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## APPLICATION DETAILS

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<b>Application No:</b>	22/0665/COU
<b>Location:</b>	4/4A, Captain Cook Square, Middlesbrough
<b>Proposal:</b>	Change of use from retail to bar, food and mixed use Leisure Venue including outdoor roof terrace on 1st floor and cellar to the rear yard (Sui Generis)
<b>Applicant:</b>	Middlesbrough Council
<b>Agent:</b>	Middlesbrough Council
<b>Ward:</b>	Newport
<b>Recommendation:</b>	Approve with conditions

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## SUMMARY

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Planning permission is sought for the change of use of a vacant retail unit within the Town centres primary shopping area to a bar and restaurant (sui generis) and for a first-floor outdoor seating area to provide limited bar/food area.

Being a town centre use the principle of the proposed use in this location is considered acceptable. Local Plan Policy REG21 defines this area as being primary shopping frontage which is aimed at retaining retail uses within this location. Policy REG21 sets out that there should be no more than 15% non-retailing uses within the primary shopping front areas of the town centre. The October 2021 survey established 15.7 % non-retail uses within the primary shopping frontage designation with a further slight increase in this figure following the recent approval of the E Gaming centre at Unit 5 Captain Cook Square.

The proposal will result in the loss of a single retail unit but will provide a new leisure use and result in the re-occupation of a large vacant unit, providing additional footfall within this section of the town centre and additional employment opportunities that will assist in improving the vitality and viability of Captain Cook Square and the wider town centre.

The external changes to the building including the single storey extension and acoustic fencing around the roof terrace area will be to the rear of the building and given the locations will not have a significant impact on the character and appearance of the area.

The proposed acoustic fencing to the outdoor seating area is in accordance with the submitted noise report mitigation measures and will reduce any potential noise impacts on the occupants of the nearby premises.

Despite there being no parking provision for the intended use, the application site is considered to be within a sustainable location within the town centre and within close walking

distance to good public transport links such as the bus station and train station and there are public car parks in close proximity.

No objections have been received in relation to the proposal and the application is recommended for approval subject to conditions.

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## **SITE AND SURROUNDINGS AND PROPOSED WORKS**

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The application site is Unit 4/4A Captain Cook Square a two-storey building located within Middlesbrough Town Centre. The building has a rear service yard accessed from Grange Road and Smith Street.

The application site forms one of several similarly designed modern commercial buildings that front the pedestrianised area at Captain Cook Square. To the north of the site is Middlesbrough Bus Station and to the west is a pedestrian footpath link to the Captain Cook multi-storey car park. Immediately to the south are terraced properties along Grange Road and residential properties located around Stephenson House, Hardwick House and Runswick House.

The proposal is for the change of use of the vacant retail unit to a bar and restaurant with an outdoor first floor roof terrace (Sui Generis). There will be no alterations to the unit frontage with external alterations including the removal of part of the side boundary wall to the service yard and a single storey cellar extension.

The extension will project 5.8 metres with a height of 3 metres and a width of 6.2 metres with a double set of doors on the rear elevation. The proposed outdoor roof terrace will include the installation of a 3-metre-high acoustic fence internally around the existing perimeter wall. With the fence height siting approximately 1.5 metres above the existing wall height.

The applicant has submitted a Design and Access Statement and a Noise Report in support of the application

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## **PLANNING HISTORY**

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Previous planning history for the site includes:-

M/FP/0254/02/P – New Frontage, approved April 2002

M/ADV/0253/02/P – 2 No internally illuminated fascia signs, approved April 2002

M/FP/0934/02/P – 1m dia. satellite dish on wall mount at roof level, approved September 2002

M/FP/2424/01/P – Change of use to Class A2 Betting shop, approved January 2002

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## **PLANNING POLICY**

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In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, Local Planning Authorities must determine applications for planning permission in accordance with the Development Plan for the area, unless material considerations indicate otherwise. Section

143 of the Localism Act requires the Local Planning Authority to take local finance considerations into account. Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires Local Planning Authorities, in dealing with an application for planning permission, to have regard to:

- The provisions of the Development Plan, so far as material to the application
- Any local finance considerations, so far as material to the application, and
- Any other material considerations.

#### Middlesbrough Local Plan

The following documents comprise the *Middlesbrough Local Plan*, which is the Development Plan for Middlesbrough:

- Housing Local Plan (2014)
- Core Strategy DPD (2008, policies which have not been superseded/deleted only)
- Regeneration DPD (2009, policies which have not been superseded/deleted only)
- Tees Valley Joint Minerals and Waste Core Strategy DPD (2011)
- Tees Valley Joint Minerals and Waste Policies & Sites DPD (2011)
- Middlesbrough Local Plan (1999, Saved Policies only) and
- Marton West Neighbourhood Plan (2016, applicable in Marton West Ward only).

#### National Planning Policy Framework

National planning guidance, which is a material planning consideration, is largely detailed within the *National Planning Policy Framework* (NPPF). At the heart of the NPPF is a presumption in favour of sustainable development (paragraph 11). The NPPF defines the role of planning in achieving economically, socially and environmentally sustainable development although recognises that they are not criteria against which every application can or should be judged and highlights the need for local circumstances to be taken into account to reflect the character, needs and opportunities of each area.

For decision making, the NPPF advises that local planning authorities should approach decisions on proposed development in a positive and creative way, working pro-actively with applicants to secure developments that will improve the economic, social and environmental conditions of the area and that at every level should seek to approve applications for sustainable development (paragraph 38). The NPPF gives further overarching guidance in relation to:

- The delivery of housing,
- Supporting economic growth,
- Ensuring the vitality of town centres,
- Promoting healthy and safe communities,
- Promoting sustainable transport,
- Supporting the expansion of electronic communications networks,
- Making effective use of land,
- Achieving well designed buildings and places,
- Protecting the essential characteristics of Green Belt land
- Dealing with climate change and flooding, and supporting the transition to a low carbon future,
- Conserving and enhancing the natural and historic environment, and
- Facilitating the sustainable use of minerals.

The planning policies and key areas of guidance that are relevant to the consideration of the application are:

Housing Local plan (2014)  
H1 - Spatial Strategy

Core Strategy DPD (2008)  
CS4 - Sustainable Development  
CS5 - Design  
CS13 - Town Centres etc Strategy  
CS14 - Leisure Development  
CS18 - Demand Management  
DC1 - General Development

Regeneration DPD (2009)  
REG20 - Principal Use Sectors  
REG21 - Primary Shopping Frontage

Supplementary Planning Documents  
UDSPD - Urban Design SPD

The detailed policy context and guidance for each policy is viewable within the relevant Local Plan documents, which can be accessed at the following web address.  
<https://www.middlesbrough.gov.uk/planning-and-housing/planning/planning-policy>

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## CONSULTATION AND PUBLICITY RESPONSES

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There have been no comments received following the neighbour's consultation and the site notices.

### Public Responses

Number of original neighbour consultations	130
Total numbers of comments received	0
Total number of objections	0
Total number of supports	0
Total number of representations	0

The following comments have been received from the statutory consultees.

### MBC Planning Policy (in summary)

National Planning Practice Guidance 'Town centres and retail' explains that a wide range of uses can, if suitably located, help to support the vitality of town centres; with evening and night-time activities having the potential to increase economic activity and provide for additional employment opportunities.

Most recent figures (October 2021) for Middlesbrough's primary shopping frontage designation show a percentage of 15.7% non-A1 uses, slightly above the 15% threshold, therefore the use as bar and leisure in this location could be deemed contrary to Policy Reg21. However given recent changes in the dynamics of both shopping and leisure patterns, and in order to promote the long term vitality and viability of the town centre, it is considered a more

flexible approach should be taken in respect of the primary shopping frontage policy. An approach that, in accordance with the NPPF 'Ensuring the vitality of town centres', allows the town centre to grow and diversify in a way that can respond to rapid change in the retail and leisure industries, allows a suitable mix of uses and reflects their distinctive character. It is therefore considered that, as a main town centre use, the use of leisure development in this location is, in principle, acceptable; although not a direct A1 retail use it is considered the development will create employment opportunities and support the long-term vitality and viability of Captain Cook Square and the wider town centre.

#### MBC Environmental Protection (in summary)

No objections subject to conditions restricting delivery and collection times, refuse collection times, submission of an odour and particulate impact assessment and the use being developed in accordance with the submitted noise assessment report (R1-05.08.22).

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### **PLANNING CONSIDERATION AND ASSESSMENT**

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The main considerations with this proposal are the principle of development, the impact on amenity, impact on the character and appearance and highway safety.

#### **Policy Context**

Planning legislation requires that planning applications should be determined in accordance with the relevant development plan in force unless material considerations indicate otherwise. In addition, the National Planning Policy Framework (NPPF) as revised in 2021, is a relevant material consideration. The NPPF states that applications should be determined giving due weight to local planning policies in accordance with their consistency with the revised Framework, with greater weight given the closer policies are to those in the Framework (para 219) and where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. As such, the Middlesbrough Local Plan and associated policies are the starting point for decision making with those of most relevance listed in the earlier section of this report.

As a matter of principle both the Local Plan and NPPF require development to be sustainable and to make an efficient use of land and buildings.

Policy REG20 (Principle Use Sectors) identifies the retail sector as a primary retail area uses A1, A2 and A3 (now 'E' uses) as being the most suitable with specific reference to the primary shopping frontages as being for retail use. Policy REG20 sets out that other complimentary uses may be acceptable providing they do not harm the principal function and character of the shopping area or impact on the vitality and viability of the town centre.

Policy CS13 seeks to protect and enhance the hierarchy of vital and viable town, district, local and neighbourhood centres in Middlesbrough by seeking to safeguard their retail character and function and resisting developments that will detract from the vitality and viability of the core retailing function of the town centre.

Additionally, to ensure the primary retail function within key areas of the town centre, Policy REG21 sets out that the proportion of non-retailing uses within the primary shopping frontages should not exceed 15% and that concentrations of non-retail uses should be avoided. The

recent town centre survey completed in October 2021 shows the percentage of units being non-A1 use (now E(a) use) for the primary shopping frontage area as 15.7 %.

With specific reference to the primary shopping frontages, Policy REG21 identifies use class A1 (retail) as the most appropriate. Other uses within class A2 (financial/professional services), A3 (restaurants and cafes) and other complimentary uses may be acceptable providing they do not harm the function and character of the shopping area, nor impact on the vitality and viability of the town centre. The Use Class order was amended in September 2020 which means A1, A2 and A3 uses now fall within retail E(a), Financial and professional services E(c) and cafes/restaurants E(b).

### **Principle of the change of use**

The proposal relates to a use which is in line with the types of uses supported by Policy REG 21 and is located within a highly sustainable location, given the building is within the town centre and within walking distance of Middlesbrough bus and train stations. The proposal is therefore considered to be within a highly sustainable location in line with both local and national policies. In addition, the re-use of a large vacant building within the town centre is considered to be a positive improvement to the vitality and viability of this area of the town centre and will contribute to the planned and approved leisure uses within Captain Cook Square. In this respect, the proposal is considered to be in accordance with the general principles of Local Plan Policies CS4 and CS5.

The proposed use is considered to provide a leisure destination within the town centre. The use will provide additional footfall within this section of the centre that will assist in supporting the vitality and viability of the town centre and is considered to be in accordance with the principles set out within Policies REG 20 and REG21.

The percentage of non-retail uses will be slightly above this 15.7 % figure given the recent approvals for the Gaming use at Unit 15 Captain Cook Square. Therefore, this proposal would be contrary to the guidance set out in Policy REG21 retailing to the protection of the retailing function of the primary shopping area and consideration therefore needs to be given as to whether there are material planning considerations that would promote a decision away from this policy guidance.

The application site is located within the primary shopping frontage. However, the location of the unit is away from the main prominent core shopping centres (Hill Street/ Dundas and Cleveland Centre) and the main through routes in the centre e.g Linthorpe Road/ Corporation Road. The location of the unit is positioned on the outer edge of the primary shopping frontage area where there is a significant proportion of retail uses and as such will not provide a break within the existing primary shop frontages.

The proposed leisure use will attract additional footfall into the town centre and is likely to be open during the day and in the evening, providing further benefits to the vitality and viability of this section of the town centre outside of normal shop hours. The intended bar and restaurant use is considered to further compliment the recent planning approvals for leisure uses within the Captain Cook Square and will contribute further to the vitality of this section of the town centre, assisting with the re-purposing of the Captain Cook Square from a retail location to a leisure destination through the grouping of similar uses.

The application site is currently vacant with a boarded-up shop front. The proposed use of both floors of this large building that fronts Captain Cook Square is considered to provide an active frontage within this location.

Policy CS14 established that the Council will work with partner organisations to ensure the provision of a wide and accessible choice of leisure facilities for the community and to reinforce Middlesbrough's role at the heart of the Tees Valley. Policy CS14 (a) sets out this will be achieved through the promotion of the town centre as a sub-regional leisure destination both in the daytime and during the evening. The proposed use of the building as a bar and restaurant use and the potential operating hours is in line with the aims of Policy CS14.

The council's planning policy team has advised that the National Planning Practice Guidance '*Town centres and retail*' explains that a wide range of uses can, if suitably located, help to support the vitality of town centres, with evening and night-time activities having the potential to increase economic activity and provide for additional employment opportunities and that given recent changes in the dynamics of both shopping and leisure patterns, and in order to promote the long term vitality and viability of the town centre, a more flexible approach should be taken in respect of the Local Plan's primary shopping frontage policy. An approach which, in accordance with the NPPF '*Ensuring the vitality of town centres*', will allow the town centre to grow and diversify in a way that can respond to rapid change in the retail and leisure industries, allow a suitable mix of uses and reflect the distinctive character of the town centre.

The proposal is considered to align with the consultation advice from the Planning Policy team and is considered to be in accordance with principles of the Local Plan Policies, creating employment opportunities and supporting the long-term vitality and viability of Captain Cook Square and the wider town centre.

### **Character and appearance**

Policy CS5 (c & f) comments that new development should secure a high standard of design, should be well integrated to the immediate and wider context and should enhance the built and natural environments.

Policy DC1(b) (General Development) comments that '*the visual appearance and layout of the development and its relationship with the surrounding area in terms of scale, design and materials will be of high quality*'.

The external alterations proposed include a single storey flat roof cellar extension to be located within the rear yard area and installation of the acoustic fencing around the perimeter of the proposed roof terrace. The location of the external changes to the rear of the building mean they will not be visible from the main pedestrianised area of Captain Cook Square and are relatively small scale in the context of the overall site / buildings.

The proposed extension and acoustic fencing around the first-floor outdoor seating area will be visible from the rear of the properties along Grange Road and from Davison Street. The extension will be the same materials as the existing building. The design, scale and location of the single storey extension within the existing service yard area means the extension is considered to have no significant impact on the character and appearance of the area.

The acoustic fencing will be fixed to the existing wall around the perimeter of the proposed roof terrace and will therefore sit approximately 1.5 metres above the boundary wall. Whilst it would be preferable for the materials to be brickwork to match the existing boundary wall,

given the fact the proposed first floor seating area is to the rear of the building and not highly visible from the wider area, the proposed fencing is in this instance considered to have no significant impact on the overall character and appearance of the street scene.

The front of the ground floor of the building is currently boarded up. This proposal includes no alterations to the existing frontage of the unit and if changes are required this would be subject to a separate planning application.

These proposed external alterations are considered to be in line with the guidance set out within Core Strategy Policies CS5 (c&f) and DC1 (b).

### **Impacts on surrounding amenity**

Both the NPPF (paragraph 130 (f) and Local Plan Policy DC1(c) require all development proposals to take account of their effects upon the surrounding environment and amenities of occupiers of nearby properties.

The application site is located within an established commercial location within the town centre. The frontage of the building faces towards the pedestrianised public realm area of Captain Cook Square. The building is located within the outer edge of Captain Cook Square with residential uses within close proximity to the south along Grange Road, Monkland Close and St Aiden Drive. There is an existing level of background noise which will be apparent to these residential properties given their proximity to the units with Captain Cook Square and this has been factored into the consideration of the proposed bar/restaurant use and the outdoor terrace

The proposed use will operate between 9am until 2 am and will include the conversion of the existing roof into an open roof terrace. A noise assessment has been submitted in support of the proposal and considered the noise impacts on the neighbouring properties including the closest residential properties on Grange Road which have windows within 14 metres of the site. The noise assessment references the existing background noise levels which are apparent within the town centre. During the evening the main noise sources were from commercial plant machinery with the source being from the nearby McDonalds which is turned off at 1am. The noise assessment suggested the following mitigation measures: -

- the installation of a 3-metre-high acoustic fence within the existing boundary wall of the roof terrace
- the operation of the roof top terrace until 1am.
- Noise management plan to minimise shouting
- Amplified music system to be set to appropriate background measures
- Internal noise within the venue to be sufficiently contained by the envelope of the building

The Environmental Health officers have considered the noise assessment report and mitigation measures provided and no objections to the proposal subject to conditions. Namely that the proposal should be in accordance with the noise assessment mitigation measure with further conditions including the submission of an odour and particulate assessment and restrictions on the hours for deliveries and collections and refuse collection.

A condition has been placed on the application to ensure that should the levels of noise within the outdoor roof terrace exceed the levels set out within the noise assessment report the use of the outdoor roof terrace would cease until a further noise survey reports and mitigation measures have been submitted to the Local Authority for consideration.



Although not specifically requested by the Environmental Health officers, given the proximity of the roof terrace to the neighbouring residential properties along Grange Road it is considered appropriate to place a condition on the proposed use to restrict any amplified music within this outdoor seating area.

The proposed use is likely to potentially increase the number of pedestrians and associated traffic within the area, particularly within the nearest street which is Grange Road. The site is considered to be within a highly sustainable location within close proximity to the bus and train stations and town centre car parks. Pedestrian access to the site is provided not only from Grange Road but also from several pedestrianised through routes leading to Captain Cook Square. The sustainable location of the site will assist in limiting any potential increase in the level of noise from pedestrians and traffic which would result from the proposed use.

In view of the sites location in the town centre, and not directly adjacent (frontage) to the nearest housing and the mitigation measures proposed, it is considered that the proposal will not result in any undue impacts on residential amenity in the area subject to conditions.

### **Highways**

The application site is located within the town centre in close proximity to both private and council car parks. Captain Cook Square itself has a multi-storey car park with a pedestrianised footpath link directly to the application site. The site is also well served by public transport link with Middlesbrough Bus Station within close walking distance and Middlesbrough Train Station. As such, there should be no adverse impacts on highway provision or safety as a result of this proposal.

The proposal will not alter the existing bin storage or service arrangements with a large service yard located to the rear of the building.

### **Conclusion**

The proposed use is a town centre use and is appropriate in principle within the town centre, it will support the diversification of this area to a leisure destination and without having any notable detrimental impacts to the primary retailing function of the town centre, in accordance with local and national planning policy and guidance. The proposed design and scale of the external alterations are considered to have no significant impact on the character and appearance of the building or the surrounding area. The location of the proposed use within the Town Centre where there is an element of existing background noise and the proposed mitigation measures means there is considered to be no adverse impact on the amenity of the neighbouring premises.

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## **RECOMMENDATIONS AND CONDITIONS**

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### **Approve with conditions**

1. **Time Limit**

The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.

Reason: In order to comply with the requirements of Section 91 of the Town and

Country Planning Act 1990 (as amended).

2. Approved Plans

The development hereby approved shall be carried out in complete accordance with the plans and specifications detailed below and shall relate to no other plans:

- a. Existing floor plans and site location plan drawing 01 dated 18th October 2022
- b. Proposed floor plans drawing 02 dated 18th October 2022
- c. Existing and proposed elevation drawing 3(a) dated 3rd January 2023
- d. Proposed acoustic fence drawing 04 dated 12th December 2022

Reason: For the avoidance of doubt and to ensure that the development is carried out as approved.

3. Opening Hours

The use of the main building hereby approved shall not be open to visiting members of the public outside the hours of 9am and 2am Monday to Sunday and the first floor outdoor seating area shall not be used by visiting members of the public outside the hours of 9am and 1am Monday to Sunday.

Reason: To prevent undue detrimental impact on residential amenity in accordance with the requirements of Local Plan Policy CS5.

4. Odour and Particulate Impact Assessment

Prior to the commencement of the use of the development an odour and particulate impact assessment shall be provided by a competent and suitably experienced, specialist air quality or odour consultant and approved in writing by the local planning authority. The assessment shall identify the impact of cooking odours and grease released to the air from the premises and detail methods to control them to prevent harm to the amenity. The report shall be carried out in accordance with the EMAQ guidance "Control of Odour and Noise from Commercial Kitchen Exhaust Systems" 2018 or an alternative appropriate assessment tool agreed in advance with the Local planning Authority. The report should include details of the position of internal ventilation extraction canopies, the position and height of the flue outlet and the type of filtration and or odour control units or other fume treatment to be installed. The systems and filtration and odour control units shall be installed and maintained in accordance with the manufacturer's recommendations including the frequency of replacement filters.

Reason ; To ensure a satisfactory form of development in the interests of the amenities of residents having regard for Policies DC1. CS5 of the Local plan and section 12 of the NPPF.

5. Delivery/Collection Hours

Deliveries and collections to the rear of the premises including waste collection must be restricted to between the hours of 8 am and 7pm Monday to Saturday and 9:30am and 6:30 pm Sunday.

Reason: In the interests of amenity of residents having regard for policy DC1 of the Local Plan and section 12 of the NPPF

6. Acoustic Fencing

The acoustic fencing shown on the approved plans shall be installed prior to the commencement of the use of the roof terrace area and shall be maintained and retained for the lifetime of the development, unless otherwise agreed in writing with the Local Planning Authority.

Reason : In the interests of the amenity of the neighbouring premises and to accord with Core Strategy policy DC1

7. External amplified systems

No speakers, tannoy, address system or amplified music system shall be installed or operated to the exterior of the building or in any external areas.

Reason: In the interests of amenity of residents having regard for policy DC1 of the Local Plan and section 12 of the NPPF

8. Roof Terrace

The outdoor roof terrace hereby approved shall be carried out in accordance with the mitigation measures set out within the noise assessment report 22221310-AJN dated 5th August 2022. In the instance of the scheme of noise mitigation failing to achieve the levels detailed within the submitted report and at the written request of the Local Planning Authority, the use of the outdoor roof terrace shall cease until further noise mitigation measures are implemented on site to achieve the noise levels detailed within the report. Any additional measures required as a result of this condition shall be retained in operational order for the lifetime of the use of the roof terrace.

Reason: To ensure a satisfactory form of development in the interests of the amenities of residents having regard for policies DC1, CS5 of the Local Plan and section 12 of the NPPF.

Reason for approval

The proposed change of use will introduce new uses to the town centre, bringing additional footfall, vitality and viability to the town centre without unduly harming the retailing function of the town centre, and is considered to be a sustainable and appropriate location for a use of this type without having undue impacts on surrounding premises or their associated uses including the nearby residential properties or on the character and appearance of the area, in accordance with the guiding principles of both national planning policy guidance and the relevant Local Plan Policies.

Case Officer: Debbie Moody

Committee Date: 20<sup>th</sup> January 2023

Appendix 1. Site Location Plan

