

### *Conclusion*

The listed building application for demolition has little in the way of supporting evidence or documentation to support the case for demolition. In terms of the planning application, the proposals do not, produce substantial benefits for

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Derby that outweigh the loss resulting from its demolition, The Theatres Trust would not expect consent for demolition to be given simply because redevelopment is economically more attractive to the developer than repair and re-use of a historic building or because the developer acquired the building at a price that reflected the potential for redevelopment rather than the condition and constraints of the existing historic building. It is our considered opinion that the Applications fail to meet the criteria for demolition set out within Planning Policy Guidance 15 and your Local Plan, and the Applicant has failed to convince The Theatres Trust that any genuine effort has been made to find a reasonable alternative solution for repair, restoration and reuse. Listed theatre buildings are a prized part of any town or city. Their special listed status is graded according to agreed national criteria. Their significance also has a local cultural dimension as they were and are popular places where people gather and provide a focal point for cultural activity and community life. Whether it is the richness of their past or the contribution they make to the present, theatres are hugely significant and provide a basis for creating pride in a place and increasing a sense of belonging. As such theatres, even when converted to other uses, are buildings that contribute to place-making and sustainable communities. The *Derby Hippodrome* is such a building. As well as providing a visible record of Derby's history, its potential future use should embody this inheritance of ideas, materials, skills technological innovations, energy and creative vision. These should be celebrated and conserved. The restoration and rebuilding of the *Hippodrome* should take pride of place in Derby as a measure of the aspirations and confidence Derby has in itself. The demolition of Derby Hippodrome would tell a very different story.

We therefore strongly recommend that you refuse the planning and listed building applications

### **2) Letter of March 2010**

The Theatres Trust is The National Advisory Public Body for Theatres. The Town & Country Planning (General Development Procedure) Order 1995, Article 10, Para (v) requires the Trust to be consulted on planning applications which include '*development involving any land on which there is a theatre.*' It was established by The Theatres Trust Act 1976 '*to promote the better protection of theatres*'. This applies to all theatre buildings. Our main objective is to safeguard theatre use or the potential for such use but we also provide expert advice on design, conservation, property and planning matters to theatre operators, local authorities and official bodies.

Objection: The Theatres Trust is strongly opposed to this proposal for partial demolition of the Grade II statutory listed *Hippodrome Theatre* without a clear understanding of the theatre needs for Derby and an Options Appraisal for the site. The Trust would also expect that any application should consider the restoration of the auditorium and the potential for theatre use by a local theatre group.

Advice/comment: The Trust's position has been set out clearly in our pre-application advice of 24 February 2009 and in our letters of 5 June 2009 and 12 August 2009 in response to the above planning application, to which we refer you for a full statement of our views. This letter responds specifically to

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additional information provided in support of the application which consists of a Marketing Report prepared by Andrew Rutherford and a Note to Accompany Planning and Listed Building Consent Applications by Charles Mynors and Lindsey Cowle, all acting on behalf of the building's owner Mr Christopher Anthony. Unfortunately, the additional information provided by the applicant repeats arguments which we have addressed in our earlier letters. It does not materially alter the situation nor our previous advice that the case for demolition of a listed building has not been made and that therefore the applications should be refused.

The considerations to be taken into account when assessing the case for demolition are set out in Planning Policy Guidance 15 (PPG15) para.3.19. It stipulates that adequate efforts must have been made to retain the building in use, including *the offer of the unrestricted freehold of the building on the open market at a realistic price reflecting the building's condition*. The Marketing Report does not adequately demonstrate that these requirements have been met. The TheatresTrust would expect to see the property marketed by a reputable company with comprehensive information about the building provided in the public domain. We refer you to the marketing of the *New London Theatre* by Drivers Jonas on behalf of The Really Useful Group in 2007. Notice of the sale appeared in the entertainment press, see for example an article in *The Stage* on 23 January 2008, and information about the venue was made publicly available via a dedicated website at <http://reallyuseful.reflectorinteractive.com/> and attached to this letter. A similar process was undertaken by the Peterborough Broadway Theatre after a fire forced the owner to put the building up for sale (sale overseen by property agent Budworth Hardcastle, notice in *The Stage* 7 April 2009 and website <http://www.theatreforsale.co.uk/>). In contrast, the marketing procedure for the *Derby Hippodrome* as described in the report is informal and fails to show sufficient rigour to fulfil the requirements of PPG15. While Savills are mentioned as having had some connection with the case, they do not appear to have been instructed formally to market the property. The *Stage* reported the prospective sale of the *Hippodrome* on 8 December 2009 at a price of £1.2 million. No agent was named and no particulars regarding the building's condition were made formally available in the public domain. The letter of objection to the planning application dated 8 February 2010 from the Derby Hippodrome Restoration Fund indicates that such information was not available upon application either. The Marketing Report appears to consider that the widespread publicity of the Hippodrome in the media is sufficient evidence of adequate marketing. It states, *The building has had extensive coverage on the Internet and been the subject of features in The Independent, The Derby Evening Telegraph, The Stage, BBC Derby, BBC National News and mention in a debate in the House of Lords, providing more publicity than could even have been achieved by a normal marketing campaign.* (Appendix A p.14 para.14). However, the Note to Accompany Planning and Listed Building Consent Applications dismisses this media coverage saying that the *Hippodrome* case has *generated huge interest and coverage in the media and on the Internet. Much of the information in the public domain is emotive and incorrect* (footnote, page 5). This would appear to undermine its value to the

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applicant as a marketing tool. Moreover, third party media coverage is certainly not evidence of an active procedure carried out by the applicant. The press reports also feature widely the figure of £1.2 million as an asking price for the *Hippodrome* (see for example BBC news website 3 December 2009 <http://news.bbc.co.uk/1/hi/england/derbyshire/8392727.stm> and The Stage 8 December 2009 <http://www.thestage.co.uk/news/newsstory.php/26530/derby-hippodrome-12m-price-tag-is-a>). This contrasts with the claim in the Marketing Report that the building was offered at no fixed asking price. If the applicant considered these reports misleading, no formal attempt was made publically to amend the figure. The accompanying Note is at pains to stress that the building should be judged on its status and condition as it now exists (p.1). Taking into account the price at which the property was purchased and the considerable decline in the theatre's fabric subsequently, this asking price cannot be seen as an accurate reflection of the building's value in the state in which it currently exists. It therefore follows that the building has not been offered on the open market at a realistic price reflecting the building's condition.

The Marketing Report claims that there is no economically viable use for the building in its original configuration (eg. Appendix G). However, PPG15 makes it clear that that this is not adequate grounds for demolition, stating *The Secretaries of State would not expect consent to demolition to be given simply because redevelopment is economically more attractive to the developer than repair and re-use of a historic building, or because the developer acquired the building at a price that reflected the potential for redevelopment rather than the condition and constraints of the existing historic building* (3.17). We refer you to the recent public inquiry into the development of Smithfield Market (2007) which is relevant in examining the tests for demolition of a listed building set out in PPG15. Smithfield's General Market Building is a large unlisted Victorian building that together with the neighboring poultry and meat market buildings (which are both Grade II listed) forms the spine and heart of the Smithfield conservation area on the fringes of the City of London. The Inspector concluded that the buildings make a significant positive contribution to the character of the conservation area and that consequently the tests in PPG15 for demolition of listed buildings applied in this case, despite the fact that the building itself was not listed. Here, a developer similarly argued that the costs of repairs needed to the building rendered it economically unattractive to purchasers. The Inspector concluded that the only true test of whether a building had an economic life was genuine marketing, which would establish whether or not anyone would view the buildings as economically attractive.

The Trust would expect the *Derby Hippodrome* to be thoroughly marketed and appraised to find suitable ways of achieving a use that would restore the special interest of the theatre. The stipulation of PPG15 para3.19 that the property should be offered on the *open market at realistic price reflecting the building's condition* has not been met. The case for demolition of a listed building has not been adequately made. **We would therefore strongly advise that you refuse these applications** [their emphasis].



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### **3) Letter of June 2010 (concluding paragraph)**

The submitted applications are extremely harmful to the significance of the listed building and cannot be seen as the optimum viable use of the building. In the Trust's view the Applicant has not thoroughly explored alternative schemes, including the possibility of charitable ownership which might preserve the building's significance. The case for demolition has not been made under the terms of the new PPS5. **We therefore urge you strongly to refuse these applications** [their emphasis].

## **9.6 DCC Archaeologist:**

### **Letter of May 2009**

I do not propose to comment in detail on the case for partial demolition of the Listed Building and/or the sufficiency of the applicant's PPG15 statement. These matters should properly be considered by Derby City Council's Conservation Officers and the relevant officers of English Heritage. At the time of listing, the Hippodrome represented a complete and unusual example of an early 20<sup>th</sup> century variety theatre. This historic significance has already been severely impacted by the loss of fabric contingent upon recent works, and will be to a large part irretrievably lost under the current proposals for partial demolition and redevelopment. The historic fabric of the auditorium area (external and internal) will be completely removed under the partial demolition, and alterations of those parts of the building scheduled for demolition will also have severe impacts, particularly to interiors.

Should the Local Planning Authority be minded to grant consent for the above proposals, then I recommend that under the provisions of PPG15 and PPG16 there is a clear case for a conditioned programme of building recording to mitigate the loss of historic fabric. The building recording should of course take place within the Health and Safety constraints operating at the site, but should aim to secure as complete a 'preservation by record' (*sensu* PPG16) of the historic variety theatre and its interior as is possible.

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

*"No development shall take place within the site until the developer has secured the implementation of a programme of archaeological work (building recording) in accordance with a written scheme of investigation (WSI) submitted by the applicant and approved in writing by the Local Planning Authority. This scheme shall include on-site work, and off-site work such as the analysis, publication, and archiving of the results. All works shall be carried out and completed as approved, unless otherwise agreed in writing by the Local Planning Authority."*

All building recording should be undertaken by a suitably qualified, experienced archaeological contractor or buildings historian. The Development Control Archaeologist should be contacted at the earliest possible opportunity for a written brief from which the WSI can be developed.

In relation to the submission of further information the consultee has stated...the additional information has no material bearing on the archaeological implications of the proposals, and I advise that my previous comments and recommendations (letter of 11<sup>th</sup> May 2009) still stand.

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### **9.7 Crime Prevention Design Advisor:**

I have been consulted at the pre application stage by the Land Agents.

This location has the potential to be subject to all types of crime. The building and its periphery has previously been subject to every type of criminal activity in the past and it must be remembered that part of the current problems are due to an undetected arson attack.

The proposed use as a car park facility could easily be exploited by the cities street drinkers and local prostitutes, who have recently been displaced, if a strong crime prevention ethos and preventative design strategy is not considered.

The new secure single perimeter block and full site enclosure of the car park, proposed for this site, will remove all past problems of drug use and anti social behaviour from the side and rear access points. The proposed infill with six apartments of the existing Crompton Street car park frontage also provides greater security to the end terraced house elevation of Crompton Street and removes the problem of multiple unobserved access points from this side of the car park along the garden blocks.

24 hour use will generate increased activity, vehicular and pedestrian, and therefore increased safety through the greater presence of capable guardians and natural surveillance to the whole area including Macklin Street.

Access to the 346 space car park is via a shared single entrance point with what appears to be a barrier control point. The application refers to a "state of the art vehicle surveillance system" and 24hr supervision.

A comprehensive CCTV scheme for all internal and external areas is essential and requires monitoring and recording including facilities to copy any evidential images. The scheme needs to be specific for image quality type and operational use. CCTV systems should comply with all data protection act requirements. The actual cameras may be vulnerable to attack especially in due to the low heights of many multi storey car parks and will require vandal resistant housings and protection. It is important to include a monitor to face the public domain at this entrance to show images are captured.

This technique will psychologically prevent opportunist crime or criminal attempts and reassure the users that the cameras are live and for real. This will help to create a safe and non threatening parking environment for all and a successful business providing safe parking facilities which are needed on this side of Town.

Two existing surface car parks are being lost to the Connecting Derby scheme and long stay car parking for the many local business employees, within the immediate area, will also be lost. There is an existing fear of use of these parking areas due to lack of maintenance, lack of enclosure and very poor lighting. The fear is most apparent within lone female users returning to their vehicles after 6pm in the darker winter months when activity to this side of Town is considerably reduced after normal office hours. This facility will give the option to park closer to work place and be far safer than all existing options.

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Lighting standards for internal and external areas are important especially with full enclosure using the remaining facades and below ground level parking areas which have zero natural light penetration. BS 5489 is the minimum required standard to achieve with the source providing high colour recognition. Reflective surface treatments can subsequently reduce the amount of luminaires required and reduce energy consumption.

The parking spaces should be arranged in straight rows to aid surveillance and avoid blind spots.

Any walls or dividers to separate half levels should be of a see through material such as mesh to allow adequate surveillance. All upper floor ventilation louvres and any roof access points must be constructed to consider and reduce the risk of persons jumping off the upper floors.

Secure anchor points will be required for motorbikes and cycles.

Further advice on standards and safety can be obtained from me or from the national safer parking scheme known as "Park Mark" [www.britishparking.co.uk](http://www.britishparking.co.uk)

The office accommodation and all private or separately accessed areas will require robust control systems to prevent unauthorised access. The canopy adjacent to the retail kiosk also requires CCTV coverage and bright lighting as it does offer opportunities for unwanted congregation offering shelter and a substantial recess which are well proven facilitators for anti social behaviour and crime. It would be better if this recess was designed out or minimised.

All glass should be of the laminated type for safety and security.

I respectfully request that in the interests of crime prevention, that the above standards for lighting, the provision of CCTV and operational requirements are a condition of any approval for this scheme.

### **9.8 Derby Cityscape:**

I am writing to you in response to the above planning application consultation. The response below supersedes any response sent previously.

The Hippodrome is a site of local historical interest and a grade II listed building; any proposals therefore need to be carefully considered in terms of both land use and design of the built-form. I suspect, unfortunately, that the collapse of the roof and other non-reversible damages to the building renders it impossible, in practical terms, to re-instate the building back to its original use.

The ideal scenario would be to have the Hippodrome refurbished and rejuvenated as a thriving theatre in Derby. In the absence of any such initiative and funding resources and to reduce the risks of health and safety on site, it is important that the owners become proactive at this stage and redevelop the site sympathetic to its historic status.

The Atkins city centre car parking study identified a shortfall of car-parking in the area and considering the wider regeneration context, partial conservation of the building combined with this use appears to be the most pragmatic solution. The principle of introducing new residential units on Crompton Street in the heart of city centre is supported as it compliments the existing residential development here. The introduction of the coffee shop and the

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retail kiosk on the Green Lane frontage extends and reciprocates the existing uses on Green Lane; it also helps, in a small way, to increase the mix of uses in the city centre.

From an urban design point of view, the café on ground floor and the entrance to upper level office contribute towards a much needed active frontage to the street. The residential block along Crompton Street screens the car park and provides a positive frontage.

The design quality of the proposed residential development and the facade treatment of the car park on Green Lane have to be carefully and sensitively considered. More detailed drawings and 3D visualisations are required to give a complete picture of how the development will sit in the surrounding historic context.

### **9.9 Other Amenity Societies:**

Members should note that no consultation responses have been received from the Ancient Monuments Society, the Council for British Archaeology, the Georgian Group, the Society for the Protection of Ancient Buildings, the Victorian Society or the 20<sup>th</sup> Century Society.

### **9.10 Health & Safety Executive:**

I refer to my visits to the Derby Hippodrome site of 31st December 2009 and meeting with Andrew Rutherford; and my visit to the site of 13th January 2010 and meeting with Paul Richardson, Paul Clarke, Debbie Maltby, Stephen Teasdale (Derby City Council) and Jerry Gilbert (Abacus).

I have referred also to previous contacts by my colleagues David Gould and Cliff Seymour (HM Inspectors of Health and Safety), Paul Thomas (HM Specialist Inspector of Health and Safety) and Samantha Peace (HM Principal Inspector of Health and Safety) from January to May 2008.

I have taken note of the case heard yesterday in Derby Crown Court against the developer in relation to the previous construction work undertaken; also of the Court Order from Southern Derbyshire Magistrates' Court in relation to the perimeter fencing.

I have been furnished by the respective parties with the following information, to which I have also referred:

BWB Consulting report and appendices including risk assessment, outline method statement, photographs

EC Harris report on health and safety implications of retention vs. demolition including photographs

Copy of Court Order pursuant to the Building Act from Southern Derbyshire Magistrates' Court dated 3rd December 2009 related to the perimeter fencing

Report Abacus Design Associates "Derby Hippodrome – current structural stability" dated 10/1/2008

Reports Abacus Design Associates "Schedule of urgent repairs..." dated 29/1/2008, 2/3/2008

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Report Abacus Design Associates “revised schedule of urgent repairs...” dated 26/2/2008

Report Abacus Design Associates “Structural Condition of former Hippodrome...” dated 3/4/2008

Report Abacus Design Associates “Planning Application.....Observations” dated 5/6/2009

Witness statement – Jerry Gilbert from Derby City Council v. C T Anthony

Report Abacus Design Associates “Assessment of support to upper balcony” dated 7/2/2010

Photographs – various

1. At present there is no work activity within the site perimeter fence of the site; the Health and Safety Executive therefore has no current enforcement responsibility. Any matter in relation to dangerous structures is a matter for the local building control officer of Derby City Council.
2. HSE are not in a position to verify any design, risk assessment or method statement prior to any work activity. It is the duty of those creating the risk to identify those risks and implement control measures. However, as previously discussed we can provide advice as to the range of risks that should be addressed during the development of risk assessments and method statements for any proposed construction work.
3. Whomever instructs construction work (including the erection of any fence structure or scaffold shield) assumes duties under CDM as a client. This will include the requirement for competence assessment of any designer or contractor instructed to undertake the work.
4. Dutyholders stipulating how work is to be undertaken, stipulating specific finishes or materials to be used, or stipulating the retention of parts of structures, may also assume duties under CDM as a designer.
5. At present the structure does not appear to present a risk to persons outside of the established perimeter fence. There is risk of serious personal injury to persons entering the area within the perimeter fence from falling masonry and debris.
6. We have been informed that there are reports of unauthorised entry into the site, breaching the “Heras” type fence currently in place. HSE would expect dutyholders to assess the adequacy of the perimeter fence considering evidence of unauthorised access and the site location. HSE’s guidance indicates that 2m high fences are an effective site barrier for most sites with the exception of city centre sites and residential areas where there have been previous attempts to gain access to the site. In such cases larger, more robust and secure hoardings may be appropriate.
7. The Hippodrome structure and perimeter fence are currently subject to inspections from outside the perimeter fence by both representatives of the developer and Derby City Council. It is advised that such inspections are formally recorded, including action taken to implement any remedial measures

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required to address risk to persons outside the perimeter fence. Reports of inspections should include reference to any evidence of unauthorised access within the perimeter fence and building structure.

8. Currently, entry within the perimeter fence and within the structure should not be undertaken due to the unstable nature of the loose elements on the elevations to the Crompton Street car park, the rear of the building, the proscenium arch and the auditorium walls, canopy and roof structure (including the Macklin Street elevation).

9. Before any work is undertaken within the established perimeter; for example, to install a hoarding or screening, then the structure should be inspected and where necessary loose elements above the areas of work, dressed. This could be achieved safely from a mobile elevating work platform (MEWP) of sufficient reach and articulation, positioned on suitable ground and operated by a competent person. The method statement for such work should address matters raised in the risk assessment for the activity. The use of the MEWP would provide an opportunity to inspect the disturbed roof elements on the Macklin St elevation and potentially other structural elements.

10. Any proposed method of work for entering the building or making the building safe should be progressive. That is, dangerous elements are made safe prior to entry into that area (for example, remotely by machine); the area is then secured before progressing to the next area. The sequence of operations should be agreed with a competent structural engineer.

11. Works proposed for the erection of the perimeter fence and any scaffold subject should be subject to a design by a competent person. The design should include calculation of wind loadings and any additional loadings imposed on the building structure if the scaffold structure is tied to it.

12. If works to erect any proposed perimeter fence and scaffold structures meet the criteria for CDM notification of the project to the HSE; then such notification should be made, the appropriate appointments should be made and the relevant requirements for notified projects under CDM and the Approved Code of Practice to the Regulations complied with.

13. The fire curtain manufactured with asbestos containing materials and fitted to the stage is partially damaged and free to the elements. With reference to the previous perimeter asbestos monitoring results and the current physical condition of the fire curtain; there appears to be a low risk of the spread of asbestos fibres. As such, it is recommended that the curtain remain in situ until a safe area of work is established around the curtain which will facilitate its safe removal. The condition of the curtain should be monitored and any significant deterioration in its condition will require the situation to be further assessed. If a safe area around the fire curtain (by stabilising the proscenium arch) cannot be safely achieved, then it may be necessary to demolish the arch remotely whilst applying sufficient fibre suppression, then for trained operatives wearing appropriate personal protective equipment to pick the asbestos containing material from the arisings. Any such method would require a suitable and sufficient risk assessment and written plan of work.

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14. Information regarding the presence of asbestos containing materials should be correlated and provided to any contractor instructed to undertake any demolition or remedial work. Previous concerns related to asbestos containing materials in the orchestra pit have been received by HSE. Work with such materials in poor condition is likely to require to be undertaken by a licensed contractor following the appropriate notification to HSE. Persons undertaking demolition or refurbishment work where asbestos containing materials may be present, should have received asbestos awareness training.

### **9.11 Abacus Design Associates Ltd – The City Council’s appointed structural consultants**

On 17 May 2010 the City Council’s consultant was instructed to carry out an inspection to gauge the listed building’s current structural condition. For Members reference a summary of the main conclusions and recommendations in the consultant’s report of 22 May 2010 is included below:

1) Although decorations and finishes to the interior have weathered, the external elevations of this building remain in a relatively stable state (given its partially demolished nature) and its structural condition has not deteriorated significantly over the past two years (since the partial demolition).

2) Inside the footprint of the building is an extremely dangerous environment and under no circumstances should anyone enter the building in its current condition. Additionally, the extent of the presence of asbestos containing materials is not known.

3) The fenced-off exclusion zone has been provided to keep the public away from areas where loose debris might fall from the building and this exclusion must be maintained whilst potentially loose debris is present at high level. If any work is to be carried out on the building, it will be necessary to remove high level hazards after fully considered risk assessments and method statements have been formulated and executed.

4) In addition to the above requirements, there are some (predominantly maintenance) items that should be attended to in the short- to medium-term future:

- a) Re-fixing sections of hanging cladding and removal of spalling render on the Green Lane elevation.
- b) Boarding up openings in remaining masonry walls to prevent an acceleration of weathering to the structural fabric.
- c) Removal of vegetation from gutters and stone features, etc.

5) It is also necessary to have regular (say, quarterly) inspections carried out to check for significant changes in the building’s structural condition. It is also recommended that a high level inspection from a mobile elevating work platform should be carried on an annual basis.

6) Clearly, the sooner the future of this building is decided upon, the better. Being open to the elements will obviously increase the rate at which the building deteriorates.

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7) My work undertaken in or around this building must be risk assessed in advance and method statements devised to enable such work to proceed so as not to endanger the health and safety of operatives and others.

The consultant has also provided a response to a report of HSP Consulting (acting on behalf of the applicant) regarding concerns about the structural stability of the listed building. The main body of that report, of 22 May 2010, is reproduced below. Please note the report refers to Appendices which are not reproduced with this report but can be viewed via the web-link provided at the start of this report.

### **General structural deterioration**

Last week, I carried out a structural inspection of the former Hippodrome Theatre building from outside the current exclusion zone fence. This inspection shows that there has been negligible structural deterioration over the past two years. My inspection report dated 22 May 2010 refers.

Of course, it still remains dangerous inside the current exclusion zone and any work undertaken within the exclusion zone will need careful planning and execution with due regard being given to the significant hazards that are present. It is essential to maintain the security of the exclusion zone. Outside the exclusion zone, I am satisfied that no undue danger to the public exists at present.

### **Balcony Support**

A schematic balcony support arrangement is shown on the plan submitted by HSP Consulting and is attached in Appendix A to this report for reference purposes.

Although the front balcony beam (noted as beam "B" in the HSP report) has considerable structural capacity, it is inconceivable that a beam (with such curves and cranks on plan) has been designed as the primary support member at the front of the balcony. The beam clearly acts as an effective trimmer between the cantilever trusses. The load assessment in the HSP calculations has been based on a straight beam which takes support from the end of the outer trusses. There are several reasons why this analysis is inappropriate, particularly:

- a) The beam is curved and would sag dramatically if it were actually supporting the ends of the central trusses;
- b) The relatively horizontal appearance of the front façade of the balcony indicates that, away from the failed section, the steel cantilever truss support system retains its structural integrity. If beam "B" had been supported on the outer truss (which has been locally damaged at its end), the whole of the front façade to the upper balcony would be sagging severely.

My report dated 7th February 2010 showed that the balcony is primarily supported by cantilever action and, for reference, a copy of that report is included in Appendix D.



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It remains clear that the balcony is primarily supported from the rear by cantilever action and it remains, therefore, extremely unlikely that significant failure of the balcony is likely to occur due to local instability of the damaged wall at the Crompton Street side.

### **Failure of the balcony support and stability of Macklin Street wall**

As mentioned in my report dated 27th March 2010, if the end of the upper balcony were to drop further at the Crompton Street end, its diaphragm effect would prevent there being any significant outward thrust on the Macklin Street wall, from consideration of basic structural principles.

As stated in email, dated 26th April 2010 (see Appendix E), to Mike Baker of HSP Consulting, the balcony support is remote from the Macklin Street wall and so, even if there were to be a problem with the balcony, the Macklin Street wall would not be duly affected. The indication on the plan (Appendix A) of the presence of a corridor and the presence of the inner corridor wall that can be seen at the far side of the balcony provides good evidence of that corridor being present.

The likely presence of concrete floors and masonry cross walls would only provide additional stability to that wall.

I remain satisfied, therefore, that there is no significant risk of localised collapse within the building causing failure of the Macklin Street wall.

### **Stability of the pier supporting the roof lattice beam over the front of the balconies**

The calculations attached to HSP Consulting email dated 10th May 2010 primarily address the structural capacity of the damaged masonry pier and panel adjacent to the opening in the brickwork on the Crompton Street elevation. The calculations have looked at the capacity of the wall acting as a cantilever as there is no support at the top of that damaged section. Although the calculations show that, acting as an isolated cantilever pier, there is a shortfall in its structural capacity, in reality cantilever action from a much wider section at the base of the wall would resist wind loads. Sheets 2/8 — 2/11 inclusive of our own calculations (included in Appendix B) show that this secondary wall panel is structurally stable under design wind load conditions (even ignoring the internal balcony structure that provide structural restraint to the inside of that wall).

More important is the stability of the section of wall that supports the pitched roof structure, as failure of this wall would be far more serious. Our calculation sheets 2/1 — 2/7 (in Appendix B) show that this section of wall is capable of resisting design wind loads. Our analysis has been carried out ignoring the considerable restraint and buttressing that is provided by the balcony structures that connect to that wall. Our analysis is based on far more onerous conditions than could ever actually occur.

I remain satisfied that the Crompton Street elevation walls are structurally capable of supporting the loads that are likely to be imposed on them.

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### **General**

Clearly, in the future, it is inevitable that there will be further structural deterioration if the building remains open to the elements and it is essential that the structural condition of the building is monitored on a regular basis. Renewed efforts should be made to make a speedy decision about the future of the building so that hazards can be eliminated and the most important remaining internal structural elements can be protected.

## **10. Summary of policies most relevant:**

Members should note that PPS5: Planning for the Historic Environment and its supporting practice guide was recently published and cancels both PPG15: Planning and the Historic Environment and PPG16: Archaeology and Planning.

At the time of submission of the applications the criteria set out in paragraph 3.17 and 3.19 of PPG15 were applicable.

Sections 3.16 to 3.19 in PPG15 relating to these requirements are restated in Policy HE7.6 and Policy HE9 of PPS5, with amended terminology. The relevant policies and tests are addressed throughout the report and Members are reminded that the summary table in **Appendix 1** seeks to provide a guide to the policies and the government's emphasis on key elements.

A copy of PPS5 has been previously circulated to Members for ease of reference.

### **Saved adopted CDLPR policies**

GD2	Protection of the Environment
GD4	Design and the Urban Environment
GD5	Amenity
CC1	City Centre Strategy
CC7	Residential Uses within the Central Area
CC18	Central Area Car Parking
CC19	Public Car Parking
H13	Residential Development – General Criteria
S1	Shopping Hierarchy
S2	Retail Location Criteria
S5	Small Shops
S12	Financial and Professional Services and Food and Drink Uses
E10	Renewable Energy
E19	Listed Buildings and Buildings of Local Importance
E20	Uses Within Buildings of Architectural or Historic Importance
E23	Design
E24	Community Safety
T1	Transport Implications of New Development
T4	Access, Parking and Servicing
T10	Access for Disabled People

*The above is a summary of the policies and guidance that are relevant. Members should refer to their copy of the CDLPR for the full version or the department prior to the meeting.*

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### **11. Officer Opinion:**

I would remind Members that Section 16 of the Planning (Listed Building and Conservation Areas) Act 1990 states that it is the duty of the local planning authority when considering whether to grant listed building consent to... *'have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'*. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 also states that it is the duty of the Local Planning Authority, in respect to listed buildings in the exercise of planning functions, to have special regard to preserving the building and its setting's special interest.

Policy E19 – Listed Buildings and Buildings of Local Importance states:

'Proposals for development, and applications for Listed Building Consent, will not be approved where they would result in the demolition of statutory listed buildings. Proposals will also not be approved where they would have a detrimental effect on the special architectural or historic interest of a statutory listed building, its character or setting. Exceptions will only be made where there is a convincing case for demolition or alteration.'

Paragraph 9.42 of the adopted CDLPR contains the reasoned justification for policy E19. The reasoned justification states...

*About 370 buildings in the City are statutorily listed as being of special architectural or historical interest. Listed building consent is needed for the demolition of listed buildings, or to carry out any internal and external alterations that affect the character of a listed building. Once historic features and other characteristics of listed buildings are lost, they cannot be replaced. **The City Council, therefore, has a duty to pay special regard to the preservation or enhancement of the building, its setting, or any features of special architectural or historical interest which it possesses. PPG15 (Planning and the Historic Environment) advises that there should be a general presumption in favour of the preservation of listed buildings, except where a convincing case can be made out for alteration or demolition.** The criteria set out in PPG15 will be used to assess any such proposals. Permission will only be granted for demolition or significant alterations where the scheme would result in substantial benefits to the community significantly outweighing the loss and where there is clear evidence that all reasonable efforts have been made to sustain existing uses or find viable new ones and that preservation in some form of charitable or community ownership is not possible or suitable. The City Council will expect applications for planning permission and listed building consent to be submitted simultaneously. **In considering applications affecting listed buildings, the Council will consider the advice of statutory and local consultees.*** [The bold text is my emphasis]

Reference in the reasoned justification is made to PPG15 and Members will be aware that this pre-dates PPS5 which was introduced and considered during the life of the applications. Regard has to be had to the criteria in PPS5 and its companion practice guide together with the professional expertise of statutory consultees such as English Heritage and the Theatres Trust. It is important to note that nothing in PPS5 changes the existing legal framework or the designation of listed buildings and

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the existing legislation contained within Planning (Listed Building and Conservation Areas) Act 1990 which sets out the basis on which listed building consent may be required, remains.

The City Council has at its disposal the specialist expertise of officers in the Built Environment and Legal Teams and the local knowledge base provided by the Conservation Area Advisory Committee. The concluding sentence of the quote from paragraph 9.42 of the CDLPR above indicates that the Council will consider the advice of statutory and local consultees. Members will recognise that the applications have generated substantial debate about the adequacy of the submitted information and the efforts made by the applicant's team to find the optimum viable use for this listed building. The proposal has attracted involvement from senior officers at English Heritage and the Theatres Trust has provided clear, unequivocal, recommendations based on the submitted information.

This report provides Members with the main body of responses from the consultation process. For clarity, I consider that it would be worthwhile to repeat some of the recommendations of the statutory and local consultees in relation to the proposals and the criteria outlined in PPS5. Members will also note that at paragraph 4 of this report I have reproduced the applicant's summaries of the case and why, in his opinion, the applications should be granted.

### **1) English Heritage**

#### **Recommendation of 11 May 2010**

The submitted information to date, inclusive of the marketing report and accompanying note has been comprehensively addressed by English Heritage in our letters of 20 May 2009, 19 June 2009, 27 July 2009, 16 September and 10 February 2010. Whilst our advice has been based on PPG15 extant at the time, in line with the new policy framework of PPS5, in essence our recommendation remains the same. We recommend this application be refused on the grounds that the criteria for considering cases of substantial harm in PPS5 detailed in policies HE9.1-3 accompanied by guidance contained within the Historic Environment Planning Practice Guide, in particular paras 96-97 have not been addressed either adequately or in some areas, at all.

We continue to urge the City Council to consider all the planning options (the application, alternatives to it, enforcement procedures, urgent works and CPO procedures) in the round. They should not be considered in isolation.

### **2) Theatres Trust**

#### **Letter of June 2010 (concluding paragraph)**

The submitted applications are extremely harmful to the significance of the listed building and cannot be seen as the optimum viable use of the building. In the Trust's view the Applicant has not thoroughly explored alternative schemes, including the possibility of charitable ownership which might preserve the building's significance. The case for demolition has not been made under the terms of the new PPS5. **We therefore urge you strongly to refuse these applications** [their emphasis].

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### **3) CAAC**

#### **Comments of 14 May 2009**

The Committee very strongly object to the proposal and recommended refusal of both applications. The Committee was not convinced by the arguments put forward that the building is sufficiently structurally unsound for it to be demolished and considered that there is a lack of an adequate options appraisal looking at restoration and reuse, potential funding sources, and a lack of evidence of active marketing. The proposed change of use to a car park with retail and offices therefore has not been proven to be the optimum viable use that is compatible with the building. Committee believe overall that there is insufficient evidence, within these applications, to meet the criteria as set out in PPG15.

#### **Comments of 13 May 2010 – The applications were reported back to CAAC on the basis of the amended drawings submitted**

The Committee regarded the amended plans submitted in order to reconfigure the traffic flow to have no impact on its original recommendation to refuse consent for both the planning and listed building consent applications, on the grounds that the further substantial demolition required was not justified.

HE9.1 of PPS5 requires a presumption to be made in favour of the conservation of the designated heritage asset. Once lost heritage assets cannot be replaced. HE9.1 states that loss affecting any designated heritage asset requires clear and convincing justification.

Where an application will lead to substantial harm to, or total loss of significance the tests of HE9.2 need to be met. The applicant's suggestion that HE9.2 does not apply is not accepted. Whilst the application may not lead to the total loss it will certainly result in substantial harm. Whilst recognising the difficulties of retaining parts of the existing building the application involves and will result in removal of significant parts of the building including the proscenium arch and balconies. Further, whilst the current state of the building is clearly relevant, regard should be had to other options that could lead to reinstatement of the building or a less harmful alternative options which would be lost should consent be granted. These options should not be discounted without having been properly explored.

In terms of meeting the tests of HE9.2(i) the applicant suggests that substantial public benefits will arise. I do not accept this to be the case. In terms of public safety the opinion of the Council's structural engineer, which is supported by the HSE, is that provided an adequate and secure exclusion zone is maintained this will sufficiently address public safety issues. Whilst the application clearly has some merits they are not in terms of public benefit so substantial as to outweigh the harm or loss that would be caused. I would suggest that the provision of a public car park and ancillary facilities in this location, together with the associated 3 small flats on Crompton Street, could not be deemed to be offering 'substantial public benefits' to the citizens of Derby. One has to have regard to recent major developments in the city centre that have increased the supply of city centre parking facilities and residential accommodation in close proximity to this site. It is also reasonable to suggest that the former Duckworth Square site which is in close proximity to this site could potentially offer these parking and residential facilities, as an alternative site option, in the foreseeable future.

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In terms of meeting the tests to satisfy HE9.2(ii) as to the first test *(a) nature of the heritage asset prevents all reasonable use*, the applicant's submission that this part of the test is met is simply based on the current state of the building without any regard to, or proper assessment of repairing or reinstatement of the building. I do not consider that that is sufficient.

In terms of the second part of the test *(b) no viable use of the heritage asset can be found in the medium term that will enable its conservation*, HE9.3 advises that the applicant should be required *to provide evidence that other potential owners or users of the site have been sought through appropriate marketing*. I agree with the reasons as set out in the letter of February 2010 from English Heritage as to the inadequacy of evidence provided on marketing. There are references in the English Heritage letters to various attempts to advise the applicant's team about marketing strategies. I do not therefore accept that the applicants have satisfied the second stage of this tests.

In terms of the third part of the test *(c) conservation through grant funding or some other form of charitable or public ownership is not possible*, HE9.3 requires 'reasonable endeavours' to be made *to seek grant funding for the heritage asset's conservation and to find charitable or public authorities willing to take on the heritage asset*. Whilst accepting that the Council is unlikely to take on the building itself it is wrong to suggest as the applicant does that compulsory purchase has been ruled out. The applicant appears to place too much weight to the attempts by one group, the Derby New Theatres Association, to find backing for restoration of the listed building for theatre use. The potential of other community groups interested in the rescue and reuse of the listed building, as a theatre or otherwise, has not been explored. I also concur with English Heritage's view that in identifying the optimum viable use for the reuse of the building that the scheme being proposed by the Derby Hippodrome Restoration Fund requires testing which would be consistent with paragraph 97 of the HEPPG which accompanies PPS5.

In terms of the fourth part of the test *(d) the harm to or loss of the heritage asset is outweighed by the benefits of bringing the site back into use* I am not convinced this is the case particularly as other more appropriate uses have not been adequately explored.

HE7.6 of PPS5 requires that where there is evidence of deliberate neglect or damage to a heritage asset in the hope of obtaining consent the resultant deteriorated state of the heritage asset should not be a factor taken into account. The majority of the present damage to the building arises directly as a consequence of the actions of the owner when he carried out the unauthorised works for which he was convicted. The conviction was based on the owner's plea accepted by the court and the Council that the damage that arose as a consequence of that unlawful action was not deliberate. Whilst it may be arguable that failure to address concerns of the Council until served with an urgent works notice prior to these works could reasonably be viewed as deliberate neglect the current state of the building cannot in the main be attributable to such and therefore HE7.6 is not considered applicable. That said the policy itself does not require the building to only be considered in its current state as suggested by the applicant, rather the correct approach is as indicated by English Heritage in their letter of February 2010 that whilst the current state cannot be ignored and is clearly relevant other options and opportunities for use, repair and restoration should not be

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ignored. Moreover the policy itself even if not applicable does not preclude having regard to the circumstances leading up to the current state of the premises and actions of the owner in that regard.

The overall conclusion is to accord with the advice given from English Heritage in that it has not been demonstrated that all reasonable endeavours have been made to find alternative uses for the listed building and there is not clear and convincing justification for the proposals and the criteria for considering cases of substantial harm in PPS5 detailed in policies HE9.1-3 accompanied by guidance contained with the Historic Environment Planning Practice Guide, in particular paragraphs 96-97 have not been addressed either adequately or in some areas, at all.

### **12. Recommended decision and summary of reasons:**

#### **12.1 To refuse listed building consent and planning permission**

#### **12.2 Reasons:**

- 1) In the opinion of the Local Planning Authority and English Heritage the criteria for considering cases of substantial harm in PPS 5 detailed in policies HE9.1-3 accompanied by guidance contained with the Historic Environment Planning Practice Guide, in particular paragraphs 96-97 have not been addressed either adequately or in some areas, at all. For this reason the proposal is contrary to these national policies and saved policy E19 of the adopted City of Derby Local Plan Review.
- 2) In the opinion of the Local Planning Authority it has not been demonstrated that all reasonable endeavours have been made to find alternative uses for the listed building and there is not clear and convincing justification for the proposals. Too much weight appears to have been given to the attempts by one group, the Derby New Theatres Association, to find backing for restoration of the listed building for theatre use. The potential of other community groups interested in the rescue and reuse of the listed building, as a theatre or otherwise, has not been explored. For this reason the proposal is contrary to policies HE9.1 - HE9.3 of PPS5, the accompanying guidance contained within the Historic Environment Planning Practice Guide and saved policy E19 of the adopted City of Derby Local Plan Review.
- 3) In the opinion of the Local Planning Authority it has not been demonstrated that the offer of the unrestricted freehold of the listed building on the open market at a realistic price reflecting the listed building's condition under current ownership has been made, for a use that may not involve substantial demolition or total demolition. For this reason the proposal is contrary to policies HE9.1 - HE9.3 of PPS5, the accompanying guidance contained within the Historic Environment Planning Practice Guide and saved policy E19 of the adopted City of Derby Local Plan Review.

#### **12.3 Application timescale:**

Both applications are beyond the statutory time limit for determination.

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