

# Birmingham City Council

Planning Committee

21 December 2023

I submit for your consideration the attached reports for the **City Centre** team.

<u>Recommendation</u>	<u>Report No.</u>	<u>Application No / Location / Proposal</u>
Approve – Subject to 106 Legal Agreement	6	2023/00766/PA  16 Kent Street City Centre Birmingham B5 6RD  Demolition of existing buildings and construction of 9-12 storey building to provide 146 no. apartments with associated internal amenity space for residents
Approve - Conditions	7	2023/05721/PA  2-6 Colmore Gate Colmore Row Birmingham B3 2QA  Partial demolition of existing building, extension to create a 26-storey tower and a 10-storey shoulder and construction of a new facade, external rooftop landscaped amenity space and pavilion (all use class E office and ground floor retail), the closure and diversion of the existing pedestrian arcade and provision of public realm and landscape works at ground floor level

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Committee Date: 21/12/2023      Application Number: 2023/00766/PA  
Accepted: 06/02/2023      Application Type: Full Planning  
Target Date: 22/12/2023  
Ward: Bordesley & Highgate

16 Kent Street, City Centre, Birmingham, B5 6RD

Demolition of existing buildings and construction of 9-12 storey building to provide 146 no. apartments with associated internal amenity space for residents

Applicant: Prosperity Southside Residences Ltd  
JQ1, 32 George Street, Birmingham, B3 1QG  
Agent: PJ Planning  
Cradley Enterprise Centre, Box no 15, Maypole Fields, Cradley, B63 2QB

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Recommendation  
**Approve Subject to a Section 106 Legal Agreement**

1. **Proposal:**

1.1 As originally submitted the application proposed a 15-storey residential building. However, to address concerns about its scale and design, the plans were amended to a 12-storey building stepping down to 9-storeys, where it adjoins the Unitary and Armouries building on Lower Essex Street and Priory House on Kent Street. The amended scheme returns to the scale and form of the scheme design as considered under application 2021/03783/PA, previously recommended for approval but withdrawn.



Proposed ground floor layout

- 1.2 The layout is an “L” shaped block that sits to back of pavement along Kent Street and Lower Essex Street. At ground floor is an entrance foyer and residents lounge at the corner of the two roads. Along Lower Essex Street there is cycle storage (148 spaces), whilst along Kent Street there are plant rooms and a refuse store. Facing the internal courtyard there are four apartments. Two stair cores and three lifts provide access to the upper floor residential accommodation. No on-site car parking is proposed.
- 1.3 The scheme provides 35 x 2-bed (24%), and 111 x 1-bed (76%) apartments as follows: -
- 100 x 1-bedroom 1 person apartments of between 39sqm and 45sqm
  - 11x 1-bedroom 2 person apartments at 50sqm
  - 23 x 2-bedroom 3 person apartments of between 63sqm and 66sqm
  - 12 x 2-bedroom 4 person apartments of between 74sqm and 77sqm
- 1.4. The elevations comprise a simple grid to unify the massing. Smooth red brick with detailing are used to define the corner and the setback upper three floors, whilst the dark red brick emphasises the wing blocks. The wing blocks feature a deeper reveal to add depth to the façade. Windows and doors are dark grey aluminium. At roof level there is a green / brown roof, together with solar panels and air source heat pumps. There are also 2 roof terraces at Level 9.
- 1.5. The scheme provides a resident’s lounge of 146sqm and external amenity spaces totalling 509.5sqm comprising:
- Ground floor amenity area: 361.5m<sup>2</sup> (306.5 m<sup>2</sup> shared amenity & 55m<sup>2</sup> private terraces)
  - 9th floor amenity area: 148m<sup>2</sup>



Illustrative view of the corner of Lower Essex Street and Kent Street

- 1.5. The application is supported by: -
- Planning Statement
  - Design and Access Statement
  - Noise Assessment
  - Overheating Risk Report
  - Energy and Sustainability Report

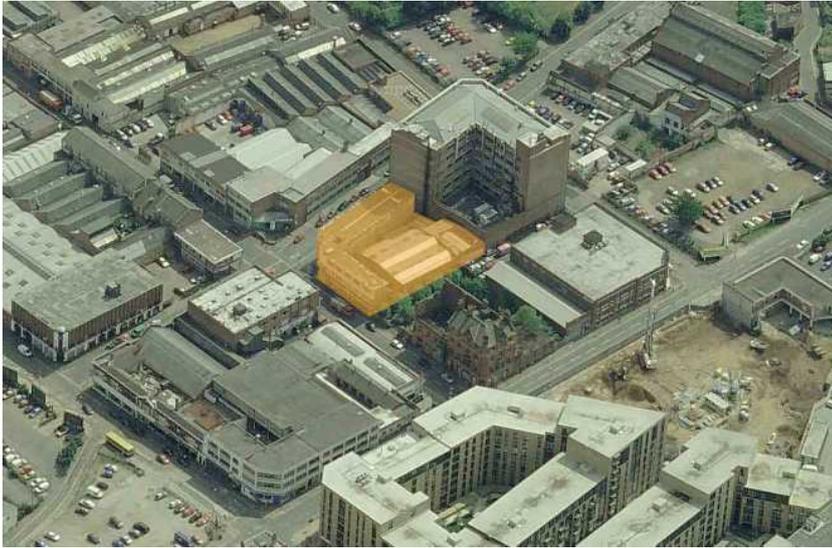
- Building Regulations Part L Compliance Statement
- Daylight and Sunlight Report
- Fire Statement
- Preliminary Ecological Appraisal
- Transport Statement and Travel Plan
- Drainage Strategy

1.6. A Viability Statement has been submitted, which demonstrates that with a policy compliant contribution, the scheme would not be financially viable. The report has been assessed by independent consultants who consider that the scheme can sustain a contribution of circa £1,050,000. As per the previously consented Oasis site immediately to the south, the proposal is that this amount be put towards noise mitigation works at The Nightingale Club, opposite the site. The previous assessments (2021) costed these works at £650,000, however, with inflation the cost estimate for these works is now in the region of £850,000 (excluding VAT). The proposal is that as agreed with Oasis, money be paid into an escrow account held by the City, for the Club to draw down on as required. The proposal differs from the Oasis Agreement (which requires payment upon commencement of works on that site) in that it is proposed to make a payment of £100,000 1 month after the grant of planning consent for initial preparatory work, the remainder paid 9 months after the grant of planning consent, whether development has commenced or not. In addition, the applicant has agreed to pay £250,000, if the cost of the Noise Mitigation Works exceeds £1,050,000 and no alternative funding has been secured. This additional money would then be refunded to the applicant if there is alternative funding. If the cost of the Nightingale noise mitigation works is less than £1,050,000, then any unexpended money would be used toward off-site affordable housing.

1.7. [Link to Documents](#)

## 2. **Site & Surroundings:**

- 2.1. The application site is located on the south side of the City Centre, at the junction of Kent Street and Lower Essex Street. It is within the Gay Village, close to major attractions, including the Hippodrome Theatre, Birmingham Royal Ballet and China Town. The site is also within easy walking distance to the central retail and commercial districts, with a 10-minute walk to Birmingham New Street Station and the Bullring Shopping Centre.
- 2.2. The site is 0.13 hectares and comprises a 3-storey vacant office building with a former nightclub on the ground floor. The northern site boundary is formed by the Unity & Armouries residential development which has recently been completed and is now occupied. The western site boundary is formed by Priory House, which has been converted to residential use. On the opposite side of Lower Essex Street to the east is the Nightingale Club and a further phase of the Unity & Armouries development site. Further to the east on Kent Street is Medusa Bar and Sidewalk Bar. These bars / clubs operate each day of the week and open into the early hours of the morning. Surrounding uses include offices, leisure and residential.



Aerial view of the proposed development site (prior to U&A)

### 3. **Planning History:**

#### Application Site

- 3.1. 20/11/2018 – 2018/03004/PA – 16 Kent Street – Demolition of existing buildings and residential-led redevelopment to provide 116 apartments and 2no. commercial units (Use Classes A1-A4, B1(a) and D1) in a 9-12 storey building – Appeal against non-determination dismissed. Reasons for refusal: inadequate mitigation proposed within the development against noise from the Nightingale; absence of an agreement to secure noise mitigation measures at the Nightingale which could result in complaints against the Nightingale; and absence of an agreement to secure affordable housing. Subsequent appeal dismissed 25 March 2022
- 3.2. 27/4/2021 - 2021/03783/PA - 16 Kent Street - Demolition of existing buildings and redevelopment to provide 116 apartments with a ground floor of 2 commercial units to include Use Classes E(a), E(b), E(c), E(e), E(f) public houses, wine bars, and/or drinking establishments (sui generis) and E(g)(i) – Withdrawn.

#### Nearby Developments

- 3.3. 16/03/2016 – 2015/10323/PA – Land at Wrentham Street, Kent Street and Gooch Street North – Erection of 3-6 storey building comprising 141 residential apartments, ground floor commercial unit (Use Classes A1, A2, B1(a) and D2) together with associated parking and landscaping – Approved subject to conditions.
- 3.4. 29/05/2018 – 2017/09434/PA – Former Kent Street Baths, Land bounded by Bromsgrove Street, Gooch Street North, Kent Street and Henstead Street – Clearance of site and erection of a residential mixed use development comprising 504 dwellings, flexible retail, restaurant, leisure and office uses, car parking and associated developments – Approved subject to conditions.
- 3.5. 18/12/2020 - 2020/04784/PA - Priory House, Gooch Street North/Kent Street - Conversion and refurbishment of Priory House, including change of use from Use Class B1(b) to include 79 residential apartments (Use Class C3), ancillary internal and external resident's amenity areas, secure car and cycle parking and other associated works - Approve subject to Conditions.
- 3.6. 4/6/2021 - 2021/05033/PA - Land at Lower Essex Street, Hurst Street and Sherlock Street - Demolition of existing buildings and erection of 3 residential blocks to provide

628 apartments together with associated amenity/commercial (Use Class E) floorspace, parking and landscaping. Block A - 27 storey tower with 9 storey shoulder, Block B – 12 storey taller element and 8 storey shoulders, Block C – 8 storeys – Approved 9/12/2022 subject to a Section 106 legal agreement.

- 3.7. 17/6/2021 - 2021/05399/PA - Site Bordered by Gooch Street North, Kent Street and Lower Essex Street (also known as the Oasis site) - Demolition of all buildings and construction of 7 to 12 storey buildings (excluding basement) comprising 456 apartments (1 & 2 bed) (Use Class C3); 517sqm commercial floorspace (Flexible Use Classes E(a)/E(b)/E(c)/E(e)/E(f)/E(g)(i)); landscaped private courtyard and private garden terrace; new public thoroughfare – Approved 16/9/2022 subject to two legal agreements. The first between the applicants and the City Council to secure: -
- a) £1.041m public realm works to provide a new throughfare known as The Avenue; and
  - b) and a deposit of £1,305,000 in a holding fund for noise mitigation works at the Nightingale with any residual amount to be spent by the City Council on off-site affordable housing.

The second agreement between the City Council and the Nightingale to secure the implementation of the noise mitigation works and for any residual monies to be used to provide off site affordable housing.

- 3.8. 19/01/2021 - 2021/00081/PA - Land at Kent Street - Erection of 8-12 storey building providing 133 no. residential apartments (Use Class C3) together with ancillary ground floor amenity and commercial space (Use Class E) – awaiting determination.

#### 4. **Consultation Responses:**

- 4.1. City Design - the layout of this block is generally acceptable as its sits at back of pavement, forming an appropriate city block corner. The amended design still has some animation around the ground floor, but bins and cycle storage weaken both elevations. The revised proposal has been reduced to 12 storeys, whilst still very large is more reflective of the emerging character of this area. It could be supported if concerns around design quality can be satisfactorily addressed.
- 4.2. BCC Regulatory Service – no objection subject to the incorporation of an agent of change agreement (based on the approach taken under 2021/05399/PA) and the following conditions.
- Contamination remediation scheme
  - Contaminated land verification report
  - A Noise Assessment
  - Noise Mitigation Scheme
  - Noise Commissioning Testing
  - Limitation on the noise levels for Plant and Machinery
  - Sound Insulation for Plant and Machinery
  - Demolition Management Plan
  - Construction Management Plan

The conditions in relation to noise assessment, noise mitigation scheme and noise commissioning testing are set out in full below.

#### **Noise Assessment**

Prior to the commencement of above-ground construction and/or specification of the glazing and ventilation a further noise assessment shall be undertaken to establish the noise impacts on the development following the completion of the noise mitigation works to the Nightingale secured through this consent. This assessment

shall be carried out in accordance with the Birmingham City Council Planning Consultation Guidance Note on Noise & Vibration and submitted to and agreed in writing by the Local Planning Authority and the approved report shall be the basis of the design if the noise mitigation scheme.

#### Noise Mitigation Scheme

Prior to the commencement of above-ground construction and/or specification of the glazing and ventilation, a scheme of noise mitigation shall be submitted to and agreed in writing by the Local Planning Authority which shall detail the following and the noise mitigation shall be undertaken in accordance with the approved details and thereafter maintained:-

i. the design and specification for the proposed noise mitigation from glazing, building components and ventilation provision based on a composite noise reduction calculation in accordance with BS8233 and BS EN 12354:3 which shall ensure that the internal noise environment to habitable rooms based on the combined impact of the noise break-through from the building structure (including glazing) and the noise generated by the mechanical ventilation within the habitable room meets:-

- the daytime and night-time internal noise level criteria requirements detailed in section 7 (and in particular Table 4) of British Standard 8233:2014 'Guidance on sound insulation and noise reduction for buildings', and
- the 2017 ProPG on Planning and Noise – 'New residential developments', and
- the requirements of the Birmingham City Council Planning Consultation Guidance Note on Noise & Vibration.

ii. the design and specification for the proposed noise mitigation from glazing and building components based on a composite noise reduction calculation in accordance with BS8233 and BS EN 12354:3 which shall ensure that the internal noise environment from building façade break-through to all habitable rooms shall achieve the following internal levels expressed as a 15-minute Leq.

	Frequency Hz							
	63	125	250	500	1000	2000	4000	8000
dB Leq	47	41	35.2	29.2	25.0	21.9	19.5	17.7

iii. the design and specification for any mechanical ventilation system to any habitable room (other than kitchen or bathroom extraction) - subject to the requirements of iii. above the scheme shall include an assessment of the combined impact of the noise break-through from the building structure (including glazing) and the noise generated by the mechanical ventilation within the habitable room and shall identify how background ventilation and purge ventilation will be achieved.

iv. the scheme shall also address the adequacy of the ventilation system to avoid over-heating conditions and shall be supported by an overheating assessment carried out in accordance with CIBSE TM59 Design methodology for the assessment of overheating risk in homes.

#### Noise Commissioning Testing

a) A method of post-installation commissioning testing and assessment of the approved acoustic mitigation scheme shall be submitted to and agreed in writing by the local planning authority prior to testing being undertaken. This assessment and testing shall demonstrate that the internal noise environment to habitable rooms from mechanical ventilation and noise break-in through the structure under all conditions meets the following: -

i. the daytime and night-time internal noise level criteria requirements detailed in section 7 (and in particular Table 4) of British Standard 8233:2014 'Guidance on sound insulation and noise reduction for buildings', and

ii. the 2017 ProPG on Planning and Noise – 'New residential developments', and

- iii. the requirements of the Birmingham City Council Planning Consultation Guidance Note on Noise & Vibration, and
  - iv. the following internal levels expressed as a 15-minute Leq.
- |          | Frequency Hz |      |      |      |      |      |      |      |
|----------|--------------|------|------|------|------|------|------|------|
|          | 63           | 125  | 250  | 500  | 1000 | 2000 | 4000 | 8000 |
| dB Leq47 | 41           | 35.2 | 29.2 | 25.0 | 21.9 | 19.5 | 17.7 |      |

b) Prior to the first occupation of the development a report detailing the results of the post-installation commissioning testing and assessment of the acoustic mitigation scheme demonstrating that the scheme meets the requirements of a) above shall be submitted to and approved in writing by the local planning authority.

- 4.3. BCC Transportation Development - no objection subject to conditions to secure cycle parking and reinstatement of redundant footway crossings on Lower Essex Street. There is also a small area of stopping up required at the corner of Kent Street and Lower Essex Street, which reduces the public footway width. However, this is not a concern given the wide footway where the kerb lines and junction radius has been stretched out away from the plot, and there are no highway features such as signs or lamp columns.
- 4.4. BCC Planning Ecologist – no objection subject to conditions to secure a condition requiring bird / bat box and details of the green / brown roofs.
- 4.5. BCC Leisure Services – request a contribution of £231,400 towards improvement of public open space in Highgate Park, within Bordesley & Highgate Ward in line with Policy TP9.
- 4.7. Severn Trent Water – no objection subject to conditions to secure drainage plans for the disposal of foul and surface water flows. Although their sewer records do not show any public sewers within the area, there may be sewers that have been recently adopted under the Transfer of Sewer Regulations 2011.
- 4.8. Local Lead Flood Authority – holding objection pending the submission of additional information.
- 4.9. West Midlands Fire Services – the approval of Building Control will be required to Part B of the Building Regulations 2010. Early liaison should be held with them in relation to fixed firefighting facilities, early fire suppression and access. The external access provisions for a building should be planned to complement the internal access requirements for a fire attack plan.
- 4.10. West Midlands Police –
  - Query why the post room is accessible from the external amenity space and recommend it is a closed unit with internal controlled access only.
  - Recommend that the main entrance has two sets of doors to create an air lock facility and reduce the risk of tail gating (this could be negated if the reception is to be staffed 24/7 however).
  - Support the double key card entry to the cycle store but query the need for a second door on Lower Essex Street
  - Query what hours the ground floor reception will be staffed
  - CCTV should be provided to cover all entrances
  - An Access controlled intercom into the building should be installed and video capable.
- 4.11. Health and Safety Executive – content with the fire safety design.

5. **Third Party Responses:**

- 5.1. Adjoining occupiers, local MP, residents associations and Southside BID notified. Site notice displayed. The following comments have been received.

Original Application

- 5.2. Cllr Gareth Moore - whilst the blank elevation to Lower Essex Street reduces direct overlooking of the Nightingale Club, there is a still noise issue that will not be fully addressed due to the proximity of the venue. Noise will still disperse into the vicinity, not only from the Nightingale but from revellers visiting the Gay Village and the vehicles/taxis that are associated with the night-time economy. As a noise issue will still be present, this will impact of the quality of life of future occupiers and will lead to noise complaints against Nightingale. Therefore, many of the issues previously raised are still valid and the only way these concerns can be thoroughly addressed is through refusal of the application. If the application is approved, an Agent of Change agreement to secure noise mitigation works is essential. Would welcome the opportunity to address the Planning Committee when this latest application is presented.
- 5.3. Objection by owner of the Nightingale – the area remains a haven for the LGBTQ+ night-time economy and the heart of the community providing a safer place to exist in the city. Despite the redesign, noise from the Nightingale Club, and other venues, disturbance from taxis and people generally will impact on the quality of life on future residents. This would lead to noise complaints and until these issues are resolved the application should be refused.
- 5.4. Birmingham Civic Society – support the application provided that the city council is satisfied that the building is sufficiently insulated so local night clubs will not be impacted by future claims of disturbance.
- 5.5. Objection from a city centre resident on design grounds.

Revised scheme

- 5.6. Comment by the owner of the Nightingale - Subject to completion of the legal agreement to secure noise mitigation works at the Nightingale he is prepared to withdraw his earlier objection.
- 5.7. Objection from a city centre resident on the grounds of poor bland design.

**6. Relevant National & Local Policy Context:**

- 6.1. National Planning Policy Framework - the following paragraphs are particularly, but not exclusively, relevant to the proposal:
- Chapter 2: Achieving Sustainable Development
  - Chapter 4: Decision-making
  - Chapter 5: Delivering a sufficient supply of homes
  - Chapter 8: Promoting healthy and safe communities
  - Chapter 9: Promoting sustainable transport
  - Chapter 11: Making effective use of land
  - Chapter 12: Achieving well-designed places
  - Chapter 14: Meeting the challenge of climate change, flooding and coastal change
  - Chapter 15: Conserving and enhancing the natural environment
  - Chapter 16: Conserving and enhancing the historic environment

- 6.2. Birmingham Development Plan 2017- The site falls within Policy GA1 the City Centre Growth Area; and within the Southside and Highgate Quarter where the aim is to support the area's cultural, entertainment and residential activities and its economic role complemented by high quality public spaces and pedestrian routes.
- PG1 Overall levels of growth
  - PG3 Place making
  - TP1 Reducing the City's carbon footprint
  - TP2 Adapting to climate change
  - TP3 Sustainable construction
  - TP4 Low and zero carbon energy generation
  - TP6 Management of flood risk and water resources
  - TP7 Green infrastructure network
  - TP8 Biodiversity and geodiversity
  - TP9 Open space, playing fields and allotments
  - TP12 Historic environment
  - TP21 The network and hierarchy of centres
  - TP24 Promotion of diversity of uses within centres
  - TP25 Tourism and cultural facilities
  - TP26 Local employment
  - TP27 Sustainable neighbourhoods
  - TP28 The location of new housing
  - TP29 The housing trajectory
  - TP30 The type, size and density of new housing
  - TP31 Affordable housing
  - TP37 Health
  - TP38 A sustainable transport network
  - TP44 Traffic and congestion management
- 6.3. Development Management DPD
- DM1 Air quality
  - DM2 Amenity
  - DM3 Land affected by contamination, instability and hazardous substances
  - DM4 Landscaping and trees
  - DM6 Noise and vibration
  - DM10 Standards for residential development
  - DM14 Transport access and safety
  - DM15 Parking and servicing
- 6.4. Supplementary Planning Documents & Guidance:
- Birmingham Parking SPD
  - Birmingham Design Guide SPD
  - Public Open Space in Residential Development SPD

## 7. **Planning Considerations:**

### Principle of Residential Development

- 7.1. NPPF paragraph 11 states that plans and decisions should apply a presumption in favour of sustainable development. For decision taking, paragraph 11 d) states that where the policies which are the most important for determining the planning application are considered out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Footnote 8 of the NPPF confirms that in considering whether the policies that are most important are indeed out-of-date, this includes, for applications involving the

provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites.

- 7.2. The Birmingham Development Plan became 5 years old on 10th January 2022 and is currently being updated. In accordance with NPPF paragraph 74, BDP policies PG1 and TP29 are considered out of date, and the Council's five-year housing land supply must be calculated against the Local Housing Need figure for Birmingham. Currently, the Council cannot demonstrate a five-year supply of deliverable housing sites. Consequently, Paragraph 11d) of the NPPF is engaged and the tilted balance applies for decision taking.
- 7.3. The application site is 0.13 hectares in size which currently contains a vacant three-storey office building with a former nightclub on the ground floor fronting Kent Street and Lower Essex Street, there are new residential development which are either built, under construction or consented in the immediate surrounding area. I have no objections to the loss the former nightclub, as there are several other entertainment venues in the vicinity. The proposed 147 dwellings would make a positive contribution to achieving the 51,000 new dwellings that are required in Birmingham by 2031 and more locally within the City Centre Growth Area (GA1) as set out in the Birmingham Development Plan.
- 7.4. With regards to policy TP30 - The type, size and density of new housing - the submission proposes 76% 1 bed and 24% 2 bed units. The Councils recently published Housing and Economic Development Needs Assessment (HEDNA) provides guidance on the mix of dwelling sizes required in different parts of the city. The scheme provides a higher proportion of one-bedroom apartments than would normally be supported. However, a viability assessment has been submitted to demonstrate the necessity for the housing mix. I consider that in this instance, the high proportion of one-bedroom apartments can be supported in to meet the costs of the noise mitigation works at the Nightingale.
- 7.5. Apartment sizes range from 39sqm to 50sqm for 1-bedroom apartments and 63sqm to 77sqm for 2-bedroom apartments. All the apartments therefore comply with the minimum standards of 39sqm for 1-bedroom apartments 61sqm for 2-bedroom set out in the Technical Housing standards. In terms out amenity space, whilst the scheme does not include private balconies there is an internal courtyard, two rooftop terraces and an indoor resident's lounge, providing 655sqm of amenity space (equivalent to 4.5sqm of amenity space per unit). When assessed against the guidelines 800sqm would be required, a shortfall of 145sqm. However, given its City Centre location and the high proportion of one bedroom apartments, I consider that the level of amenity space is reasonable.

#### Affordable Housing

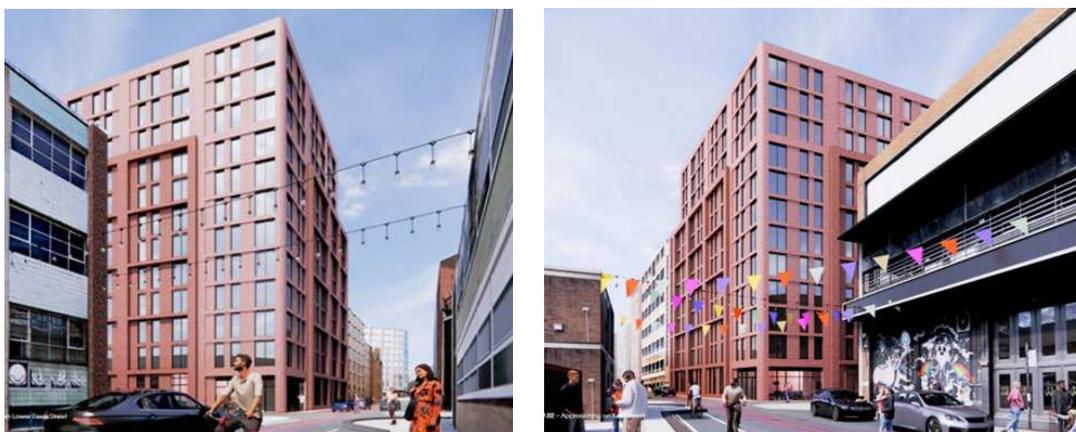
- 7.6. The NPPF advises that where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes be available for affordable home ownership. Moreover, BDP Policy TP31 seeks 35% affordable homes as a developer contribution on residential developments of 15 dwellings or more, unless it can be demonstrated that this would make the scheme unviable. As stated in the Housing and Economic Needs Assessment, there is a notable need for affordable housing, and provision of new affordable housing is an important and pressing issue in the area. The City Council therefore seeks to maximise the provision of affordable housing where opportunities arise.
- 7.7. A financial appraisal has been submitted to demonstrate that, with a policy compliant contribution the scheme would not be financially viable. The report has been

assessed by independent consultants who consider that the scheme can sustain a contribution of £1,050,000. However, in this instance, as development cannot proceed without addressing noise from the Nightingale, it is proposed that the developer contributes £1.05m toward the cost of noise mitigation works at the Nightingale, with any unexpended monies being used toward off-site affordable housing. If the cost of the Noise Mitigation Works at the Nightingale exceeds £1,050,000, and no alternative funding has been secured, then the applicant has also agreed to pay an additional £250,000, which will then be refunded if alternative funding is secured.

- 7.8. The Nightingale is a long-established nightclub, catering especially for the LGBTQ+ community, which has operated in Birmingham for around 40 years, and has been in its present premises for over 10 years. In accordance with the agent of change principle set out in the NPPF, the onus is upon the development to mitigate noise at source. It is therefore essential that noise insulation of the Nightingale takes place for the development to proceed. In addition, it is anticipated that the proposed mitigation would help safeguard the future of the Nightingale and maintain the night-time economy within Southside in accordance with Policies TP24 and TP25
- 7.9. The Noise Mitigation Works at the Nightingale would significantly reduce the noise breakout from the premises and hence the noise impacting not only on the proposed development but also other nearby existing and proposed residential developments. The Noise Mitigation Works would therefore facilitate development not only the application site but also other nearby sites. It would also mean that the S106 Contribution (up to £1.3m) from the Oasis site could be put toward the provision of affordable housing. This approach would be consistent with Policies GA1.1, TP28 and PG3 of the Birmingham Development Plan and Policy DM6 of the Development Management DPD. The scheme would make an efficient use of this underused site contributing to the City's need for residential accommodation, a consideration that is to be given increased weight now that the Council cannot demonstrate a five-year supply of deliverable housing sites.

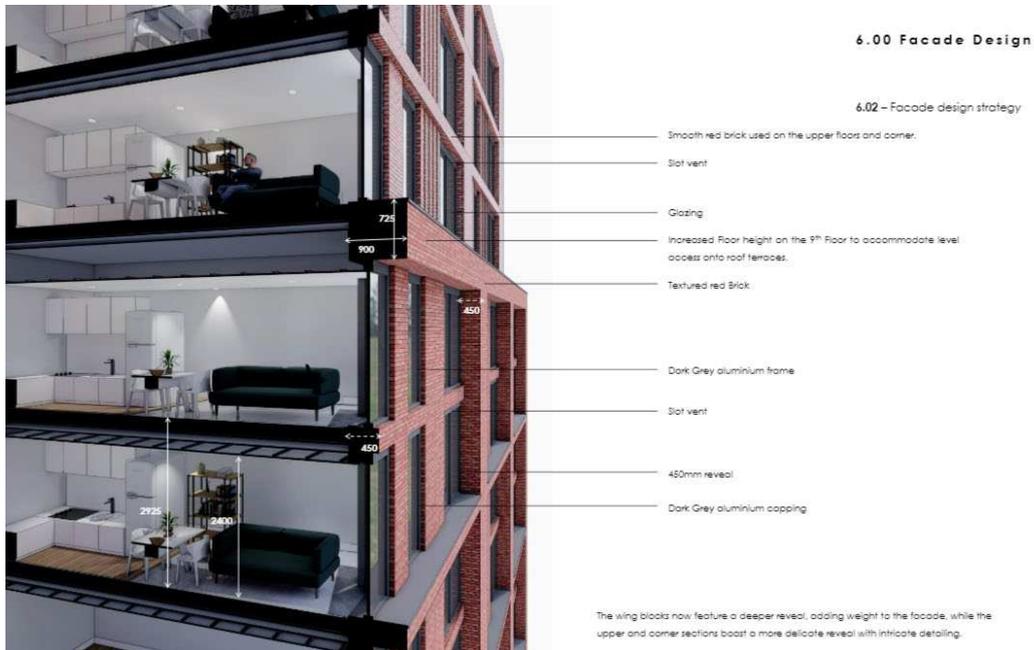
#### Urban Design

- 7.10. I have no objection to the redevelopment of the site for an apartment block. It responds to the emerging mixed use context of the area and will contribute to the regeneration of the Southside area of the City Centre. The development sits at back of pavement and wraps around a street corner with an entrance and a ground floor that is generally well arranged. The proposal is typical for much of the new development being proposed or has secured planning permission in the area. Between 9 and 12-storeys will not be incongruous with the new scale of this part of Birmingham.



Illustrative views north along Lower Essex Street and west along Kent Street

- 7.11. The design has also reverted to the earlier supported iteration of the proposal with the two lower level 'façade planes' that break up the massing and assist with unifying the streetscape. Whilst floor to floor heights are different to the neighbouring industrial/office buildings the brick grid blends the stepped mass of the design and focuses the tallest element onto the street corner by one façade bay on each side. This stepped mass is defined through the depth of façade.



Façade Design

- 7.12. To address concerns about quality raised by the Urban Design Manager, the applicant has been in dialogue with supply chain during the design process to ensure development can be achieved. The intended system of construction for this proposal allows deep reveals and soffits to be achieved. Furthermore, conditions are attached to secure architectural details, materials and a sample panel. Subject to these safeguarding conditions, I consider that the design of the scheme is satisfactory.

#### Noise

- 7.13. The site is located within a vibrant night-time economy area and directly opposite the Nightingale nightclub. BCC Regulatory Services have had many dealings with the nightclub in terms of noise impacts and currently there is a limited amount of residential development potentially impacted by noise associated with the premises and the conditions do not represent a statutory nuisance.
- 7.14. Following extensive discussions, the applicant has now amended the design of this application to effectively the previous scheme (LPA ref 2021/03783/PA) that was recommended for approval. In addition, rather than the originally proposed agent of change approach the applicant is seeking now to use the same approach based on an Escrow agreement using a legal agreement which was accepted for the Oasis development under 2021/05399/PA.
- 7.15. Accepted practice is that when considering noise from commercial enterprises a hierarchy of measures should be considered with the priority being mitigation or prevention of the noise at source and the last option being mitigation by treatment at the receptor (in this case glazing and ventilation to the residential development).

During the assessment of the previous applications there have been several noise reports and there has also been joint monitoring with the applicants' consultant and the consultant acting on behalf of the Nightingale to agree incident levels at the facades of the proposed development, typical noise levels generated by the operation of the nightclub and the most likely significant sources of noise escape from the building. This assessment identified that the primary noise sources were the outdoor smoking and drinking areas on the balconies overlooking the development site, noise escape from some weak structural areas of the building and transmitted noise escaped through the ventilation system located on the roof. There were extended discussions about using the 'agent of change' approach and agreement was reached with all parties that a series of measures could be incorporated at the Nightingale which in combination with the facade treatment at the residential development would lead to an acceptable noise environment.

7.16. The current application has been supported by an updated noise assessment, which refers to the adoption of the Agent of Change assessment detailed in the HL report 1006881-AM – Noise Break Out Assessment – R2, dated 19th May 2021. Following ongoing conversations with the Nightingale and other developers it has been determined that this mitigation scheme is not acceptable to use going forwards as it was based on a relatively simple assessment of the issues and the club operator has concerns about the operability of the nightclub with the proposed design. However further work has been carried out as part of the Escrow agreement discussions and the following design principles identified that need to be addressed as part of any noise mitigation scheme at the Nightingale in the Escrow:-

- The existing first and second floor balconies to be decommissioned and not used when the Nightingale is operating or has music playing.
- The doors to the first and second floor balconies to be sealed closed at all times that the Nightingale is operating or has music playing and also to be provided with additional acoustic mitigation and treatment.
- To provide new smoking areas accessible to the first and second floors with acoustic mitigation and screening and also be designed to comply with the Health Act 2006.
- The ground floor fire doors to be replaced or upgraded with additional acoustic mitigation and treatment.
- The ground floor walls to be provided with additional acoustic mitigation and treatment.
- The first and second floor windows and to be sealed and to be provided with additional acoustic mitigation and treatment.
- The existing ground floor smoking area to be provided with a canopy or other acoustic mitigation to reduce noise breakout.
- The roof mounted plant to be upgraded or replaced. The upgraded plant to provide increased ventilation to address the impacts of sealing doors and windows (which may require additional cooling provision) and to be provided with acoustic mitigation and treatment to address noise transmission through the exhaust and also plant noise breakout.

7.17. The noise report provides factual data which has been previously agreed. There are still some technical issues which BCC Regulatory Services do not agree with, however, they are content that the characterization of noise impacts of the report summarises the current position. In addition, the implementation of the agent of change works will significantly alter the noise environment and a further noise assessment will be required to characterise the new noise impacts and design the appropriate noise mitigation. BCC Regulatory Services are content that this can be adequately conditioned.

7.18. The applicant has submitted an overheating assessment, which concludes that the

overheating controls are adequate even accounting for closed windows. This revised report has assumed that windows on the facade facing the Nightingale will be sealed but others will be openable and that is something which will need to be reconsidered following the completion of the noise mitigation works carried out at the Nightingale. A condition to secure a revised overheating assessment is therefore attached.

- 7.19. The key issue in respect of this application is that BCC Regulatory Services are not able to support the development on the basis that the only mitigation proposed is facade treatment, primarily glazing and ventilation as this would lead to potential nuisance noise nuisance conditions if windows were opened by the residents and it cannot be a reasonable assumption that residents will be requested to keep their windows closed. However, the applicant has proposed to use the approach agreed for the Oasis scheme under 2021/05399/PA. The key consideration is whether the development would introduce a noise sensitive use in an existing area in circumstances where the resulting residential noise climate may represent a statutory nuisance which may place unreasonable restrictions on the operation of existing businesses.
- 7.20. BCC Regulatory Services suggest that the mitigation measures would address some of the structural and design issues and this will reduce the noise impact however it will still require the Nightingale to operate responsibly, and they are of the view that this addresses the balance. The process for agreement of the scheme for mitigation at the Nightingale is outlined in the legal agreement relating to Oasis and the proposal is to have a similar agreement with this application.
- 7.21. Whilst the best method would be to incorporate the agent of change requirements as conditions of the permission rather than an agreement not regulated by conditions, the Escrow approach is a mechanism that should achieve a suitable outcome on the basis that a detailed scheme design is agreed, that scheme is then implemented and following completion commissioning testing and validation of the works is completed. At that stage it will be necessary to reevaluate the local noise environment and provide noise mitigation at the facade that will then adequately address the residual noise. Following extensive discussions with the applicant and the Nightingale, I believe that an agreed scheme and funding package to enable all parties to agree to join an Escrow agreement has now been reached.
- 7.22. BCC Regulatory Services have no objection to this proposal based on the incorporation of an agent of change (based on the approach taken under 2021/05399/PA) subject to the safeguarding conditions, including conditions to secure a further noise assessment, a noise mitigation scheme and noise commissioning testing. These noise conditions together with the noise mitigation works at the Nightingale Club will ensure satisfactory living environment for prospective residents.

#### Sustainability

- 7.23. The applicant has submitted an energy statement which outlines that the scheme will maximise energy efficiency by using a fabric first approach to improve air tightness and ensure heat loss is minimised. Low energy LED lighting is proposed alongside mechanical ventilation with heat recovery to reduce energy demand. In terms of renewable energy, air sourced heat pumps will provide hot water and underfloor heating which would overall provide a 54% reduction in Co2 emissions against the 2021 Building Regulations baseline. In addition, a sustainable construction statement has been submitted reviewing the type and source of materials used during construction and how waste will be minimised and recycling maximised. The scheme can therefore be considered as acceptable to satisfy policy TP3 of the BDP.

## Ecology

- 7.24. Based on the Preliminary Ecological Appraisal there is little by way of current bird/ bat nesting / roosting potential and the building has been classed as negligible for this, as such there are no conditions needed for demolition. The PEA does identify opportunities to provide the building with new roost / nesting feature. As recommended by the City Councils Planning Ecologist conditions are attached requiring bird / bat boxes. In addition, as part of both the ecological enhancement and climate resilience of the building a condition to secure details of the green / brown roofs is also attached.

## Transportation Issues

- 7.25. The Transport Assessment notes that the site currently accommodates office and leisure uses. It is highly accessible by non-car travel modes, with full integration with pedestrian networks and very good access to regular bus and rail services. The site is also located within the Southside area of Birmingham city centre and as such is located within short walking distances of various local amenities and opportunities.
- 7.26. The TA adds that it is highly likely that people choosing to reside in a location such as that of the proposed development site would work within the city centre or immediate surrounding area. Therefore, residents would likely commute to work by walking, cycling and public transport.
- 7.27. BCC Transportation Development have no objections to the proposals. The parking is all controlled across a large area and the site is adjacent to the City Centre. I concur and conditions are attached to secure cycle parking and off-site highway works, namely, the reinstatement of redundant footway crossings and review of Traffic Regulation Orders. A second resolution is also attached to secure a stopping up order for a small area of footway at the corner of Kent Street and Lower Essex Street.

## Drainage

- 7.28. Policy TP28 stipulates that new residential development should be located outside flood zones 2 and 3a (unless effective mitigation measures can be demonstrated) and 3b. The site is in flood zone 1 and so is suitable for residential development. With regards to TP6, to minimise flood risk permeable paving, bioretention areas and a green roof have been included within the submitted surface water drainage strategy.
- 7.29. Severn Trent Water have raised no objections and suitable drainage conditions are recommended. However, the Local Lead Flood Authority have raised a holding objection pending the submission of additional information, which has been requested. Any further comments will be reported.

## **Other issues**

### Public Sector Equality Duty

- 7.30. The Equality Act 2010 introduced a new public sector equality duty. In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - advance equality of opportunity between people who share a protected characteristic and those who do not;
  - foster good relations between people who share a protected characteristic and

persons who do not share it.

This application is only acceptable if an agreement to mitigate noise at source is reached between the City Council, developer and the Nightingale. The reason, for this is that in the absence of an agreement the proposal would potentially be contrary to this Legislation as the scheme could impact upon Nightingale, which is a key venue for the LGBT community.

Community Infrastructure Levy

- 7.31. The site is in a low value residential area and does not therefore attract a CIL contribution.

## 8. **Conclusion**

- 8.1 In principle redevelopment of this site for residential is acceptable and would be consistent with land use planning policies for the area. In its revised form the scale and form of the development is also acceptable. Furthermore, additional information has been submitted to address concerns about design quality and safeguarding conditions are attached.
- 8.2. The key issue is therefore noise from the Nightingale. Following extensive discussions, an approach based on an Escrow Agreement approach (similar to the Oasis development) is proposed to secure funding for the Nightingale Noise Mitigation Works. Subject to this agreement and conditions, BCC Regulatory Services have no objections.
- 8.3. To secure the necessary funding for the Nightingale Noise Mitigation Works, the proportion of one-bedroom apartments is high, however, I consider that these are exceptional circumstances. Therefore, given the tilted balance (which advises that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits) I recommend approval subject to a S106 agreement and safeguarding conditions.

## 9. **Recommendation:**

- 9.1. That planning application 2023/00766/PA be approved subject to the completion of two legal agreements. The first S106 Agreement between the applicants and the City Council to secure the following:
- a) The applicant to pay £100,000 1 month after the grant of planning permission toward the cost of preparing a detailed specification and costing for Noise Mitigation Works at the Nightingale.
  - b) The applicant to pay £950,000 9 months after the grant of planning permission for the agreed Noise Mitigation Works at the Nightingale.
  - c) The applicant to pay £250,000 at any point beyond 9 months after the grant of planning permission but before completion of the Noise Mitigation Works at the Nightingale, if directed by Birmingham City Council because: the cost of the Noise Mitigation Works (items a and b) above will exceed £1,050,000, and no alternative funding for the Noise Mitigation Works at the Nightingale has been secured.
  - d) If alternative funding for the Noise Mitigation Works at the Nightingale is secured or if final cost of the Noise Mitigation Works (items a and b) does not

exceed £1,050,000, the City Council will refund any money paid by the applicant above £1,050,000 (item c above).

- e) If the Noise Mitigation Work (items a and b) are below £1,05,000, then any unexpended monies will be used for affordable housing.
- f) payment of a monitoring and administration fee associated with the legal agreement of £1,500.

The second S106 Agreement between the City Council and the Nightingale to:

- a) require the implementation of the noise mitigation works; and
- b) provide for any residual monies to be used for off site affordable housing.

9.2. In the absence of the above legal agreements being completed to the satisfaction of the Local Planning Authority by the 22<sup>nd</sup> February 2024 or such later date as may be authorised by officers under powers hereby delegated, planning permission be refused for the following reason(s):-

- a) In the absence of an agreement to secure satisfactory noise mitigation measures at the Nightingale through application of the agent of change principle, the proposal would result in a poor-quality living environment for prospective residents and complaints against the Nightingale, which could affect the Nightingale and hence the Gay Village. This would be contrary to Policies GA1, GA1.3, TP24, TP25, TP28 of the Birmingham Development Plan, Policy DM6 Noise and Vibration of the Development Management in Birmingham Development Plan Document the Revised National Planning Policy Framework and Public Sector Equality Duty.
- b) In the absence of a suitable legal agreement to secure affordable dwellings the proposal would be contrary to TP31 of the Birmingham Development Plan and Revised National Planning Policy Framework.

9.3. That the City Solicitor be authorised to prepare, seal and complete the above planning agreements.

9.4. That in the event of the planning agreements being completed to the satisfaction of the Local Planning Authority on or before 22<sup>nd</sup> February 2024, or such later date as may be authorised by officers under delegated powers, favourable consideration be given to this application, subject to the conditions listed below (that may be amended, deleted or added to providing that the amendments do not materially alter the permission).

9.5. That no objection be raised to the stopping-up of an area of footway at the corner of Kent Street and Lower Essex Street and that the Department for Transport (DFT) be requested to make an Order in accordance with the provisions of Section 247 of the Town and Country Planning Act 1990.

- 
- 1 Requires the scheme to be in accordance with the listed approved plans
  - 2 Requires the prior submission of a contamination remediation scheme
  - 3 Requires the submission of a contaminated land verification report
  - 4 Requires the prior submission of a drainage scheme
-

- 
- 5 Requires the prior submission of a Sustainable Drainage Assessment and Sustainable Drainage Operation and Maintenance Plan
  - 6 Requires the submission and approval of external materials
  - 7 Requires the submission and approval of architectural detailing
  - 8 Requires the construction and approval of a sample panel on site
  - 9 Requires a further noise assessment
  - 10 Noise Mitigation Scheme
  - 11 Noise Commissioning Testing
  - 12 Requires the prior submission of details of bird/bat boxes
  - 13 Limits the noise levels for Plant and Machinery
  - 14 Sound Insulation for Plant/Machinery
  - 15 Requires the submission of hard and/or soft landscape details
  - 16 Requires the submission of boundary treatment details
  - 17 Requires the submission of details of green/brown roofs
  - 18 Requires the submission of a CCTV scheme
  - 19 Demolition Management Plan
  - 20 Construction Management Plan
  - 21 To ensure energy and sustainability measures are delivered in accordance with statement
  - 22 Requires the submission of cycle storage details
  - 23 Requires the submission and completion of works for the S278/TRO Agreement
  - 24 Implement within 3 years (Full)
- 

Case Officer: David Wells

**Photo(s)**



View from opposite side of Lower Essex Street looking south



View along Kent Street looking east

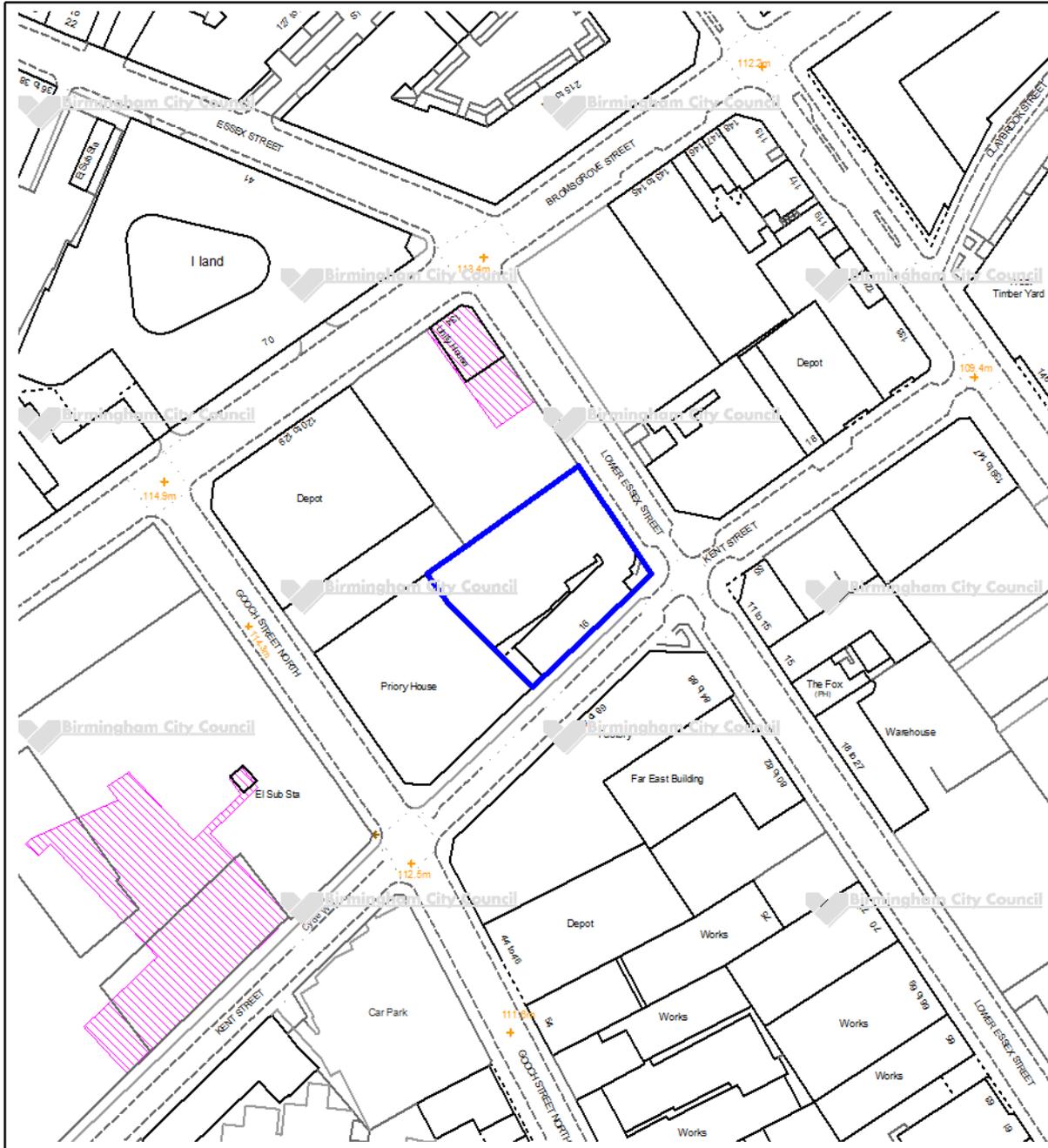


View along Lower Essex Street looking north



View from opposite side of Kent Street

# Location Plan



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Committee Date:	21/12/2023	Application Number:	2023/05721/PA
Accepted:	22/08/2023	Application Type:	Full Planning
Target Date:	21/11/2023		
Ward:	Ladywood		

**2-6 Colmore Gate, Colmore Row, Birmingham, B3 2QA**

Partial demolition of existing building, extension to create a 26-storey tower and a 10-storey shoulder and construction of a new facade, external rooftop landscaped amenity space and pavilion (all use class E office and ground floor retail), the closure and diversion of the existing pedestrian arcade and provision of public realm and landscape works at ground floor level

Applicant: AP Colmore Ltd  
c/o Agent, 2 Cornwall Street, Birmingham, B3 2DX  
Agent: Lichfields  
Cornerblock, 2 Cornwall Street, Birmingham, B3 2DX

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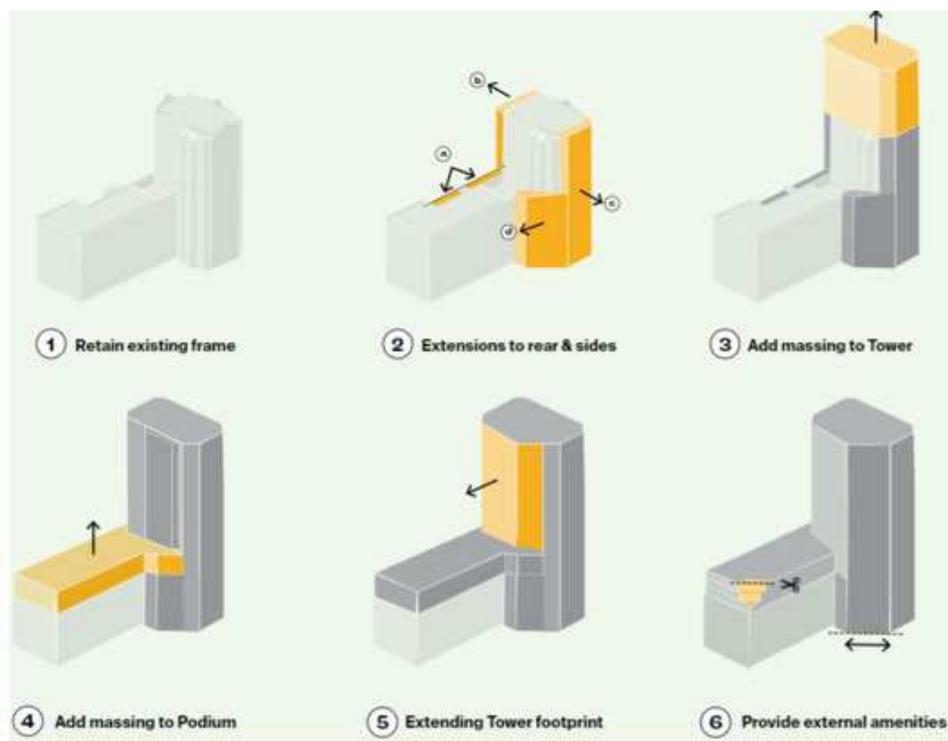
Recommendation

**Approve subject to Conditions**

1. **Proposal:**

- 1.1 The proposal is for the partial demolition of the existing building and extensions to create a 26-storey tower and a 10-storey shoulder. In addition, a new facade, external rooftop landscaped amenity space and pavilion (all use class E office and ground floor retail) are proposed. The existing pedestrian arcade would be closed, and new public realm and landscape works at ground floor level would be provided including a new pedestrian route.
- 1.2 The proposed redevelopment is inclusive of the retention of the existing concrete frame, with extensions to both sides and rear of the existing podium level and tower, increasing the footprint of the building, with additional storeys to the tower and podium. The existing Colmore Gate building comprises 28,964sqm (GEA) of office (and ground floor commercial and servicing) floorspace. The proposal is to reconfigure and extend the existing building to provide a total of 47,438sqm (GEA) of floorspace, totalling 18,474sqm of additional floorspace.
- 1.3 The existing tower comprises the ground floor plus 16 storeys, the proposal would result in a building of ground floor + 25 storeys. There is also the addition of two storeys to the shoulder building along Bull Street which would result in a 10-storey building.
- 1.4 A private communal outdoor amenity space/terrace is proposed on the podium roof, along with a pavilion activity space structure, landscaping and seating areas. Smaller private terrace areas for offices are proposed at L8 and L9.
- 1.5 The proposal also removes the basement parking and increases cycle parking and facilities (changing and showers). Relocating existing basement plant to the roof.
- 1.6 The proposal re-configures the ground floor diverting the existing right of way under the building, around to the side and re-providing and increasing the ground floor commercial space.

- 1.7 The document submitted in support of this application include the following; Planning Statement, Statement of Community Involvement, Heritage Statement Townscape and Visual Appraisal, Design and Access Statement, Planning Noise Report, Air Quality Screening Assessment, Indoor Air Quality Plan, Preliminary Ecological Appraisal Report, Construction Environmental Management Plan, Transport Assessment, Travel Plan, Wind and Microclimate Assessment, Daylight, Sunlight and Overshadowing Assessment, Solar Glare Assessment, Flood Risk Assessment, Drainage Strategy Report, Energy Statement, Sustainable Construction Statement (including BREAAAM Pre-Assessment Report) BREEAM UK New Construction Ecology Report, Fire Statement, Aerodrome Impact Assessment, Financial Assessment.
- 1.8 [Link to Documents](#)



**Figure 1: Showing location and proportion of extensions to existing building**



**Figure 2: Existing and proposed NE Elevation (Bull Street)**

## 2. **Site & Surroundings:**

- 2.1. The site comprises a late 20th century tower (17-storeys high) and shoulder block (eight-storeys high). The tower fronts onto the south-eastern side of Colmore Row (opposite the main entrance and square leading into Snowhill Station). The tower marks the corner of the junction of Colmore Row with Bull Street, which carries the Metro (tram) and the site extends along this frontage with its north-eastern facing flank forming a shoulder block located in a stepped back position from the tower.
- 2.2. The site is on the edge of the Colmore Row and Environs Conservation Area and adjacent (and in close proximity to) a number of listed buildings including the grade I Cathedral of Birmingham.



**Figure 3 – Ariel image of existing building location**

## 3. **Planning History:**

- 3.1. 2008/03053/PA Refurbishment of ground floor, including extension to provide shop unit and new canopy. Approved 29/7/2008
- 3.2. 2010/02299/PA Extension of permitted use to include A2 (financial & professional services) & A3 (restaurants & cafes) uses within new retail area approved under application 2008/03053/PA. Approved 29/6/2010
- 3.3. 2012/02332/PA Retrospective change of use of 5th and 7th floors from offices (Use Class B1) to conference centre (Use Class D1) or flexible office use (Use Class B1). Approved. 21/6/2012

## 4. **Consultation Responses:**

- 4.1. Historic England – Objection

*The proposed works would accentuate the additional height and footprint of the existing development, bringing the overall massing of the tower well above the characteristic building heights along Colmore Row and Environs Conservation Area.*

*Colmore Row and Environs Conservation Area, and Steelhouse Lane Conservation Area, provide an impressive and deliberate collection of institutional buildings where the lavishness of the architecture speaks of the city's civic values at a point in time. The application site lies at a location where these two historically defining areas of the city converge, but the scheme does not reflect that importance in scale or appearance.*

*The scheme would fall short of opportunities and aspirations for place-making, informed by Birmingham's historic environment and landscape. The proposals would harm the significance of the Colmore Row and Environs Conservation Area as well as the Cathedral Church of St Philip (GI listed) and The Grand Hotel (GII\* listed) through setting impacts.*

*The proposals would result in harm that could be avoided by an alternative design for a reduced scheme which better responds to the various heritage assets. As there is a design solution that we consider would reduce the harm, we do not consider these proposals are justified in line with NPPF paragraph 200 requirements.*

4.2. BCC Conservation – Objection

The proposed development by way of its height and massing has adverse impact upon Colmore Row Environs Conservation Area and the setting of other designated heritage assets.

4.3. BCC City Design – No objection

No objection is raised, but no overwhelming support is offered at this time, in terms of overall benefits from the scheme on townscape and architectural merit.

4.4. BCC Employment Access – No objection

Subject to conditions requiring a construction employment management plan.

4.5. BCC Transportation – No objection subject to conditions and a s.278 and s.35 agreement

The current walkway is noted on ARCGIS HMPE reference 1219 and a Public Right of Way under reference 2681, though both records refer to a section 35 Highways Act agreement to make the route available when the building was constructed in and agreement signed in 1996. A new section 35 agreement can be used for the new route and a condition should be applied requiring its completion.

Cycle parking before occupation, lighting and materials details.

The works to the public highway - alteration to remove the car park/basement access, and any associated works long with footway changes around the new walkway are provided prior to the new building being operational.

4.6. BCC Ecology – No objection subject to conditions

Scheme for ecological/biodiversity/enhancement measures, Bird/bat boxes, A landscape and ecological management plan (LEMP), A scheme for biodiversity roofs, precautionary working method statement (pwms) condition.

4.7. West Midlands Fire Service – No objection

Subject to compliance with building regulations.

4.8. West Midlands Police – No Objection

Subject to Design out Crime principles being applied to the design/management of the building.

4.9. Birmingham Civic Society – No objection

4.10. Transport for West Midlands – No objection subject to conditions

WMCA will require sight of method statements and drawings relating to any excavation, drainage, demolition, lighting and building work or any works to be carried out on site that may affect the safety, operation, integrity and access to the tramway.

4.11. Active Travel England – No Objection subject to conditions

details of the cycle parking in accordance with approved planning statement, Travel Plan

## 5. **Third Party Responses:**

5.1. The application has been publicised by sending out letters to neighbours, posting a site notice within the vicinity of the site and a press notice, 5 responses have been received raising the following points of objection;

- The Bull Street proposals especially will block out almost all of the sunlight. This would reduce the amount of sunlight and natural daylight for our conference guests, employees and other users.
- Alongside the Meeting House there is a small garden, something of an oasis in the city centre, and a place much used by Quakers as well as visitors to Priory Rooms, the Conference Centre. This development will result in the garden suffering from a lack of sunlight and consequent damage to the ecosystem currently in place.
- There may also be a negative affect on the landscaped gardens
- This building extension will have a negative impact on the Meeting House and local neighbours and the local community, particularly due to noise disturbance. The objective of a Quaker Meeting is to sit and wait on God in silence. The activities involved in building this facility, as well as the increased use as a result of the new build, will result in more noise and disturbance.
- The new build will overlook the Meeting House and will result in less privacy, and increased nuisance.
- There will be loss of daylight in the Meeting Room, a Meeting Room that is already suffering from shading due to the height of surrounding buildings. The new build will just make it worse.
- The new build, which is a further extension, will be out of character with the surrounding area, and the area will suffer from over-development and overcrowding.
- There will be negative and adverse visual impact as a result of the development, particularly on the landscape and locality
- Peace Hub occupies the shop-front on the ground floor, which is used as a community drop-in space, and Peacemakers have a small office on the first floor. We are concerned about the potential loss of natural light that the development will cause for both. The 'Daylight, Sunlight and Overshadowing Assessment' provided for the development by GIA dismisses the impact of any loss of light to our building on the basis that it is 'commercial'. However, both projects are in fact charitable, and we would argue do have a reasonable expectation of natural light.
- The increase height with increase the need for heating and lighting in the winter months, at both a financial and environmental cost.
- closure of pedestrian footways should be confined to the southern side of the street where Colmore Gate is located
- Why do we need more office space in Birmingham when there seems to be a lot of empty offices for rent already. Do we need another high rise which which does not, in my opinion make for a pleasant city centre.
- Noise and dust must not have an effect of our business or other businesses in the location.
- Our access to our carpark is via Temple Row and Upper Bull Street. This must remain accessible.
- The Metro is also an important route into and out of the city and this must remain open at all times.

## 6. **Relevant National & Local Policy Context:**

6.1 National Planning Policy Framework

Section 11: Making effective use of land

Section 12: Achieving well-designed places  
Section 14: Meeting the challenge of climate change, flooding and coastal change  
Section 16: Conserving and enhancing the historic environment

## 6.2 Birmingham Development Plan 2017

GA1: City Centre  
PG3: Place making  
TP2: Adapting to climate change  
TP3: Sustainable construction  
TP4: Low and zero carbon energy sources and technologies  
TP12: Preserving the historic environment  
TP21: Network and Hierarchy of Centres  
PT24: Promoting a diversity of uses within centres  
TP39: Walking  
TP40: Cycling

## 6.3 Development Management DPD

DM1: Air Quality  
DM2: Amenity  
DM14: Transport access and safety

## 6.4 Supplementary Planning Documents & Guidance:

Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment - Historic England (2015); Good Practice Advice Note 3: the setting of Heritage Assets – Historic England (2017); Birmingham Design Guide (2022) National Design Guide (October 2019); National Planning Practice Guidance (PPG); Car Parking Guidelines SPG (2021) The Snow Hill Masterplan (2015)

## 7. **Planning Considerations:**

### 7.1. The main material considerations of this application are;

- The principle of development
- Impact upon heritage assets
- Design
- Sustainable Construction
- Transportation
- Environmental Protection
- Flooding and Drainage
- Ecology
- Planning Obligations and Financial Viability
- Other Matters

### **Principle of Development**

7.2. Policy PG1 is the strategic policy setting the quantum of development to be delivered in the plan period. However, the figures set out in Policy PG1 are out of date and only limited weight is given to this policy.

7.3. Paragraph 11 d) of the NPPF states that where the policies which are the most important for determining the planning application are considered out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Policy GA1 and TP21 are also important

for determining this application, these are considered to up to date and consistent with the NPPF, these policies are therefore afforded full weight.

- 7.4. The application site is located within the City Centre Growth Area (Policy GA1) in the Birmingham Development Plan (2017). Policy GA1 confirms the City Centre as a focus on retail, office, residential and leisure activity within the context of the wider aspiration to provide a high-quality environment and visitor experience. 'The City Centre Core' role is to provide "an exceptional visitor and retail experience with a diverse range of uses set within a high-quality Environment". The site is also within the retail core which Policy GA1 identifies as the preferred location for appropriate scale retail, and mixed-use developments.
- 7.5. Policy GA1.2 focuses on the different areas within the City Centre Core. In relation to the Snowhill District in which the application site falls, the policy states that "the eastern expansion of the central office core around Snow Hill station will be supported through key office and mixed-use developments. Connected routes and incidental spaces throughout the district will be promoted to provide a public realm that will encourage new business activity."
- 7.6. The site also lies within the city centre retail core. Policy TP21 'The network and hierarchy of centres' supports proposals for main town centre uses within allocated centres, to ensure the vitality and viability of these centres, particularly where development will bring vacant buildings back into positive use. The existing building is made up of office and ground floor commercial use (currently retail – convenience), the continued use of the existing office floor space does not require planning consent. However, the increase in floor space does (along with the façade and landscape proposals).
- 7.7. The building is currently vacant, with the applicant putting forward an argument that the existing office space does not meet current standards and therefore cannot be let. It is argued that the proposed refurbishment and extension would provide Grade A office space which would support and encourage the continued investment and economic growth within the City Centre and the potential for new high-end occupiers, whilst bringing back in to use a prominently located office building in the central business district area of the city.
- 7.8. The HEDNA identifies a need for 469,000 square metres of office floorspace in the period up to 2042, (less than the PG1 figure). The Annual Monitoring Review (AMR) identified 217,211 square metres of completed office floorspace in the period 2013-2022 and 588,742 square metres with either planning permission or under construction. Together this would amount to 805,953 square metres of additional floorspace, which is 61,000 square metres above the PG1 figure and beyond the updated need figure in the HEDNA. Therefore, evidence suggests there is no overwhelming need for additional office space. However, it must be noted that these figures are expressed as a minimum and a maximum quantity is not expressed.
- 7.9. The proposal includes 223m<sup>2</sup> of ground floor retail space. Policy GA1.1 support retail development with appropriate scale that complements the existing Retail Core and as part of mixed-use redevelopments throughout the City Centre. The scale of the retail space, located within the retail core, is not required to be supported by a sequential test or retail impact assessment.
- 7.10. Therefore, whilst there may be no evidence of a significant need for office space, the principle of the proposed development is supported by Policy to encourage further regeneration and economic growth within the city centre. It is not envisaged that the E use class proposed would give rise to the need for a retail impact assessment or sequential test.

#### **Impact upon heritage assets**

- 7.11. Policy TP12 of the BDP states that great weight will be given to the conservation of the City's heritage assets and that development affecting a designated or non-

designated heritage asset or its setting, will be expected to make a positive contribution to its character, appearance and significance.

- 7.12. The site is not within a conservation area but sits immediately adjacent to Colmore Row and Environs Conservation Area and is visible in the setting of Steelhouse Lane Conservation Area. The application site would also be visible in the setting of a number of listed buildings, including the Grade I St Phillips Cathedral.



**Figure 4: Site location in conservation area context (left) and listed building locations (right)**

- 7.13. In determining a planning application that would affect a Listed Building, Section 66 of the Listed Building and Conservation Areas Act requires the Local Planning Authority to “have special regard to the desirability of preserving the Listed building or its setting or any features of special architectural or historic interest which it possesses.” And Section 72 requires that “special attention is paid to the desirability of preserving or enhancing the character or appearance of a conservation area”. It is also important to note that footnote 7 of the NPPF states that development should be approved unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, assets of particular importance are defined as designated heritage assets (amongst other things).
- 7.14. The application is supported by a Heritage Statement (HS) that argues there would be some adverse effects to the setting of heritage assets. In all instances where harm is found this is described in the statement as less than substantial; Grade I St Philip’s Cathedral - very low level and Grade II\* Methodist Central Hall – negligible. With harm arising as a result of increased height in some views impacting the prominences of the cathedral and tower of the Methodist Hall and appreciation of their architecture.
- 7.15. Whereas in other cases the submitted HS argues that the setting of Grade II Great Western Arcade, Colmore Row Conservation Area would be preserved.
- 7.16. Historic England have objected to the application and state that “*The proposals would result in harm that could be avoided by an alternative design for a reduced scheme which better responds to the various heritage assets. As there is a design solution that we consider would reduce the harm, we do not consider these proposals are justified in line with NPPF paragraph 200 requirements*”. BCC Conservation Officer also notes that in their view the scheme should be amended to reduce the mass of the tower, to lessen impact to heritage assets. With Historic England adding that opportunity should be taken to enhance the setting of heritage assets.
- 7.17. The proposals were presented to the Conservation Heritage Panel (CHP) at pre-application stage. CHP considered the existing building to be of architectural value and therefore a non-designated heritage asset, which positively contributes to the

setting of two conservation areas. CHP raised concern with the proportions of the tower as a result of extension, considering that this should take a more slender form. CHP considered that the proposal would compete with St. Philips cathedral and would be unacceptable. CHP also considered that the architecture presented to them at the time, needed significant improvement.

- 7.18. The Council's conservation officer and the submitted HS, do not consider the existing building to be a non-designated heritage asset, the Conservation Officer adding that it does not add to the significance of any of the surrounding designated assets either. I support this view and have not considered the existing building as a non-designated heritage asset with regards to the provisions of the NPPF or Policy TP12.



**Figure 5: Existing Building from Snow Hill Station**

*Colmore Row and Environs Conservation Area and Steelhouse Lane Conservation Area*

- 7.19. The application site is not within either conservation area but does sit immediately adjacent to Colmore Row Conservation Area. The significance of both conservation areas largely arising from the historic townscape formed of C19 and C20 buildings which have a very high quality of architecture, some of the best examples of Victorian and Edwardian architecture in the city centre. Whilst also having a human scale consistent height of buildings with a tight grain. The conservation area is also significant in that it reflects the importance and development of Birmingham's economy and civic role. Historic England consider both the height and mass of the proposed alterations to the existing building would be dominant in the setting of the Colmore Row conservation area with the scale and appearance of the proposed buildings *"at odds with that of the existing development in the Colmore Row and Environs Conservation Area"* BCC Conservation Officer concurs that the additional height and mass would be harmful.
- 7.20. Historic England state that *"the dominant mass of the proposed scheme would result in further segregation of the two Conservation Areas. This would cause harm to the significance that Colmore Row and Environs Conservation Area, in particular, derives from its setting, albeit a low level of less than substantial harm".* BCC conservation

Officer states that 103 Colmore Row should not be used as a precedent (A tower positioned to the west end of Colmore Row) and considers 103 Colmore Row to be extremely harmful to heritage assets. The Conservation Officer considers that this proposal would be a repeat of what they consider to be, harmful development to heritage assets in this location. Concurring with HE view that the proposal would harm the significance of Colmore Row Conservation Area.

- 7.21. BCC Conservation Officer agrees with the HS that impact to the Steelhouse Lane Conservation Area, would not be adverse.



**Figure 6 : View looking east along Colmore Row (within conservation area)**

*Cathedral Church of St Philip (GI listed building) The Grand Hotel, 31 Colmore Row (GII\* listed building)*

- 7.22. Historic England consider that *“The proposed works would result in a bulkier, taller tower than that currently in place, which would further remove itself from the human scale development that characterises this part of the city and would harm the heritage significance that the listed buildings derive from their setting. In our view this would constitute a lower level of less than substantial harm”*
- 7.23. BCC Conservation Officer considers the harm to the above assets to be less than substantial (but does not give a scale of to what degree).
- 7.24. *Great Western Arcade (GII listed building)*
- 7.25. This is a Victorian shopping arcade which still retains its retail function. The arcade is within the ownership as the applicant. As a result of the application proposals to retain the existing structure, only minor works would be required to replace flashing between the Arcade and the Colmore Gate building. This nature of these works mean that Listed Building Consent is not required. The Conservation Officer has confirmed this and does not consider that this would harm to the significance of this asset.
- Methodist Central Hall (GII\* listed building)*
- 7.26. BCC Conservation Officer agrees with the HS, that the impact to the Methodist Hall would be less than substantial to a low degree.
- 7.27. Paragraph 200 of the NPPF requires that ‘any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification’. Historic England and the Conservation Officer both consider that amendments could be made

to the scheme to lessen impact to heritage assets. As a result, the applicant has provided a Financial Viability Assessment putting a case forward that for the building to be renovated to a standard that would provide grade A office space and introduce sustainable design principles. The additional height and footprint are required to make these investments in the existing building financially viable and deliverable. This assessment has been independently assessed and it was confirmed that without the additional mass the scheme would not be viable. The assessment provides two scenarios, existing and a lower scheme (with less floorspace) which demonstrates that if additional floors were removed from the tower, there would be a disproportionate financial deficit. Therefore, it is argued by the applicant that the less than substantial harm identified is justified. I concur that the requirements of paragraph 200 are met.

- 7.28. The harm identified to designated heritage assets as a result of scale, mass and architecture should be weighed against the public benefits of the proposal in accordance with Policy TP12 and Paragraph 202 of the NPPF.

### **Design**

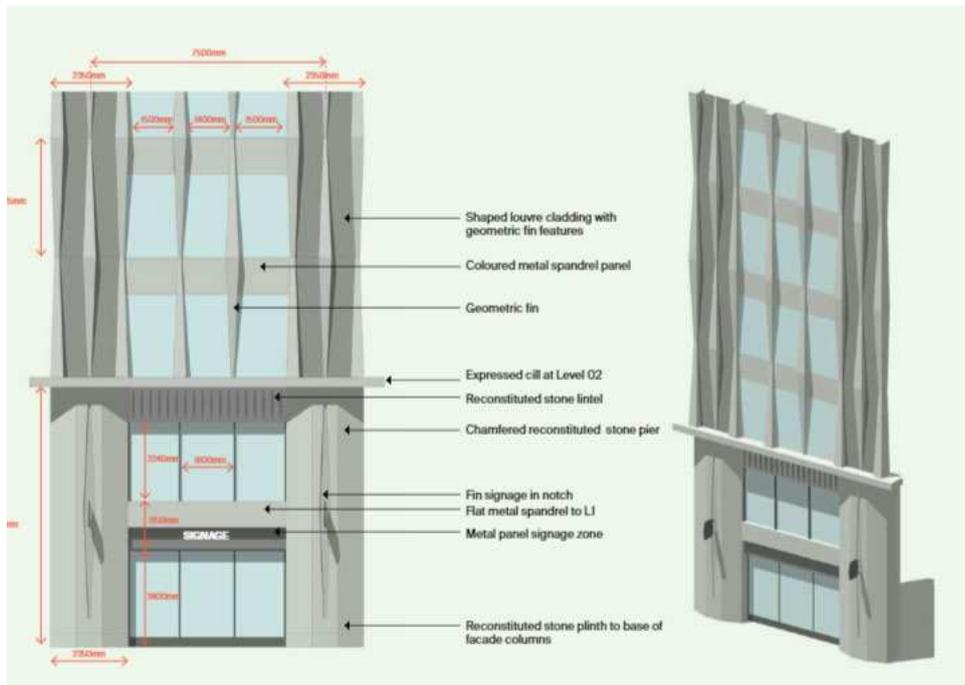
- 7.29. Policy PG3 of the BDP (2017) advises that all new development must ensure high quality design. It states that development should create a positive sense of place and local distinctiveness; design out crime and make provision for people with disabilities; encourage people to cycle and walk; ensure spaces are attractive and functional in the long term; integrate sustainable design; and make the best use of existing buildings and efficient use of land.
- 7.30. The existing Colmore Gate building comprises a 17-storey tower, and as such, already falls within the Council's definition of a tall building being over 15 storeys in height. The proposed development would increase the overall height of the tower to 26 storeys. Although a tall building exists on this site, this is a significant extension in height and a tall building assessment has been submitted in support of the application.
- 7.31. The tall building submission documents, including the Townscape and Visual Impact Assessment set out that the application site is located on a key route from the Ring Road into the City Core via Snow Hill Queensway and Colmore Row/Bull Street and a tall building would sit within the context of other tall buildings including One, Two and Three Snowhill and other recently consented schemes for tall buildings and therefore the principle of tall buildings in this area is established. The principle of tall buildings in this location is further supported by the Snow Hill Masterplan, albeit the masterplan is non-statutory, recognition of this as a growth area characterised by landmark office development is found in GA1.
- 7.32. The City Design Manger also acknowledges that "*The principle of refurbishing and extending an existing office building (as an office) is supported. Not only does this support the economic growth of the Central Business District but is retaining the embodied carbon within the existing structure. It is also the intention of this proposal that in delivering a new façade, that the sustainability of the building will be greatly improved as it will be possible to improve the passive performance of the building's fabric*" matters which are discussed later in the report.
- 7.33. However, the 'Healthy Living and Working Places City Manual' of the Design Guide (2022) sets out a number of tall building considerations, including whether tall buildings add to the skyline and key views, architectural quality, grouping, which the proposal should still accord.
- 7.34. The submission documents make a case that the proposed building makes a positive impact upon the townscape and would act as a wayfinding feature. The tower is already visible in the local townscape and there is an emerging scale within the central business district. However, the City Design Manager points out that "This late 20<sup>th</sup> century anomaly will in the short term be emphasised" by the increased massing of the proposed tower.

- 7.35. Amendments have been made to the scheme through the pre-app process, reducing the mass and creating a better relationship between the proportions of the tower and shoulder to accord with City Note LW-43 which suggests shoulders should be no more than one third of the tower. This is not achieved (being about two fifths). However, the City Design Manager acknowledges the poor proportions of the existing building and agrees that although not ideal, can be supported in this instance. It must still be acknowledged that in terms of the tower, the advice of the City Design Manager is that the proposal “*lacks the elegance of a new build tower, its girth and height in combination, is not as elegant as would otherwise be desirable, in such a sensitive location*”.

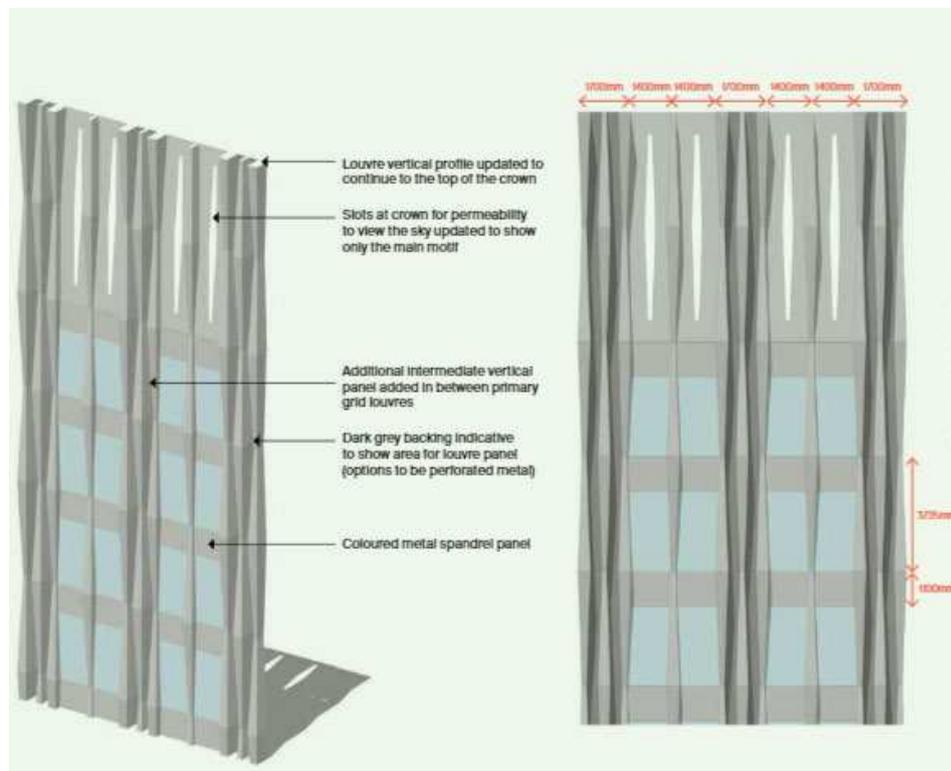


**Figure 7: View looking north along Bull Street**

- 7.36. In addition changes to the architecture have been negotiated to give better articulation, vertical emphasis, consistent bay arrangements and aimed to achieve 360-degree elevational design whilst working within substructure constraints. However, the façade remains to have a lack of modelling and relief, this is limited by the retention of the existing structure in combination with the thermal performance requirements of the new elevations and filling the available space with additional floor space. The fin and louvre features have a maximum projection of 300mm, 200mm of which over-sails the highway.
- 7.37. Given that the proportions of the existing tower and its extended footprint present challenges, the architecture of the building is of particular importance.
- 7.38. The proposed elevational treatment incorporates chamfered reconstituted light grey stone piers, to create a double height base with areas of glazing framed in dark grey metal between. Above, the façade comprises vertical bands of glazing and light-grey metal spandrel panels, with vertical projecting geometric fins with an undulating elongated diamond shape set between vertical columns formed of a series of light grey louvred fins with a dark grey metal backdrop. The plant at the top of the tower would be enclosed by a two storey ‘crown’ combining the vertical fins along with raked solid panels featuring vertical tapered slots. The architectural treatment is proposed to be carried through to the shoulder building.



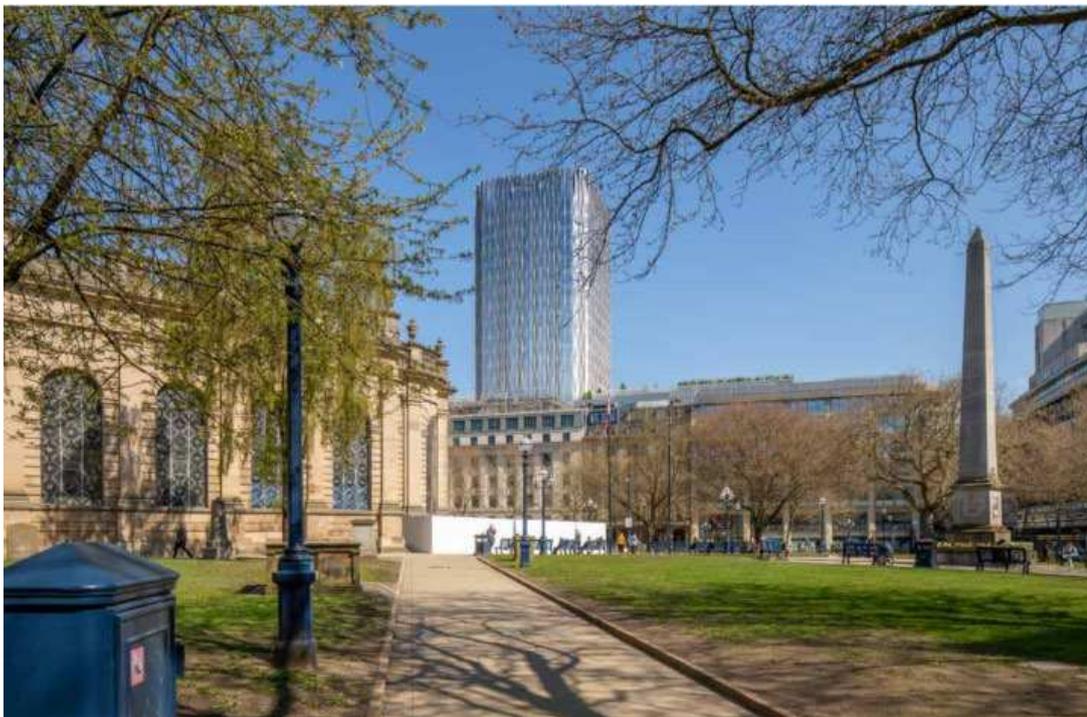
**Figure 8: Bay study of base and podium**



**Figure 9: Bay study of tower and crown**

- 7.39. The success of this approach would depend on quality of delivery, therefore a further reduction in any modelling or design quality could not be accepted.
- 7.40. The application of the panels would also be important. Typical bay drawings and detailed sections have been provided. The junction between panels is currently being presented at 20mm, which is large enough to be visible, hence attention needs to be given to this detail, therefore it is important that should permission be granted a architectural panel is constructed and viewed by the Council on site before the façade is applied.
- 7.41. In initial presentations, the stair core was expressed in the architecture of the façade

facing St Philips Cathedral and the panelling either side had no modelling. The formal submission shows the new tower core set in from the façade to allow the fins to wrap around all sides of the tower. This is a welcomed move; however, the materiality would still differ on this elevation as glazed panels cannot be used on to the core (due to fire safety). Therefore, the architecture is not truly 360°, as it should be.



**Figure 10: view from within Cathedral Square towards St Phillips Place**

- 7.42. With regards to the base of the building, the use of reconstituted stone cladding, formed out of the existing building's stone cladding, is supported and is considered a positive element of the design. The use of a lighting scheme is also shown highlighting this feature, this should be conditioned.



**Figure 11: CGI of base, along Bull Street**

- 7.43. Whilst improvements have been made and are recognised, the design reached, is considered by the City Design Manager to be *“a compromise, in that it is fettered by the position and form of the retained existing structural frame and the aspirations to improve thermal performance. That aside, the design arrived at is acceptable and responds as best it can to its modern central business district location, despite its heritage context”*
- 7.44. Further to the limitations and challenges created by the retention of the substructure and improving the environmental performance of the building, ss mentioned above, the applicant has provided a Financial Viability Assessment, to demonstrate that

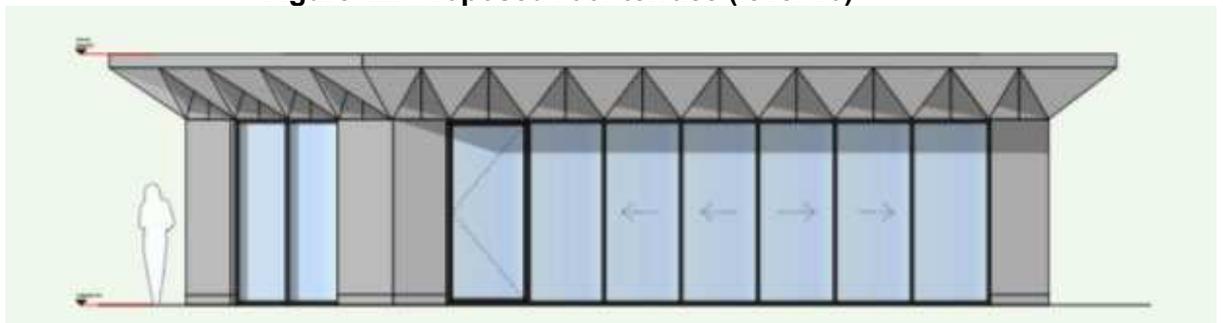
without the additional floor space proposed the scheme would not be financially viable. This report has been reviewed by a third-party consultant on behalf on the City Council. The applicant also confirmed that additional height (to reduce floorplate width) was not possible due to restrictions of the loading baring capacity of the existing frame. The submitted energy statement sets out the strategies employed to create a sustainable structure.

### *Landscaping*

- 7.45. The proposed development includes a landscaped roof terrace to the podium roof level, with the provision of a pavilion structure and plant enclosure. There are also smaller terrace areas to the Bull Street elevation.



**Figure 12: Proposed roof terrace (level 10)**



**Figure 13: proposed pavilion of roof terrace**

- 7.46. The new public realm along Bull Street and Colmore Row would be landscaped with mixed stone paving along with street furniture and metal planters, creating a buffer between the walkway and adjacent tram route along Bull Street. This should tie in to the existing surrounding Granite and York Stone.



**Figure 14: Proposed landscaping and public access**

*Microclimate and Amenity*

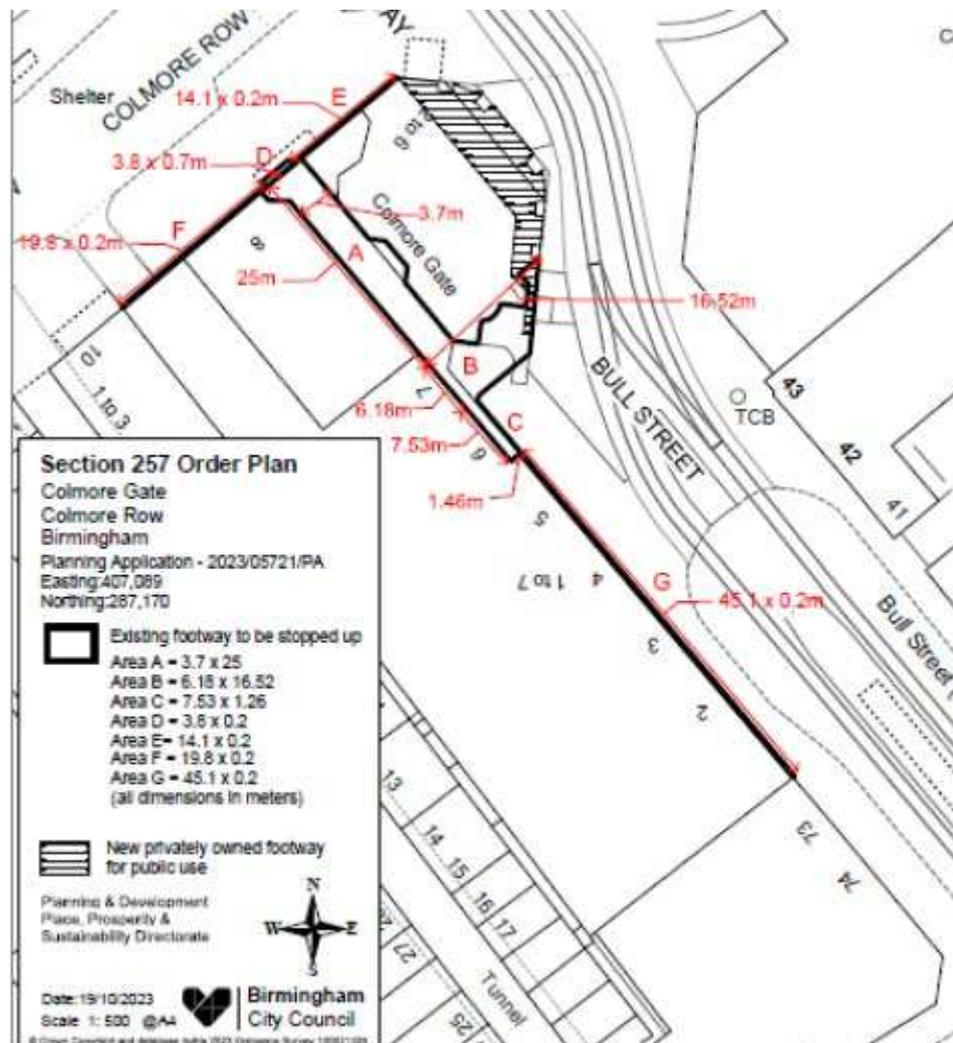
- 7.47. Policy DM2 (Amenity) expresses that all development will need to be appropriate to its location and not result in unacceptable adverse impacts on the amenity of occupiers and neighbours.
- 7.48. Wind – the application is supported by a wind assessment, this demonstrates that the extension of the building, including the increase in height would maintain wind conditions at ground level, suitable for pedestrians and any cumulative impact from surrounding developments would not have a material impact on wind conditions.
- 7.49. Daylight, sunlight and solar glare – the application is supported by a Daylight, Sunlight and Overshadowing Assessment and a Solar Glare Assessment. The daylight report finds that the development would have a minor impact on the daylight condition of the Quaker Meeting House. When considering the BRE guide for commercial premises and city centre urban locations, the overall impact of the scheme on the surrounding buildings is considered acceptable. The Solar Glare report assesses the proposed development in order to evaluate whether solar glare reflections would be visible from sensitive viewpoints. Most viewpoints were found to be acceptable, where there was glare visible in most instances this could be mitigated by car visors or reflections are for very short durations and would therefore not be unacceptable.
- 7.50. There have been a number of objections from members of the public in relation to loss of light, specifically to a place of worship and conference centre. However, as set out in the supporting assessments, these types of uses are not afforded the same protection with regards to loss of light as residential premises. In addition to loss of light, concern for impact of noise during construction has been expressed. Given the construction period would be temporary this is not considered significant enough to warrant refusal of the application. In addition, a condition has been suggested to require a construction management statement to control the impacts of noise and dust during construction.
- 7.51. There are limitations to the design proposed. Clearly a more elegant form with greater depth and modelling to the façade would be preferable. However, the structural limitations are accepted, as is retention of the existing structure and the findings of the Financial Viability Assessment. I concur with the advice of the City Design Manager in that whilst the design is a compromise, there is reason enough to accept it, in this instance. However, should the viability position worsen, and the scheme be value engineered as a result, it is unlikely that the City Council would support a diminished design approach, as supported by paragraph 135 of the NPPF. In addition, conditions should be applied to ensure that the proposed materials and architectural details are acceptable.

**Sustainable Construction**

- 7.52. The Guidance note on Sustainable Construction and Low and Zero Carbon Energy Generation (2022) provides guidance to developers on how to achieve the requirement of Policies TP3 and TP4. This sets out that from 15<sup>th</sup> June 2022 all non-domestic development must achieve at least a 27% reduction in carbon dioxide emissions compared to the 2013 Building Regulation (Approved Document Part L) standards. Policy TP3 of the adopted Birmingham Development Plan requires that development should seek to maximise energy efficiency and carbon reductions. Development proposals should therefore seek to achieve a betterment over the baseline national requirements against the Target Emission Rate (TER) of the 2021 Edition of the 2010 Building Regulation (Part L) where possible and where viable.
- 7.53. For non-domestic development, the policy requires development to aim to meet BREEAM standard Excellent (on developments over 1000sqm). Where this is not achieved, the applicant should provide justification and support this with a financial viability appraisal.
- 7.54. Policy TP3 'Sustainable construction' of the BDP requires development to maximise energy efficiency, minimisation of waste and the maximisation of recycling during the construction and operation of the development, conserve water, consider the use sustainable materials and the flexibility and adaptability of the development to future occupier's requirements. It also requires non-domestic development (including multi-residential accommodation) over a certain threshold to aim to meet BREEAM 'Excellent'. Policy TP4 requires new developments to incorporate the provision of low and zero carbon forms of energy generation or to connect into low and zero carbon energy generation networks where they exist.
- 7.55. The design approach proposes passive and low energy design technologies to reduce baseline energy demand and CO2 emissions through operation, followed by the application of low and zero carbon technologies. The energy strategy aims to demonstrate a reduction in carbon emissions and achieving sufficient Ene01 credits to reach BREEAM excellent, as a minimum. A BREEAM pre-assessment has been providing showing a target score of 81.32% (achieving excellent).
- 7.56. The feasibility of a range of LZC technologies have been considered by the submitted Energy Statement which concludes that PV panels and air source heat pumps (ASHP) are the most feasible and desirable technologies for the scheme. The proposal is to install 228.8 m<sup>2</sup> solar PV on the roof as shown on the plan in the Energy and Sustainable Construction Statement, with a capacity of 42.6 kWp. Air Source Heat Pumps (ASHP) is also considered suitable and will be used in their Hybrid Variable Refrigerant Flow (HVRF) format. The development overall will achieve a 57.04% reduction in energy and CO2 emissions compared to 2013 building regulations. A detailed plan showing where the ASHP would be installed will be required.
- 7.57. The Sustainable Construction Statement sets out other considerations to the sustainable construction of the development, including; sustainable procurement, use and recycling of materials, the use of SUDS, introduction of green infrastructure, passive design considerations including; improved building fabric high performance glazing, heat recovery, LED lighting, building management systems which provides energy efficiently controls; BREEAM Excellent pre-assessment completed.
- 7.58. The Submitted Energy Statements sets out that high performance glazing is specified which minimises the cooling demand and overheating risk of the design.
- Re-use of the existing building and embodied carbon*
- 7.59. The applicant confirms that the existing structural frame is sound and capable of supporting extension and adaption to support a continued office use, therefore the approach is to retain the existing frame. This approach is supported by the NPPF. The applicant has provided commentary on this approach having a lesser carbon impact, through retention of embodied carbon, than would be seen through demolition and re-build.

## **Transportation**

- 7.60. Policy DM14 (Transport access and safety) defines that development must ensure that the development would not have an unacceptable adverse impact on highways safety, safe convenient and appropriate access arrangements are in place for all users and that priority is given to the needs of sustainable transport modes.
- 7.61. The proposed development is supported by a Transport Assessment. This Assessment sets out and supports the removal of the existing 99 car parking spaces which are in the basement and introduction of 299 cycle spaces and supporting facilities. Allowing for the removal of the access including the current highway crossover. Drop off and waste collections point would be required. In addition, removal of the vehicle entrance point would allow for the removal of the existing vehicle cross over. This accords with the BCC Parking SPG.
- 7.62. The TA also considers the potential impact of the development on the nearby Tram Infrastructure. TfWM were consulted and suggest a set of conditions to ensure the ongoing operation of the Trams throughout any works. The catenary equipment would have to be removed and placed on a temporary structure, however, it is noted and recognised by the applicant that the equipment would have to be re-attached to the building.
- 7.63. The proposal requires the closure of an existing right of way and would therefore be subject to a Stopping Up Order. The existing route runs through the existing building from Colmore Row to Bull Street. An alternative pedestrian route would be provided, around the eastern edge of the building (but still underneath a cantilevered section of building). Transportation have no objection to this re-routing and confirming it may be a more pleasant route, given it would be open to one side and now overlooked by new ground floor commercial use, which would have an active frontage. A Section 35 Highways Act Walkway Agreement, or other agreement, would be required to allow public access over this land which would no longer be a Public Right of Way, as it would be in private ownership. A Grampian style condition would be required to ensure this agreement is entered in to before occupation of the building.



**Figure 15: Stopping Up Plan and area of new route (hatched area)**

- 7.64. The proposal is supported by a Travel Plan which sets out how the Travel Plan Co-ordinator would encourage walking, cycling and public transport use as an alternative way to access the site, rather than using a private car.
- 7.65. The proposed development is unlikely to have an adverse impact upon the safe operation of the highway and transportation do not object.

### **Environmental Protection**

- 7.66. The existing use is office and the continued extended use is office, in addition, the ground floor commercial space is also use class E and therefore it is not considered that the proposed development would introduce any significant additional noise, air quality or contamination issues.
- 7.67. Noise - The application is supported by a noise assessment which identifies the nearest sensitive noise receptors (hotel and place of worship). However, it establishes that appropriate noise levels are achievable but as final details of plant is unknown it should be conditioned to further assess and proposed any required mitigation before installation.
- 7.68. Air Quality – The application is supported by an Air Quality Assessment the acknowledges the site’s location within the Clean Air Zone. However, concludes that the as the proposal is car free and removed 99 parking spaces trip generation would fall and so impact upon air quality would not be significant.
- 7.69. There are no land contamination concerns given that the proposal is for the reuse and extension of an existing building.

## **Flooding and Drainage**

- 7.70. TP6 'Management of flood risk and water resources' requires a sustainable drainage assessment and maintenance plan for all major developments. BDP Policy TP2 'Adapting to climate change' and TP3 'Sustainable construction' states that new development should be designed and constructed in ways to conserve water and reduce flood risk, promoting sustainable drainage systems.
- 7.71. The site lies within Flood Zone 1 and is therefore appropriate for development of this use. The existing site is extensively developed with impermeable areas (buildings and hard surfacing).
- 7.72. The FRA sets out that a surface water management system (which includes SuDS techniques) should be incorporated into the design, ensuring that runoff rates do not increase post-development. The submitted drainage strategy states that infiltration systems are not feasible for the site given the building occupies the whole site and therefore surface water would be discharged into the public sewer at a restricted rate. Geo-cellular structures are proposed within blue roofs to attenuate rainwater and restrict run off at a betterment to the existing, as suggested in the FRA.
- 7.73. The developer has provided confirmation from STW that the restricted discharge rates shown in the drainage strategy are acceptable to them, to allow for connection to the network.

## **Ecology**

- 7.74. Policy TP8 'Biodiversity and Geodiversity' requires all development, where relevant. NPPF para 174 requires planning decisions to contribute to and enhance the natural and local environment, including minimising impacts on and providing net gains for biodiversity to support the enhancement of Birmingham's natural environment.
- 7.75. A Preliminary Ecology Assessment was carried out which found no presence or opportunities for protected species other than nesting birds. As the existing development does not support any biodiversity features and the proposed development includes rooftop gardens/ green roofs, this would serve to significantly enhance the green infrastructure on the site. The PEA considered that this would result in a 100% increase in biodiversity on the site.
- 7.76. BCC Ecology agree with the PEA in that mitigation measures should be employed during construction to protect any nesting birds. The overall approach to ecological enhancement/BNG, as set out in the PEA and BREEAM report, is supported by BCC Ecology.
- 7.77. The green roof as shown is sedum, this does not take the opportunity to be designed to enhance biodiversity features. The applicant has agreed to a condition requiring further detail of the green roof to be shown with ecological enhancements.

## **Other Matters**

- 7.78. An Aviation Report (Aerodrome Safeguarding Assessment) is submitted with this application. the proposed development would not penetrate the Outer Horizontal Surface at Birmingham Airport and there would be no impact on the airport's operations. It is not anticipated that there would be an impact on the airport during construction as cranes (and associated construction activities) would be kept under 309m above ordinance datum. The report also considered impact upon the Children's Hospital (access to helipad) and found there to be no unacceptable impact. Birmingham Airport did not respond.
- 7.79. A Gateway One Fire Report was submitted with the application, HSE fire did not respond to the consultation. Nevertheless, the proposal development would be required to comply with Building Regulations with regards to fire safety.

## **Planning Balance**

- 7.80. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that ‘If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise’.
- 7.81. Paragraph 11 d) states that where the policies which are the most important for determining the planning application are considered out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 7.82. BDP policy PG1 is considered out of date. However, Policy GA1 and TP1 are up to date, consistent with the NPPF and are afforded full weight. Therefore, on the whole the policies are considered to be up to date and consequently, Paragraph 11d) of the NPPF is not engaged and the tilted balance does not apply in this instance.
- 7.83. The harm identified to the significance of designated heritage assets, and the great weight afforded to their conservation needs to be considered along with the considerable importance and weight to be applied to the statutory duties of the Planning (Listed Buildings and Conservation Areas) Act 1990, specifically in section 66 and 72, as well as the degree of accordance with BDP policy TP12 and the relevant paragraphs in the NPPF against the benefits of the scheme.
- 7.84. The identified harm is as follows;
- Colmore Row and Environs Conservation Area - a low level of less than substantial harm.
  - Cathedral Church of St Philip (GI listed building) The Grand Hotel, 31 Colmore Row (GII\* listed building) - lower levels of less than substantial harm.
- 7.85. Whilst low levels of less than substantial harm are identified by HE, the reason for objection sited is “*The proposals would result in harm that could be avoided by an alternative design for a reduced scheme which better responds to the various heritage assets. As there is a design solution that we consider would reduce the harm, we do not consider these proposals are justified in line with NPPF paragraph 200 requirements. If the proposals are not amended, please treat this letter as an objection*”.
- 7.86. The application is supported by a FVA which justifies the increase in floorspace, as required to support the financial investment in the existing vacant building to provide grade A office space. It is therefore considered that paragraph 200 of the NPPF is satisfied.
- 7.87. Using the three strands of sustainable development the public benefits of the scheme are identified as
- Economic
- Temporary construction jobs over the construction period (562 direct and 680 indirect FTE)
  - £87.6m direct and indirect GVA p.a. in the construction phase
  - 2,796 FTE direct operational jobs and 811 further indirect FTE jobs supported locally.
  - £209.3m of GVA p.a. during operation
  - Refurbishment of the existing building, providing grade A office space in the city centre.
- 7.88. Para. 81 of the NPPF states that “Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business

needs and wider opportunities for development” However, I also note that many of the new jobs would only be for a temporary period, and that whilst permanent jobs would be created, a proportion of the floorspace and therefore calculated jobs, already exist. However, given the scale of development, moderate weight is attached to these economic benefits.

#### Social

- Introducing better passive surveillance of public route, thereby enhancing pedestrian safety.

#### 7.89. Environmental

- Bringing back in to use a vacant sustainably located office building.
- Making use of existing embodied carbon through the conversion of an existing structure
- Refurbishment of energy inefficient building to an energy efficient structure.
- New publicly accessible route, replacing existing unattractive route.
- Public realm improvements
- Car free development (involving the loss of 99 existing parking spaces) and provision of 299 cycle spaces.
- Landscaping with ecological benefits, with no net loss in biodiversity.

7.90. Significant weight is afforded to the sustainability credentials of the built development. The site has very limited ecological value and the proposal does provide ecological gains, however, this is afforded moderate weight.

7.91. The designated heritage assets buildings hold considerable historic significance and the less than substantial harm which would be caused to their significance by the development is considered by conservation colleagues to reach a low level. However, in my view, and very much on balance, I consider there are enough benefits associated with this proposal to outweigh the heritage harm identified. The paragraph 202 test of the NPPF is therefore favourable to the proposal. I therefore recommend the application is approved subject to the conditions set out below.

## 8. **Conclusion**

8.1. Overall, the proposed use is supported by Policy GA1 and TP21, the site is within the City Centre growth area and would see the development of this brown field site, with a high-quality development.

8.2. The opportunity to repurpose the existing building with alterations, compared to a scheme for demolition and new build, is welcomed in respect of minimising impact on the adjoining listed buildings and in relation to climate change and making use of existing embodied carbon.

8.3. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 the application would accord with the development plan taken as a whole and is therefore acceptable subject to completion of a legal agreement and conditions.

## 9. **Recommendation:**

9.1. That consideration of planning application 2023/05721/PA be APPROVED subject to the suggested conditions below (that may be amended, deleted or added to providing that the amendments do not materially alter the permission); and

9.2. That the Director of Legal Services be authorised to make an Order in accordance with the provisions of Section 257 of the Town and Country Planning Act 1990. For the closing of the existing public route and re-routing around the building, along with other alterations to the highway as listed above.

- 
- 1 Implement within 3 years (Full)
  - 2 Requires the scheme to be in accordance with the listed approved plans
  - 3 Requires the prior submission of a construction employment plan.
  - 4 Requires the prior submission of a demolition and construction method statement/management plan
  - 5 Requires the submission of extraction and odour control details
  - 6 Requires details of Sound Insulation for Plant/Machinery
  - 7 Limits the noise levels for Plant and Machinery
  - 8 Requires the submission and approval of external materials
  - 9 Requires the submission and approval of architectural detailing
  - 10 Requires the construction and approval of a sample panel on site
  - 11 Requires the provision of cycle parking prior to occupation
  - 12 Requires compliance with the commercial travel plan
  - 13 To ensure that the development achieves BREEAM rating level
  - 14 To ensure energy and sustainability measures are delivered in accordance with statement
  - 15 Requires the submission of hard and/or soft landscape details
  - 16 Requires the submission of a scheme for ecological/biodiversity/enhancement measures
  - 17 Requires the prior submission of details of bird/bat boxes
  - 18 Requires the submission of Biodiversity Roof details
  - 19 No development shall take place (including demolition, ground works, vegetation clearance) until a construction ecological management plan (CEcMP) has been submitted to and approved in writing by the local planning authority. The CEcMP shall include the following.
  - 20 Requires temporary fixing locations
  - 21 Requires replacement of Overhead Line Equipment
  - 22 Requires earthing / bonding of scaffolding
-

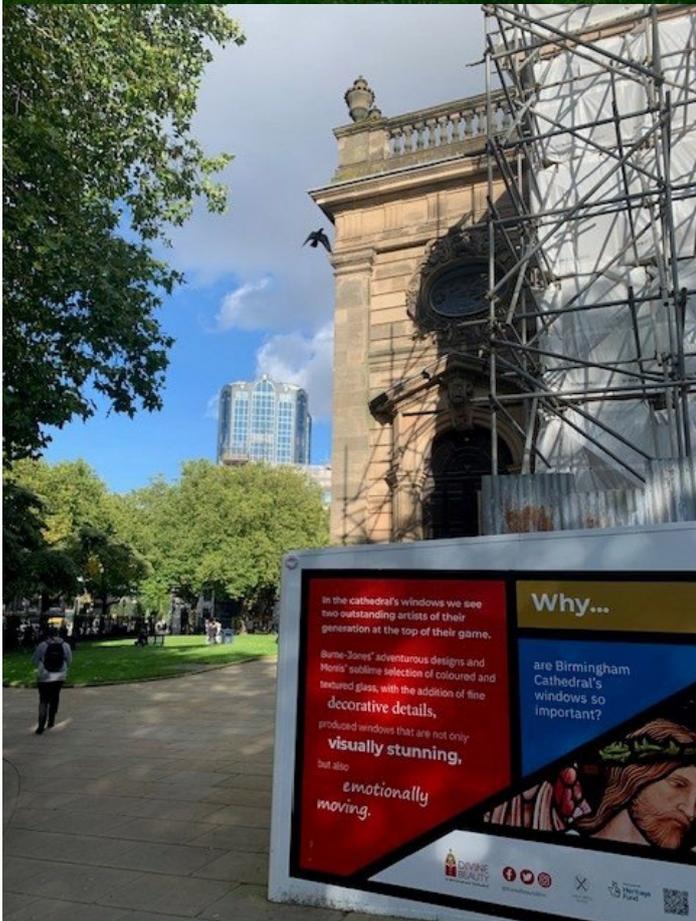
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- 23 Requires the submission of details of excavation and earthworks
  - 24 Requires the submission of a lighting scheme
  - 25 Requires the prior submission of a Sustainable Drainage Assessment and Sustainable Drainage Operation and Maintenance Plan
  - 26 Requires the prior completion of a legal agreement to provide the publicly accessible route
  - 27 Requires the works to the public highway to be complete before occupation of the building
- 

Case Officer: Rhiannon Hill

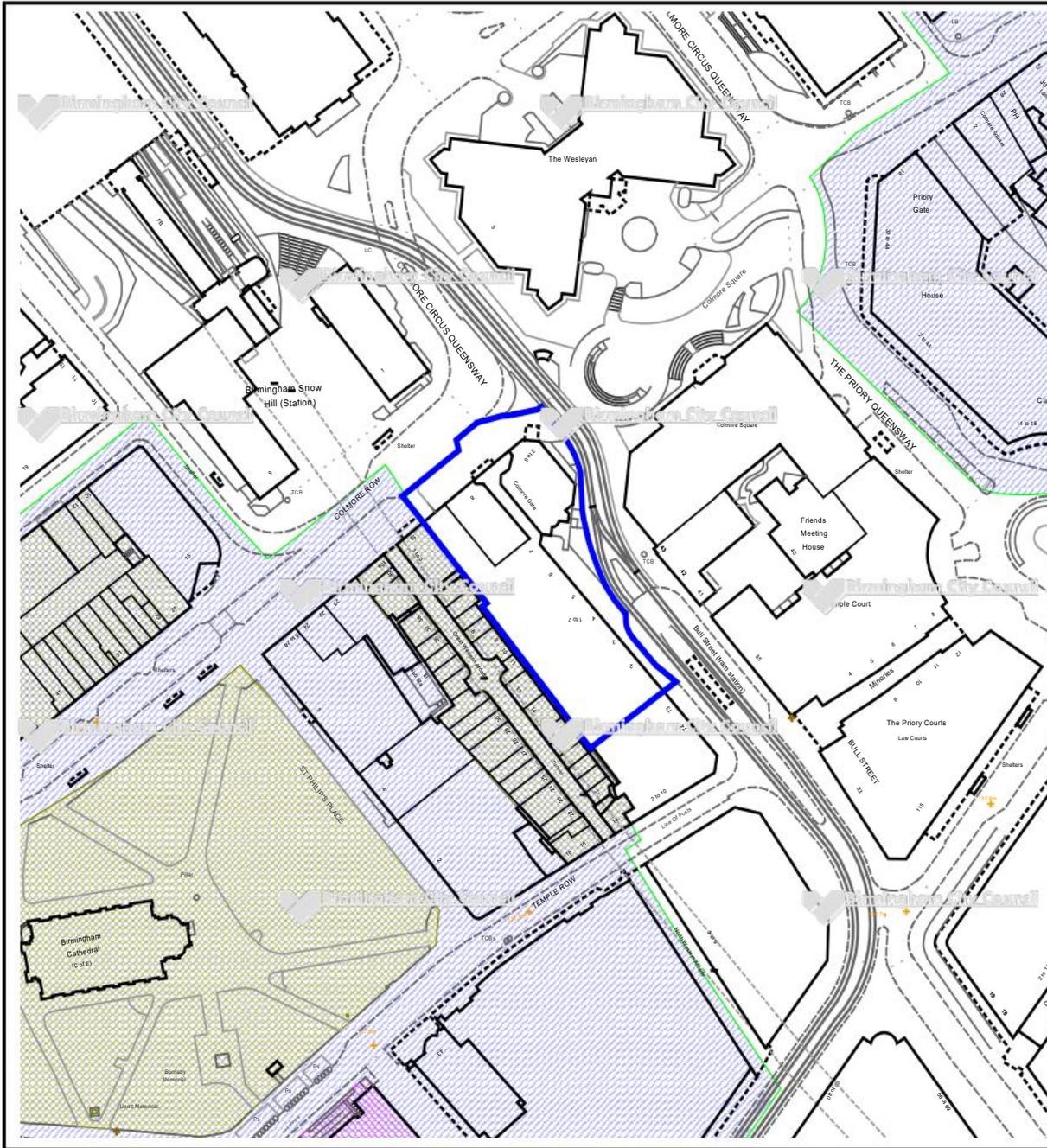
**Photo(s)**







## Location Plan



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# Birmingham City Council

Planning Committee

21 December 2023

I submit for your consideration the attached reports for the **East** team.

<u>Recommendation</u>	<u>Report No.</u>	<u>Application No / Location / Proposal</u>
Approve – Conditions	8	2023/06270/PA  63-65 Mason Road Erdington Birmingham B24 9EH  Sub-division of existing ground floor retail unit (Use Class E) into two units and change of use of one unit to hot food takeaway (Sui-Generis), with associated external shopfront alterations including formation of new entrance and installation of flue extraction system to the rear

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Committee Date: 21/12/2023      Application Number: 2023/06270/PA  
Accepted: 27/09/2023      Application Type: Full Planning  
Target Date: 22/12/2023  
Ward: Erdington

**63-65 Mason Road, Erdington, Birmingham, B24 9EH**

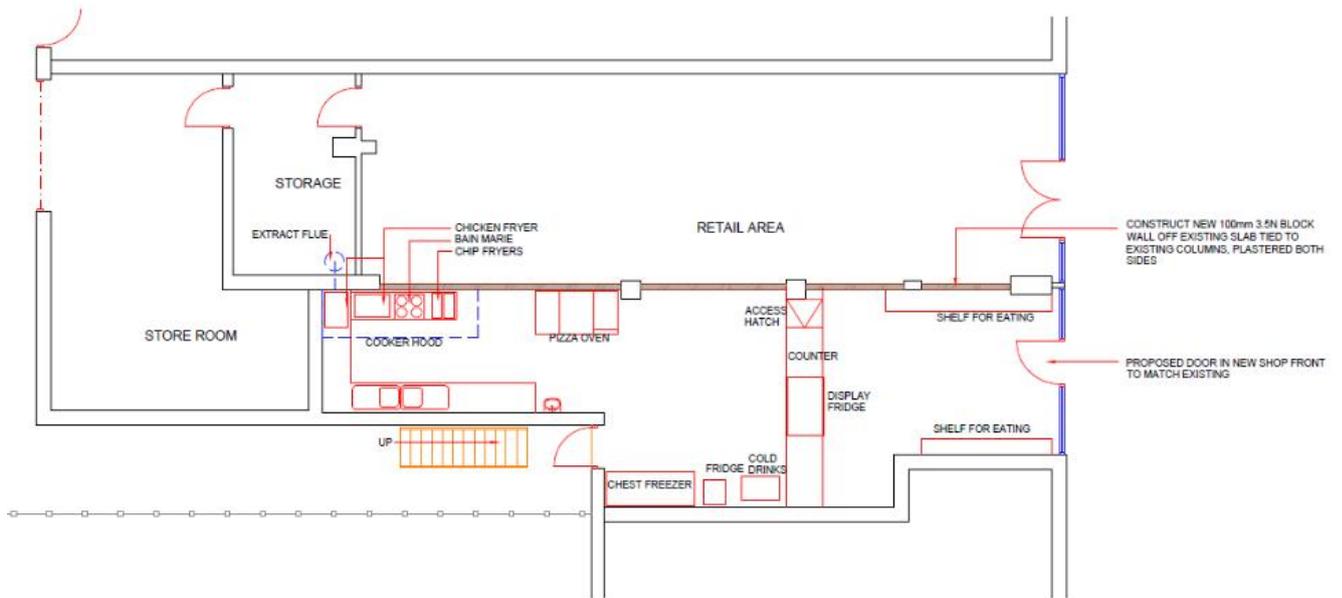
**Sub-division of existing ground floor retail unit (Use Class E) into two units and change of use of one unit to hot food takeaway (Sui-Generis), with associated external shopfront alterations including formation of new entrance and installation of flue extraction system to the rear**

Recommendation

**Approve subject to Conditions**

1. **Proposal**

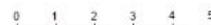
- 1.1. This application proposes the sub-division of the existing ground floor retail unit (Use Class E) into two units and the change of use of one unit to a hot food takeaway (Sui-Generis), with associated external shopfront alterations including the formation of a new entrance and the installation of a flue extraction system to the rear.
- 1.2. The proposal would include the reconfiguration of internal space to provide the proposed hot food takeaway with 18.6m<sup>2</sup> of serving/waiting space and 35.5m<sup>2</sup> of kitchen/preparation space. The residual retail unit would be allocated 63.3m<sup>2</sup> of retail space and two storerooms measuring 10.5m<sup>2</sup> and 29.5m<sup>2</sup> respectively.
- 1.3. Externally, the existing front elevation would be amended to provide an additional entrance door leading to the proposed takeaway. In addition, a flue would be added to the rear flat roof of the existing unit, measuring 5.3m in height and approximately 0.5m in width.
- 1.4. The application is identical to the previously refused application 2023/02141/PA other than the submission of a sequential assessment dated 15/09/2023.
- 1.5. A 58-signature petition of objection, as well as 11 individual objections, to the application has been received. Under the terms of the Scheme of Delegation applications must be determined by Planning Committee where there are 20 or more objections.
- 1.6. [Link to Documents](#)



PROPOSED REAR ELEVATION  
SCALE 1:100



PROPOSED FRONT ELEVATION  
SCALE 1:100



## 2. **Site & Surroundings**

- 2.1. Nos.63 and 65 comprise an existing supermarket. The premises occupy a broadly rectangular footprint within a constrained plot, with a service area to the rear. The building embodies a distinctive appearance, constructed from rendered brick with a pitched slate roof with intersecting gable fronts of differing sizes and pitch and a shop front at ground floor level with fascia signage.
- 2.2. The site is located within a mixed commercial and residential area. A row of terraced commercial buildings are located along the south of Mason Road with established residential use of upper storeys. Residential houses located to the north, south, east and west. The visual character of the area is defined by the presence of Victorian terraces constructed from red brick and render with a roofscape of pitched roofs with chimneys and the regular occurrence of gable fronts.

### 2.3. [Site Location](#)



## 3. **Planning History**

- 3.1. 16/1/2003- 2002/06227/PA- Retention of alterations to shop front - Approved subject to conditions.
- 3.2. 13/1/2007- 2006/06969/PA - Retention of ATM- Approved subject to conditions.
- 3.3. 7/6/2023- 2023/02141/PA - Sub-division of existing ground floor retail unit (Use Class E) into two units and change of use of one unit to hot food takeaway (Sui-Generis) with associated external shopfront alterations including formation of new entrance and installation of flue - Refused for the following reason:
- The proposal would introduce a main town centre use in an out of centre location and insufficient evidence or justification has been submitted to demonstrate that there are no sequentially preferable sites within the hierarchy of Local Centres. The proposal would therefore undermine the

residential character of the area and have an adverse impact on the vitality and viability of nearby Local Centres. As such, the application conflicts with Policies TP21 and TP24 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.

#### 4. **Consultation Responses**

- 4.1. Environmental Pollution Control: No objections, subject to conditions requiring noise insulation scheme between residential and commercial premises, limiting the noise levels of plant and machinery and the hours of operation.
- 4.2. Transportation Development: No objections, subject to condition requiring submission of details relating to boundary treatment.
- 4.3. West Midlands Police: No objections.

#### 5. **Third Party Responses**

- 5.1. Ward Councillors, Residents Associations and adjoining occupiers were notified, and a site notice was displayed outside the premises.
- 5.2. A petition with fifty-eight signatures was submitted in opposition to the application. The following issues were raised within the petition:
  - Loss of retail unit;
  - Impact on parking demand;
  - Impact on residential amenity;
  - Proliferation of hot food takeaways.
- 5.3. Eleven third-party responses were received, raising the following issues:
  - Incompatibility with residential area;
  - Noise impact;
  - Odour impact;
  - Impact on highways and parking;
  - Proliferation of hot food takeaways;
  - Health impact;
  - Impact on drainage;
  - Crime and anti-social behaviour.

#### 6. **Policy Context**

##### *Local Policy:*

- 6.1. Birmingham Development Plan 2017:
  - PG3 Place Making
  - TP21 The Network and Hierarchy of Centres
  - TP24 Promoting a Diversity of Uses Within Centres
- 6.2. Development Management in Birmingham DPD 2021:
  - DM2 Amenity
  - DM14 Transport Access and Safety
  - DM15 Parking and Servicing
- 6.3. Supplementary Planning Documents & Guidance:
  - Birmingham Design Guide (2022)

- Birmingham Parking SPD (2021)

*National Policy:*

- 6.4. National Planning Policy Framework (2021)
- 6.5. National Design Guide (2019)

7. **Planning Considerations**

- 7.1. This application has been assessed against the objectives of the policies set out above. The key issues in the determination of this application are the principle of development, visual amenity, the residential amenity of existing and future residents, and highways safety and parking.

*Principle of Development:*

- 7.2. Policy TP21 requires proposals for main town centre uses outside of Local Centres to satisfy the requirements of national planning policy which in turn requires a sequential test to demonstrate that more sequentially preferable sites are not available. The Planning Policy team have advised that the submitted sequential test has demonstrated satisfactorily that no sequentially preferable sites in the nearest District and Neighbourhood Centres (Erdington District Centre within 100m, and Kingsbury and Wylde Green Neighbourhood Centres within 1km) are available. The proposal is located within a parade of existing shops, which is the next sequentially preferable location for the proposed use. This parade contains nine local shops, including uses such as a hairdresser's, florist, tool shop and the local MP's office. Approval of this application would result in ten separate units, including one takeaway. This arrangement does not conflict with any policy of the Local Development Plan and is therefore considered to be acceptable in principle.
- 7.3. Third parties have raised concern over the proliferation of hot food takeaways. Policy 6 of the Shopping and Local Centres SPD requires no more than 10% of units within a frontage to consist of hot food takeaways. Subsequent to development, 10% (one out of ten) of the units within the frontage would be in use as a hot food takeaway. The proposal would therefore not result in a proliferation of hot food takeaways in a manner that would conflict with this policy.
- 7.4. Third-parties have also raised concerns over the loss of a retail unit. However, the proposal would retain the existing retail unit, albeit with a reduced floorspace. Notwithstanding this, as the site is not located within a Local Centre, there would be no policy reason to resist the loss of a retail unit.

*Visual Amenity/ Urban Design:*

- 7.5. The proposed development would not have a harmful impact on the area's visual amenity. The removal of one of the few double-fronted units in the parade of shops would be consistent with the rhythm of shop fronts present in the street scene. In addition, the proposed flue to the rear of the site would not be visible from any public space and would therefore not be harmful to the character of the area.

*Residential Amenity:*

- 7.6. The proposed development would not be harmful to the residential amenity of surrounding occupiers. The noise and disturbance associated with the subdivided units would not significantly exceed that of the existing retail unit, which currently

operates until 23:00 Monday- Saturday and 10:30 on Sunday. Environmental Pollution Control requested conditions requiring the submission of a noise insulation scheme between residential and commercial premises, limiting the noise levels of plant and machinery and the hours of operation of the hot food takeaway. These conditions are considered reasonable provisions for the preservation of the residential amenity of surrounding occupiers.

- 7.7. It is noted that the proposed extraction flue would not adjoin any windows relating to surrounding dwellings and therefore would not result in overbearing impacts or a loss of outlook. Furthermore, given that the proposed flue would be more than 1m above the eaves of the building, it would be capable of diffusing exhaust fumes in a manner that would preserve the residential amenity of the numerous first floor flats in proximity.

*Highways, Traffic and Parking:*

- 7.8. It is considered that the proposed development would not have a harmful impact on the functioning of the local highways network. The Birmingham Parking SPD requires a maximum of one parking space for a hot food takeaway with less than 35m<sup>2</sup> of public floorspace within Accessibility Zone B. Although no off-street parking is proposed, there are numerous short-stay car parking spaces on the highway adjacent to the site. It is noted that an increased parking demand associated with the proposed hot food takeaway would be offset by the reduced parking demand associated with the existing retail shop, which is likely to attract similar parking demand profiles. Furthermore, it is anticipated that the majority of demand for the takeaway use would fall within evening hours when adjoining retail uses are likely to be closed for business, ensuring opportunities for on-street parking to take place during these peak demand times. Accordingly, Transportation Development did not object to the application. It was recommended that the forecourt be fitted with a boundary treatment to prevent the use of the forecourt for unlawful vehicle access or parking. The use of bollards or some similar form of boundary treatment is considered to be a reasonable precaution to preserve highways safety.

*Other Issues:*

- 7.9. Third party comments referred to the potential for the proposed hot food takeaway to result in anti-social behaviour, including littering. However, West Midlands Police did not object to the application. It is not considered that a speculative increase in anti-social behaviour constitutes a reason to refuse the application.
- 7.10. Third party comments have raised concerns over the health impact of a hot food takeaway. However, no policy of the Local Development Plan provides a basis to oppose the application due to its impact on health.
- 7.11. A third-party comment has claimed that the proposal would be harmful to the local drainage system. However, there is no evidence that the proposed use would be more harmful in this respect than the current use.

**8. Conclusion**

- 8.1. The proposed change of use is acceptable in principle, would not be harmful to the area's visual amenity, the residential amenity of surrounding occupiers or the functioning of the local highways network. As such, the application complies with the policies of the Local Plan and is recommended for approval.

9. **Recommendation**

9.1. Approve subject to conditions.

- 
- 1 Implement within 3 years
  - 2 Requires the scheme to be in accordance with the listed approved plans
  - 3 Requires the prior submission of noise insulation (variable)
  - 4 Requires the submission of details of pavement boundary
  - 5 Limits the noise levels for Plant and Machinery
  - 6 Limits the hours of operation to 0900 - 2300 Monday to Saturday and 1000 - 2200 Sunday
- 

Case Officer: Jeff Badland

**Photo(s)**



Front elevation of site

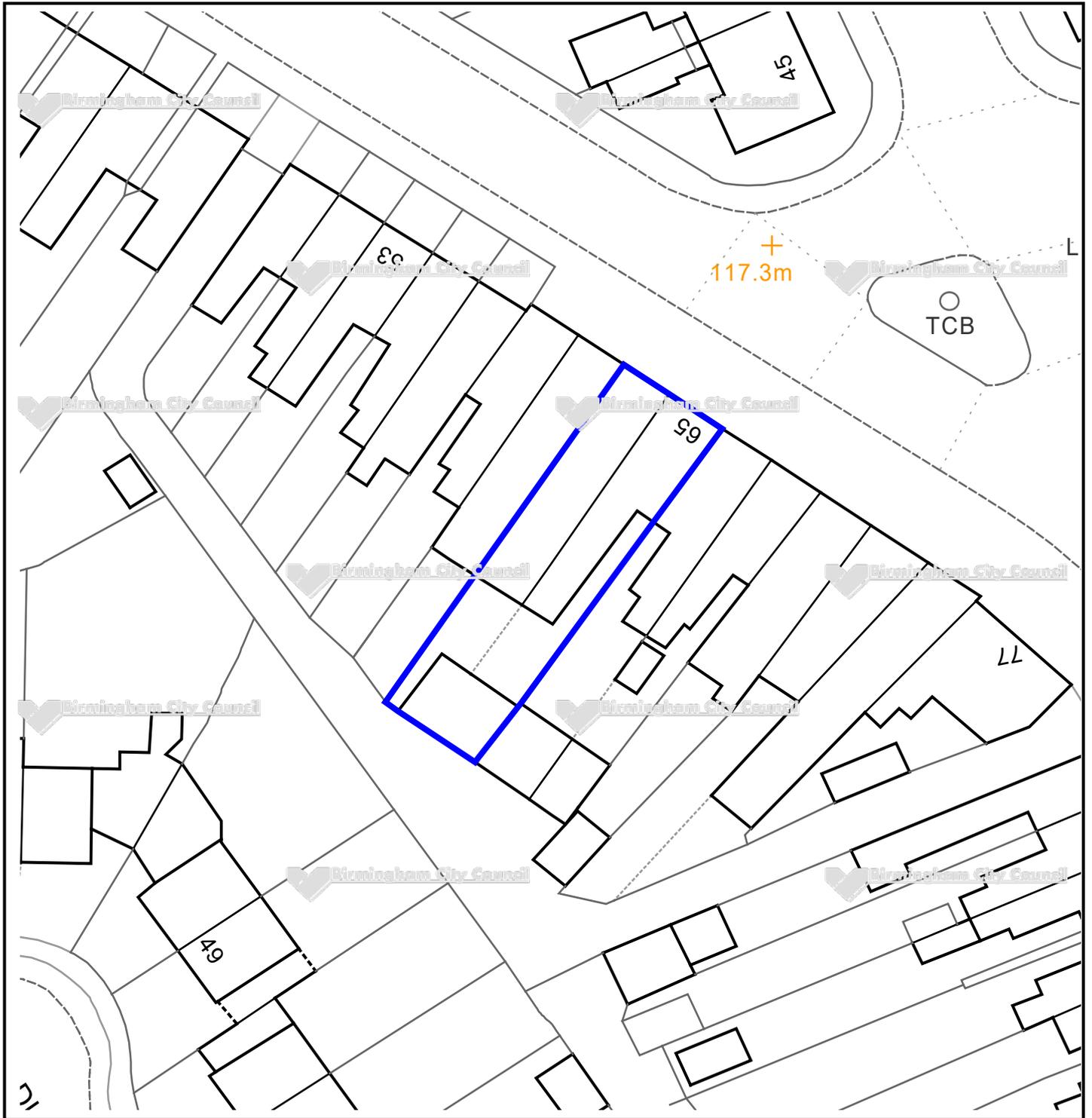


Bird's eye view of front elevation from northeast



Bird's eye view of rear elevation from southwest

## Location Plan



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