

# **Birmingham City Council**

## **Planning Committee**

**8 August 2024**

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

<u>Recommendation</u>	<u>Report No.</u>	<u>Application No / Location / Proposal</u>
Approve – Conditions	6	2023/08255/PA  1629-1653 Bristol Road South Longbridge Birmingham B45 9UA  Demolition of existing buildings and erection of a Class E foodstore with associated car parking, access, landscaping and associated works

Committee Date:	08/08/2024	Application Number:	2023/08255/PA
Accepted:	06/12/2023	Application Type:	Full Planning
Target Date:	09/08/2024		
Ward:	Rubery & Rednal		

1629-1653 Bristol Road South, Longbridge, Birmingham, B45 9UA

Demolition of existing buildings and erection of a Class E foodstore with associated car parking, access, landscaping and associated works

Applicant:	Aldi Stores Ltd
	C/o Agent
Agent:	Avison Young
	3 Brindleyplace, Birmingham, B12JB

### Recommendation **Approve subject to Conditions**

#### 1. **Proposal:**

- 1.1 Planning permission is sought for the demolition of existing buildings including 1629, 1631, 1651 and 1653 Bristol Road South and the erection of a Use Class E food retail store with associated parking and landscaping. This is before your Committee as the proposed development is a departure from the Birmingham Development Plan. The development would comprise of site remediation and enabling ground works; formation of a new vehicular access from Bristol Road South; laying out of a car park, footpaths and soft landscaping and the erection of a steel framed store with warehousing and delivery facilities.



Proposed site plan

- 1.2 The proposed store would have a gross external area of 2,017sq.m, gross internal area of 1,945sq.m and a retail floor of 1,315sq.m. The remaining floor space would be split between the staff areas and the warehouse. The building would be 67m at its longest length and 41.5m at its widest. The overall height of the proposed store would be approximately 5.5m high from finished floor level with a maximum 6.7m for the loading bay at the rear of the site. The store entrance would have a glazed shopfront and canopy providing focus to the main elevation. The canopy, which would be illuminated from below, would also provide a covered, well-lit area over the trolley store.
- 1.3 The building would be set back from the front boundary to the established building line along Bristol Road South. The store would primarily comprise of white mineral render with Blockleys brick 'smooth black' with black tarmac coloured mortar brickwork below rendered panels.
- 1.4 The front and side elevation would have large, glazed panels presenting an active frontage to Bristol Road South on approach allowing natural light into the retail space.



CGI Image of proposed store

- 1.5 109 car parking spaces are proposed, including 6 parent and child spaces, 7 spaces for people with mobility issues, 4 electric vehicle charging spaces with future scope to increase and 4 staff parking spaces. 10 bicycle spaces would also be provided under the store entrance canopy.
- 1.6 Proposed opening hours are 0800-2200 hours Monday to Saturday and 1000-1600 hours on Sundays.
- 1.7 Approximately 50 jobs would be created with a mix of full and part time opportunities recruited from within the local community.
- 1.8 The application is supported by a Design & Access Statement, including Sustainable Construction Statement; Planning and Retail Statement; Transport Assessment and Travel Plan; Land Contamination Phase 1 Environmental Site Assessment; Preliminary UXO Risk Assessment; Flood Risk and Drainage Assessment; Arboricultural Impact Assessment; Arboricultural Method Statement; Preliminary

Ecological Appraisal; Preliminary Bat Roost Assessment; Dusk Emergence Bat Surveys, Air Quality Assessment; Noise Impact Assessment; BREEAM Pre-Assessment; Renewable and Low Carbon Energy Statement; Lighting Plan and a Landscaping Plan.

1.9 The application was submitted before the mandatory BNG Requirement.

1.10 Site area: 0.56Ha.

1.11 [Link to Documents](#)

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

2.1. The site is located on the north side of Bristol Road South and is a relatively square plot of 0.56 hectares. The site is bounded to the south by the A38 Bristol Road South and the River Rea to the north. The site is in close proximity of Junction 4 of the M5 and is located on Bristol Road South linking the M5 to the City Centre. The site drops in level by approximately 2m from south to north. The Bristol Road South in this location is a dual carriageway with a wide grassed central reservation. Vehicle access is from the west with egress to the east. The site is located within Flood Zone 1 with a small area on the northern boundary and beyond the site boundary falling within Flood Zones 2 and 3.

2.2. On both sides of Bristol Road South in the vicinity of the application site are commercial, employment and retail uses. Immediately adjoining the site to the west are two retail units, one occupied by Country Cousins Interiors with residential flats above, abutted by a drive thru MacDonalds restaurant with a car wash beyond. The site is adjoined to the east by a sign writing business with Roundabout Cars Birmingham above and single storey building occupied by Cofton Security, beyond which are two use class A5 take-away units with residential above abutted by the new Blaise Veterinary Hospital. On the opposite side of Bristol Road South is a small parade of retail units, a church and a carpet sales warehouse. To the south, the area is characterised by residential development.

2.3. To the north of the site is the former Longbridge West Works site, formerly car manufacturing and now with residential and employment development currently under construction, which is allocated as a Regional Investment Site (RIS) and housing. The application site and the adjacent uses fronting Bristol Road South are also part of the designated RIS. To the east, (and within walking distance of the application site), is the former Longbridge North Works, which now forms the Longbridge District Centre and includes Bournville College, Austin Park, Premier Inn, Sainsbury's and Marks and Spencer. The Royal College of Defence Medicine Personnel Accommodation is also located to the east of the application site and is located on the RIS plan allocation.

2.4. [Site Location Plan](#)

## 3. **Planning History:**

3.1. 2 August 2018. 2017/03370/PA. Planning permission refused for the erection of use class A1 food retail store with associated parking and landscaping. Planning permission refused on the following grounds:

- 1) The application is located on an allocated Regional Investment Site and is a Departure from the adopted Birmingham Development Plan. The proposed Use Class A1 Food Retail Store is not a use supported by the Development Plan for the site nor is it considered to be a supporting use to the overall RIS allocation. The proposed development is therefore considered to undermine the proposed economic growth associated with the RIS, which remains an important component

- of the City's employment and economic growth strategy. As such, the proposed development is contrary to Policies GA10 and TP18 of the Birmingham Development Plan; Proposal RIS 1 of the Longbridge Area Action Plan and Paragraphs 11, 80, 120 and 121 of the National Planning Policy Framework 2018.
- 2) The application site is located out of centre. An in-centre site that could meet the requirements for convenience floor space is available, suitable and viable and located nearby at Phase 3 of the Longbridge District Centre. As such, the proposed development would fail to satisfy the requirements of the Sequential Test and is therefore contrary to Policies GA10, TP21 and TP22 of the Birmingham Development Plan and Paragraphs 11, 86, 87 and 90 of the National Planning Policy Framework 2018.
- 3.2. 10 August 2007. 2007/02780/PA. Planning permission refused for the Construction of food retail store (Class A1) with associated car parking. Planning permission was refused on design and layout, flood risk assessment and *"The proposal is premature to and likely to prejudice the outcome of the Longbridge Area Action Plan, particularly the proposals for a new centre at Longbridge Lane, a regional employment investment site, new housing development and the enhancement of the River Rea corridor as set out in the Preferred Options Document. The proposal is contrary to the Preferred Options Document and Policies 3.14B, 7.27, 7.28 and 19.19A of the Birmingham Unitary Development Plan (2005) and the aims and objectives of PPS6: Planning for Town Centres."*
- 3.3. 9 March 2007. 2006/07889/PA. Planning permission refused for the Construction of food retail store with associated car parking. Planning Permission was refused for the following primary reason (alongside design and layout): *"The proposal is premature to and likely to prejudice the outcome of the Longbridge Area Action Plan, particularly the proposals for a new centre at Longbridge Lane, a regional employment investment site, new housing development and the enhancement of the River Rea corridor as set out in the Preferred Options Document which has been approved for consultation. The proposal is contrary to the Preferred Options Document and Policies 3.14B, 7.28 and 19.19A of the Birmingham Unitary Development Plan (2005) and the aims and objectives of PPS6: Planning for Town Centres."*

This refusal of planning permission was appealed by the applicants (APP/P4605/A/07/2047819) with the appeal being dismissed (21 February 2008) by the Planning Inspectorate as the application site was out of centre; the appellants had not satisfactorily proved that the proposal would not fit into a town centre; the proposal would be contrary to national and local planning policy which seeks to promote the growth and development of existing town and local centres and the application site is shown within the confines of a planned new RIS in the emerging Longbridge AAP where new retail provision would not be appropriate.

#### Other relevant applications

- 3.4. 16 May 2024. 2024/00874/PA. Planning permission granted for the erection of employment unit for research and development and manufacturing purposes (Use Classes E(g)(ii) and E(g)(iii)), access, parking, service yard, landscaping, and other associated infrastructure (Plot 8 RIS).
- 3.5. 19 October 2023. 2023/03677/PA. Outline planning permission with all matters reserved granted for a residential development of up to 220 dwellings (C3) together with access, parking, landscaping, and associated infrastructure at 1 Park Square.
- 3.6. 19 October 2023. 2023/03678/PA. Outline planning application with all matters reserved granted for a residential development of up to 160 dwellings (C3) together with access, parking, landscaping, and associated infrastructure at 2 Park Square.

- 3.7. 27 July 2023. 2023/01788/PA. Reserved Matters Approval granted for appearance, landscaping, layout, and scale pursuant to permission reference 2021/06547/PA for Phase 2c of the proposed development comprising 160 dwellings together with public open space, parking, landscaping, and associated infrastructure (Longbridge West)
- 3.8. 6 July 2023. 2022/06192/PA. Reserved Matters Approval granted for appearance, landscaping, layout and scale pursuant to permission reference 2021/06547/PA for Phase 1 of the development comprising strategic landscaping, drainage and green infrastructure (Longbridge West).
- 3.9. 15 May 2023. 2023/01857/PA. Planning permission granted for the retention of single storey building (Use classes A1 (Ea), A3 (Eb), A4 (Sui Generis), D1 (Ed, Ee and Ef) and/or D2 (Sui Generis)), ancillary stores and toilet buildings, external seating, access, service space, landscaping and associated infrastructure following temporary permission under 2019/10577/PA (Longbridge Town Centre).
- 3.10. 16 February 2023. 2022/05654/PA. Reserved Matters Approval granted for appearance, landscaping, layout, and scale pursuant to permission reference 2021/06547/PA for Phase 2B of the residential development comprising 183 dwellings together with public open space, parking, landscaping and associated infrastructure (Longbridge West).
- 3.11. 26 January 2023. 2022/06337/PA. Reserved Matters Approval granted for appearance, layout, and scale pursuant to permission reference 2021/06547/PA for sub-Phase 2a of the development comprising initial highways access and associated drainage infrastructure for Phase 2 (residential development) (Longbridge West).
- 3.12. 18 August 2022. 2022/03915/PA. Planning permission granted for the erection of employment unit for research, development and industrial purposes (Use Classes E(g)(ii), E(g)(iii) and/or B2), parking, service yard, access, drainage, landscaping and other associated infrastructure (Plot 3 RIS).
- 3.13. 30 June 2022. 2021/06547/PA. Outline planning permission granted with all matters reserved except access for a residential development of up to 350 dwellings, access, landscaping, public open space and associated development infrastructure (Longbridge West). Permission subject to Section 106 Agreement securing:
  - a) The provision of 20% affordable housing split as 13% low-cost home ownership at 80% of open market value, 5% First homes at 30% of open market value and 2% social rent in perpetuity with mix to be agreed.
  - b) The provision of £999,000 for off-site Social Rent affordable housing provided by Birmingham Housing Municipal Trust within the Northfield Constituency.
  - c) The provision of £20,000 to cover a Landscape Clerk of Works fee for overseeing the implementation of the POS/Green infrastructure /play elements/cycle route to ensure these are constructed to BCC standards and quality.
  - d) Payment of a monitoring and administration fee associated with the legal agreement to a maximum £10,000.
- 3.14. 26 November 2021. 2021/07145/PA. Planning permission granted for the erection of Multi-Disciplinary Veterinary Referral and Research Centre (Sui Generis) with access, parking, landscaping and associated infrastructure (RIS).
- 3.15. 12 February 2020. 2019/10577/PA. Temporary planning permission for 5 years granted for the erection of a single storey building (GEA 665sq.m) for uses including A1 retail, A3 restaurant/café, A4 (drinking establishment), D1 (non-residential institution e.g., art gallery, museum, library) and D2 (assembly and leisure e.g., cinema); ancillary stores and toilet buildings, external seating, access, servicing and

landscaping for a temporary period of 5 years – expires 12 February 2025 (Longbridge Town Centre).

- 3.16. 15 September 2020. 2020/02457/PA. Planning permission granted for the erection of residential apartment block comprising 56 apartments (21 x 1 bedroom and 35 x 2 bedroom) with associated access, parking, landscaping and infrastructure (Longbridge Town Centre).
- 3.17. 25 October 2018. 2017/10775/PA. Planning permission granted for reprofiling of levels, river (including new floodplain) works, vehicular bridge, highways, pedestrian/cycle and associated infrastructure at land at Longbridge West.
- 3.18. 25 May 2018. 2018/01697/PA. Outline planning permission granted, with all matters reserved for future consideration, for site preparation and construction of premises for a Use Class A1 supermarket, car parking, landscaping, access roads and associated works within Longbridge District Centre.
- 3.19. 4 August 2015. 2015/03064/PA. Planning permission granted for the erection of secure serviced residential accommodation (Use Class C2A) for defence medicine personnel, access, parking, landscaping and associated infrastructure (RIS).
- 3.20. 7 August 2014. 2013/09229/PA. Planning permission granted for retail and service development (A1, A3 and A5) comprising 14,832sq.m (GEA) anchor store, retail units of 4,383sq.m (GEA), restaurant/takeaway pavilion building of 589sq.m (GEA), erection of multi storey car park of 1216 spaces and surface level car park of 500 spaces, access, landscaping and associated works. (Phase 2 Town Centre) Subject to a Section 106 Agreement to secure:
- a) An index linked financial contribution from the date of this planning committee of £1,857,846 towards the spend priorities of the Longbridge Infrastructure Tariff identified in Table 2 of the Longbridge Area Action Plan 2009 payable as 25% on commencement of development, 25% on first occupation, 25% on 50% occupation and 25% on 95% occupation.
  - b) The first occupation of the 14,832sq.m retail unit shall be Marks and Spencer Plc.
  - c) A continued commitment to remain in a Local Training and Employment Scheme with the City Council and other agencies and employ local people during construction and operation of the development.
  - d) Payment of a monitoring and administration fee associated with the legal agreement of £10,000.
- 3.21. 9 September 2011. 2011/00773/PA. Planning permission granted for mixed use development comprising new superstore, shops (A1), Financial and Professional (A2), Restaurants/Cafes (A3), Public Houses (A4) and Hot Food Takeaways (A5), Offices (B1a), 40 residential apartments, hotel, new public park, associated parking and service infrastructure and new highway access from Longbridge Lane and Lickey Road. (Phase 1 Town Centre).

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

- 4.1. Transportation – No objection subject to conditions relating to bus stop relocation, construction management, cycle storage and a car parking management plan during the servicing of the store. This application is for the erection of use class A1 food retail store with associated parking and landscaping. The proposed Aldi store will circa 1945sqm with 109 parking spaces and cycle parking for 20 bikes on 10 stands which is acceptable. Bus stops are also located with reasonable walking distance of the store. Tracking diagrams have been provided for delivery vehicles. As with other stores there will be three articulated vehicle deliveries per day along with 12 local delivery vehicles

for products such as milk. Delivery vehicles will use the same car park entrance. I would recommend that a Car Park Management Plan is submitted for when servicing is undertaken. Visibility is acceptable as shown, noting that the speed limit is now 30mph. Parking provision is in line with the Parking SPD (Nov 2021) for zone C. Capacity assessments have been undertaken and the TA concludes that the proposal is unlikely to impact significantly on the highway network. An analysis of the accident history of the road network local to the site has not identified any accident patterns that would impact on the acceptability of the proposed development.

- 4.2. West Midlands Fire Service - No objection.
- 4.3. Lead Local Flood Authority – No objection subject to safeguarding conditions relating to sustainable drainage and a sustainable drainage operation and maintenance plan.
- 4.4. Regulatory Services – No objection subject to safeguarding conditions relating to plant noise, lighting, contaminated land and operating hours.
- 4.5. National Highways – No objection. Due to the nature of the proposal and the distance of the site from the Strategic Road Network (SRN), the proposal is unlikely to have a material impact on the operation or free flow of the SRN.
- 4.6. Health and Safety Executive – No comments provided as the proposed development site does not lie within the consultation distance of a major hazard site or major accident hazard pipeline.
- 4.7. Employment Access Team – No objection subject to a construction employment plan condition.
- 4.8. Environment Agency – No objection subject to a contaminated land condition.
- 4.9. Severn Trent Water Limited – No objection subject to a drainage condition.
- 4.10. West Midlands Police – No objection subject to safeguarding conditions relating to CCTV and lighting.

5. **Third Party Responses:**

- 5.1. 23 letters were sent to residents/local occupiers/businesses; Ward Councillors for the Northfield and Rubery and Rednal Wards; Former Northfield Constituency MP and Local Resident Associations notified. Site Notice and Press Notice posted. The application has been advertised as a Departure from the Development Plan. 4 letters of objection and 272 letters of support have been received. The letters of support outlined that the store is much needed in the local area especially during the cost-of-living crisis and the development would be another step in helping Longbridge continue to grow.
- 5.2. The 4 letters of objection are based on the following issues:
  - Will the businesses on site be relocated by Aldi?
  - Access for the store is not appropriate.
  - Impact on biodiversity.
  - Bird and bat boxes should be incorporated into the scheme.
  - Car parking – sufficient for staff and customers?
  - Should be refused again as nothing has changed – already too many supermarkets.
  - I have lived at 1651/53 Bristol Road South for 30 years. The property is leasehold and comprises of 2 shops, a wood yard and workshop, where we make Bespoke furniture. If this planning application goes through, I will lose my



home and business and myself and 4 staff will be unemployed, there is no way I can relocate as all my money has gone into the business. This has had a very detrimental effect on my mental health, and I am dreading the future with no home or livelihood, everything I have ever had has gone into this business and the news that Aldi will demolish the premises has devastated me and my staff. I feel it is wrong to end a business established over 50 years just to build another supermarket.

- 5.3. Councillor Adrian Delaney - The proposal to build a new Aldi store in my ward is very welcome and I fully support this application. The location of the store is on land that has been empty for many years. This land is a local eyesore full of litter that does attract fly tipping. Development of this land will help to remove a local eyesore and significantly improve this area of my ward. The new supermarket will also provide much needed jobs for local people. It will also help reduce the shopping bill for residents and reduce the need for people in Rubery, Rednal and surrounding areas to have to travel some distance to access a retailer like Aldi. This is good news for my ward and the wider area and as the local Councillor I fully support this application.
- 5.4. Former MP Gary Sambrook - The new Aldi food store will significantly improve this location. The land is unsightly and has been vacant for many years, it has had problems with fly tipping, litter and rats. The new store will also create new jobs for local people. The redevelopment of this land is very welcome, and I fully support this application.

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

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

a. **National Planning Policy Framework**

Chapter 2: Achieving Sustainable Development – paras. 7, 8, 10, 11  
Chapter 4: Decision-making – paras. 38, 47, 55, 56, 57  
Chapter 6: Building a Strong, Competitive Economy – para 85  
Chapter 7: Ensuring the vitality of town centres – paras 90 to 95.  
Chapter 9: Promoting sustainable transport – para. 114-117  
Chapter 12: Achieving well-designed places – paras. 135, 136, 139  
Chapter 14: Meeting the challenge of climate change, flooding and coastal change – paras.162, 173 and 175.  
Chapter 15: Conserving and enhancing the natural environment – paras. 180, 186, 189-194

b. **Birmingham Development Plan 2017:**

PG1 – Overall Levels of Growth  
PG3 – Place Making  
GA10 – Longbridge  
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  
TP17 – Portfolio of Employment Land and Premises  
TP18 – Regional Investment Sites  
TP19 – Core Employment Areas  
TP21 – The Network and Hierarchy of Centres  
TP26 – Local Employment

TP38 – A Sustainable Transport Network

TP39 – Walking

TP40 – Cycling

c. Longbridge Area Action Plan (AAP)

Proposal RIS1: Regional Investment Site (RIS) - on part of North works car park and majority of West works.

d. Development Management DPD:

Policy DM1 – Air Quality

Policy DM2 – Amenity

Policy DM3 - Land affected by contamination, instability and hazardous substances.

Policy DM4 – Landscaping and Trees

Policy DM5 – Light Pollution

Policy DM6 – Noise and Vibration

Policy DM14 – Transport Access and Safety

Policy DM15 – Parking and Servicing

e. Supplementary Planning Documents & Guidance:

Birmingham Design Guide

Birmingham Parking SPD

Nature Conservation Strategy for Birmingham SPG

Sustainable Management of Urban Rivers and Floodplains SPD

7. **Planning Considerations:**

- 7.1. The key considerations in the determination of this application relate to the principle of development including the RIS designation and retail policy, design and layout, landscape and ecology, parking and access, surface water drainage; noise/amenity and sustainable energy and construction.

**Policy Background**

- 7.2. The application site falls within the Longbridge Growth Area which is covered by policy GA10 of the Birmingham Development Plan (BDP). This policy refers to the ambitions and targets of the Longbridge Area Action Plan (AAP). The AAP forms part of the Development Plan for the purposes of determining planning applications. The AAP contains a shared vision for Longbridge:

*"Longbridge will undergo major transformational change redeveloping the former car plant and surrounding area into an exemplar sustainable, employment led mixed use development for the benefit of the local community, Birmingham, Bromsgrove, the region and beyond. It will deliver new jobs, houses, community, leisure and educational facilities as well as providing an identifiable and accessible new heart for the area. All development will embody the principles of sustainability, sustainable communities and inclusiveness. At the heart of the vision is a commitment to high quality design that can create a real sense of place with a strong identity and distinctive character. All of this will make it a place where people will want to live, work, visit and invest and which provides a secure and positive future for local people."*

- 7.3. The application site is located on land allocated as a Regional Investment Site (RIS) within the AAP and is outside of both the AAP Centre Boundary and the extended centre Boundary within the BDP (Policy GA10 and TP21 of the BDP). The application site is also an allocated core employment site. The most relevant policy within the AAP

is RIS1 which requires new development to be of B1b/B1c or B2 use class, with a target to achieve at least 100,000 square metres of these uses on the site. The RIS policy both within the BDP and the AAP identifies that appropriate uses for the site are within the B1b (research and development), B1c (light industrial) and B2 (general industrial) Use Classes with a small proportion of the site (up to 25,000sq.m for B1a offices). Policy TP18 of the BDP also relates to development on allocated RIS and reiterates that development proposals should be in a B1 or B2 use. Policy TP19 of the BDP is also relevant due to the core employment designation which states that core employment areas will be retained in B class employment use and will be the focus of economic regeneration activities likely to come forward during the plan period, but that other uses appropriate for industrial areas may also be considered appropriate.

- 7.4. These policies were written before the changes to the Use Classes Order were introduced in 2020 which has resulted in B1 uses now being classified as an E class use amongst many other commercial uses. The issue of RIS uses and the development proposal is addressed later in this report.

#### **Retail considerations**

- 7.5. As previously identified, the application site lies wholly outside the Local Centre boundary, as defined by Proposal LC1 and subsequently amended by the BDP. As a consequence and following the requirements of Policy GA10 of the BDP, the application proposal faces the sequential and impact tests set out in Paragraphs 91 to 95 of the NPPF.

- 7.6. The proposed store operator's (ALDI) philosophy is to provide high quality products at discounted prices within a pleasant shopping environment. The applicant considers that the supermarket's function is both as a 'weekly' food shop destination and/or as a 'top-up' convenience store. The store stocks a limited 2,000 product lines including:

- Pre-packed seasonal fruit and vegetable lines.
- General tinned, bottled and pre-packed groceries.
- Frozen and chilled goods.
- Beers, wines and spirits.
- Pre-packed bread, 'morning goods and cakes; and
- A limited everyday range of non-food household items.

The applicant considers it important to note that there is no staffed butchery, fishmonger, bakery, delicatessen or hot food-counter and ALDI's food store format does not accommodate customer restaurants or in-store franchises such as a Post Office, dispensing pharmacy, dry cleaning, betting shop, opticians, or photo processing. The store would also stock a limited range of non-food goods (approximately 20% of the net sales area). The range of non-food goods in an Aldi store would be ancillary to the food offer in floorspace terms.

- 7.7. Crucial to the ALDI business model is the tried and tested store format that enables goods to be unloaded directly into the store via a dock leveller and transferred directly to the shop floor. All stores have a consistent proportion and layout. Given the policy requirement for flexibility (under the sequential test), ALDI recognises the requirement and would assist where possible however, they identify several key areas where it is not possible to exhibit flexibility as it would undermine the operational efficiency of the business and its viability. These include:

- A minimum of 1,883 sqm gross (1,315 sqm net) floorspace
- 105 car-parking spaces
- site of 0.8 ha or thereabout
- A store must be capable of being serviced by an HGV delivery vehicle and the site layout must allow the delivery vehicle to be able to enter and leave the site in a forward gear and for the vehicle to be able to dock correctly in the purpose-built delivery area of the store.

### The Sequential Test

- 7.8. Paragraph 91 of the NPPF sets out the sequential test that applies to planning applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date Local Plan. Paragraph 91 states that *'main town centres uses should be located in town centres, then in edge of centre locations, and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.'* In considering edge and out-of-centre proposals, Paragraph 92 states that *'...preference should be given to accessible sites that are well-connected to the town centre'*.
- 7.9. The previous application saw the applicants review the availability, suitability and viability of sites within a five-minute drive-time catchment for the proposed store, incorporating the areas of Northfield, Longbridge, Frankley, Rubery and the edge of Bromsgrove district. In applying the sequential test, several parameters were used including:
- A minimum site size of 0.5ha, capable of accommodating floor space of around 1,800sq.m GIA and, ideally, at least 100 car parking spaces.
  - The need for a single storey open and unrestricted sales floor area that benefits from a level topography.
  - Direct and/or easy vehicular access to the main road network; and
  - The need for the store to be directly visible from the main road network.
- 7.10. The sites assessed as part of the previous application's sequential test assessment were:
- 1) New Rose and Crown pub and car park and Kingdom Hall – Rubery.
  - 2) Rubery Social Club and adjoining properties – Rubery.
  - 3) Rubery and Rednal Royal British Legion Club and car park – Rubery.
  - 4) Site adjacent to existing retail units at Longbridge District Centre (phase 3).
  - 5) Land at One Park Square, Longbridge; and
  - 6) Additional site adjacent to Austin Park and Bournville College.
- No sites in Northfield and Frankley centres were considered as being suitable to meet the basic occupier site requirements. Sites 1, 2 and 3 were assessed as unsuitable and unavailable as the applicant considered the sites to be too small to accommodate the store and the required number of parking spaces, and the sites were in active use and in multiple ownerships, and were subsequently considered unavailable. As such, these three sites were discounted, and the LPA agreed with this assessment.
- 7.11. Site 5 was assessed as being of sufficient size to accommodate the ALDI and required car parking and in fact, is too large and as such would require the plot to be split into two, leaving a strip of surplus land. The applicant discounted the site on the basis that the owner was marketing the site for a major office development and the plot subdivision would not allow this to occur and the site was not available for acquisition. The LPA concluded that the store would need to be developed as part of a wider mixed-use development on the site and neither St Modwen (who own the site) nor ALDI would be prepared to develop a scheme of the size required speculatively. On this basis, the LPA concluded that the site could be discounted as it was not suitable or available, even having applied the appropriate degree of flexibility in relation to format and scale.
- 7.12. Site 6 (adjacent to Bournville College) was assessed, and a layout produced that indicatively showed that a store and car parking could be accommodated on the site and that the site could be made available by St Modwen for the proposed development. However, the store would need to turn its back to Bristol Road South; would provide less than the required 100 car parking spaces and would not be viable. The applicant considered that the viability in relation to site 6 is key in the sequential test assessment. They considered that the site is detached from the town centre as it is more associated with the park and college; direct access from Bristol Road South is unachievable and

the access route would have to pass existing food retailers in the centre of Sainsbury's and M&S and as such, the site had insufficient commercial presence to support the proposed development. The LPA concluded that whilst site 6 was available and suitable, it would not provide sufficient commercial presence for the site to be viable and could therefore be discounted.

- 7.13. This left one site reviewed through the sequential test assessment, that of Site 4, at Phase 3, Longbridge Town centre. Originally the site was discounted by the Applicant as not being suitable or available as the site was the 'wrong' shape, would have to have a relationship with the existing retail units, would only provide around 70 car parking spaces, would have to share car parking and the delivery area would not work. Further analysis was undertaken by the applicant in relation to the development of this site for an Aldi store which determined that a development would require the discount food store to be non-standard with abnormal build and operation costs relating to the construction of a concrete delivery platform, first floor storage area and lift operations within the store. The Applicant's assessment concluded that this alongside the limitations on dedicated car parking provision would render the site non-viable and unsuitable for the proposed ALDI store. The LPA did not agree with this and during the application consideration, the site became the subject of a planning permission (2018/01697/PA) for a store with a gross internal area of up to 3,100sq.m, sales area of 1,400sq.m and up to 110 car parking spaces. The application was subsequently refused based on a sequentially preferable site being available.
- 7.14. Aldi submitted a pre-application enquiry in July 2022. The submission related to a slightly smaller site than that which has now been submitted, as it excluded 1651-1653 Bristol Road South. The LPA responded that in relation to retail impact considerations because the proposal is for less than the 2,500 sqm (gross) threshold set out in the NPPF, a retail impact assessment was not required, although the submission of an impact assessment was helpful. In relation to the sequential test, the LPA concluded that of the original sites reviewed only One Park Square (Site 5) should be considered as a preferable site despite it having been discounted as such in 2018 as the site remained available and was no longer subject to a planning permission for offices. The previously sequential site (site 4) having been developed for an apartment scheme and Herberts Yard (a single storey building (Use classes A1 (Ea), A3 (Eb), A4 (Sui Generis), D1 (Ed, Ee and Ef) and/or D2 (Sui Generis)), ancillary stores and toilet buildings, external seating, access, service space, landscaping and associated infrastructure).
- 7.15. In applying the sequential approach, Paragraph 92 requires that applicants and Local Authorities should demonstrate flexibility on issues such as format and scale. These matters have been examined in appeal decisions and in the High Court, which have established that the guiding principle is whether an alternative site can accommodate a development which can perform a materially similar function to the proposed development, rather than some alternative scheme. The assessment should, however, be fascia-blind and should relate to the location, role and function of the proposal, and not the identity of an individual retailer or applicant.
- 7.16. This was confirmed in the judgement of the High Court in relation to Aldergate Properties Ltd v Mansfield District Council. The judgment states that the identity of an applicant is not "generally" relevant and acknowledges that "there are instances where identity may matter." It is reasonable to take the position that a "broad type of development" may comprise an operator, rather than any food store or convenience store, not least in the context of the Tesco Stores Ltd v Dundee City Council [2012] UKSC 13 Supreme Court Judgment which is clear that "the issue of suitability is directed to the developer's proposals, not some alternative scheme."
- 7.17. The applicant has therefore concluded that it is appropriate to apply the sequential test

on the basis that there is only limited scope to be flexible in the configuration of their floorspace and sites. This is agreed by the LPA.

- 7.18. In relation to availability, the correct approach as per the NPPF is to consider whether sites are available now or “within a reasonable period.” Sites which are immediately available may include those which are vacant and, on the market, those with planning permission, and land allocated in a development plan. Whether a site is available within a “reasonable period” will depend upon factors including the circumstances surrounding individual sites and settlements, the urgency of any need to improve retail provision, the content of the development plan, and evidence of actions being made by a promoter to make a site available.
- 7.19. In undertaking a wider sequential test than was requested, the assessment concludes the following:
- a) In relation to One Park Square, since the pre-application enquiry, it has been the subject of an outline planning permission for residential development. As such, it is concluded that the site is not available and that it will support residential development in accordance with St Modwen’s proposals.
  - b) There are no sites allocated in the adopted BDP, LAAP or any other policy document for Longbridge, for retail or mixed-use development, whether in or on the edge of the Centre, that have not already been built out or promoted for other uses.
  - c) There are no sites allocated in the adopted BDP, or any draft development plan, for retail or mixed-use development within any of the other centres within the catchment.
  - d) Not aware of any sites that have planning permission for retail or mixed-use development in or on the edge of Longbridge District Centre, or any of the other centres within the catchment.
  - e) No vacant, opportunity sites that might be suitable for retail development in or around any of the centres within the primary catchment area have been identified.
  - f) A small number of vacant units within each of the centres have been identified. These were all very small, ranging in size from approximately 50 sqm to 950 sqm and so substantially too small to accommodate the development that is proposed, even adopting a flexible approach.
  - g) Two further sites were reviewed - one in Northfield and one in Rubery. The potential site in Northfield was a unit within Northfield Shopping Centre which was formerly occupied by Wilko. The unit occupies an area of circa 2,490 sqm. However, the unit is located within a shopping centre, has no commercial frontage, and does not have any dedicated surface level parking that is directly accessible from the store. They conclude that the unit is unsuitable having regard to the legitimate operational requirements of a limited assortment discounter (LAD) food store.

The potential site in Rubery is to the north of New Road and comprises a vacant public house (New Rose and Crown) and its car park. The site appears to have been vacant for several years. It is approximately 0.51ha in size and so is substantially too small to accommodate the proposed food store as well as appropriate levels of customer car parking, even adopting a flexible approach. This site was previously discounted as the LPA agreed that the site was unsuitable. Circumstances have not changed since 2018 and so the same conclusion is reached that the site is unsuitable.

- 7.20. The Sequential Assessment submitted concludes that there are no more centrally located sites or opportunities that are allocated, committed or proposed for retail development, and which could accommodate the broad type of development that is proposed, even when adopting a flexible approach and as such, the sequential test is met.

#### Conclusions on Sequential Test

- 7.21. In the recent High Court Judgement (The King (on the application of TESCO Stores Limited) and Stockport Metropolitan Borough Council and LIDL Great Britain Limited) issued on 11 December 2023; one of the grounds of challenge related to the interpretation of retail policy and the sequential test in relation to the meaning of 'availability'. The Judge concluded (in paragraph 44) that *"if a site is already committed to an occupier, then the commercial reality is that it is not available to any other unidentified operator and, dependant on the facts of the case, there may be no opportunity of it becoming available within a reasonable period"*.
- 7.22. In relation to One Park Square (site 5 within the previous assessment), the site has obtained planning permission for outline residential development and the site owners, St Modwen, are in the process of (and almost concluded) selling the site to a residential developer. On this basis, I conclude that the site is not available under Paragraph 91 of the NPPF.
- 7.23. With regards to the site in Northfield, I concur with the reason for discounting the occupation of the former Wilko store and on this basis, the store would not be sequentially preferable. However, planning permission has been sought by Lidl Stores for the demolition of part of the Northfield Shopping Centre and its replacement with a new Lidl store. As such, this site would become a sequentially preferable in centre site. Once assessed against the requirements of Paragraph 91 however, this site is also discounted as not being 'available' as Lidl have a legal agreement with the owners of Northfield Shopping Centre and therefore in accordance with the Stockport MBC High Court Judgement, it is already committed to an occupier and is not therefore available.
- 7.24. Taking all the evidence into account, I conclude that the proposed development meets the sequential requirements of Paragraph 91 and 92 of the NPPF and Policy TP21 of the BDP.

#### Retail Impact

- 7.25. Paragraph 94 of the NPPF identifies that where applications for retail, leisure and office development outside of town centres are made, they should be accompanied by an impact assessment if the floor space exceeds 2,500sq.m. The assessment should include:
- *"The impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*
  - *The impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made."*
- 7.26. Paragraph 94 of the NPPF then confirms that *'Where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the above factors, it should be refused'*.
- 7.27. As previously discussed, the applicant identifies that the proposed development falls below the 2,500sq.m threshold for which an impact assessment is required but notes that Policy GA10 of the BDP requires a full retail impact assessment for all proposals for further retail development within the Longbridge AAP area, reflecting the fact that retail development to date in Longbridge is more than double the floor space originally envisaged.
- 7.28. An appropriate starting point for the impact assessment is to determine the primary catchment area of the food store. This is informed by data on existing convenience goods shopping patterns, taken from two sources:
- a) The household survey commissioned for the Birmingham Retail & Leisure Needs

#### Assessment (BR&LNA)

b) A further household survey commissioned by the applicant for an area to the south-west of Birmingham not covered by the BR&LNA.

- 7.29. The area covered by the BR&LNA household survey is wide and includes most of the administrative area of Birmingham. Longbridge lies in the southernmost part of Zone 23, with the application site lying outside of the survey area (to the west of Zone 23 and south of Zone 24). It has been necessary, therefore, for the applicant to commission a further household survey to cover the application site and the remainder of the likely primary catchment of the proposed store (and of nearby competing stores).
- 7.30. The additional survey comprises four additional zones (referred to as A, B, C and D). They lie to the south, west and east of Zones 23 and 24 of the BR&LNS. In total, the Study Area for the assessment comprises Zones 18, 19, 21, 22, 23 and 24 of the BR&LNS, and Zones A, B, C and D for the more recent applicant commissioned survey. The totality of this area is larger than the primary catchment of the proposed Aldi store but has been set at this size to capture the catchment areas of competing stores and centres.
- 7.31. The impact assessment determines that the primary catchment area for the proposed ALDI store would comprise Zones 23 and A of the study area. Based upon this area, the defined centres covered by the assessment are Longbridge, Rubery, West Heath and Northfield. The assessment considers the key indicators of 'town centre' health for these centres and what the market share data within the Household Surveys tells us about their trading position.

#### Longbridge

- 7.32. Based upon a combination of the BR&LNA and applicant household survey data Longbridge district centre attracts the following market shares:

#### *Convenience goods shopping:*

- 7.33. The Sainsbury's store attracts a significant market share of main food shopping trips from residents of Zones 23 and A, including 18% of first choice main food trips from Zone 23 and 14% of first choice trips from Zone A. It also attracts a broadly similar share of second choice trips from residents of these zones (18% from Zone 23 and 9% from Zone A). The adjacent Marks & Spencer store has a lower share of main food trips (1% of first choice main food trips from Zones 23 and A apiece). It does, however, have a broader spread of main food trips from Zones 22, 24 and B.
- 7.34. In relation to top-up food shopping, the Sainsbury's is again the most popular of these two stores, albeit with a more focused catchment (focusing on Zone 23) given the nature of this type of shopping trip. In line with its main food shopping role, the Marks & Spencer has a more evenly spread market share across Zones 23, 24, A and B, with the highest market share coming in Zone A for second choice top-up food shopping trips.

#### *Comparison goods shopping:*

- 7.35. Using a combination of the results from the BR&LNA and applicant household surveys, table 1 below summarises the first-choice destination market shares for Longbridge district centre across Zones 23, 24, A and B. The market penetration rate of the district centre across most comparison goods categories is wider than its convenience goods shopping role. Whilst not shown in the table, it should also be noted that the District Centre is also able to attract a reasonable market share of comparison-goods shopping trips from residents of the other parts of the study area (i.e. Zones 18, 19, 21, 22, C and D), indicating the attractiveness of the centre to a large area of south-west Birmingham.



	Zone			
	23	24	A	B
Clothes / Shoes	26.22%	7.34%	19.12%	12.16%
Books, CDs, DVDs	8.37%	5.90%	6.79%	0.00%
Home furnishings	12.72%	12.47%	2.41%	5.84%
Toys, games, cycles, recreational goods	27.57%	29.59%	16.37%	11.61%
Health & beauty goods	27.56%	16.18%	19.33%	6.89%
Domestic appliances	6.00%	5.63%	2.50%	0.00%
DIY and gardening goods	4.85%	4.86%	0.90%	0.56%
Furniture and carpets	17.63%	3.67%	3.13%	1.95%

*Table 1: market share of Longbridge town centre for first choice shopping trips*

- 7.36. The household survey information also provides an indication of the centre most visited by residents across the study area. Longbridge is the most visited centre amongst residents of Zones 23, A, B and D.
- 7.37. Overall, Longbridge is a healthy and attractive centre which has received significant investment in recent years and continues to do so. The District Centre includes a range of uses which are supported by a wide catchment area, particularly for comparison goods and main food shopping, and is the most popular centre amongst residents of a large part of south-west Birmingham.

#### Northfield

##### *Convenience goods shopping*

- 7.38. Of the two main food stores in Northfield, the Aldi store is the most popular for main food shopping. It attracts a 16% share of first choice main food trips from Zones 22 and 23, and a 9% share of first choice trips from Zone 24. It is also similarly popular for second choice main food trips in Zones 22 (11.5%), 23 (10.4%) and 24 (15.1%). The influence of the Aldi store is slightly more constrained and more focused upon Zone 23, where it has a 18% share of first choice top-up food trips and a 10% share second choice top-up food trips.
- 7.39. The Sainsbury's store on Frankley Beeches Road has a similar size of catchment area to the Aldi, but a materially lower main food shopping market share. Its share of first choice main food trips from Zones 22, 23 and 24 are 4%, 9%, 8% respectively. The Sainsbury's store has a similar share of top-up food shopping trips across Zones 22, 23 and 24 as the Aldi, apart from Zone 23 where it has a 7% of first choice top-up trips.

##### *Comparison Good Shopping*

- 7.40. The household surveys provide the following data for Zone 23 residents (who are considered to comprise the primary catchment for Northfield residents):
- Clothing & footwear goods – 15%
  - Books, CDs, DVDs, video games – 8%
  - Home furnishings – 11%
  - Toys, games, bicycles and recreation goods – 11%
  - Health and beauty goods – 27%
  - Domestic appliances and other electrical items – 6%
  - DIY and gardening goods – 5%.
  - Furniture and carpets – 6%.
- 7.41. The household survey data also shows that Northfield was the second most popular centre amongst residents of Zones 22, 23 and 24 of the study area.
- 7.42. Overall, Northfield is a healthy centre and a focus for a wide range of convenience, comparison and retail, financial and leisure service trips in SW Birmingham. The centre benefits from a mix national multiple and local independent traders and has a strong

comparison goods focus which will mean that the scale of trading overlap with the proposed Aldi will be reduced. It is relevant to note that Northfield is likely to have an overlapping catchment with the proposed Aldi at Longbridge, and the Northfield Aldi is likely to experience some loss of trade as residents of Zones 23 and 24 transfer their trips to the proposed store which is closer to home.

#### Rubery

- 7.43. The Co-op store does not attract any main food shopping trips, which is unsurprising given its size, retail offer and the presence of large food stores in the local area. However, the household survey data informing the assessment indicates that it attracts 6% of first choice top-up food trips from Zone A residents and 5% of second choice top-up trips. The Tesco store attracts 0.7% of first choice main food trips from Zone A residents and 3% of second choice main food trips. It is also a popular top-up food shopping destination, attracting 14% of first choice trips and 12% of second choice trips from Zone A residents.
- 7.44. Whilst not in Rubery and is an out of centre store, the Morrisons at Birmingham Great Park is located along Bristol Road South, served by a car park of circa 200 spaces and a petrol filling station. This store, due to its size, has a wider catchment than the in-centre Co-op and Tesco stores, attracting main and top-up food shopping trips from residents of Zones 23, 24 and A.

#### West Heath

- 7.45. There are no main food shops within West Heath Local Centre, however there is a Tesco Express to the north of the centre on the corner of Redhill Road and The Fordrough. Within the household survey data, the Tesco Express attracts 0.9% of second choice main food shopping trips from Zone 23 residents. This store is more popular for top-up food shopping trips with a 4.6% share of first choice top-up trips in Zone 23 and 2.4% in Zone 24. It also attracts 3.4% of second choice top-up trips from Zone 23 residents and 2.5% in Zone 24. West Heath also appears to a limited extent in the comparison goods market share data in the household surveys, including 0.6% of DIY trips from Zone 22 residents, 3.7% of health and beauty trips from Zone 23 residents, along with 0.7% of shopping trips for books, CDs, DVDs and video games from Zone 23 residents.

#### Financial Impact Assessment

- 7.46. A key part of the overall assessment of impact is the likely financial impact of the proposed Aldi store on nearby defined 'town centres'. The assessment has adopted the following data and assumptions:
- Study area and household survey information: As noted earlier the Study Area (and associated household survey information) combines several zones from the study area being used in the BR&LNA and four additional zones on the south-western edge of the Birmingham urban area. This study area is wider than the likely primary catchment area of the proposed Aldi store but has been set to cover a wider area to gain information on the catchment of surrounding competing stores and centres. The existing survey information from the BR&LNA which has been used provides data on first and second choice main and top-up food shopping destinations, along with various categories of comparison goods. For the four additional study area zones, a new household survey has been undertaken by the applicant. It adopts the same questionnaire as the BR&LNA survey to provide consistency between the two surveys.
  - Timeframe for the assessment: Based upon best practice, the submitted financial impact assessment has a base year of 2023 (the application year) and extends to 2026 and 2028 which have been set as the design years for the purposes of assessing the likely impact of the proposed store. The use of 2026 as one of the design years is a worst-case scenario as this is likely to be the opening year for the store. A later design year of 2028 is also provided based

on PPG guidance which asks for an assessment of impact two calendar years after the opening of a retail development.

- Population and per capita expenditure data: To provide an up-to-date assessment, new population data has been obtained from Experian for each of the study area zones. Similarly, new per capita retail expenditure data has been obtained from Experian. The base year for this data is 2021 and has been projected forward to 2023, 2026 and 2028 using economic forecasts within Experian's Retail Planner Briefing Note 20.

7.47. A full financial impact assessment has been provided and covers population levels within the study area; per capita convenience retail expenditure levels within the study area; total retail expenditure levels for convenience goods; market share levels for main and top-up food shopping across the various study area zones; study area derived convenience goods turnover levels for existing stores and centres; forecast convenience goods trade draw and trade diversion to the proposed ALDI store and forecast convenience goods impact on existing stores and centres.

7.48. With regards to the likely impact on existing stores and centres, the assessment assumes that all the turnover of the proposed store will come from the various study area zones, in the following pattern:

- 51% of turnover drawn from residents of Zone 23
- 16% of turnover drawn from residents of Zone 24
- 28% of turnover drawn from residents of Zone A
- The remaining 5% of turnover drawn from residents of Zone 18, 21, 22, B and D.

This is the same pattern of trade draw as the nearby Sainsburys store in Longbridge district centre (as derived from the BR&LNA and applicant household surveys).

7.49. The pattern of diversion has been undertaken on a zone-by-zone basis in order that a finer-grained assessment can be made of the proposed store's trading impacts. These levels of diversion are then brought together and identify the following effects on existing stores in south-west Birmingham:

a) The Sainsbury's supermarket in Longbridge District Centre is forecast to experience a trade diversion of £3.7m, which is the second highest diversion for a single store in the local area (after the Aldi in Northfield). This level of diversion would result in a trading impact (on future 2028 turnover levels) of -9.4% / -9.5%, reducing the convenience goods turnover of this store from £39.2m to £35.5m. Given the healthy trading position of the Sainsbury's store, this level of impact is unlikely to affect its future viability, particularly as it would remain a focus for shopping trips to Longbridge District Centre and would continue to benefit from:

- (i) linked trips with other retail and commercial uses in the centre; and
- (ii) a retail offer and product line range which extends well beyond that of the proposed Aldi, meaning that it would remain a focus for a wide range of grocery and comparison-goods shopping requirements.

b) The Marks & Spencer within Longbridge District Centre has a food hall alongside a wide-ranging comparison goods offer. Based upon its convenience goods retail offer and current market share levels (for main and top-up food shopping) the assessment forecasts that £0.3m of convenience goods expenditure would be diverted from this store. This level of diversion would result in a small level of impact (-3.2% / -3.3%) which is unlikely to materially affect the viability of the food hall element, or overall performance, of this store. The reasons for this are three-fold: first, the convenience goods offer comprises only one part of the overall retail offer of the Marks & Spencer store, with its (larger) comparison not being affected by the proposed ALDI; second, Marks & Spencer and Aldi have a differentiated retail offer, with materially different product ranges; and third, the level of trading impact is, in any event, very small.

c) Apart from a very small diversion from smaller stores, the two food stores in Northfield District Centre which would experience trade diversion are the Aldi and Sainsbury. The diversion from Aldi is likely to total £4.1m, which is the highest for any single store in the local area, which is based upon three factors:

(i) the likelihood that some residents in Zones 23, 24 and A (particularly Zone 23) would travel to the proposed new Aldi as they would find it more convenient to travel to;  
(ii) brand loyalty / popularity in this part of south-west Birmingham; and  
(iii) the current levels of market share achieved by the Northfield store amongst main food shopping trips. The diversion of £4.1m would result in an impact on the convenience goods turnover of this store of -8.6% / -8.7% although this would not materially affect the future viability of this store on the basis that the survey evidence shows it to be significantly over-trading against benchmark levels; and that Aldi has already taken into account (and acknowledged) this level of impact when making the decision to propose a new store in Longbridge.

d) The other store in Northfield which would receive a modest level of trade diversion is Sainsbury's. The assessment indicates that the level of diversion from this store is likely to be circa £0.9m which would equate to a small convenience goods impact of -3.3%. Given the strong catchment of Northfield District Centre, the wide product offer of this store (well beyond the proposed ALDI), along with the opportunities for linkages with other parts of the centre, the viability of the Sainsbury's store being harmed is minimal.

e) In relation to the other two centres in the local area at Frankley and West Heath, convenience goods stores in these centres do not generally feature in the household survey results due to their size, limited day-to-day retail offer and very localised catchments. Consequently, the assessment does not show any forecast impacts. The only convenience store which could experience a de-minimis impact is the Tesco Express immediately to the north of West Heath. However, at only -0.1%, the future trading function of this store would not be materially affected as it would continue to play a differentiated role and function to surrounding larger food stores, focusing upon smaller top-up shopping trips.

f) The remaining elements of the proposed store's convenience goods turnover would be derived from out of centre stores such as the Morrisons (£0.9m), which lies a short distance to the west of the application site. There would also be £1.2m of diversion from the Aldi in Kings Norton and £0.2m of diverted expenditure from the Tesco in Rubery.

g) In addition to the convenience goods offer of the proposed Aldi, there would also be a small comparison goods offer. This would comprise a mixture of a small line of core comparison goods (i.e. health and beauty goods, plus pet food goods, alongside an ever-changing 'specials' range which is located with the centre of the retail sales area). This mix of comparison goods would mean a varied and minor impact on existing food stores and comparison goods retailers in both the local area and further afield. For example, it is likely that part of the comparison goods trade diversion would come from the food stores in Longbridge district centre and, to a lesser extent food stores in Northfield district centre and out of centre retail provision.

#### Overall Impact on Longbridge and Other Nearby Defined Centres

7.50. Based upon the above analysis, the assessment reaches the following conclusions regarding the likely impact of the proposed Aldi store on the health of, and investment within, nearby defined centres:

- The only stores in Longbridge District Centre likely to experience any financial impact would be the Sainsbury's and Marks & Spencer stores at between 9.4% / -9.5% and -3.2% / -3.3%. Whilst these levels of impact do not raise any specific

concerns for either store, the test of 'impact' relates to the health of a centre as a whole, and it should be noted that there would be no material trading overlap with other shops and service in the remainder of Longbridge District Centre. As a consequence and bearing in mind the scale and attractive nature of the District Centre, we do not consider that there should be any cause for concern over its future vitality and viability.

- A similar conclusion can be reached in relation to Northfield District Centre. The only effects would be on the Aldi and Sainsbury's stores, with Aldi expecting to take some pressure off its Northfield store by providing an additional store in SW Birmingham. The impact on Sainsbury's would be much lower and would leave that store unaffected given its wider convenience and comparison goods product offer, and its ability to benefit from linkages with other retail and service uses in the remainder of the District Centre. Moreover, a large majority of businesses in Northfield District Centre have no trading overlap with the proposed Aldi and the future health of the centre as a whole would not be materially affected.
- With regards to Rubery, our impact assessment indicates that: (A) the Co-op on New Road will experience a minor -0.2% impact on turnover; (B) the Farmfoods store will experience a -0.2% impact; and (C) the Tesco food store will have a -2.5% impact on its convenience goods turnover. These levels of trade diversion are minor and not material and, consequently, would not have a significant adverse impact upon Rubery 'town centre'.
- The smaller centres, Frankley and West Heath, serve different functions to the proposed Aldi so that there are no concerns over their future vitality and viability.
- Finally, there are no planned or committed investment projects in the above four centres which are likely to be materially affected by the opening of the proposed Aldi at Longbridge. In relation to impact on existing investment within nearby centres, the low levels of financial impact and low level of trading overlap with existing retail, service and other commercial land use provision indicates that retailer, landlord and investor sentiment / confidence is unlikely to be materially affected.

#### Conclusions on Retail Impact

7.51. Based on the findings of the impact assessment, the trade diversion findings suggest that the proposed ALDI development is unlikely to have a 'significant adverse' impact on existing, committed and proposed investment in Northfield District Centre or Longbridge District Centre. The assessment also finds that the proposed Aldi store would have no impact on the smaller centre's future vitality and viability. I therefore conclude that the proposed development would not have a significant adverse impact on either existing, committed or planned investment and the vitality and viability of Longbridge, Northfield or Rubery. As such, the proposed development would comply with the requirements of TP21 of the BDP and Paragraphs 94 and 95 of the NPPF.

7.52. Lastly, I note the overwhelming local public support for the proposed development.

#### **Loss of Allocated Regional Investment Site/Core Employment Land**

7.53. The application site is located within the Regional investment Site (RIS) and Core Employment Area, allocated within the Longbridge Area Action Plan and the BDP (Policy TP18). The AAP states that the RIS will comprise the following:

- *"An area of 25ha gross.*
- *A floor space and use class breakdown for new development of:*
- *A technology park of at least 15ha to provide a minimum of 100,000sq.m of B1b (research and development)/B1c (light industry) and B2 (general industrial) and high-quality high technology uses which support the objectives of the RIS.*
- *A maximum of 25,000sq.m of B1a (office) for firms that support and complement the high technology sector and the objectives of the RIS.*

- *A maximum total of 10,000sq.m of floor space for services and amenities primarily for use of staff and businesses and integrated into the development e.g. meeting and conference facilities, cafes, sandwich shops and newsagents, crèche, gym and hotel.”*
- 7.54. Policy TP18 of the BDP covers regional investment sites and states that *“Development on these sites will be restricted to uses falling within Use Classes B1 and B2. Warehousing will only be permitted where it is ancillary to the main B1 or B2 use. Complementary facilities to the RIS such as leisure facilities, small-scale retail and conferencing facilities may be permitted but only at an appropriate scale and ancillary to the main B1/B2 use of the site. The potential for supporting facilities to be provided off site, through either new or existing facilities; will also be taken into account.”* Policy TP19 addresses core employment areas and provides a definition of appropriate employment uses which includes B1b (research and development), B1c (light industrial), B2 (general industrial) and B8 (warehousing and distribution) alongside waste management, builders’ merchants and machine/tool hire centres. The B1b and B1c uses now fall within Use Class E. The policy goes on to state that *“applications for uses outside these categories will not be supported unless an exceptional justification exists.”*
- 7.55. Planning permission was previously refused in 2018 as the application was a Departure from the adopted Birmingham Development Plan; the proposed Food Retail Store was not a use supported by the Development Plan for the site nor was it considered to be a supporting use to the overall RIS allocation. The proposed development was therefore considered to undermine the proposed economic growth associated with the RIS, which remains an important component of the City’s employment and economic growth strategy.
- 7.56. At that time, the LPA considered that the proposed retail food store represented inappropriate development on the RIS and as such was contrary to the adopted local plan. The RIS policies of the BDP are consistent with the NPPF and were supported by the Inspector who examined the BDP. At the time, the LPA were actively exploring ways to address the current fragmentation of the ownership of this part of the RIS, to allow a far more commercially attractive and viable development opportunity to be brought forward in due course. Also, planning applications were lodged with the LPA for the required infrastructure and first phase of RIS development, underlining St Modwen’s commitment to progress the RIS.
- 7.57. However, the wider site has moved forward significantly since the previous refusal. In terms of the wider RIS, the infrastructure is now complete and the first development on the RIS has been completed and occupied, a second has recently received planning permission and a third is lodged with the LPA. The housing development at the rear of the RIS is also now under construction after receiving planning permission. With regards to the application site, the frontage plots of the RIS where the site is located have not been able to be acquired to bring forward larger plots suitable for RIS development. In fact, due to planning permissions granted along this commercial frontage to the RIS, acquisition to create larger plots is no longer feasible as several other non-RIS uses in this commercial frontage of the RIS have been developed. These include the Royal College of Defence Medicine personnel living accommodation and a state-of-the-art veterinary hospital. These uses are spread across this road frontage to the RIS and prevent the grouping of smaller plots to create large plots. As such, this remains the only plot within the AAP RIS frontage that can be developed and most of the site has already been cleared. The remaining uses within the wider RIS commercial frontage are small businesses with residential flats above.
- 7.58. The Birmingham Development Plan Preferred Options Document is currently out to consultation. This document proposes that the RIS designation is removed from this

frontage and that the application site and those along this frontage no longer sit within a core employment area or the revised wording of 'Core Industrial Area'. Policy GZ20 identifies the Longbridge Growth Zone which includes the former Longbridge West Site and would cover the application site and states that the wider site is suitable for 13ha of commercial floor space.

- 7.59. The applicant's supporting statement identifies that most of the site has been vacant for around 18 years and has not therefore contributed to local employment throughout that time. Its former use was as a petrol filling station, and so it has not previously supported Class E(g), B2 or B8 (i.e. office, light industrial, research & development, general industrial, or storage and distribution) uses. They note that 1629-1631 and 1651-1653 Bristol Rd South would be demolished as part of the proposal to accommodate the development but acknowledge that their loss has been anticipated by AAP policy for many years.
- 7.60. Whilst the preferred options consultation can only attract very limited weight at present, although it does indicate the direction of travel in relation to policy for the site, and the site remains part of a strong employment allocation within the BDP, this frontage of the allocated RIS site including the application site has always been a commercial frontage, with shops and small businesses alongside a McDonalds Drive-Thru Restaurant, including at the point of the RIS allocation. Further development, approved since the RIS allocation was made, within this frontage has seen other uses including a Veterinary Hospital and Residential Accommodation for Defence personnel being constructed; further eroding the RIS/core employment allocation on this frontage. In fact, the application site would have limited to no connection to the wider RIS site to the north.
- 7.61. The proposed changes to the site allocation through the preferred options consultation indicate a clear focus of industrial development on the main body of the RIS/core employment land, freeing this site and the wider frontage for other growth zone development. I consider that a significant change has occurred on the ground following the granting of planning permissions in recent years that form a material consideration and exceptional justification for this application. The development of the main body of the West Works site is progressing for industrial development, the infrastructure works have been completed and the adjacent housing to the rear of the West Works site is under construction. On this basis, I consider that the proposed food store development on this site, whilst a departure from the adopted Plan, is acceptable. The development would create local employment opportunities and would comfortably occupy a vacant site sat within an existing commercial frontage in compliance with the wider growth and regeneration plan for Longbridge. The store would also serve the new housing located to the rear of the site on the other side of the River Rea. As such, I raise no objection to the proposed development and consider that exceptional justification has been provided in accordance with Policy TP19.

#### **Design, Landscaping and Trees**

- 7.62. The proposed store would have a gross external area of 2,017sq.m. The store entrance would have a glazed shopfront and canopy providing focus to the main elevation. The canopy, which would be illuminated from below, would also provide a covered, well-lit area over the trolley store. The building would be set back from the front boundary to the established building line along Bristol Road South and the front and side elevations would have large, glazed panels presenting an active frontage to Bristol Road South on approach allowing natural light into the retail space. The store would primarily comprise of white mineral render with Blockleys brick 'smooth black' with black tarmac coloured mortar brickwork below rendered panels.
- 7.63. My City Design Advisor considers that the proposed development is acceptable in design as the building is positioned to respect the building line, the height is not out of

character with the street scene, and the elevation facing Bristol Road South is an active frontage with significant clear glazing. The entrance is in a convenient location, clearly defined and visible from the street. The service area is out of sight to the rear and the car park has a reasonable depth of planting to the frontage and to the site boundary to the east. I concur with this view and consider that the proposal is acceptable in design and in accordance with the spirit of policy PG3 relating to place making.

- 7.64. In relation to landscaping, the general approach to the soft landscape scheme seems acceptable, although I am sceptical that the proposed trees will survive long term within the car park. A revised site plan and landscaping scheme has been received, which provides for some additional areas of planting in large, raised planter beds to the front of the store facing the car park. A further four trees are also proposed within the hard standing of the car park. The additional planting, especially the trees along the Bristol Road frontage, is welcomed. The large planting areas in front of the store would assist in providing a more attractive setting for the customer entrance. The submitted landscaping plan indicates the provision of 8 Japanese Alder, 2 Common Serviceberry, 2 Callery Pear, 4 Bird Cherry and 7 Rowan with no details of the further 4 trees now proposed to the frontage. The landscaping scheme would also see 184 native privet hedging plants, 92 native shrubs including Hazel, Dogwood, Spindle, Holly, Privet and Guelder Rose and 498 ornamental shrubs and grasses being planted. I consider the landscaping to be acceptable and appropriate for the site.
- 7.65. The Landscape Officer has requested safeguarding conditions relating to a new landscaping scheme to be submitted along with a landscape management plan and these are recommended below.
- 7.66. The submitted Arboricultural Assessment has identified two individual trees (both Ash) and four groups of trees all of which have been surveyed as Category C trees. Of these, T1 (Ash), Group2 (Ash) and Group 3 (Ash, English oak, Hawthorn, Goat Willow, Aspen, Beech and Silver Birch) are to be removed as they sit within the proposed building's footprint. Works would be required within the root protection areas of Group1 (Ash, Goat Willow, Sycamore and Hazel) and Group3 for new landscaping, footpath and car parking provision. Group 4 (Hawthorn) is located off-site but overhangs the site. The car parking would also require works to be undertaken beneath the canopies of the retained trees on site. My Arboricultural Officer has reviewed the submitted assessment and has raised no objections subject to a safeguarding condition relating to the submission of an arboricultural method statement. I concur with the Arboricultural Officer's view and the relevant condition is recommended below.
- 7.67. Based on the above, I consider that the proposal accords with Policies PG3 and TP8 of the BDP.

### **Ecology**

- 7.68. The application is accompanied by a Preliminary Ecological Appraisal (PEA) and a Preliminary Bat Roost Assessment (PRA). The PEA and PRA were undertaken by Middlemarch Environmental on the 7th and 19th of September 2023, this included a desktop study and an extended Phase 1 Habitat survey with a further Badger walkover survey. Further Bat Surveys have been undertaken in the past month and have been submitted in support of the application. The application was submitted before the Biodiversity Net Gain requirement became mandatory.
- 7.69. The site comprises a range of buildings of mixed construction type, including a single and two-storey building which are currently being used for retail and hiring purposes. A large proportion of the site has been cleared and is being used as a storage compound. The site lies in an urban context and is bounded to the west by a fast-food chain restaurant and to the south and west by residential dwellings with associated gardens, other small business, a secondary school, allotments and shared spaces of



amenity.

- 7.70. Rea Valley Site of Local Importance to Nature Conservation (SLINC) and Longbridge Sidings Potential Site of Importance (PSI) lie approximately 40m north of the site boundary, alongside the gardens associated with the residential dwellings, allotments and shared spaces of amenity these areas provide a network of important habitat resources to a range of local wildlife.
- 7.71. EcoRecord holds records of a variety of protected/notable species within 1km of the site, including, starling, house sparrow, swift, dunnock, song thrush, wren, house martin, king fisher, common frog, smooth newt, badger, common pipistrelle, soprano pipistrelle, daubentons bat, and brown-long eared bat.
- 7.72. The PEA noted that the site contained habitats of dense scrub, ephemeral perennial, scattered trees of mature and semi-mature age, tall ruderal, poor semi-improved grassland, building/hardstanding structures and 2no. Schedule 9 non-native invasive species. Himalayan balsam was found across the northern bund of vegetation and a single stand of Japanese knotweed located on the eastern boundary and in the northern extent of the compound.
- 7.73. The PEA also makes note of 11no. buildings across the site, the buildings have the potential to support roosting bats and nesting birds, a Preliminary Roost Assessment (PRA) has been proposed to confirm the potential roost characteristics of the buildings. The trees on site offered negligible potential to support roosting bats, however the tree line and scrub boundaries do provide suitable commuting features to external habitat. The buildings, scrub and trees provide suitable nesting bird habitat, this was confirmed by the presence of a nesting pigeon in a mature ash tree in the southwest of the site. The PEA noted that small areas of suitable badger habitat were recorded across the site, however on the day of the survey no evidence was found, there were no setts, mammal pathways, tracks or latrines found. All other protected/notable species have been scoped out for further survey work due to the lack of suitable habitat available on site.
- 7.74. A PRA of the buildings on site was conducted in the same timeline as the PEA, two of the buildings (B1 and B4) contained features with the high potential to support roosting bat. B1 was recorded as having a missing ridge tile on the southeast corner of the roof and a hole in the wooden soffit box. The eastern wall contained bricks in poor condition with missing mortar, this elevation and that of the northern elevation contained numerous missing, broken and dislodge roof tiles. B4 was noted as having lifted roof tiles on the northern elevation and a large gap in the northeast corner of the building, there were a lot of features with the potential to support roosting bats, but lack of access meant that it was not possible to inspect these at time of the PRA. The remaining buildings were found to have negligible suitability to support roosting bats, this was due to the structural characteristics of the building and lack of potential roost features.
- 7.75. A suite of bat activity surveys and report have been submitted since the PRA. The report (Middlemarch, July 2024) sets out the results of the surveys. 3no. dusk surveys were undertaken on 9th May 2024, 6th June 2024, and 27th June 2024. The surveys were undertaken by 4no. surveyors aided by Echometer Touch detectors and Canon XA40 and XA60 night vision aids. The report notes that access was not permitted to building B1 on the northern elevation, night vision aids were also unable to be used on B1 as permission had not been granted. However, this was not thought to be a material constraint and surveyors observed the building with detectors from the adjacent scaffold yard. All three surveys were carried out in line with published guidance and during optimum weather conditions.

- 7.76. The first survey undertaken on 9th May 2024, recorded no bat activity, the second survey undertaken on 6th June 2024, recorded general noctule activity observed at 21:58 and 22:05, and the final third survey undertaken on 27th June 2024 recorded general pipistrelle and noctule activity. No emergences were recorded on either survey.
- 7.77. The report concluded that bats were not using B1 and B4 at the time of the surveys. The report notes that a lighting scheme in accordance with best practice guidance should be adopted to avoid and minimise potential disturbance and fragmentation impacts on sensitive receptors, such as bat species.
- 7.78. The City Ecologist welcomes the additional information submitted and notes that there was no access to the north side of B1 and the use of NVAs were not permitted, however on review of the surveyor location plan, they are confident that it is highly unlikely that an emergence was missed, given the generally low activity seen across the 3no. surveys and the evidence of NVAs submitted for the rest of the buildings.
- 7.79. They note that an amended Landscape Plan has been submitted in support of the application that includes the provision of 23 specimen trees including prunus and alnus to be planted on the borders and within planting pits inside the car park separating the parking bays. Native shrubs comprising of dogwood, guelder rose, and spindle are proposed to the north and west borders. Further greening of the site includes 13m of native privet hedge to the southeast boundary, and a variety of ornamental shrub and grass species spaced throughout the development. They welcome the further greening of the site and inclusion of native species, although the species mix tends to lean towards a higher non-native proportion, the specimens that have been chosen offer resource for invertebrates and birds through the production of fruit and flowers associated with those species.
- 7.80. The City Ecologist requested that the site deliver a 10% BNG and that a Biodiversity Metric Assessment be submitted. However, as already noted, this application was submitted prior to the mandatory BNG requirement and as such, there is no necessity or requirement for this to be provided.
- 7.81. They raise no objection to the proposal subject to safeguarding conditions relating to the need for an additional preliminary ecological appraisal to be submitted if work has not commenced by 7 September 2024; ecological enhancement measures, bird and bat boxes, a construction ecological management plan, a landscape and ecological management plan and a lighting condition. Based on the conclusions of the City Ecologist, I raise no objection to the proposed development on ecology grounds and consider that the development complies with policy TP8 of the BDP. The relevant conditions are recommended below and I consider that these would be sufficient to overcome the objections raised on ecology grounds by local residents.

#### **Highways and Parking**

- 7.82. A Transport Assessment has been prepared by Connect Consultants. The site has been assessed in terms of its accessibility by walking, cycling and public transport, with the assessment concluding that the site has a good level of accessibility by pedestrians and cyclists, with access to the store directly from Bristol Road South. In addition, the site is well served by bus, with stops nearby providing regular services to Longbridge and Rubery, maximising opportunities for the site to be accessed by non-car modes. The railway station is located nearby, with services directly to Birmingham New Street and beyond in under 30 minutes.
- 7.83. Vehicular access would be from Bristol Road South, with the incorporation of a singular access and egress. A total of 9 car parking spaces would be provided including 7 accessible bays, 6 parent and child bays, 4 staff parking bays and 4 electric charging

bays. 10 cycle hoops spaces would also be provided close to the store entrance and beneath the store canopy to provide shelter.

- 7.84. The impact of the proposals on the local highway network has been assessed and the assessment concluded that the local highway network has sufficient capacity for the proposals.
- 7.85. Transportation has reviewed the submission and has raised no objections to the proposal. They note that tracking diagrams have been provided for delivery vehicles and as with other stores there would be three articulated vehicle deliveries per day along with 1 to 2 local delivery vehicles for products such as milk. Delivery vehicles would use the same car park entrance. Visibility is acceptable as shown on the application plans, noting that the speed limit is now 30mph. Parking provision would be in line with the Parking SPD (Nov 2021) for Zone C. Capacity assessments have been undertaken and the assessment concludes that the proposal is unlikely to impact significantly on the highway network. An analysis of the accident history of the road network local to the site has not identified any accident patterns that would impact on the acceptability of the proposed development.
- 7.86. National Highways have also responded with a no objection as due to the nature of the proposal and the distance of the site from the Strategic Road Network (SRN), the proposal is unlikely to have a material impact on the operation or free flow of the SRN.
- 7.87. I note the objections relating to car parking numbers and that the access is not appropriate. As noted above, the car parking provision proposed would be in line with the Car Parking Guidelines and as such is acceptable and the safety of the access has been reviewed and concluded to be acceptable by Transportation.
- 7.88. Based on the above, I consider that the proposals accord with the BDP and the Development Management DPD.

#### **Flood Risk and Drainage**

- 7.89. The submitted Flood Risk Assessment identifies that the site is affected by Flood Zones, with Flood Zone 3 being located against the northern boundary of the site, is at low risk of fluvial flooding from the River Rea to the north but as a proposed food retail store would be within the less vulnerable development category. The historic records have indicated that no historical river flooding has occurred at the site and even in the 1 in 100-year event; an area of only 20sq.m on the northern boundary would flood. The built footprint would be located outside of the 1 in 100-year flood event.
- 7.90. The Environment Agency has raised no objection to the proposed development, and I concur with their view. The proposed development would raise no objection in relation to flood risk.
- 7.91. The application is also supported by a surface water drainage strategy. This strategy identifies that the proposed store and car park would have an impermeable area of approximately 0.56ha. A combination of rain gardens, filter strips and swales and attenuation tanks are proposed.
- 7.92. The LLFA has raised no objection as overall they are in acceptance of the principles within the FRA and Surface Water Drainage Strategy. The Environment Agency has also raised no objection. Safeguarding conditions are sought by the LLFA in relation to the sustainable drainage proposals and a sustainable drainage operation and maintenance plan. I concur with their views and consider that the proposed development is acceptable in terms of flood risk and surface water drainage. The relevant conditions are recommended below.

### **Sustainable Construction**

- 7.93. Policy TP3 requires new developments to be constructed in ways that:
- Maximise energy efficiency and the use of low carbon energy.
  - Conserve water and reduce flood risk.
  - Consider the type and source of the materials used.
  - Minimise waste and maximise recycling during construction and operation.
  - Be flexible and adaptable to future occupier needs.
  - Incorporate measures to enhance biodiversity value.
- 7.94. Policy TP3 also requires non-residential development proposals over 1,000 square metres floorspace to aim to achieve BREEAM excellent standard. A BREEAM pre-assessment report has been submitted that demonstrates that Excellent standard can be achieved with a total score of 75.50% using the BREEAM V6 New Construction tool.
- 7.95. Policy TP4 requires new developments to incorporate the provision of low and zero carbon forms of energy generation or to connect into existing networks where they exist. For non-residential developments over 1,000 square metres the policy states that first consideration should be given to the inclusion of Combined Heat and Power (CHP) generation or a network connection to an existing CHP facility. The use of other technologies is also acceptable where they will have the same or similar benefits, there is no adverse impact on amenity and any environmental risks can be adequately managed.
- 7.96. The submitted Renewable and Low Carbon Energy Statement contains sufficient information to address the requirements of policies TP3 and TP4 (apart from the BREEAM pre-assessment). An 80kWp solar photovoltaic array has been incorporated on the roof of the proposed store and an air source heat pump supplemented by a refrigeration heat recovery scheme are proposed. An 81.9% saving in CO2 emissions is predicted.
- 7.97. Based on the above, I consider that the requirements of TP3 and TP4 have been met. Appropriately worded safeguarding conditions to ensure delivery of these technologies outlined in the Sustainable Construction and Energy Statement are recommended below.

### **Other Issues**

- 7.98. The proposed development does not attract a CIL contribution.
- 7.99. Regulatory Services has reviewed the submitted contaminated land assessment and, whilst raising no objections to the proposal, has recommended safeguarding conditions relating to contaminated land are attached to any approval. The Environment Agency has also requested a contaminated land condition. This condition is recommended below. Regulatory Services have also requested an opening hours condition. Given that the site sits within a commercial frontage on a busy strategic highway running from the M5 motorway to the centre of Birmingham and the adjacent McDonalds operates 24 hours a day, I do not consider it necessary to restrict opening hours. The new housing under construction to the north of the site is a significant distance from the application site and the proposed store would not have a significant or detrimental noise impact on the future occupiers of the residential development.
- 7.100. I note the objections raised by residents regarding the need for a further supermarket, business relocation and the loss of an existing business currently operating from part of the application site. The need for a further supermarket is not a policy test and is not therefore a material planning consideration. The retail proposal has been assessed against the sequential test and retail impact policies and has been found to meet the policy. With regards to the business loss and relocation issues, this issue sits outside

of the planning system as the applicant, if needing to obtain further land that sits outside of its current ownership, would have to purchase it from its current owner. The current occupier of the premises proposed for demolition are tenants as the property is leasehold and could therefore have lost the tenancy from the owner at any point past or present, irrespective of this current application. There is no obligation on the LPA or the applicant to relocate any business lost through a planning permission being granted and built through. I note that it has been the intention of planning policy for this frontage to be redeveloped and as such, the loss of/relocation of existing small businesses is regrettable but not unforeseen.

## 8. **Conclusion**

- 8.1. The proposed development has met the requirements of retail policy relating to impact and whether the site is sequentially preferable. As such, the proposed development has overcome the previous reason for refusal in this regard. With respect to the site being located within the allocated RIS and Core Employment Area, significant development has occurred along the commercial frontage of the RIS on Bristol Road South following its designation, which has not been wholly in accordance with policy. These developments would now prevent land acquisition occurring to bring forward a larger plot suitable for RIS size development. The proposed development also has a size requirement that cannot be found in the other assessed centres, and this therefore forms an exceptional circumstance for this development. LPA policy is proposed to change for the application site and the commercial frontage in this location as the Preferred Options consultation identifies the RIS/Core Employment Area removed in this location and targeted on the main body of the West Works employment site. The application site would now sit within the Longbridge Growth Zone that would support commercial development in this location. As such, the development is considered acceptable and in accordance with the wider Longbridge growth and regeneration goals.
- 8.2. The proposed development is considered acceptable in design and landscape terms and would have no environmental impacts that would warrant a refusal of planning permission. The development would create local construction and retail jobs. As such, the development would have a positive economic social and environmental benefit and is therefore considered to be sustainable development.

## 9. **Recommendation:**

- 9.1. That planning permission is granted subject to the conditions listed below.

- 
- |   |  |
|---|--|
| 1 | Requires the scheme to be in accordance with the listed approved plans           |
| 2 | Requires the agreed mobility access to be maintained                             |
| 3 | Requires the prior submission of a contamination remediation scheme              |
| 4 | Requires the submission of a contaminated land verification report               |
| 5 | Requires the prior submission of a drainage scheme                               |
| 6 | Requires the submission of a surface water drainage scheme                       |
| 7 | Requires the submission of a Sustainable Drainage Operation and Maintenance Plan |
| 8 | Requires the submission and approval of external materials                       |
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- 9 Requires submission of bin store and sub-station details
  - 10 Requires the prior submission of an additional Preliminary Ecological Appraisal and Badger Survey if works have not commenced before 7th September 2024.
  - 11 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.
  - 12 Requires the submission of a scheme for ecological/biodiversity/enhancement measures
  - 13 Requires the prior submission of details of bird/bat boxes
  - 14 Limits the noise levels for Plant and Machinery
  - 15 Requires the submission of hard and/or soft landscape details
  - 16 Requires the submission of a landscape and ecological management plan
  - 17 Requires the submission of a lighting scheme
  - 18 Requires the prior submission of a construction method statement/management plan
  - 19 Requires the submission of a CCTV scheme
  - 20 Limits the use of the car park floodlighting
  - 21 Requires the prior submission of a construction employment plan.
  - 22 To ensure energy and sustainability measures are delivered in accordance with statement
  - 23 To ensure that the development achieves BREEAM Excellent rating level
  - 24 Requires the submission of a parking management strategy
  - 25 Requires the provision of cycle parking prior to occupation
  - 26 Requires bus stop provision
  - 27 Implement within 3 years (Full)
- 

Case Officer: Pam Brennan



## Photo(s)



Photograph 1: View of site from opposite side of Bristol Road South – Looking North



Photograph 2: View of site from Bristol Road South – east boundary



Photograph 3: East Boundary



Photograph 4: View of site from Bristol Road South -west boundary



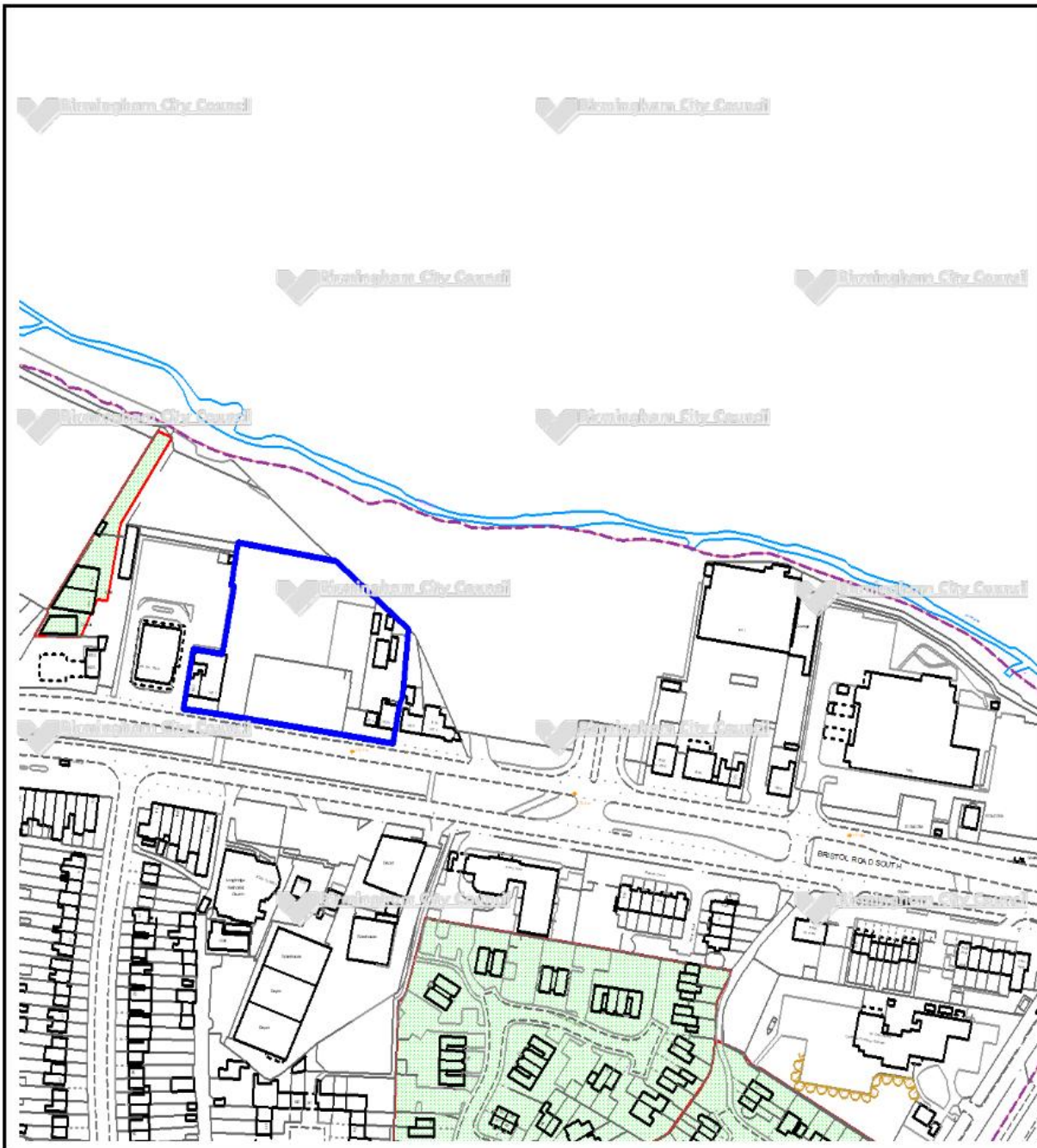
Photograph 5: West boundary



Photograph 6: Aerial View of Site and RIS Commerical Frontage



## Location Plan



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# **Birmingham City Council**

## **Planning Committee**

**8 August 2024**

I submit for your consideration the attached reports for the **North West** team.

<b><u>Recommendation</u></b>	<b><u>Report No.</u></b>	<b><u>Application No / Location / Proposal</u></b>
Approve – Subject to 106 Legal Agreement	7	2023/08705/PA  Duchess Place Hagley Road Edgbaston Birmingham B16 8NH  Demolition of existing building on site, to allow for the erection of a 37no. storey residential tower, to provide 462no. one, two and three-bedroom apartments, with ancillary commercial, business and service space (Use Class E and Sui Generis [drinking establishment/hot food takeaway]), with other associated internal and external amenity space. Together with car parking, cycle storage and other associated works.

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Committee Date:	08/08/2024	Application Number:	2023/08705/PA
Accepted:	28/12/2023	Application Type:	Full Planning
Target Date:	30/08/2024		
Ward:	Ladywood		

Duchess Place, Hagley Road, Edgbaston, Birmingham, B16 8NH

Demolition of existing building on site, to allow for the erection of a 37no. storey residential tower, to provide 462no. one, two and three-bedroom apartments, with ancillary commercial, business and service space (Use Class E and Sui Generis [drinking establishment/hot food takeaway]), with other associated internal and external amenity space. Together with car parking, cycle storage and other associated works.

Applicant:	Moda Living (Project Hagrod) Ltd and Calthorpe Estates
	C/o Agent
Agent:	CBRE Ltd
	55 Temple Row, Birmingham, B2 5LS

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#### Recommendation

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

#### **1. Proposal:**

- 1.1 This application seeks full planning consent for the demolition of an existing vacant office building, known as "No. 1 Duchess Place" to allow for the erection of a 37no. storey residential tower. This will provide 462no. one, two and three-bedroom apartments, with ancillary commercial, business and service space (Use Class E and Sui Generis [drinking establishment/hot food takeaway]) at ground floor level, together with other associated internal and external public and private amenity space. The proposals would also include ancillary car parking, cycle storage and other associated works.
- 1.2 The proposed housing mix within the apartment block would be:
  - 1-bedroom apartments – 226no. – 48.9%
  - 2-bedroom apartments – 210no. – 45.4%
  - 3-bedroom apartments – 26no. – 5.6%.
- 1.3 All of the proposed apartments would meet or exceed the Nationally Prescribed Space Standards and would be offered as private rental units, managed by the developer, MODA Living.
- 1.4 As part of the development, a financial contribution of £1.9 million pounds, has been put forward by the applicant. This is to be used to provide affordable housing off-site, in a tenure and type that the LPA deem fit for the city. This is the equivalent of providing circa 8% affordable housing on-site, in the form of discounted rental units, at a 20% discount from market value (38no. apartments) . The contribution is backed by a robust financial viability assessment which has been independently verified by the Councils

financial consultants, LSH.

- 1.5 The development includes areas for private amenity internally within the building in the form of co-working spaces, meetings rooms, gyms, and lounges and these spaces would equate to between 765sqm and 1,019sqm, depending on the final layout. At roof level, a further private amenity space of 395sqm is to be provided for the use of future occupiers on floor 36no. of the building. Externally, publicly accessible amenity spaces are proposed in the form of a series of linked public spaces situated to the south and west of the building, which equate to 2,358sqm.
- 1.6 A total of 39no. car parking spaces are to be provided as part of the development, with 10no. of these to be fitted with EV Charging points. The development would also include 230no. cycle storage spaces for use by residents and visitors. The existing site has two vehicular access points, one via Hagley Road to the south and the second via Duchess Road to the north, both of which would be retained.
- 1.7 The development would have an ancillary ground floor commercial space, with an active frontage towards Hagley Road. This would have a floor-space of circa 254sqm and is proposed to have a flexible use class, as Use Class E or Sui-Genesis, to allow for its use as a restaurant, café or takeaway.



*Image 1 – CGI of proposed development facing Hagley Rd.*

- 1.8 The application is submitted with the following supporting documentation:
  - Arboricultural impact assessment;
  - Aerodrome safeguarding assessment;
  - Affordable housing statement;
  - Air quality assessment;
  - Archaeological assessment;



- Biodiversity net gain assessment;
- Environmental statement;
- Ecology appraisal;
- Bat survey;
- Ecological impact assessment;
- Ecological mitigation and enhancement strategy;
- Energy statement;
- Fire statement;
- Financial viability assessment;
- Flood risk assessment and sustainable drainage strategy;
- Ventilation strategy;
- Planning statement;
- Residential standards schedule;
- Statement of community involvement;
- Ground conditions study;
- Tall buildings report;
- TV, Radio and communications impact assessment;
- Transport assessment; and
- Travel plan.

## 1.9 [Link to Documents](#)



Image 2 – Proposed CGI of building from internal park area.



Image 3 – Proposed CGI of building entrance from park area.



Image 4 – Proposed entrance from Hagley Road.

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

- 2.1 The application site has a sideways “T” form and comprises an existing 4-storey, 1960’s vacant office building fronting Hagley Road, as well as land to the rear of no’s 93 to 95 Hagley Road, which currently lays vacant, as well as a section of another vacant office building to the north of these, which fronts onto Duchess Road, known as No. 2 Duchess Place. No. 2 Duchess Place has already gained planning consent for its demolition under planning application reference: 2017/00663/PA. A section of this building will need to be demolished to allow for the proposed rear access to the

application site via Duchess Road. Around the site are a mix of historic and modern buildings. To the west, immediately adjacent to the site, at No.'s 93-109 Hagley Road are terraces of 3-storey Grade II listed buildings in a Classical/Regency style dating from early to mid-19th Century. Similar buildings can also be found to the northeast of the site where similar Grade II listed 2-storey terraced properties are located at 71-79 Francis Road.

- 2.3 To the immediate east of the site at no. 83 Hagley Road is a 17-storey office building, known as Cobalt Square. To the north is the 8-storey office building of no. 2 Duchess House which is due to be demolished and a part of which is included within the boundary of this application, as set out above. To the south on Hagley Road, the Edgbaston Village Tram stop can be found, with a number of large commercial office blocks sited further south on the opposite side of Hagley Road. To the far east of the site, taller blocks of a similar height to that proposed can be found fronting Broad Street. It should also be noted that to the far west of the site 3no. residential tower blocks at at varying heights of between 10no. and 14no. storeys are being erected. These form part of the New Garden Square development, which was given outline approval in 2017, under planning reference: 2017/00663/PA and this encompassed a large area, including the application site and was set to redevelop this area as a commercial hub, with some residential accommodation. The blocks to the west form part of this scheme, however, should the current application be approved, the wider consent would become redundant. MODA living now seek to develop out this area as a new residential village and the current application is earmarked as Phase 2 of the New Garden Square redevelopment and the application is shown in red on the below plan.

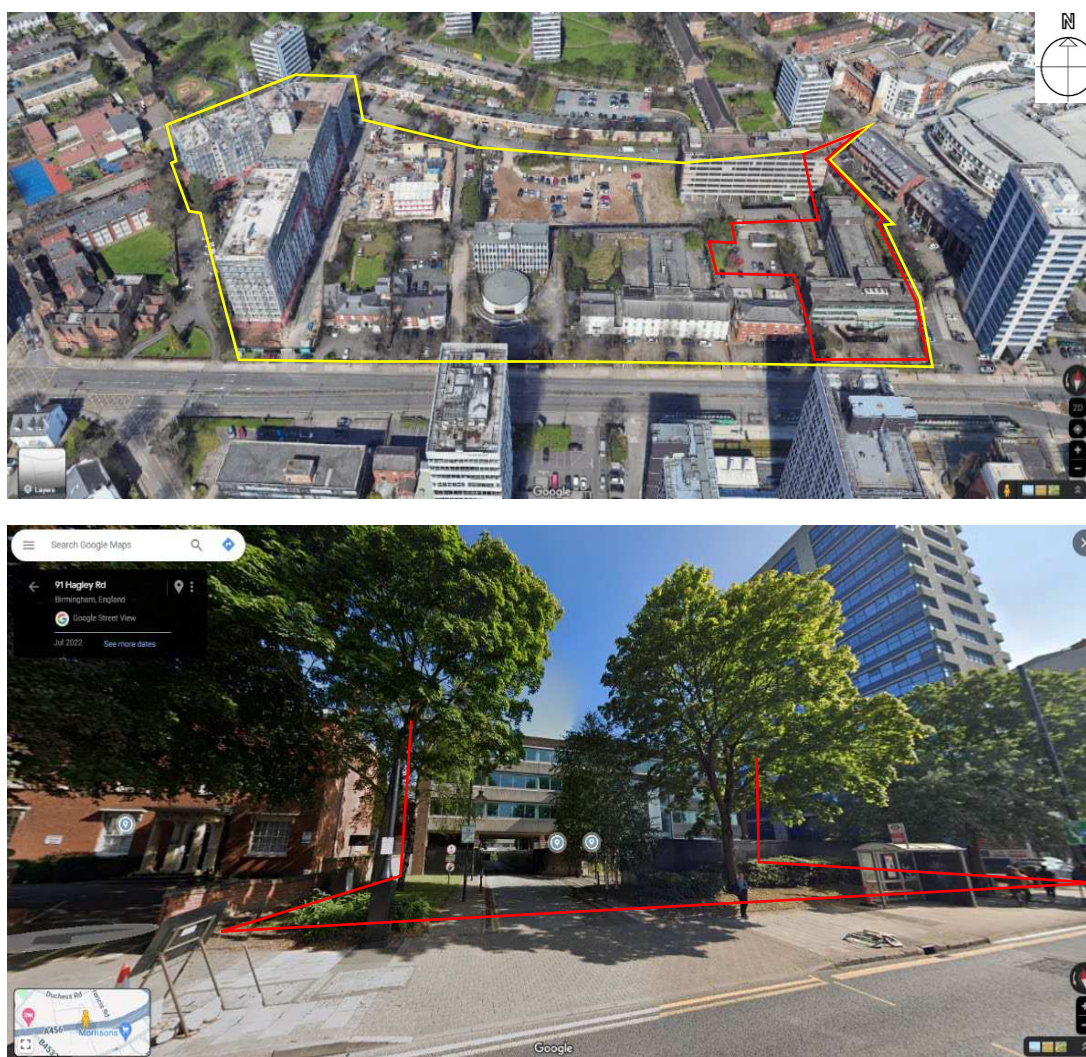


Image 5 – showing outline of New Garden Square in yellow in top image and the application site in red, on both images.



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

- 3.1. 2017/00663/PA - Outline planning application (all matters reserved) for site clearance and demolition of all structures and buildings (save for listed buildings and directly attached extensions) and commercial-led mixed use redevelopment providing up to 57,500sqm (GIA) of Office/Research & Development space (Use Class B1a and B1b), up to 2,400sqm (GIA) of retail (Use Class A1), Professional and Financial Services (Use Class A2), Restaurants and Cafes (Use Class A3), Drinking Establishments (Use Class A4), a hotel of up to 100 bedrooms (Use Class C1), up to 400 new residential apartments units (Use Class C3), up to 900 new car parking spaces through the creation of a new multi-storey car park and other car parking areas, alterations to the site access arrangements for Hagley Road and Duchess Road and strategic landscaping – approved – 28/11/2017.
- 3.2. 2019/08815/PA - Variation of Condition Nos. 2 (list of approved plans) and 6 (list of approved documents) attached to planning approval 2017/00663/PA to allow for alterations to the building parameters – approved – 29/05/2020.
- 3.3. 2020/04544/PA - Reserved Matters Approval for the residential phase of the New Garden Square development in respect to: access, appearance, landscaping, layout and scale following Outline planning consent ref: 2019/08815/PA; comprising of up to 400 no. apartments, within 3 no. blocks, alongside their associated car parking and landscaping works – approved – 24/09/2020.



Image 6 – Formally approved site plan for New Garden Square and massing plans from planning reference: 2017/00663/PA.

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

- 4.1. Leisure services: request a financial contribution of £971,575. This would be used for improvements and enhanced play provision, together with associated maintenance costs, at Chamberlain Gardens.
- 4.2. Regulatory services: no objections, subject to the following conditions being attached to any subsequent consent: submission of extraction and odour control details, control

on noise levels for plant and machinery, hours of use 07:00-23:00 daily for retail use, delivery time restrictions - 07:00 to 20:00 for retail use. commercial uses - a noise assessment and noise mitigation scheme, details of any extract ventilation and odour control equipment/ plant or equipment including noise impacts, noise insulation, noise mitigation scheme construction management plan, contamination remediation scheme and contaminated land verification report.

- 4.3. LLFA – Raise an objection on the basis of outstanding information. This has been submitted for their consideration, in consultation with the LLFA and final wording of any pre-commencement conditions is awaited upon.
- 4.4. HSE – Raise no objection and have issued fire safety requirements that the building must meet. These have been passed onto the applicant.
- 4.5. Highways Agency – raise no objection.
- 4.6. Civic Society – object to the proposals on the lack of affordable housing.
- 4.7. Historic England – Object to the proposals on heritage grounds and further state that the development does not respond to the historic context of the site, particularly the adjacent Listed Buildings.
- 4.8. West Midlands Police – raise no objection and have issued secure by design safety advice which has been passed onto the applicant.
- 4.9. Transport for West Midlands – Raise no objections to the development proposals.
- 4.10. West Midlands Fire Service – Raise no objection and have issued fire safety requirements that the building must meet. These have been passed onto the applicant.
- 4.11. Employment access team – raise no objection, subject to a condition to secure an social value plan.
- 4.12. Birmingham Airport – no objection, subject to the addition of the below conditions: prior submission of a Instrument Flight Procedures Assessment, prior submission of a Construction Management Plan, prior submission of a Bird Hazard management plan and a permanent obstacle lighting scheme.
- 4.13. Transport – raise no objection, subject to the following conditions: prior submission for details relating to Cycle parking, Car parking spaces provided and marked out before occupation, Refuse store to be provided before occupation, Highway works required before occupation with a suitable Highway Agreement which may require alterations to the access points, and TRO changes to the permit bays and reprovision of these along Duchess Road with the redundant footway crossing reinstated, prior submission of a delivery/servicing management plan, prior submission of a Construction Management Plan, prior submission of a car park management plan and the submission of a Travel Plan.
- 4.14. Network rail – raise no objection and have issued general advice which has been passed onto the applicant.
- 4.15. Sport England – object to the proposals on the basis of any subsequent s106 not providing the calculated £430,820 needed to improve playing pitches within the area.
- 4.16. Severn Trent Water – raise no objection, subject to the addition of a condition to require details for the disposal of foul and surface water flows.



5. **Third Party Responses:**

5.1. Adjacent occupiers, Councillors, M.P. and residents associations were notified of the application and a site/press notices were also posted. 3no. letters of objection have been received, raising the following concerns:

- Loss of light concerns, resultant of new development;
- Increase in noise and nuisance, from both construction and occupation;
- Additional pressure of parking capacity within the area and wider road network;
- Additional impacts upon air quality within the area;
- Existing infrastructure is not in good condition to take on more development i.e. roads and pavements;
- Lack of safe and open space for families;
- Overbearing form of development; and
- Development will have impact on character and dominance of other towers due to wide width.

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

6.1. Planning and Listed Building Act (1990).

6.2. National Planning Policy Framework (Relevant Sections):

- Section 8, Promoting Healthy and Safe Communities, Paragraphs 92, 93, 98, 99;
- Section 9, Promoting Sustainable Transport, Paragraphs 110, 111, 113;
- Section 11, Making Effective Use of Land, Paragraph 120;
- Section 12, Achieving Well-Designed Places, Paragraphs 126 – 135;
- Section 15, Conserving and Enhancing the Natural Environment, Paragraph 174;
- Section 15, Conserving and Enhancing the Historic Environment, Paragraphs 194-208.

6.2. Birmingham Development Plan 2017 (Relevant Policies):

- Policy PG3 (Place Making);
- Policy GA2 (Greater Icknield);
- 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
- 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
- TP32 Housing Regeneration
- TP37 Health
- TP38 A sustainable transport network
- TP39 Walking
- TP40 Cycling

- TP44 Traffic and congestion management
- TP45 Accessibility standards for new development

6.3. Development Management DPD (Relevant Policies): relevant

- Policy DM1 (Air Quality);
- Policy DM2 (Amenity);
- Policy DM3 (Land Affected by Contamination, Instability and Hazardous Substances);
- Policy DM4 (Landscaping and Trees);
- Policy DM10 Standards for residential development;
- Policy DM14 (Transport Access and Safety); and
- Policy DM15 (Parking and Servicing).

6.4. Birmingham Big City Plan – Masterplan.

7. **Planning Considerations:**

BACKGROUND

- 7.1. Outline planning permission for the New Garden Square redevelopment was granted under planning reference: 2017/00663/PA. This granted planning consent for an office-led-redevelopment of the wider New Garden Square development site, which the current application site forms part of, as well as the areas to its north and west. The approval was to comprise circa 55,700sqm of new office space, within a series of office blocks at varying heights and up to 400no. residential units across the entire site. Following this approval, in 2019, the former outline consent was varied to allow for increases in the building parameters of the site. This was to allow for taller residential blocks, to the west of the site, under planning reference: 2019/08815/PA. Following this approval in 2019, development works began on-site, for what is known as “Phase 1” of the “New Garden Square” redevelopment, at the western end of the site, with apartment blocks F1, F2 and F3 now almost complete and set to deliver 397no. residential units. These are shown on the below image:



*Image 7 - Map of New Garden Square – marking Phases 1 and 2.*

- 7.2. Whilst the wider outline consent, is no longer viable, due to the changes in the market, and the decline in demand for office space. The applicant, MODA Living, is now looking to redevelop New Garden Square, as a modern living village, comprising a series of development blocks, with the current application forming the next phase of this redevelopment. This scheme is thus known as “Phase 2” of the New Garden Square development and is marked as Plot D on the above plan.

- 7.3. It is important to note however, that the wider site area, which previously formed part of the outline consent, under application reference 2017/00663/pa, does not form part of this current application, with this solely focusing on Plot D. And although some of the submitted materials, including the above plan, show indicative details of what could come forward for the wider site, it is important to note such material is contextual only and any permission on the back of this application would solely be for Plot D and for no other area within the wider New Garden Square site, which does not form part of this application, as identified on the submitted site location plan and indicated in red on the above New Garden Square Plan.
- 7.4. The existing building on site, under the outline consent, has approval for this to be demolished and replaced by a building providing mixed uses at ground floor and an office use on its upper floors, to a maximum height of 47.5m at the rear facing the central greenspace and 29.5m, fronting Hagley Road. The current application thus takes a larger footprint and proposes a residential tower of 37no. storeys within this location. The vision for New Garden Square aims to create a neighbourhood of up to 1,600no. homes along with commercial and community spaces. It retains the principle of having a major central public realm area, as the focus for surrounding buildings, and this block would form the south-western end of this development.

#### Principle

- 7.5. The principle for a high-density residential development at the site has already been established, with planning consent being granted for Phase 1 of the New Garden Square redevelopment, under planning reference: 2019/08815/PA. It is noted however, that the original outline approval, for the New Garden Square site, sought to establish a more commercial development, and this formed the basis of the original approval, under planning reference: 2017/00663/PA. However, given the subsequent changes in the market since the Covid-19 pandemic and the resultant decline in demand for commercial floor space, especially office space, which comprised a large part of the earlier outline consent, it is considered that the current application for a high-density residential development be considered acceptable.
- 7.6. It should also be noted that as a result of the current application, the wider outline consent, would become redundant. As the current proposals deviate substantially from this former approval, by way of size, scale, siting, and by way of the end use of the building. This change, however, is considered to be much more reflective of the current market and given the site sits at the periphery of the city centre, outside of any designated local centre, but at a close range to local shops/amenities and transport infrastructure, this location is deemed suitable for residential development, to a scale as proposed. I further note that the site sits outside of flood zones 1 and 2 and is therefore in compliance with BDP Policy, in terms of finding suitable locations for new housing developments. As such, I deem the principle of a high-density residential development on this site, already well established, given the imminent occupation of Phase 1 of the NGS development, alongside the site's wider locational features, which allow this to be suitable for residential redevelopment.

#### Ancillary retail floor space

- 7.7. The site lies just outside the Edgbaston (Five Ways) Local Centre and, although some commercial / retail space is proposed to be provided on the ground floor of the development, this is described as ancillary to the proposal and to primarily serve residents of the development. The floor plans indicate that the total retail / commercial floorspace would be around 250sqm, which falls well below the threshold in order to provide a retail impact assessment or other supporting evidence in accordance with Policy TP21 of the BDP. As such, on this basis, I deem this element of the proposals as acceptable and a condition to limit the maximum level of commercial floor-space

will be added as a safeguarding measure in this regard.

#### Sustainability

- 7.8. In order to satisfy the policy requirements of Policies TP3 and TP4 of the BDP, the proposal is accompanied by a Sustainable Construction Statement, completed by CBRE and an Energy Statement carried out by Tate Consulting. The Energy Statement sets out that the proposal will provide potential carbon savings through efficient building fabric and airtight design; maximised use of LED and low energy heating; use of natural ventilation; good levels of thermal insulation and low carbon energy generation, using Air source heat pumps. The Statement estimates that these measures will achieve at least a 15% reduction in carbon dioxide emissions against the Target rate of the 2013 edition of Part L of the 2010 Building regulations but up to a 65.39% reduction when using best-in-class products. The statement thus satisfies the requirements of these policies, and it is considered that the proposal would result in a modern and energy efficient building, which will look to utilize on-site clean energy generation through the use of air source heat pumps.
- 7.9. An appropriate condition will therefore be attached to ensure that the construction and design of the development is carried out in accordance with the Energy and Sustainability Statement carried out by Tate Consulting to meet the highest possible carbon dioxide reduction targets using best-in-class products. Subject to the above condition, the application is deemed acceptable in this regard.

#### Housing Mix

- 7.10. The Council's Housing and Economic Development Needs Assessment (HEDNA) provides guidance on the mix of dwelling sizes, required in different parts of the city, and replaces the existing SHMA referred to in Policy. The current proposal would not replace existing housing and would therefore add to the housing stock within the area, which is North Edgbaston. Figure 2 'Tenure of housing' as set out in the BDP (2017) requires as a percentage, a mix of housing. This has been updated by the HEDNA which suggests the following mix for the central area, in which the current application is located. 1 beds: 17%, 2 beds: 37%, 3 beds: 31% and 4 beds 15%. The proposed housing mix of the proposed 462no. housing units within the block would be:
- 1-bedroom apartments – 226 – 48.9%
  - 2-bedroom apartments – 210 – 45.4%
  - 3-bedroom apartments - 26 – 5.6%.
- 7.11. It is thus noted that the scheme is putting forward a much higher number of both 1-bedroom and 2-bedroom units, than identified within the HEDNA. In this regard however it is important to note the tenure of the development, with this being for private rent, as opposed to ownership. The HEDNA notes the substantial growth within the private rental sector within the city and the need for this type of accommodation, particularly to support working professionals, to which this development is aimed towards. The HEDNA further mentions that such developments include Phase 1 of the development at New Garden Square where a similar mix was approved, given the type of demographic that would be looking to take up such units. The HEDNA adds that a high percentage of such developments consist of young, single, working professionals, under the age of 65 and thus there is more of a focus on 1- and 2-bedroom units within such developments, given the demographics such accommodation caters toward.
- 7.12. As such, although I note the comments within the HEDNA, I can see that over 50% of the units being put forward are for 2-bedrooms plus units, with just over 48% being put forward for 1-bedroom units. I further note that this is purpose built private rental accommodation, which caters towards young professionals, working with the city

centre, on the periphery of which the site is located. As such taking these factors, as well as the former approval on site into account, I deem the current mix as acceptable and also note the inclusion of 3-bedroom units, within an area of the city which is not predominantly catered towards family living. Despite this, the applicant has still provided a small level of accommodation which could be suitable for families, looking to move into the area. On this basis, I consider the proposals acceptable.

#### S106 and Affordable housing

- 7.13. Policy TP31 states, “The City Council seek 35% affordable homes as a developer contribution on residential developments of 15 dwellings or more”. The policy however also allows developers to submit a Financial Viability Appraisal (FVA) when they consider affordable housing of 35% cannot be provided on their respective scheme. Furthermore, the NPPF makes clear that viability is a material consideration in the assessment of a planning application.
- 7.14. The applicant in this case, has submitted a Financial Viability Assessment, completed by CBRE, in support of the application. This cites a number of factors at play, on this development, which would lead to the reduction in its viability and in turn any affordable housing contributions the scheme can make. These include: the increase in building costs and materials, as well as the substantial level of demolition and public realm works needed for this development to come forward. This is in addition to the Councils Selective Licensing costs, which apply to build to rent schemes and in this case, such costs would be equivalent to providing circa 3.7% affordable housing on site. The submitted FVA has been independently assessed by the Councils financial viability consultants, Lambart Smith Hamptons, who remain in agreement with costs associated with the scheme, as well as the future rental revenue.
- 7.15. Despite such costs, officers and LSH have been involved in tense and difficult negotiations with the applicant, in order to secure much needed affordable housing for the city. In this regard, an off-site contribution of £1.9 million pounds has now been secured, which would be put towards providing much needed affordable housing elsewhere in the city. This figure equates to broadly an 8% affordable housing figure, if this was to be provided on site, and given that this is a build to rent scheme, the form of any affordable housing, would be discounted rental units, at a 20% reduction from market value. 8% would roughly equate to roughly 38no. units within the building.
- 7.16. Although the Council prefers any affordable housing to be delivered on site, the policy does allow for flexibility to be applied, at officers discretion, on a case-by-case basis. As such, in my view, in this case, given that the scheme is a build to rent development, where the only form of accommodation would be affordable rent, it would be more beneficial to the city of Birmingham and its residents if the cash contribution was used off-site, to deliver much needed affordable housing in a form and tenure to be decided by the council. Such funds could then target the most in need residents within the city and be used to provide social rental units etc. which cannot be secured by the development as proposed.
- 7.17. LSH further confirm, given the high rental values within this part of the city, that the development would attract, even with a 20% discount, it is not likely that the scheme would have a significant impact upon the future occupiers of any affordable units. I further note that a similar approach was taken on Phase 1 of the scheme, albeit the contribution for this phase was much smaller. I also note that the £1.9 million offer, is greater in value, by way of this being an off-site offer, then when compared to the equivalent being provided on site.
- 7.18. It is on this basis, given the numerous rounds of negotiation and consultation between the LPA, MODA and LSH, and the fact that the current offer has been evaluated and

verified, I deem this to be the best outcome for the city. I further note, that although a rare occurrence, in this particular case, owing to the uniqueness of the development and the challenges involved, the flexibility and desirability of the LPA to gain the best outcome for the residents of the city must be put forward. The off-site financial contribution of £1.9 million pounds is to be secured by a s106 agreement and will be paid to the council in a staggered form, based on the occupancy levels of the building. The funds are also to be index linked from the date of any such application being supported by Planning Committee. Subject to the inclusion of such clauses within a suitable s106 agreement, attached to any subsequent consent, I deem the scheme acceptable in this regard.

#### Public Open Space

- 7.19. With regard to public open space and play, based on 2 hectares per thousand population generated by the development, an off-site POS contribution of £971,575 was requested by Leisure Services. This was however on the basis that none of the POS provided on site would be accessible by the public, which is not the case, as set out within the above sections of this report. On this basis, considering that the site will be delivering a small amount of high quality accessible public open space, as well as the fact that the scheme is deemed to be unviable, if any further contributions, beyond the above for affordable housing contribution of £1.9million were put forward, I deem the scheme acceptable in this regard.

#### Environmental Impact Assessment

- 7.20. An Environmental Impact Assessment (EIA) is the process undertaken in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (SI 2017/571) the 'EIA Regulations'. The EIA process is where development proposals deemed likely to have significant environmental effects are appraised. EIA establishes the nature of a development and the environment in which it is likely to take place, during both the construction and operational phases. The Environmental Statement (ES) is the document that reports the assessment process and is submitted with the planning application. It has the status of a material consideration during the determination of the application.
- 7.21. An ES should focus on the likely significant effects of the proposed development so that they can be considered by the LPA when determining the planning application. Topics scoped out as being unlikely to give rise to significant effects on the environment were: socio-economic, wind microclimate, climate change, effect interactions, alongside environmental management and mitigation.
- 7.22. During the assessment of likely significant effects, the EIA (in line with requirements of the EIA Regulations) has considered measures to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects 'mitigation'. Each chapter determines whether the level of effect reported is 'significant' or not. This determination is based on professional judgment and can be either adverse or beneficial significant effect.
- 7.23. The subject areas of likely significant effects, in this case were identified as: Demolition and construction, noise and vibration, built heritage, daylight and sunlight, solar glare and visual.
- 7.24. It is a requirement of the EIA Regulations for the EIA to assess the 'cumulative effects' arising from the Proposed Scheme. Both effect interactions resulting from the proposed development and in combination effects arising alongside effects from other existing or proposed development. Taking the chapters separately a summary of the predicted significant effects is provided below, these issues are then considered as part of the planning application submission later in the report.

Summary of likely significant effects, as described in the ES

#### *Demolition and construction*

- 7.25. The statement sets out that there are likely to be significant effects arising as a result of the proposed development during demolition of the existing building on site and construction of the development as proposed. These impacts have been broken down into various areas, which include; noise and vibrations impacts and the impacts of such works upon the built heritage within the area. The report however confirms that there isn't likely to be any significant impacts arising from the demolition and construction works with respect to: vibration, daylight, sunlight and overshadowing, or solar glare, wind microclimate, climate change or townscape and visual.

*Demolition and construction – Noise and vibration*

- 7.26. The on-site construction activities would result in an increase in noise levels, naturally, during the construction and demolition phases of the development. These impacts although considered significant are noted as being temporary only. The report further sets out that such impacts would only take place for a small number of days and any impacts associated with these would further be somewhat mitigated against by the implementation of a construction environmental management plan and by the applicant using best practice guidance.

*Demolition and construction – Built Heritage*

- 7.27. Short term significant adverse effects are also noted for the setting of the 6no. statutory Listed Buildings sited within the site's vicinity, these are:
- 71 and 72 Francis Road;
  - 73 Francis Road;
  - 75 –79 Francis Road;
  - 93 – 95 Hagley Road;
  - 97 –107 Hagley Road; and
  - 109 Hagley Road.

- 7.28. In this regard, the applicants note that hoarding will be put up around the site to provide screening of the activities taking place on site. Any such negative impacts upon the setting of these assets would again therefore only be temporary, during the demolition and construction phases of the development, and as such will not be permanent.

*Day light and sunlight*

- 7.29. The submitted ES notes that the development would have significant adverse effects upon both the daylight and sunlight amenity at Broadway Plaza, which comprises residential properties. These are however noted to be largely down to these residences having balconies, which inherently limit daylight and sunlight availability into the rooms below. Additionally, most of the primary living spaces within these residences will however retain levels of daylight and sunlight which is typical of an urban setting and are of a comparable level elsewhere within the city. The ES notes that as only a small number of residences would be impacted, and any such impacts should therefore be noted as being acceptable.

*Solar Glare*

- 7.30. 20no. road location and 7no. tram locations were assessed for instances resulting in solar glare, as a result of the development. From these, 2no. instances were considered to result in significant adverse impacts, these are on Islington Row Middleway westbound and Hagley Road, eastbound. From these, for the first location, any instances of solar glare would be limited between the hours of 5-6AM and would only occur between late July to late August and would not be present outside of these times or period of year. It is also noted that the junction impacted does offer users an alternative option of looking at a second set of traffic lights if solar glare impacted road users and as such, this is considered acceptable. Road users would also have the option to use a visor which again would overcome any such occurrence.
- 7.31. With reference to the second point, on Hagley Road. This would occur when viewing

the traffic lights on the left and right of the road, between the hours of 5PM and 7PM between late March and late May and would be impacted within these hours only. However, the ES notes that this is only a worst-case scenario with other mitigation such as trees etc. have not been taken into account, as well as the angle of the sun light coming in. It is also noted the use of a vehicle visor would again remove any such impacts and as such again this is considered acceptable.

#### *Visual*

- 7.32. Once complete, the submitted ES highlights that upon operation the following significant effects were identified:
- View 1 – Hagley Road, looking east outside 109 Hagley Road (beneficial);
  - View 2 – Francis Road, looking southwest, junction with Duchess Road (neutral);
  - View 3 – Hagley Road, looking east outside The Oratory (beneficial);
  - View 14 – Edgbaston Reservoir (LLB), looking south-east, national cycle route on northern bank (beneficial); and
  - View 20 – Edgbaston Reservoir (LLB), east bank (beneficial);
  - View 21 – Chamberlain Gardens, looking south-east, east of Monument Road (neutral).
- 7.33. Views 1 and 3 are closer to the site and the ES concludes that the proposed development will have a net beneficial outcome on these views, through the delivery of a high quality, distinctive focal point within the view, which provides a new visual landmark into Birmingham city centre. View 2 is noted to have a significant neutral effect, through balancing the dual impacts of the benefits as set out above and the adverse effects stemming from the proposed development's significant scale viewed at the rear of listed buildings. View 21 is noted to have a significant neutral effect as a result of the positive effects as set out above, balanced against the urbanising effects derived from the proposed development's significant scale and mass as experienced within this area of open space. Views 14 and 20 are further away but it is concluded that the proposed development will have a beneficial effect.
- 7.34. These identified significant effects (both beneficial and adverse) should be considered as part of the planning application. They are considered further later in the report, including mitigation.

#### **Impact upon Heritage Assets**

- 7.35. Policy TP12 establishes that the historic environment will be valued, protected, enhanced and managed for its contribution to character, local distinctiveness and sustainability and the Council will seek to manage new development in way which will make a positive contribution to its character. Under the Planning (Listed Buildings and Conservation Areas) Act 1990 the LPA in considering applications for planning permission, has a statutory duty to pay special regard to the desirability of preserving listed buildings, their setting or any features of special architectural or historical interest which they may possess (section 66 (1)).
- 7.36. Para. 205 of the NPPF states that "When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance." To follow on from this, Para. 208 states that: "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use."



7.37. In this case, I note that the application site is not situated within a designated Conservation Area, nor is this located on the boundary of any such area. The development site further doesn't incorporate any land immediately associated with any designated heritage assets. However, it is to be noted that the development would sit immediately adjacent to a collection of Listed Buildings on Hagley Road and would further be seen from a further collection of Listed Buildings on Francis Road. There are also other Heritage Assets within the wider vicinity, which could also be impacted by the proposals, given the significant scale of development involved. A supporting Heritage Townscape and Visual Impact Assessment (HTVIA) has been submitted by the applicants to assess the level of any harm that the proposals may have upon nearby designated heritage assets.

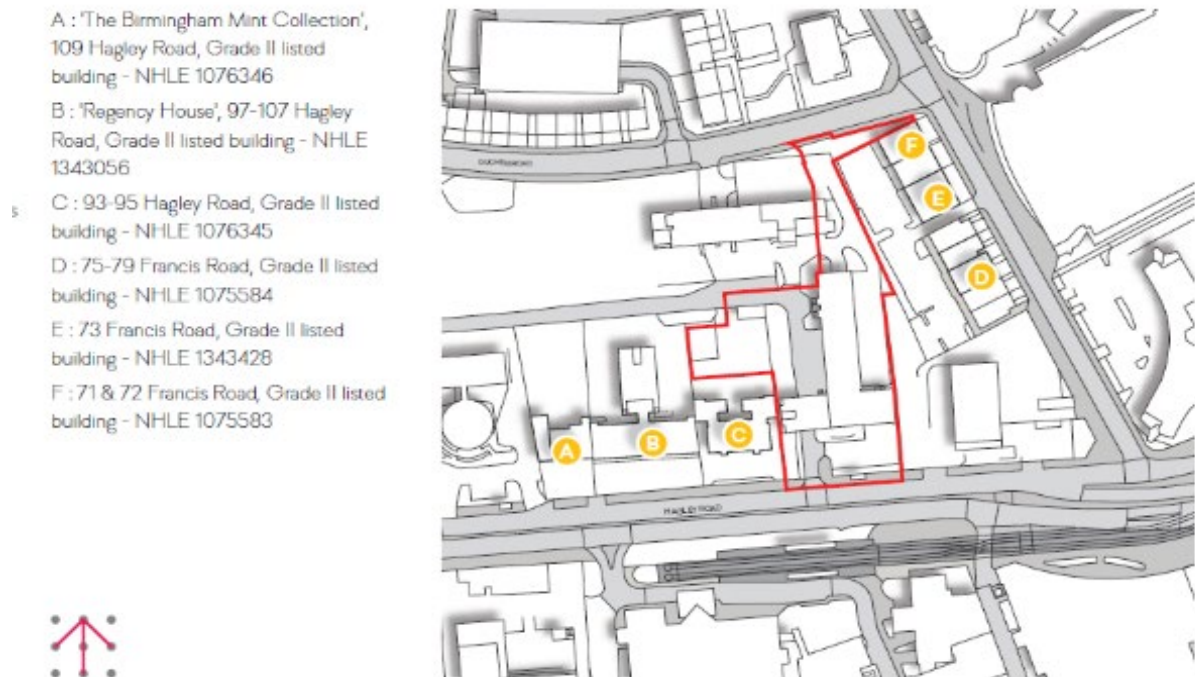


Image 8 – Plan from HTVIA – showing Heritage Assets in vicinity of site.

7.38. The above image from the submitted HTVIA, showcases a collection of Historic Buildings sited to the west and north-east of the site, which are Listed. From these to the west, immediately adjacent to the site are a pair of semi-detached, brick houses, dating from the early 19<sup>th</sup> century, 93-95 Hagley Road. Beyond this is the long terrace of 97-109 Hagley Road, dating from 1819-20.



109 Hagley Road



97-107 Hagley Road



93-95 Hagley Road

Images 9, 10 and 11 – Heritage assets along Hagley Rd.

7.39. The run of historic houses is broken by an unusual and interesting office building of

number 111, dating from 1965 with a circular forebuilding with a four-storey office block with vertical fins behind, as can be seen on the above plan. The City's Conservation Officer does not however deem this to hold any historical or architectural value and thus the focus will remain on this run of Heritage Assets to the east of this.

- 7.40. The Conservation Officer broadly agrees with the submitted HTVIA with regards to the identified assets in the surrounding area, stating that the Assessment makes a comprehensive assessment, which is fair and proportionate. The Conservation Officer also states that: *"For the majority of the assets, I would probably agree with the consultants conclusions that the development will affect the significance of the heritage assets in a negative way, and for the more distant ones the level of harm will be less than substantial, at the low or very low end of the scale."*
- 7.41. In relation to the impact the development would have upon these buildings on Hagley Road, as identified above, the Conservation Officer states that: *"The Hagley Road buildings survive far better",* then other assets within the site's vicinity, namely those on Francis Road, which are discussed further below. The Officer notes that: *"Aside from the modern intervention at number 111, (which is set back and not prominently visible) there is a clear run of historic buildings from Plough and Harrow Road towards the site. Buildings clearly read still as a historic streetscape, with a clear unity of period and scale, set back behind their gardens, fronted by trees in the way they always would have been experienced. Cobalt House does bookend this run of the historic townscape in quite an abrupt manner that has caused some past harm to the setting, but this is mitigated to some extent by the separation from the listed buildings. The scale of the proposed tower is considerably greater than Cobalt House and will also be closer with no attempt at graduating the transition."*



Image 12 - existing Listed Buildings on Hagley Rd.



Image 13 - Existing abutment between site and no. 95 Hagley Rd.

- 7.42. Historic England further add that: *"The design and scale of the proposed development does not respond to the site's historic context, particularly the rare and significant runs and terraces of adjacent listed buildings and fails to respond to the townscape character and composition of the local area"*.
- 7.43. To the site's rear west, Numbers 71-79 Francis Road are Grade II listed buildings and are a group of two-storey, stucco rendered, classical villas of circa 1840, formerly detached and semi-detached properties. The submitted HA notes that each of these buildings is a good example of the early 19<sup>th</sup> century villas constructed within the area.





75-79 Francis Road



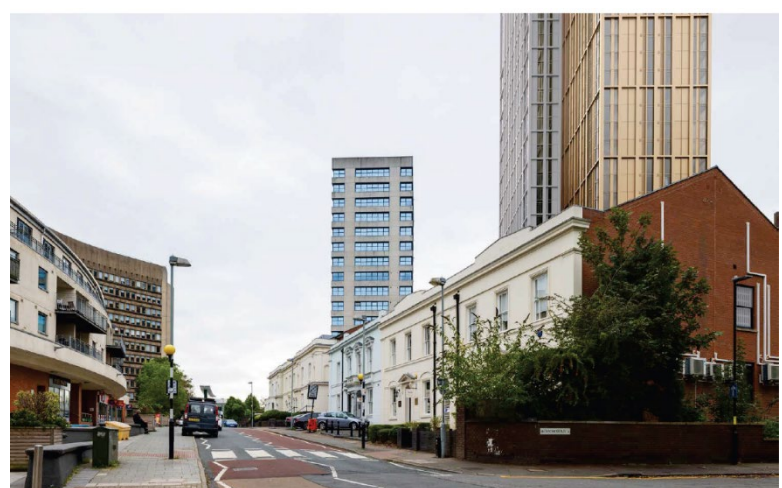
73 Francis Road



71 & 72 Francis Road

Images 14, 15 and 16 – listed buildings along Francis Rd.

- 7.44. In their regard, the Conservation Officer notes that: *“The Francis Road properties have probably experienced a greater degree of change to their fabric and settings than the Hagley Road buildings. In the addendum to the HTVIA the consultants state that, ‘the suburban setting of the listed buildings on Francis Road and Hagley Road was historically a key element of their significance, but their immediate setting has already been totally transformed by modern development’, they go on to say that their significance is now drawn from their physical form and group value. On Francis Road there is some truth in this analysis, the houses have been facaded with modern structures behind the retained historic façade. Either side and opposite are modern development, but I still feel that despite this the experience is still of a clearly historic street, fronted by historic buildings and that the setting still does contribute to significance even though modern development is clearly visible beyond it. The proposed tower will loom over the rear of the listed properties in a way that the existing modern development does not, the scale to the rear is currently a modest four storeys.”*



Images 17-18 - Existing and proposed CGI of proposed development in the context of Francis Road.

- 7.45. The above CGI image shows the impact the development would have upon existing views of the Listed Buildings sited on Francis Road, when looking north-to-south along Francis Road. Historic England note that: *“The proposed 37 storey tower block would be more than twice the height the adjacent Cobalt Square office block to the east of the application site, as well the elements of New Garden Square under construction. The proposed tower would rise overwhelmingly above the characteristic building heights of the listed buildings on Francis and Hagley Roads, and those further west along Hagley Road and within the Edgbaston Conservation Area”.*





*Images 19-20 - Existing and proposed views of site from Hagley Road looking east.*



*Images 21-22 - Existing and proposed views looking at the site from within the neighbouring Edgbaston Conservation Area.*

#### Other assets

- 7.46. The historic houses on Hagley Road resume with the unlisted number 115, which is also an early 19<sup>th</sup> century build and is considered a non-designated heritage asset and part of the group. Number 119 is a listed Grade II, brick, two-storey, early 19<sup>th</sup> century in date with big ground floor bay windows.
- 7.47. Below 119 on the corner of Plough and Harrow Road is the Plough and Harrow pub of 1832, two-storey, brick with stone dressings in a Tudor-style. Further west is the Oratory. This is Grade II\* listed with the church at the rear with the former school hall and priests house at the front facing Hagley Road.
- 7.48. South and west of this city block between Hagley Road and Harborne Road is the Edgbaston Conservation area, mostly consisting of a superior 19<sup>th</sup> century suburb of buildings similar to those discussed above on the north side of Hagley Road. Large stucco villas and terraces in generous grounds with mature green infrastructure form part of its character.
- 7.49. From reviewing the submitted materials and the consultation comments, I note that the applicant has provided a thorough townscape and settings analysis of the significance of these heritage assets, as set out above and this further assesses how these assets would potentially be affected by the proposed development, if approved. The submitted assessment states that the main impact the development would have upon these existing designated heritage assets is that it would draw attention away from these buildings, given the size/scale and form of the proposed landmark tower along this

busy thoroughfare. Further, the townscape would be urbanised, shifting the wider character of the area from a suburban one to a more urban setting.

- 7.50. The Conservation Officer notes that the level of harm is far greater for the collection of buildings immediately to the west of the site on Hagley Road, as well as the collection of Buildings on Francis Road, as identified above, when compared to other heritage assets located within the wider vicinity. Historic England considers that level of harm to these assets to be at the upper end of the scale for less than substantial harm. Whereas the Conservation Officer deems this to be to the lower- moderate level of harm.
- 7.51. In this regard, the submitted HTVIA states that the heritage assets will not be physically affected, and that the proposed development represents '*an incremental progression of a now long-established cycle of change within this locality*' and that '*most of these assets surroundings having already been transformed by modern development, including through buildings of significant scale in close proximity*' HTVIA. The Conservation Officer however raises an objection, with regard to the scale of the building and notes that the scale and density proposed here is more akin to a city centre setting and is not an incremental progression but a larger change. The officer also notes that the area has been subject to change, but not to such a level to allow for development of such scale.
- 7.52. When looking at the change to the heritage assets themselves, it is noted that the Francis Road properties have experienced a greater degree of change to their fabric and settings than the Hagley Road buildings. The original houses have been heavily extended to the rear, with only the historic facades retained to the frontage along Francis Road. Either side and opposite are modern development. The submitted HTVIA further considers that there is real change within the surroundings of the site and that this cannot be seen as the once suburban area in which these assets were once sat. Large modern developments surround the site to all sides, with several buildings of scale, albeit of a lesser scale than the current proposals. The applicant thus argues that the further modernisation of the landscape doesn't result in a major change, when considered relative to the current existing baseline of the wider site context.
- 7.53. I thereby consider that although the scale of the development is sizeable, and greater than the existing tall buildings within the area, this area is and has previously undergone significant change, most notably with NGS Phase 1. I further note that although the development may not be within the city centre, this sits within a busy thoroughfare into the city core, which is only a short distance away, ahead of the Five-ways round about, to the east of the site. To the east, a large number of examples of tall buildings at a scale of the proposed development and higher can be seen and although it is noted that these buildings sit some distance away and are within the city centre core, I deem the character of the area to already be very urban and not the suburban setting this once was. This is further reinforced by the tall buildings in front of the site, with the metro stop and Cobalt House. Thus, the setting of these Heritage Assets is already somewhat transformed to a more urban one.
- 7.54. I further note there is already a sense of character within the area, where historic buildings, in this cluster are sat adjacent and juxtapositioned to more modern developments, which would very much still be the case as a result of the current proposals. Albeit, the current proposal would be taller, but would be an improvement on the existing situation on site and would further be sat a considerable distance of 15m away from the listed buildings to the site immediate west, where the current building on site abuts this boundary, thereby allowing a clear distinction between old and new along the street-scene.
- 7.55. I further note that although the building will be visible from the backs of the properties on Francis Road, these backs already consist of large modern extensions, with the eastern portion of Francis Road, already comprising modern development. The historic



frontage of Francis road would remain unaffected and thus I note there would be some harm to the views of the frontages of these building when viewed along Francis Road, looking west, as a result of a tall building sitting within this backdrop, but I do not consider this to be to the upper levels of harm as set out by Historic England and agree with the conservation officer and deem this to be towards the lower to moderate end of the less than substantial harm scale and I will consider the public benefits to outweigh this level of harm later in the report.



Image 23 - Modern extensions on the back of Francis Road Listed Buildings.



Image 24 - Broadway Plaza opposite the Listed Buildings on Francis Rd.

- 7.56. With reference to the assets on Hagley Road, I note that the current building on site makes no contributions to the setting of these heritage assets, and this almost abuts their boundary to the west and sits in a deteriorating state. The current proposals would demolish this building from the site and erect a high quality 37 storey building, set 15m away from the edge of Hagley House, allowing a clear distinction between old and new, and I thus see this to result in some harm, by way of taking views away these historic run of Listed Buildings, but would say this also offers some improvements to their setting by introducing a high quality public realm within their setting and will add more distance to the new development. I thus feel the level of harm would be to the lower to moderate level, as set out by the Conservation Officer, given the considerable scale of the building and again will assess this level of harm against the public benefits of the scheme, further in the report.



Image 25 - High rise building opposite application site on Hagley Rd.



Image 26 - Cobalt House sat adjacent to application site to the east.

- 7.57. Additionally, the conservation officer notes that: *“the proposed development will also impact upon the setting of the Edgbaston Conservation Area. Currently the taller buildings along the Hagley Road are visible from within the northern part of the conservation area only and appear in glimpses. The proposed tower will be quite different at over twice the height of existing buildings on this road and will be a major visual encroachment upon the experience. This level of harm would again be less than substantial, to the lower-moderate levels”* and I would agree with this conclusion.
- 7.58. Further west of the site sits the Oratory. This is Grade II\* listed building with a church at the rear and the former school hall and priests house at the front facing Hagley Road. I do not however consider the proposed development to have any significant adverse impacts upon the heritage of this building and would deem this again to be to the very lower end of less than substantial harm.
- 7.59. In terms of cumulative effects, Cumulative townscape effects were assessed relating to the proposed development in combination with a range of identified developments. From all character areas, it was not considered that the development of the site would result in any meaningful functional or visual relationship with any of these schemes and therefore no unacceptable cumulative effects are anticipated.

### **Townscape and Design**

#### Townscape and visual effects

- 7.60. 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
- 7.61. Design Principle 19 (Creating tall buildings) is relevant to the application proposals and states that tall buildings must deliver 360-degree innovative architecture that responds positively to their surroundings; engaging and activating street environments, whilst introducing a silhouette, body and crown that enhances the citywide skyline and respects key views, existing landmarks and the city’s historic environment.
- 7.62. City Note LW-45 Siting of Tall Buildings requires a number of factors to be considered when assessing the acceptability of a proposed site for a tall building, including the character of the surrounding area and potential impact to the area; the role and potential of the Site within its surrounding context; the location and hierarchical position of the Site within the street scene and urban block; the relationship with existing landmark buildings and presence within existing views/street scene and impact on the skyline; impact on surrounding heritage assets and impact surrounding environment and adjacent uses.
- 7.63. Policy TP33 states that for student accommodation the scale, massing and architecture are appropriate for the location, and that the design and layout will create a safe, secure and welcoming living environment and will not have an unacceptable impact on the local neighbourhood and residential amenity.
- 7.64. Matters of Townscape and Visual effects are considered within the ES and likely significant effects set out. The assessment of townscape character and visual effects has been informed by the identification of various viewpoints across the city, and representative viewpoint photography and visualisations have been used to support and inform the Heritage Townscape Visual Impact Assessment. From the submitted assessment six viewpoints were noted to have significant effects.
- 7.65. The ES describes three of these viewpoints to have beneficial townscape effects, based on the delivery of a high quality, distinctive focal point within the view, which provides a new visual landmark within the city skyline and adds definition to the important Hagley Road corridor which leads into the city. The scheme is further noted

to provide beneficial impacts from further away, by adding a further landmark tower around five ways and is seen to present a beneficial effect on the cityscape.

- 7.66. Three of the remaining views were seen to have a neutral effect, where the positive impacts of the scheme, as outlined above would be contrasted against any negative impacts associated with adverse impacts of the development being sat at scale, alongside a number of heritage assets and thus impacting upon their views, alongside the further urbanisation of the area when viewed from areas of current open space. Overall, the ES finds the effect on townscape to be beneficial.
- 7.67. The area which is likely to experience the greatest level of change in views arising from the proposed scheme is that of the immediate context of the site, given the scale of development compared to the existing and surrounding context. This is explored further below.

#### Layout

- 7.68. The layout of the site has been designed around its location, sited along a key arterial route into the city, on Hagley Road. The proposed tower has been designed to have the same building line as Cobalt House, sited to the site's east. The building has been further designed in the form of two stepped bars, which allows for the building to appear much more slender and breaks up the width and mass of the building. This also allows for a larger arrival space to be created off Hagley Road, to the site's south and creates a good degree of separation from the adjacent listed buildings. The concentration of this Hagley Road frontage allows there be an active frontage on this end of the building, allowing this to integrate well at the public realm level. The two blocks would thus have two very different views, with the block located south facing Hagley Road having a very urban feel and the rear block, looking west towards the new proposed public realm, having a park environment. The design has thus been further developed on this basis.

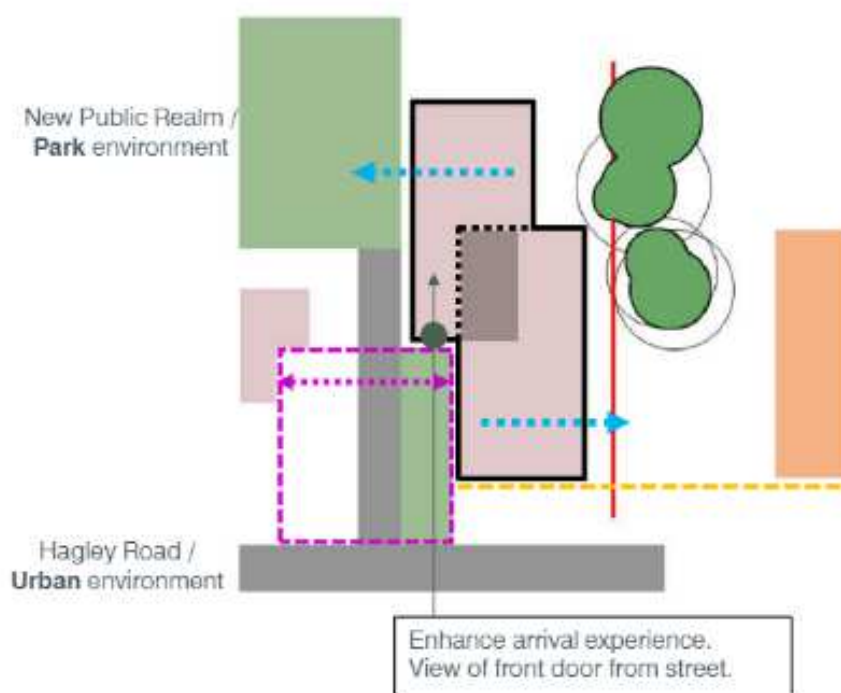


Image 27 - Contextual plan of building and wider public realm

- 7.69. The ground floor is split into three main areas, with an active frontage retail unit to the southern front end, a back-office/facilities type of area to the middle allowing for a bike store, bin-store and lifts etc., alongside an arrival space to the northern side of the building, facing the proposed external amenity space. This space would contain a residents amenity area, meeting rooms, offices etc. a floor plan can be seen below:



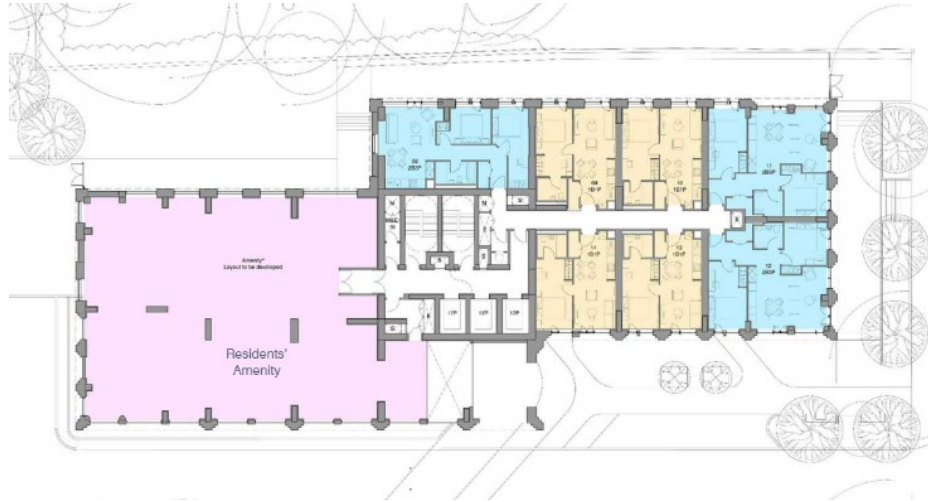


Image 28 - Proposed ground floor – floor plan.

- 7.70. The residents amenity area would continue to the first floor, and again occupy the rear end of the floor, with apartments then occupying the southern portion of the building. It is to be noted that amenity areas can also be found on the roof terrace, on floor number 36. The City Design Officer notes that: “The park-facing block contains the residential entrance to the building. It is a positive feature that the stepped building form allows the front door to face Hagley Road. This block provides residents’ amenity space at ground and first floors, contributing to good levels of activity and intervisibility with the park”. As such, on this basis, I deem the layout and wider form of the building acceptable and consider the dual aspects of the building, which offer activity and natural surveillance to be positive outcomes of the building design which will add to the wider areas visual amenity.

#### Scale and Massing

- 7.71. In this regard, the submitted supporting documentation notes that Plot D is seen as the key marker building for the New Garden Square masterplan and a landmark building at the gateway location at the western edge of the city centre. A diagram has been submitted (design and access statement - copied below) showing the proposed building in the context of existing tall buildings along Broad Street linking with NGS to the west of the City Centre. For comparison, Moda’s Mercian building on Broad Street is 132m high, Cobalt House, sat adjacent to the site is 63m and, facing the site on the opposite side of Hagley Road, Lindum House and No. 54 Hagley Road are 63m and 68m respectively.

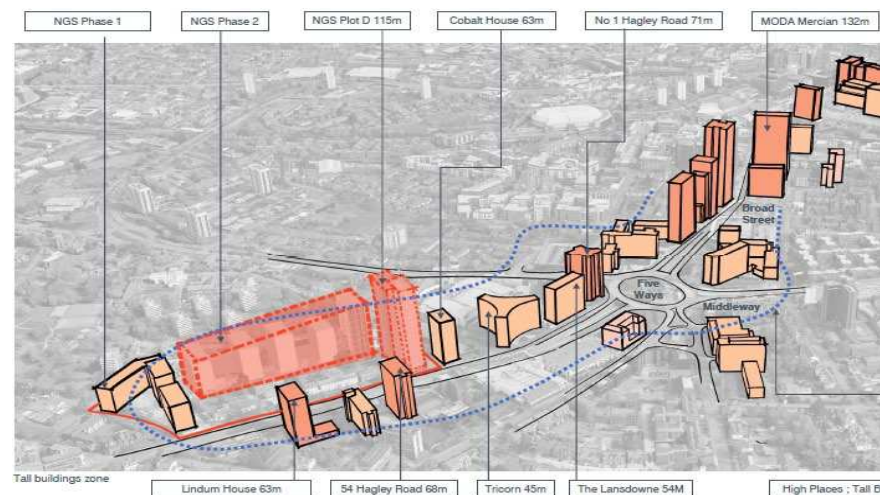


Image 29 – submitted CGI of tall buildings.

7.72. It is therefore noted that currently, the area around the site's immediate context, although of an urban nature features tall buildings to a lower scale, than that proposed. Whereas, when we look further afield, a continuous form of tall buildings can be seen to the eastern edge of Five Ways roundabout and then further east, towards the city centre. As such, given the above plan it is clear that the area already contains buildings of scale, of circa 63m and 68m and thus this is already an urban setting, with views of further taller buildings already established within the area when looking further east. As such the introduction of a tall building to this important gateway linking to this eastern entrance to the city centre as a marker building is supported and it is considered that the scale as proposed is acceptable. The City Design Officer further accepts the scale and feel this will act as a key marker for the westwards entrance of the city centre from Hagley Road and given the wider context a case for the scale as proposed can be made. The below image further reinforces the introduction of such scale when viewed from the Fiveways roundabout.

*View of the Proposed Development down Hagley Road, from adjacent to the locally listed Marriott Hotel (left). See viewpoint 4 for full resolution.*



*Image 30 and 31 – existing and proposed CGI of site from Five Ways roundabout.*

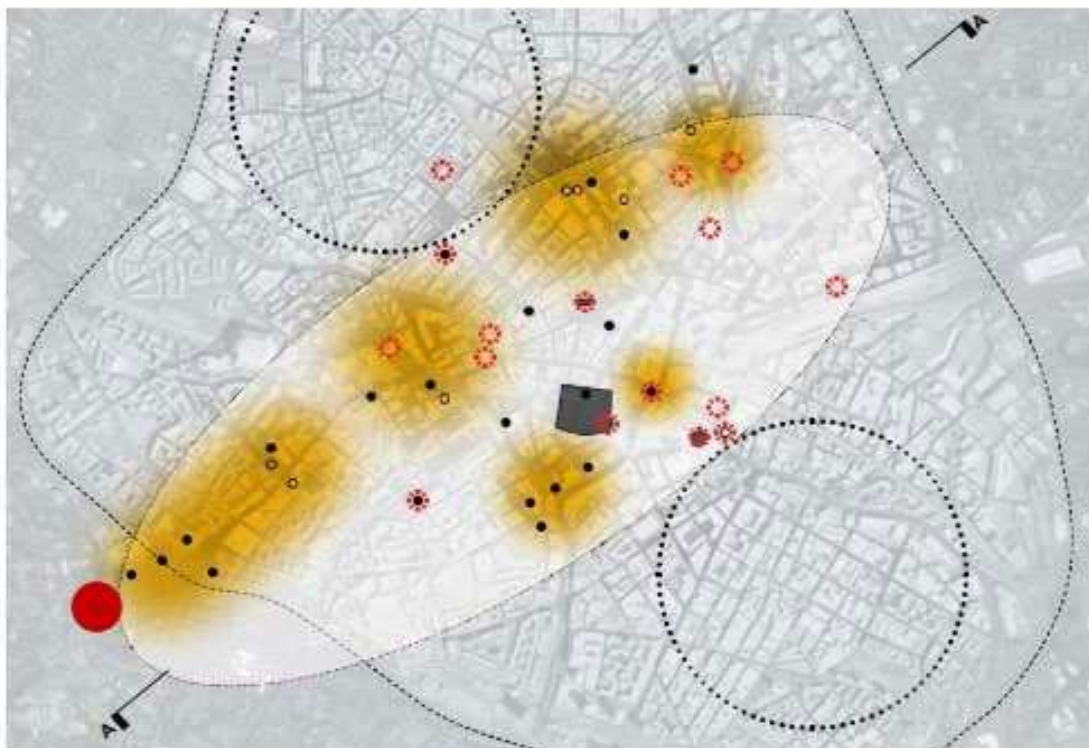


*Images 32/33 of the proposed development when viewed from Edgbaston Reservoir within the city skyline.*

7.73. As shown on the above images, the building is seen to fit into the skyline of the city,



as a key marker building for the western portion of the city centre. This approach fits in with the City Council's published, Big City Plan (Masterplan published by the Council), outlines the City's intention to create an identifiable skyline memorable for its key buildings. Of this, the plan highlights areas where tall buildings can be located. It is thereby noted that the NGS site occupies a key location at the entrance of the area earmarked for tall buildings, which would allow tall buildings to run west to east across the city centre, in line with this vision.



Birmingham's Big City Plan – Tall building clusters and height limits within the city centre

Image 34 – extract from Big City Plan.

- 7.74. This view is further supported by the City Design Officer who notes that: *"I consider that siting, scale and massing of the proposed block D building is acceptable. At 37 storeys and 115m, it would be appreciably taller than nearby high buildings including Cobalt Square (17 storeys and 63m) but the stepped form creates a relatively slender appearance that complements the existing towers and a building that will positively mark the western gateway to the city centre and the Metro tram terminus on Hagley Road, sited opposite the site"*.



Image 35 – showing height of proposed development in wider context.

- 7.75. Further, the rationale for the architectural language of the building, driven by local area character and the site context, is set out within the submitted DAS. The design incorporates a strongly defined base with 5m floor to floor heights at both ground and first floors, a consistent architectural language to the main body and an extension of

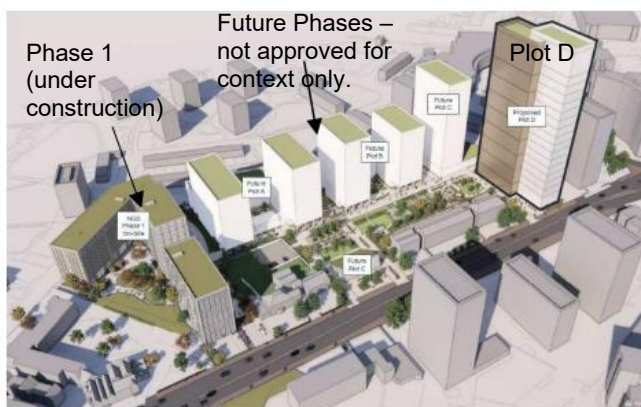
this expression to the crown of the building. Given the proportion of the façade, the design has a prominent vertical emphasis with a more subtle horizontal grid – see CGI image below.”



Base of building –  
Hagley Road (right)  
and park (left)  
frontages

Image 36.

- 7.76. CGI visualisations have also been provided to show the proposed building and its context, including illustrative scale and massing of phase 2 buildings along Duchess Street in the northern part of NGS. Refer to images below.



Illustrative masterplan



West (park) elevation – future phase 2 on left



North  
(Duchess)



East (rear of  
Francis Road)



South  
(Hagley)



South (Hagley Rd)

Images 37 – 40 – CGI's from DAS.

## Façade Design

- 7.77. Facades of the two 'interlocking rectangles' of the building will be treated in subtly different ways. The Hagley Road frontage element has an 'urban' character that visually references surrounding towers, with 2-storey grid expression clad in lightweight polyester powder coated aluminium material finished in a white stone effect. The rear element responds to the adjacent park at the centre of the New Garden Square site, through a more open 4-storey grid expression with similar aluminium

cladding but in a bronze metallic finish. Final material finishes will be agreed in consultation with the LPA.

- 7.78. Articulation of the facades is created by a hierarchy of features: the primary grid with widths of glazing responding to the different sizes of the internal apartments; narrower fins and capping features set within this grid; and additional solid / perforated panels that are integral to the building's function, helping to control natural light levels, heating and the cooling of apartments.
- 7.79. The perforated panels also present opportunities to add decoration, and the DAS illustrates indicative screen designs that relate to aspects of the local area, with further technical testing required to select a preferred options. Below are Bay studies of the different façade treatments (DAS 4.04):

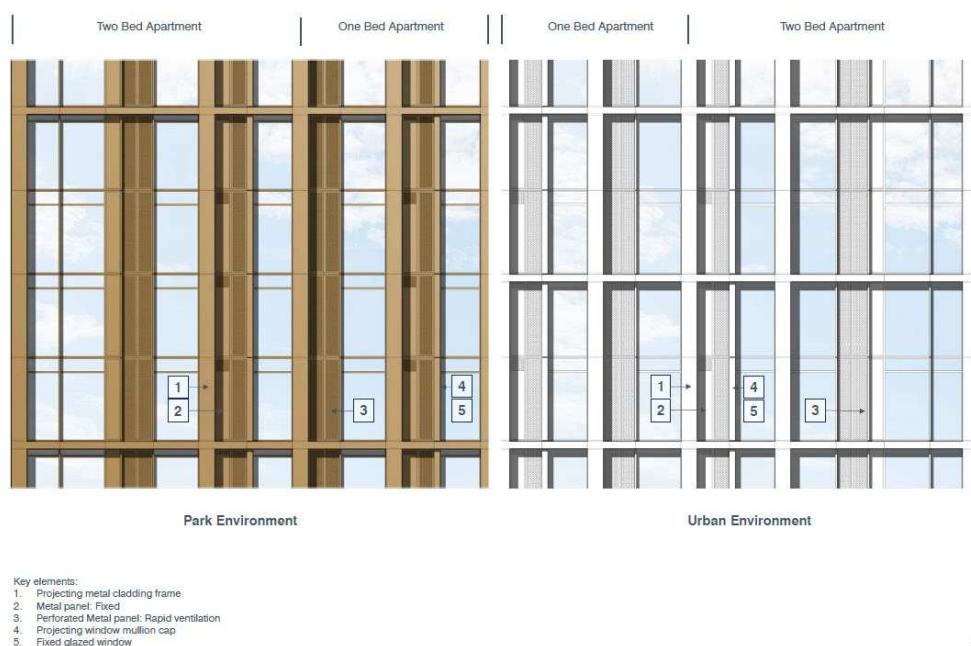


Image 41 - façade design from DAS.

51

- 7.80. The architectural approach reinforces the stepped form of the building, creating a well-defined base, middle and top to the building and provides a good level of visual articulation and interest and is thus supported by City Design.

### Landscaping

- 7.81. As part of the development proposals, a pocket park is proposed to the west of the building. This park is envisioned to be extended westwards, as a linear park running east to west within the New Garden Square site, from Plot D, to Phases 1, which sit to the western edge of the site and are now nearing completion. The Design and Access statement highlights that this space has been designed to be pedestrian friendly, support ecological diversity and be of a high quality for visitors and residents to enjoy equally.
- 7.82. In addition to the pocket park, landscaping is proposed along the rear access to the site, via Duchess Road and to the site's immediate front off Hagley Road, in order to better the public realm experience.
- 7.83. In addition to this, the roof terrace on floor 36 has also been carefully design to feature ornamental planting, movable planters and various trees and shrubs, all to add to the flexibility usage of the space, increase biodiversity and support residents to enjoy the



external areas of amenity as provided. The landscaping proposals have been assessed by the city design officer who supports this approach and recommends conditions are attached to secure full and final details for any landscaping proposals and as such appropriately worded conditions are attached. On this basis, this element of the scheme is considered to be acceptable.



Image 42 – landscaping plan.



Image 43 – Roof terrace plan.

## Trees

- 7.84. There are existing mature trees on the site and to this effect a Tree Survey, Arboricultural Impact Assessment and Tree Protection Plan have been submitted. There are no Category A trees on-site; and an identified 10no. category B trees will be retained and 8no. will be removed. 36no. category C trees will be retained and 12no. removed. Whilst many tree removals were included within the approved outline scheme, additional trees are proposed to be removed as part of the current proposals, while it is also noted that others which were previously to be removed are to now be retained. A total of 32no. new trees will be planted across the application site. The Council's Tree Officer has reviewed the proposals and raises no objection to the proposals as submitted, subject to appropriate new planting provision being provided across the site, which can be secured by way of condition.

## Residential amenity

- 7.85. Policy DM10 of the DMB (2021) requires that development would not have a significant adverse effect on the privacy or amenity of nearby residents and occupiers of adjacent buildings and the amenity of the occupiers of the proposed development would not be adversely affected by activities within the vicinity of the site. This policy also requires the proposed development to meet nationally described space standards.

## Impacts upon future occupiers of the site

## Outdoor amenity space

- 7.86. The scheme looks to provide a range of amenity spaces for residents, this includes internal private amenity spaces, at between 765sqm and 1019sqm, depending on the final layout of the building. These spaces would comprise the ground and first floors of the building, as set out within the above sections of this report, in addition to this, 395sqm of private amenity space is also proposed via the private roof terrace, on floor 36. Externally, 2,358sqm of amenity space is to be provided via a range of spaces, including the pocket park, hard standing areas and various other spaces for use by residents and visitors. This equates to 8.16sqm of amenity space for each of the proposed apartments. In this regard City-note LW13, from the City's Design Guide states that: For each apartment: 5sq.m (1 bed flat), 7sq.m (2 bed flat) and 9sq.m (3 bed flat) of amenity space would be required by the LPA. Given that the site comprises just over 50% 2-bedroom apartments, it is considered that the level of amenity space on offer to residents would broadly comply with these guidelines and the development is thus considered acceptable in this regard.

## Apartment sizes and outlook for future residents

- 7.87. All of the proposed apartments would further comply or exceed the Nationally Prescribed Space standards and have acceptable levels of outlook and light. Furthermore, given the staggered form of the tower, many of the apartments would have dual aspect outlooks, which further adds to the level of amenity on offer to residents. The scheme is thus considered acceptable in this regard.

## Impact upon existing residential neighbouring occupiers

### Overlooking

- 7.88. To the site's immediate west lies Hagley House, which is a commercial property, to its east lies Cobalt House, which is also commercial in nature. Opposite the site to the south on Hagley Road lies 54 Hagley Road, which is also a commercial office building, with no. 38 Hagley Road also being a commercial unit. As such the proposed new apartment building would not give rise to any new overlooking issues to any existing residential occupiers within the vicinity, given the lack of such users, given the context of the area.
- 7.89. The closest residential occupiers would be to the site's north, on Duchess Road, with a 9-storey residential tower sited to the north-western corner of the junction between Francis Road and Duchess Road, sitting to the rear north of the site. Further to the west of this, lie a number of 3-storey apartment buildings, however these do not have any side facing windows which open onto Duchess Road and rather face east onto the adjacent tower block. In any regard, the distance between these existing residential units and the proposed tower is substantial at over 85m; and as such the proposals are considered acceptable in this regard and are considered not to result in any new undue impact upon existing residential occupiers within the vicinity.

### Overshadowing and loss of light

- 7.90. Paragraph 2.250 of the Birmingham Design Guide Healthy Living and Working Places City Manual (2022) states *"the City Council recognises the levels reflected within the BRE guidance relate to a suburban environment, whereas tall buildings are largely located in dense urban environments where levels of daylight and sunlight can typically be below these targets. Therefore, the weight attributed to the conclusion of these studies will be balanced against the scale of the impact, character and nature of the surroundings, site constraints, policy aspirations and other material planning*

*considerations”.*

- 7.91. The application is supported by a daylight, sunlight, and overshadowing assessment. In accordance with BRE Guidance only residential accommodation has been assessed for daylight and sunlight, all non-domestic properties in close proximity are not considered to be sensitive receptors and were also scoped out of the ES as not experiencing significant effects.
- 7.92. Daylight and sunlight levels for future occupants of the proposed scheme (including the proposed amenity space) was also scoped out as not likely to experience significant effects.

Daylight and sunlight assessment

- 7.93. The BRE Guidelines provide two methods of assessing daylight in the existing situation; the Vertical Sky Component (VSC), which assesses the quantum of skylight. And the No Skyline (NSL), which considers the distribution of light within a building.
- 7.94. Part 8 of the submitted ES sets out the findings of the submitted daylight and sunlight assessment. The report finds that once the development is complete from the 16no. residential properties which would be impacted, 88.7% of the impacted windows meet the BRE's criteria (VSC) and 95.8% would meet the NSL criteria. From the 2no. properties which fall short of these guidelines some of these serve apartments within Broadway Plaza to the east of the site. A total of 69no. windows serving 59no. rooms were assessed and from these 46% were found to be acceptable. From the affected apartments, it was found that 25no. would experience an alteration in VSC between 20-29.9% which is considered a Minor Adverse effect and 2no. would experience an alteration between 30-39.9% which is considered a Moderate Adverse effect. The remaining 8no. windows would experience an alteration in excess of 40% which is considered a Major Adverse effect. The report concludes that except where windows are located beneath balconies and therefore already obstructed, each of the windows would retain above 20.8% VSC and so are considered to remain adequately daylight. Thus, the reason behind the increased impact can be attributed to these windows being sited below extending balconies.
- 7.95. For NSL, 47no. of the 59no. (79.7%) rooms assessed would meet BRE's criteria and are therefore considered to experience a negligible effect. Of the 12no. affected rooms, five would experience an alteration in NSL between 20-29.9% which is considered a Minor Adverse effect, and 1no. would experience an alteration between 30-39.9% which is considered a Moderate Adverse effect. The remaining 6no. rooms would experience an alteration in excess of 40% which is considered a Major Adverse effect. These alterations again occur primarily where rooms are served by windows beneath balconies. Good levels of daylight are retained by windows flush with the façade, indicating the reductions occur primarily as a result of the balconies as opposed to the proposed development. The report thus concludes that overall, the effect on daylight at Broadway Plaza is considered to have a minor to moderate adverse impact (significant).
- 7.96. The second set of affected properties are within the development known as “The Blue Apartments”. This apartment building is also located east of the site. A total of 93no. windows serving 63no. rooms were assessed for daylight within this building. For VSC, 86no. of the 93no. (92.5%) windows assessed would meet BRE's criteria and are therefore considered to experience a Negligible effect. Of the 7no. affected windows, all would experience an alteration in VSC between 20-29.9% which is considered a Minor Adverse effect. The only windows affected are situated beneath balconies and thus the VSC alterations can again be attributed to the obstructing features as opposed to the Proposed Development. Each of these windows would however retain above 15.4% VSC and so may be considered to remain adequately daylight. For NSL, all rooms assessed would meet BRE's criteria and so are considered to experience a Negligible



effect. Overall, the effect on daylight at The Blue Apartments is considered Negligible to Minor Adverse (not significant).

#### Sunlight

- 7.97. A total of 19no. buildings were assessed for sunlight impacts. And a total of 466no. affected windows were found within these. Of these 93.6% would meet the BRE criteria for amounts of sunlight received and were thus considered acceptable. With reference to the impacted properties, these are sited on Broadway Plaza, and from these apartments 65no. of the affected windows were assessed and 53no. of these would meet the BRE's criteria. When looking at the affected windows 10no. of these would be affected annually, when one would experience an alteration in Annual PSH between 20-29.9% which is considered a Minor Adverse effect and 4no. would experience an alteration between 30-39.9% which is considered a Moderate Adverse effect. The remaining 5no. windows would experience an alteration in excess of 40% which is considered a Major Adverse effect. For Winter PSH, 55no. of the 65no. windows assessed would meet BRE's criteria and are therefore considered to experience a Negligible effect. The remaining 10no. see losses greater than 40% which is considered a Major Adverse effect. As discussed in the daylight discussion, these alterations primarily occur where windows are located beneath balconies, which already shade the windows from sunlight, and result in disproportionate percentage alterations. Overall, the effect on sunlight to Broadway Plaza is considered Minor to Moderate Adverse (significant).

#### Overshadowing

- 7.98. The Proposed Development is likely to add shade to rear gardens along Duchess Road and Huntly Road private gardens from 8am-10am around March, within the year, with the remaining parts of the year seeing no adverse impact. In terms of actual sun hours on the ground the report concludes that 25 of the 26 areas would meet BRE's criteria and therefore experience a Negligible (not significant) effect. The remaining rear garden at 73 Duchess Road would see a reduction of 24% on the area which receives at least two hours of sun on March 21st. The effect on this area is therefore Minor Adverse (not significant).
- 7.99. The adverse impacts from the scheme on surrounding existing neighbouring properties are noted and will be considered in later sections of this report.

#### Noise and nuisance

- 7.100. A noise impact assessment was submitted as part of this application, this looked at expected noise levels for future occupiers of the site, with a particular focus on habitable rooms and further explored any mitigation, if needed. This report identified that suitable mitigation would be required for certain parts of the building, however, subject to these measures being implemented on site, the report found that satisfactory noise levels can be expected for future occupiers. These measures focus on specific glazing being added to the apartments which would face the Hagley Road frontage, where noise levels from traffic in particular can be expected. To this effect, these apartments would be fitted with mechanical ventilation and would still retain openable windows. Occupants would then have the flexibility to open windows when needed, but this wouldn't be the only means of cooling or allowing air into the rooms within the southern elevation of the building. Environmental health officers have reviewed the submitted report and deem this acceptable. They have recommended conditions be attached onto any subsequent consent which will look to secure details for any Noise Insulation and Noise Mitigation and such works would be required to take place, prior to occupation. Subject to the addition of such conditions, I deem the scheme acceptable in this regard.

7.101. Where the residential use of the building, is not considered to result in any new undue noise and nuisance for existing neighbouring occupiers, above and beyond the existing situation on site, as well as that previously approved, under the former 2017 outline consent. It is noted that a commercial use is now proposed at ground floor level, which could result in additional activity. As such, Environmental Health Officers have sought to protect nearby/future occupiers by controlling the hours of operation and securing any details for any mechanical ventilation, which could result in noise impacts. As such the following conditions would be attached to any subsequent consent:

- Prior submission of any extraction and odour control details;
- A limit for any background Noise Levels for Plant and Machinery;
- Hours of Use restricted for the commercial use between the hours of 07:00-23:00 Daily;
- Delivery Time Restrictions for the site between 07:00 to 20:00 daily;
- Commercial Uses - a noise assessment and noise mitigation scheme,
- Details of any extract ventilation and odour control equipment/ plant or equipment including noise impacts to be submitted to the LPA prior to installation.

7.102. Subject to the addition of the above conditions, I deem, the scheme acceptable in this regard.

Tall Building Assessments – Microclimate, Aviation Safeguarding, Television / Radio and Communications

7.103. City Note LW-44 sets out relevant assessments and methods to 'minimise and mitigate impacts of tall buildings on the local environment and microclimate. The Design Guide also identifies the key technical considerations which need to be considered in the design of tall buildings.

Wind

7.104. Within the submitted Environmental Statement, a section on Wind has been submitted and various material assessing the existing, construction and completed development impacts on wind have been submitted for consideration. While the wider development was found to be acceptable in this regard, 3no. areas of concern were uncovered as part of this assessment, which highlighted areas of strong wind impact for post completion of the development. As such mitigation measures are required.

7.105. In terms of mitigation measures, a set of three 50% porous screens would be added around the southwestern corner of the proposed development, as well as a further screen within a planter sited to the southwest of the building, alongside a final porous wind baffle which is to be added to the western elevation of the development to its northern most end. A solid screen at 1.5m x 3m in length is also proposed within the site boundary to the north is proposed, along with 2no. 1.5m x 3m solid screens proposed within the area of public open space to the west of the building. It is thus considered, subject to the addition of these mitigation measures, which would be further secured by way of condition and be required to be retained on-site in perpetuity, the development would have an acceptable impact on future users of the site in this regard.

Solar Glare

7.106. At present, there is no common methodology for the assessment of solar glare from a reflective material, or any measurable criteria within the BRE Guidelines regarding acceptable levels of solar glare.

- 7.107. Potential for glare was found in some on the sightline considered. However, in all instances this was found to be for very limited amounts of time in a year and so the effect was not considered to be significant. Further, there were options in all instances to use a visor to overcome any such glare and it was noted that factors such as tree cover and the angle at which someone would be affected could not be fully taken into account.

#### Aviation Safeguarding

- 7.108. The application is supported by an Aerodrome Safeguarding Assessment. It states that if the development is to progress at its proposed height, it would require an aviation lighting scheme in accordance with Civil Aviation Authority, alongside a crane management condition. The CAA and Birmingham Airport were both consulted on the application and no response was received. The report further concludes that significant impacts are not predicted with reference to the Birmingham Children's Helicopter Landing Sites. On this basis, the scheme is considered acceptable, and the applicant has been advised to work with the CAA and Birmingham Airport to comply with any guidance and policy.

#### Television and Radio Communications

- 7.109. The Application is supported by a Signal Survey and Television Reception Impact Assessment. The report concludes that a desktop study and baseline signal survey found that only two television broadcast platforms would be impacted by the proposals, with these being: Freeview and free sat/sky. With reference to Freeview the development was considered unlikely to impact the reception of such services and as such no mitigation is required. With reference to free sat and sky, the proposed use of cranes is likely to cause disruption of the reception of such signals, as a result of the cranes blocking signals to the west of the site and the developer would be responsible for any mitigation. This could be in the form of relocating satellite dishes to new locations where views are not obstructed or offering equipment to the user to receive the broadcast via a different channel while the works are on-going. Any such impacts are to be short-term only and the developer has set out how they would work with affected residents to overcome such issues. A condition to ensure this works takes places will be attached to any subsequent consent.

#### Air Quality

- 7.110. An air quality assessment has been submitted by the applicant in support of the application. This highlights the potential for construction dust in particular which will need to be managed during such works on site, for which a suitable condition can be attached in order to safeguard the amenity of neighbouring land users. With regards to the air quality for future land users of the site, this is seen to be acceptable, and the Councils Environmental Health Officers have raised no concerns in this regard. As such, subject to the addition of a demolition and construction method statement, which will focus on measures to secure air quality I have no concerns in this regard.

#### Land contamination

- 7.111. The application is supported by a ground investigation report, which details some intrusive ground investigation. However, the result of the investigation establishes that further intrusive investigation is required, which BCC Environmental Protection are satisfied can be dealt with via condition.

#### Transport

7.112. The supporting Transport Assessment confirms, as a result of the development hereby proposed, there would be less trips generated by the proposed residential use of the site, when compared to the formally consented office use, as part of the formally approved 2017 outline consent. On this basis, Transport Development raise no objection to the proposal and further note the sustainable location of the site, with the metro stop situated just outside of the development site, to its south, on Hagley Road.

7.113. Officers further note that the submitted plans provide suitable pedestrian and cycle access into the building, and car parking is provided within 39no. spaces of which 10no. are to be fitted EV points, considered acceptable. 230no. secure cycle parking spaces are to also be provided on-site, in the form of a double stacked arrangement in a secure store within the building, and the Travel Plan details that the site could further provide additional spaces if required in the landscaped areas within the site going forward. Following the review of such information, Officers raise no objection, subject to the addition of the following conditions:

- Prior submission for details relating to Cycle parking,
- Car parking spaces provided and marked out before occupation
- Refuse store to be provided before occupation
- Highway works required before occupation with a suitable Highway Agreement which may require alterations to the access points, and TRO changes to the permit bays and reprovision of these along Duchess Road with the redundant footway crossing reinstated,
- Prior submission of a delivery/servicing management plan,
- Prior submission of a Construction Management Plan,
- Prior submission of a car park management plan; and
- The submission of a Travel Plan.

7.114. Appropriate conditions, to this effect are thus attached and it is considered subject to the addition of these safeguarding measures, the scheme is considered acceptable in this regard.

#### Flood Risk and Drainage

7.115. BDP Policy TP6 'Management of flood risk and water resources' requires a sustainable drainage assessment and maintenance plan for all major developments. The scale of the proposal also requires a Flood Risk Assessment.

7.116. The LLFA have reviewed the proposals and had requested further information from the applicant which has been submitted in coordination with the LLFA. Unfortunately, any required pre-commencement conditions have not been received by the LPA till date and thus, as the required information has been submitted, it is considered that the resolution attached to any grant of planning permission have appropriate wording for any such conditions to be attached at a later date. Subject to such wording, I deem the application acceptable in this regard.

#### Ecology

7.117. The site fronts Hagley Road in north Edgbaston/Ladywood. The surrounding area comprises a mix of uses including residential, office/commercial, education/community facilities and open space. There are no designated nature conservation sites in close proximity to the proposed development which are likely to be impacted by the proposals. A Preliminary Ecological Appraisal (PEA) / Preliminary Bat Roost Assessment (PBRA) (Focus Ecology, October 2023), Biodiversity Net Gain (BNG) Assessment (Focus Ecology, November 2023) and Bat Survey Report (Focus Ecology, September 2023) have been submitted in support of the planning application.

7.118. The submitted PEA notes that the site comprises a derelict office building (Building 1),

a garage building (GB), hardstanding with introduced shrub and ruderal species, modified grassland, scattered trees, artificial unsealed surface, scrub, lines of trees and hedgerows (native and ornamental). The PEA notes that Building 1 was found to have low potential for roosting bats. The garage building was identified to have negligible suitability for roosting bats, as well as the various trees on-site, although some may need further assessment prior to removal. The mature trees, hedges, scrub and introduced shrub on site provide low-quality foraging and commuting habitat for bats.

- 7.119. In this regard, the submitted EMES has been amended to include a pre-demolition bat survey to confirm the absence of roosting bats before Building 1 is demolished. Tree T46 will also be retained post-development; and a tree protection area will be installed, as per the submitted AMS. However, although the EMES (section 4.3) sets out details of new bat roost features to be provided as compensation and enhancement, these details are to be secured by condition, prior to the trees on site being felled. As such the ecologist advises that mitigation and compensation measures for bats as set out in the revised EMES must be attached by way of condition. And the remaining EMES measures / prescriptions must also be secured by condition. Appropriate conditions are attached.
- 7.120. The hedgerows, mature trees, introduced shrub and scrub however provide good nesting and foraging habitat for passerine birds. The rooftop of Building 1 has the potential to support common nesting birds including pigeons and gull species, as well as the possibility for peregrine falcons to use the roof. The site also has potential to support hedgehog and has limited opportunities for reptiles. The PEA recorded no invasive Schedule 9 species within the site. The submitted BNG assessment provided calculates a net gain of 0.38 habitat units and 0.34 hedgerow units as a result of the proposed development. This is equivalent to a net gain in habitat units of 12.8% and hedgerow units of 88.35%.
- 7.121. A revised BNG assessment was submitted to the LPSA, during the course of the application. This calculates the site's baseline biodiversity value as 2.99 habitat units and 0.39 hedgerow units. Informed by the BNG Site Plan, the post-development biodiversity value has been calculated as 1.93 habitat units – a net loss of 1.05 habitat units (-35.28%) and 1.25 hedgerow units – a gain of 0.86 units (+220.75%).
- 7.122. The UKHab survey plan and biodiversity metric have been amended to include changes in the proposed landscape scheme. The post-development plan in the BNG assessment has been amended to allow for direct comparison with the UKHab survey plan. A native shrub species with ornamental value (Hazel) has been incorporated into the ground level ornamental planting and rain gardens have been added to compensate for loss of scrub habitat. The biodiversity metric has been amended to remove medium sized trees from the post-development calculations as these sized trees cannot be sourced by the applicant.
- 7.123. In the context of non-mandatory BNG, for the scheme to be policy compliant it must deliver a BNG of >0%, so based on revised planting proposals for on-site delivery, there is a deficit of >1.05 habitat units. The applicant has indicated their willingness to reach a 10% BNG on this site, through a combination of on-site and off-site delivery. This means the scheme needs to deliver 3.29 habitat units overall (from a baseline of 2.99 habitat units).
- 7.124. In terms of off-site BNG, the Council's preference is delivery on suitable green space within Birmingham, as close as possible to the developmental impact. Therefore, to deliver a policy compliant scheme, a financial sum is to be secured via a S106 agreement to fund the delivery, long-term management and monitoring of appropriate habitat interventions off-site in order to meet the calculated deficit of 1.36 habitat units

so that the scheme achieves the 10% BNG agreed by the applicant. Habitat unit costs of £22,500 per habitat unit will be applicable to the development. This contribution would cover both initial habitat creation and aftercare works, plus ongoing, long-term (30-year period) management. Therefore, the financial contribution required for the off-site habitat interventions is £30,600 ( $1.36 \times £22,500$ ).

- 7.125. On top of the financial contribution for the habitat interventions, there will be additional costs associated with monitoring of the off-site BNG delivery over a 30-year period, which will need to feed into the Council's statutory biodiversity monitoring. A monitoring fee of £4,410 is thus also applicable. In total, the combined BNG and monitoring sum required would be £35,010 and will be added to the resolution at the end of this report.
- 7.126. A range of native herbaceous species has been added to ornamental planting mixes within the proposed landscaping scheme. Hazel (native species) have been specified for the shrub planting. The native hedge planting mix would have five native species, considered acceptable.
- 7.127. The revised roof terrace planting plan incorporates changes to increase the extent of native species in the ornamental planting and shrub mixes. In addition to soft landscaping, the EMES proposes installation of a range of faunal habitat compensation and enhancement measures, again considered acceptable by the city ecologist. Based on the above the city ecologist raises no objections to the development proposal, subject to the addition of the following conditions:
- Prior submission of bird/bat boxes;
  - The development to be carried out in accordance with the submitted ecological mitigation and enhancement strategy plan;
  - Prior submission of soft landscaping details; and
  - A condition to secure the full compliance of the submitted landscape management and maintenance plan.

#### Social Value Employment condition

- 7.128. The applicant, MODA Living, has been collaborating with the Council to test an innovative approach to the standard employment condition, which is usually added to such applications, where applicants must offer a certain percentage of jobs to local people.
- 7.129. The Employment Manager at the Council notes that: "Moda Living have been at the forefront of the BCC pilot scheme, to test social value as a planning condition, which would replace the standard condition normally used on such applications. This pilot takes forward actions agreed by Cabinet in November 2021 that a *"task and finish group will be established to investigate the potential for incorporating social value outcomes in the planning process. The task and finish group will produce a recommendation which will be subject to Cabinet approval."* In this regard, Moda Living were selected to join the pilot as a trusted partner with a track record of voluntarily bringing social value legacy projects through key developments in the city, particularly at The Mercian development on Broad Street. Through such work, early analysis evidences that social value conditions better align with the objectives of inclusive growth, as set out in the Birmingham Development Plan and the BCC Levelling Up Strategy through a combination of supporting local SME supply chains, providing a wider range of jobs and skills outcomes for local residents, especially those living in the surrounding neighbourhoods of the development and/or with barriers to employment, as well as critically underpinning community wealth building through supporting community/social infrastructure.
- 7.130. As such, following from such work, as part of this scheme, the applicant, in agreement with the Council's Employment Team, will submit a Social Value Action Plan. Which is



align with the Birmingham Business Charter of Social Responsibility. The plan will look to deliver social value at an equivalent level of 20% of the total development cost. This is considered to be a great positive of the scheme for the local workforce, businesses in the area and the wider supply chain and a condition to this effect is recommended below.

#### Other matters

- 7.131. Sport England have objected to the proposals on the basis of any subsequent s106 funds not providing the calculated £430,820 needed to improve playing pitches within the area. However, Sport England are not a statutory consultee in this instance, and it has already been deemed that any further financial contribution above and beyond the figure quoted above for off-site affordable housing would make the scheme unviable.
- 7.132. Birmingham Airport was consulted on the application and raise no objections, subject to the addition of the following conditions: prior submission of a Construction Management Plan, prior submission of a Bird Hazard management plan and a permanent obstacle lighting scheme. Appropriate safeguarding conditions are thus attached. The airport have also asked for the prior submission of an Instrument Flight Procedures Assessment, that they would like done as soon as possible. They do not foresee any issues in this regard but would like such an assessment submitted to clarify any potential impacts. The response from the Airport, was received very late in the day by officers, and thus it is felt unreasonable and unnecessary to delay the application for the purposes of having this assessment submitted and then reviewed by the airport. The applicant has thus been advised to submit this for assessment as soon as possible and a condition to this effect is also attached. Based on this, I deem the application acceptable in this regard.

#### Planning Balance

- 7.133. The harm identified to the significance of designated heritage assets needs to be weighed against the considerable importance and weight to be applied to the statutory duties of the Planning (Listed Buildings and Conservation Areas) Act 1990, as well as the degree of accord with BDP policy TP12 and the relevant paragraphs in the NPPF.
- 7.134. The identified harm is as follows;
- Designated assets
- Listed Buildings along Hagley Rd – Less than substantial harm - low to moderate levels;
  - Plough and Harrow – Grade II – Less than substantial harm - low to moderate levels;
  - Listed Buildings on Francis Rd – Less than substantial harm - low to moderate levels;
  - The Oratory - Grade II\* – Less than substantial harm – very low levels of harm; and
  - Edgbaston Conservation Area – Less than substantial harm - low – moderate levels.
- 7.135. In addition to the above, there are other adverse impacts as a result of development. Starting with the identified adverse visual impacts in some views. However, it is considered that these are localised, in close proximity to the development and result from the significant increase in height compared to the existing scenario. However, given the location of the site in close proximity to the city, where regeneration is encouraged along with the densification and efficient use of underutilised land, some level of impact is unavoidable and, in this context, afforded limited weight.
- 7.136. There are also adverse impacts upon daylight and sunlight, this is most notable in

relation to the “Blue Apartments and Broadway Plaza”. The significant adverse impacts appear in a limited number of residential units and can be attributed to design, as these are primarily impacted by existing balconies which cover the windows below. As such in order to support the use of this underutilised and vacant site for residential development, at a scale and number needed by the city, some impact in such proximity to this existing residential development is unavoidable. In addition, these properties maintain acceptable levels of privacy and there is no reduction in outdoor space. There is also no anticipated impact of noise/disturbance during operational phase of the development and so acceptable amenity overall, is maintained. However, the effect upon daylight and sunlight weighs against the proposed development and is given some weight in this regard.

- 7.137. Using the three strands of sustainable development the public benefits of the scheme are identified as follows:

#### *Economic*

- Supporting the ongoing growth of the city of Birmingham, with this major multi-million pound investment within this part of the city to help regenerate this large longstanding vacant, brownfield site;
- Temporary construction jobs over the construction period (circa 425no. full time equivalent new jobs on site per annum, over a circa 3.5 years);
- Operational employment jobs – the scheme will result in 14no. full time jobs upon completion. This is a net increase in jobs when looking at the vacant nature of the current site and the unlikelihood of the premise coming back into use as office space, given the lack of appetite for such accommodation is limited, especially given the substantial investment needed to bring this building back into use;
- Added viability and visibility to this neighbourhood within the city – the development forms part of a wider plan to introduce over 1,200 new living units within this part of the city, which would in turn add to much further far reaching benefits, impacting the local economy and beyond.

- 7.138. Para. 85 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, many of the new jobs would only be for a temporary (3 year) period, and that whilst some permanent jobs would be created, the figure is not significant. However, given the scale of development and economic potential that the new residents would bring to this part of the city, moderate weight is attached to these economic benefits.

#### *Social*

- The submitted Public Benefits statement from the applicant sets out that the creation of 425no. jobs for the construction phase of the development will generate £2,699,647 in social value. With the 14no. permanent jobs creating an additional £352,417. The applicant is to submit a Social Value Action Plan, setting out how the scheme will achieve the equivalent of 20% of the build costs in social value within the locality, helping local jobs, local businesses and the wider supply chain.
- A contribution towards the 4YHLS helping to deliver a significant number of homes, at a high density, within this sustainable location at the edge of the city centre.
- Meeting affordable housing needs – the scheme would add a significant sum of money to the city councils budget to provide affordable housing across the city, with the tenure, type and form of such housing to be decided by the LPA, on the basis of where this would deliver the greatest benefit to the city. The £1.9 million is equivalent of providing circa 8% affordable housing on-site, at an affordable rental rate at a 20% discount. The benefit of having this money off-site means the funds can be used to provide social rent, as well as affordable home ownership

units elsewhere within the city, and for larger family houses which are needed by the city.

- The development would further cement the idea of this site being used for housing, as opposed to commercial or leisure space, as has previously been the case. Allowing for more land within the wider site to become available for a similar use, with the possibility of adding a great deal of new homes for the city.
- Health and wellbeing – the development will deliver 2,900sqm of external public space, which will then add to a larger public park, running east to west through the site, in the longer term. This allows this existing built-up area, with dense housing to its north, to access this park and add to the level of public open space on offer within the locality.
- Natural surveillance of the area and activation of the Hagley Road frontage. Presently the building lies vacant, with issues of fly-tipping and anti-social behaviour. The scheme would allow hundreds of new residents within the area with activity throughout the day, to deter such activities.

7.139. Significant weight is thus attached to the substantial off-site contribution coming forward from the applicant, to deliver much needed affordable housing within the city. Although off-site, this was a view taken by officers to being the best outcome for the city. In addition, the wider social benefits of the development to local people and the creation of jobs, with the submission of a Social Value Action Plan, to secure far reaching benefits of the scheme to the wider community and local businesses are also noted and given significant weight. In addition, the wider benefits of adding much needed housing to the city, natural surveillance, health and wellbeing as well as contributing to the council 4-year housing land supply is given moderate weight.

#### *Environmental*

- Replacement of a building of little architectural merit, with a high quality, well-designed scheme, which will act as a gateway and marker for the city centre;
- Public realm and landscaping improvements for the wider community and future residents;
- Efficient use of suitable brownfield land, within an existing sustainable site for a considerable number of homes;
- Reduction in on site car parking and introduction of a sustainable 'car-free' development in close proximity to the Metro stop and city centre;
- Biodiversity net gain through on-site improvements and off-site contributions;
- Positive impact upon the wider city townscape, within the sky line.

7.140. Moderate weight is afforded to the sustainability credentials of the built development, I note the carbon impact of demolition, however given the existing BDP Policies, this carries limited weight in this context. The site has very limited ecological value however the development does result in a net loss on site. However, this is mitigated through a financial obligation for off-site habitat enhancements. The development would also result in the loss of existing trees, however, the tree replacement strategy is acceptable.

7.141. The designated heritage assets 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 varying levels of harm from low- to moderate.

7.142. However, on balance, I consider there are enough benefits associated with this proposal to outweigh the heritage harm, with particular reference to the large financial contribution being made to the city council to deliver much needed affordable housing in the areas most at need within the city, in a tenure and type as deemed appropriate

by the city council. Further, the addition of a large number of homes within this sustainable location, within a high quality and well-designed scheme are noted, alongside the social, economic and environmental benefits as set out above and as such, despite the small number of adverse impacts, as noted within the report, I deem on balance the benefits of the scheme outweigh these harms.

- 7.143. Moreover, the adverse impacts highlighted are not so significant or demonstrable that they would not be outweighed the identified benefits. Therefore, I recommend the application is approved subject to the conditions set out below and the completion of a legal agreement.

## **8. Conclusion**

- 8.1. The application proposal would see the development of a vacant brownfield site, at a high density, in order to provide a sustainable form of residential development. The development would see the erection of 462no. new homes, which would suit a range of future occupiers. The development is further seen to rationalise the site area and provide a good range of on-site private and public amenity space, with numerous public improvements, including high quality publicly accessible public open space. The proposals are further considered to offer a suitable level of car parking and development is noted as having a high degree of architectural merit, delivering a well-designed key marker building to the outskirts of the city centre, along a key gateway into the city core.
- 8.2. A detailed viability assessment has been considered as part of the proposals and following, a suitable financial contribution for off-site affordable housing provision has been agreed, at £1.9million pounds. The adverse impacts of the scheme, with regards to heritage, loss of daylight and sunlight and others as mentioned within the report, are noted and given weight as part of this decision. However, it is considered the scheme has a good level of public benefits which suitably outweigh this level of harm.
- 8.3. As such, the development proposals are recommended for approval and are considered to make a positive contribution to the city's aim of creating sustainable communities, in line with the BPD and the relevant sections of the NPPF. I consider that the current scheme to be a sustainable form of development, with no undue adverse impacts which would outweigh the significant benefits of the scheme as set out within this report.
- 8.4. NPPF Paragraph 226 makes provision for local authorities to demonstrate a four year housing land supply if they have an emerging local plan that has reached at least regulation 18 stage of the *Town and Country Planning (Local Planning) (England) Regulations 2012* and which includes both a policies map and proposed allocations towards meeting housing need. As the regulation 18 consultation on the *Birmingham Local Plan Preferred Options Document* was published on 8th July 2024, which includes a Policies Map and proposed allocations towards meeting housing need, it is now considered that the provisions of paragraph 226 apply in Birmingham. The requirement to demonstrate a four year rather than a five year housing land supply therefore now applies in the City. The City has 4.38 years supply. This is derived from a 5-Year requirement of 35,970 dwellings and a supply of 31,534 dwellings. As such NPPF paragraph 11(d) does not apply to this proposal and the application is found to be acceptable in this regard.

## **9. Recommendation:**

- 9.1. That, subject to no objection being raised by the LLFA and the appropriate IFP assessment being submitted to Birmingham Airport, application 2023/08705/pa be APPROVED with conditions, pending the completion of a suitable s106 Legal

Agreement to secure the following:

- An off-site, affordable housing contribution of one million nine hundred thousand pounds (£1,900,000.00) towards the city councils delivery of affordable housing within the city. This is to be index linked from 08/08/2024. These monies are to be deposited to the LPA at the following thresholds of occupancy of the development hereby approved:
    - Nine hundred and forty-five thousand pounds (£945,000.00) to be paid at occupancy of 200no. units; and
    - Nine hundred and forty-five thousand pounds (£945,000.00) to be paid at occupancy of 400no. units.
  - An off-site Biodiversity net gain financial contribution of £35,010.
- 9.2. In the absence of a suitable legal agreement not being completed to the satisfaction of the Local Planning Authority on or before 31<sup>st</sup> October 2024 or such later date as may be authorised by officers under powers hereby delegated, planning permission be refused for the following reasons:
- I. In the absence of any suitable legal agreement to secure a policy compliant level of affordable housing, the proposal would be contrary to policy TP31 of the Birmingham Development Plan and NPPF.
- 9.3. That the City Solicitor be authorised to prepare, seal and complete the appropriate legal agreement.
- 9.4. That in the event of a suitable legal agreement being completed to the satisfaction of the Local Planning Authority on or before 31<sup>st</sup> October 2024, or such later date as may be authorised by officers under delegated powers, planning permission for application 2023/08705/pa be APPROVED, subject to the conditions listed below (that may be amended, deleted or added to providing that the amendments do not materially alter the permission).

- 
- |    |  |
|----|--|
| 1  | Implement within 3 years (Full)  |
| 2  | Requires the scheme to be in accordance with the listed approved plans |
| 3  | Requires the submission and approval of external materials             |
| 4  | Requires the submission and approval of architectural detailing        |
| 5  | Requires the construction and approval of a sample panel on site       |
| 6  | Requires the submission and approval of building & site level details  |
| 7  | Requires the submission of hard and/or soft landscape details          |
| 8  | Requires the submission of a landscape management plan                 |
| 9  | Requires the submission of a lighting scheme                           |
| 10 | Prior submission of roof garden/terrace details                        |
| 11 | Requires the submission of a contaminated land verification report     |
| 12 | Requires the prior submission of a contamination remediation scheme    |
-

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- 13 Limits the hours of use
  - 14 Limits delivery time of goods to or from the site
  - 15 Requires the submission of extraction and odour control details
  - 16 Limits the noise levels for Plant and Machinery
  - 17 Requires the prior submission of noise insulation (variable)
  - 18 Prior submission of Noise Mitigation Scheme
  - 19 Prior submission of Construction Management Plan
  - 20 Submission of further details for approved commercial use
  - 21 Prior submission of foul and surface water flow details
  - 22 Requires the submission of cycle storage details
  - 23 Prevents occupation until the turning and parking area has been constructed
  - 24 Requires the submission of a management plan for deliveries and servicing
  - 25 Requires the submission of a residential travel plan
  - 26 Requires the submission of a parking management strategy
  - 27 Requires the submission and completion of works for the S278/TRO Agreement
  - 28 Requires the submission of details of refuse storage
  - 29 Prior submission of a social value action plan
  - 30 Requires the prior submission of details of bird/bat boxes
  - 31 Requires the implementation of the submitted mitigation/enhancement plan
  - 32 Ecological landscape management and maintenance plan
  - 33 Requires the submission of boundary treatment details
  - 34 To ensure energy and sustainability measures are delivered in accordance with statement
  - 35 Prior submission of wind baffle details and their retention
  - 36 Limits the maximum gross floorspace of the ancillary retail unit
  - 37 Compliance with the submitted Signal Survey and Television Reception Impact Assessment and detailed mitigation measures
  - 38 Arboricultural Method Statement and Tree Protection Plan - Implementation
  - 39 Requires tree pruning protection
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- 40 Submission of a Construction Management Strategy
  - 41 Submission of a Bird Hazard Management Plan
  - 42 Permanent Obstacle Lighting Scheme
  - 43 Submission of Instrument Flight Procedures Assessment
- 

Case Officer: Idris Gulfraz

## Photo(s)



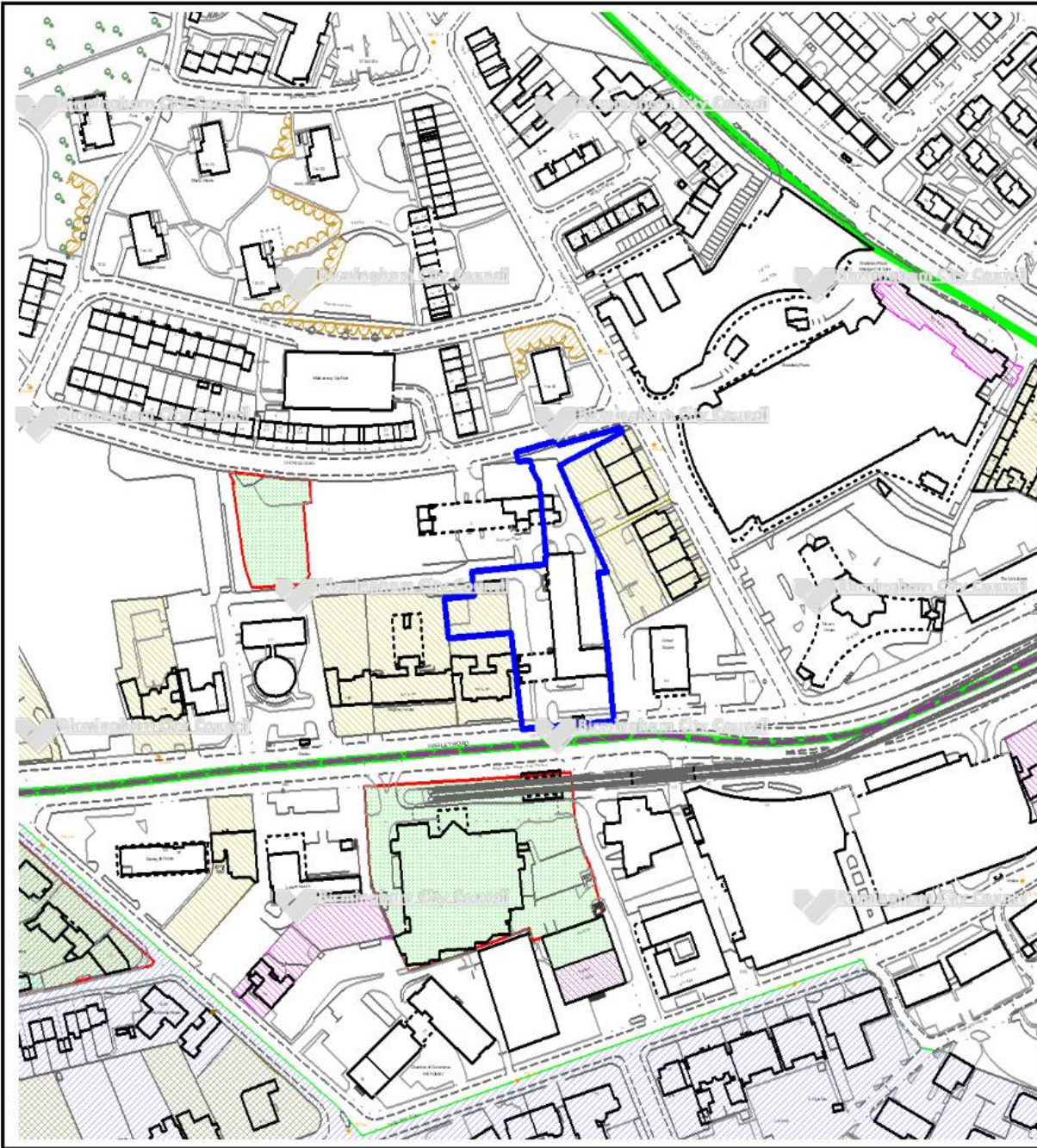
Photo 1 - Building frontage as seen from Hagley Road, looking north, into site.



Photo 2 - Building frontage from Hagley Road, looking north.



## Location Plan



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# **Birmingham City Council**

**Planning Committee**

**8 August 2024**

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>
Endorse	8	2022/06190/PA  Land off Barrows Lane Former Co-op Playing Pitches Yardley Birmingham B26 1SA  Erection of up to 87 dwellings, demolition of existing sports pavilion with replacement improved sports pavilion with associated infrastructure and access.

<b>Committee Date:</b>	<b>08/08/2024</b>	Application Number:	2022/06190/PA
Accepted:	26/08/2022	Application Type:	Full
Target Date:	23/10/2023		
Ward:	Yardley East		

Land off Barrows Lane, Former Co-op Playing Pitches, Yardley, Birmingham, B26 1SA

Erection of up to 87 dwellings, demolition of existing sports pavilion with replacement improved sports pavilion with associated infrastructure and access.

Applicant: Persimmon Homes  
Tameside Drive, Birmingham, B35 7AG

Agent:

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### Recommendation

### **Endorse**

### **Report regarding Planning Contributions to be agreed at Appeal**

#### **1 Introduction**

- 1.1 Planning permission was refused under delegated powers for up to 87 dwellings, demolition of existing sports pavilion with replacement improved sports pavilion with associated infrastructure and access at Land off Barrows Lane, Former Co-op Playing Pitches, Yardley, Birmingham, B26 1SA on 23<sup>rd</sup> October 2023. The application was refused for the following reason:

*The present scheme fails to adequately provide for mitigation by way of a suitable and agreed site for the replacement sports pitches that are lost from the site. Without such an agreement for suitable replacement or equivalent / improved facilities the proposal remains contrary to policies TP9 and TP11 of the Birmingham Development Plan, Exception 1 and 4 of Sport England's Playing Fields Policy and the NPPF 2023.*

- 1.2 A copy of the full Officers report is provided below explaining the reasoning behind the reason for refusal.
- 1.3 The applicant submitted an appeal (ref. APP/P4605/W/24/3342499) to the Planning Inspectorate following the Council's decision and the Inspectorate have decided that the appeal will be heard via a public inquiry commencing on 23<sup>rd</sup> July 2024.

#### **2 Appellant's Case**

- 2.1 The applicant has appealed on the grounds that:

- The football pitches have been closed since 2016, are undersized for adult games, are in poor condition, and are not needed for football in the area. There is no prospect of them being used again for football in the future and that their proposal would provide benefits to the continuing cricket facilities at the Barrows Lane site: a new cricket pavilion and improvements to the cricket pitch.
- The council has not given sufficient weight to the provision of 87 new dwellings, which includes 30 dwellings (35%) affordable and a sustainable mix of sizes which includes some 3-4 bedroom units.
- That, if necessary, suitable mitigation can be provided to improve the quality of off-site pitches at Oaklands Recreation Ground, Mackadown Sports and Social Club and Fox Hollies Leisure Centre (Off Site Leisure Works).

### **3 Councils Case**

3.1 The Council is contesting this decision on the grounds that:

- The pitches are intrinsically sound, and, with proper maintenance, could be brought back into use. There is under provision in football pitches in the area and its policies are worded to safeguard them from other development, only accepting their loss if they are suitably mitigated.
- That the mitigation proposals offered by the appellants have evolved since the decision but are still not properly defined. That they involve a quantitative loss of provision, would involve third parties / new planning permissions to secure delivery, delivery is uncertain and offer questionable benefits.
- Whilst new housing is welcomed, it should not be at the expense of the quality of urban life which, among other things, means ensuring that adequate sports pitches and public open space is maintained.

3.2 The evidence supporting these arguments is being examined in detail over the course of an 8 day Public Inquiry (scheduled 23<sup>rd</sup> July - 2<sup>nd</sup> August), with a government appointed Planning Inspector. The Inspector will consider the evidence and reach a decision on whether to allow the appeal or dismiss it. The Planning Inspectorate advise that a decision is due in September 2024.

### **4 Section 106 Legal Agreement**

4.1 In the meantime, and without prejudice to the Inspector's decision, the Council's solicitors have been working with the appellant's solicitors to draft a Section 106 legal agreement to secure the affordable housing and package of other benefits, in the event that the Inspector is minded to allow the appeal. The alternative is that the appellants agents present the Inspector with a Unilateral Agreement with legal wording in the clauses that favours their client, without input from the Council.

4.2 The heads of terms for this agreement would potentially secure:

**No.  
On-Site Provision**  
1

#### **Obligation**

Provision of 30 Affordable Housing Units (35% provision) comprising:

- 15 Affordable Rent – 12 x 2 bed apartments and 3 x 3 bed houses
- 8 Shared Ownership – 4 x 2 bed houses and 4 x 3 bed houses



- 7 First Homes – 7 x 2 bed houses
- 2 Provision of new pavilion in accordance with an agreed specification
- Off-Site Biodiversity Contribution**
- 3 Payment of £193,804 towards biodiversity off-setting within Sheldon Country Park
- Off-Site Leisure Works**
- 4 Payment of £316,375 towards off-site public open space and play improvements and maintenance at Gilberstone Recreation Ground
- 5 Payment of £369,305 towards Oaklands Recreation Ground comprising:
- £131,430 towards improvements to Pitch 1
  - £108,875 towards improvements to Pitch 2 and
  - £129,000 for 15 years future maintenance of Pitch 1 and 2
- 6 Payment of £708,965 towards Mackadown Sports Ground comprising:
- £288,965 towards improvements to grass platform (4 football pitches)
  - £400,000 towards a new clubhouse
  - £20,000 towards other ancillary improvements including fencing
- In addition - Payment of a monitoring and administration fee associated with the legal agreement of £13,000.
- 4.3 The off-site leisure works only come into the frame, if the Inspector considers off site mitigation for the loss of the existing pitches is necessary, and that the packages proposed by the appellant, individually or in part, adequately mitigate for the loss.
- 5 Recommendation**
- 5.1 That Planning Committee endorses the completion of a S106 agreement to secure the above contributions.

### **Original Delegated Report of Refused Application**

1. Proposal
- 1.1. This application relates to the erection of up to 87 dwellings, demolition of existing sports pavilion with replacement improved sports pavilion with associated infrastructure and access at land off Barrows Lane (former Co-op playing pitches).

- 1.2. The overall site measures approximately 3.48 hectares. The residential proposal seeks to be built at a density of 46dph.
- 1.3. The site would have a single access point off Barrows Lane as shown on Drawing 5000m (Planning Layout) which extends into the site. The road pattern is set out to provide a loop within the Site to allow sufficient access for emergency vehicles. There are also other smaller access roads and driveways from the main road serving private/shared surfaces.
- 1.4. The proposal seeks to provide the following mix of housing types:
  - 18no. 2-bed units (Open Market)
  - 20no. 3-bed units (Open Market)
  - 49no. 4-bed units (Open Market)
  - 12no. 2-bed apartments (Affordable rent)
  - 3no. 3-bed units (Affordable rent)
  - 4no. 2-bed units (Affordable – Shared Ownership)
  - 4no. 3-bed units (Affordable – Shared Ownership)
  - 7no. 2-bed units (First Homes)
- 1.5. The dwellings would comprise a mix of detached, semi-detached, terraced properties and apartments. The application seeks to provide 35% affordable housing on-site.
- 1.6. The properties would be predominantly designed in brick with gable and hipped roof forms. The development would be generally 2-2.5 stories with the apartment block designed as 3-storey. Each residential dwelling would have a front garden and rear garden.
- 1.7. Each 1 and 2 bed unit would be allocated 1 car parking space per dwelling and 3+ bed units would be allocated 2 spaces per dwelling as shown on the Parking Strategy (Drawing 3006D). The larger dwellings (Barnwood/Greenwood) are designed with single/double garages. The apartment block has courtyard style parking to the north. Each dwelling would be designed with 1 active electric vehicle charging point.
- 1.8. The application indicates that the remaining cricket/bowling facility would remain. The existing pavilion located close to the site's entrance would be demolished and re-built to provide a new pavilion as show on Drawing P17-1926-004 Revision C (Cricket Pavilion).
- 1.9. A slow worm mitigation area is proposed to the eastern corner of the site which includes a balancing pond and landscaping. This area is also identified as Public Open Space by the developer.
- 1.10. The following documents have been submitted in support of this application:
  - Planning Statement
  - Playing Field Assessment
  - Design and Access Statement
  - Air Quality Assessment
  - Transport Assessment
  - RSA Audit
  - Ecology Assessment
  - Tree Survey

- Flood Risk Assessment
- Boundary Treatment Plan
- Materials Plan
- Storey Heights Plan
- Statement of Community Involvement
- House types
- Affordable Housing Statement
- Affordable Housing Strategy
- Street Scenes
- Biodiversity net gain matrix
- Energy/Sustainability Statement/Sustainable Construction Statement
- Noise Report
- Parking Strategy
- Residential Standards
- Site Waste Strategy
- Travel Plan

## 2. Site & Surroundings

- 2.1. The application site is currently a disused private sports and social club (Birmingham Co-operative Sports and Social Club) consisting of a cricket pitch, 2 adult football pitches, 2 bowling greens and a 2-storey club house. Access to the site is via a gated entrance off Barrows Lane.
- 2.2. The site is located east of Barrows Lane. Immediately east of the access lies the two-storey club house, currently out of use and in a deteriorating state. Immediately in front of the clubhouse lies an area of hardstanding used as a car park, beyond which lies 2no. bowling greens. North of the bowling green lies the cricket pitch. South of the bowling green comprises 2no. disused tennis pitches. Beyond the disused cricket pitch to the east comprises 2no. playing fields, previously used as 2no. adult football pitches. The application does not include the bowling green and the cricket pitch within its red line plan.
- 2.3. The application site comprises large areas of lawn to the east of the site where the playing fields are located which is encompassed by mature trees which forms the sites natural boundary treatment which are protected by Tree preservation Orders. There are significant level differences within the former playing fields as the western portion of the site has a higher ground level in comparison the eastern part.
- 2.4. The surrounding area is predominantly residential comprising a range of detached and semi-detached properties, predominantly dating from the inter-war period.
- 2.5. Approximately 350m north of the site lies Sedgemere Sports and Social Club which offers a range of facilities including 3G pitches.

## 3. Planning History

- 3.1. 02/07/1981 - 08941008. Change of use from sports ground with attendant facilities to housing development. Refused - on the grounds of loss of open space and sports pitches.

- 3.2. 24/02/2015 - 2014/08666/PA. Hybrid planning application (part full and part outline) comprising:  
1) Full planning application for the demolition of sports and social club and development of replacement and improved sports facilities.  
2) Outline planning application for enabling residential development of up to 82 dwelling houses and associated access – Withdrawn.
- 3.3. 03/03/2016 - 2015/09481/PA – Hybrid application for sport facilities and part site redevelopment for housing – Refused:  
1. lack of financial contributions and  
2. poor access arrangements considered unsafe for vehicles and pedestrians.
- 3.4. 12/10/2021 - Erection of up to 108 dwellings, demolition of existing sports pavilion with replacement improved sports pavilion with associated infrastructure and access – withdrawn.

#### 4. Consultation

- 4.1. Transportation Development. No objection, subject to conditions and S278 Agreement and Section 38 application.
- 4.2. Regulatory Services - No objections, subject to conditions.
- 4.3. City Design – No objection, subject to conditions.
- 4.4. Leisure Services – Objection.
- 4.5. Sport England – Objection.
- 4.6. Lead Local Flood Authority – Objection.
- 4.7. Ecology – No objection, subject to off-site Biodiversity Net Gain contribution to be secured via a S106 agreement.
- 4.8. Tree Officer – No objection, subject to condition.
- 4.9. Employment Access Team – No employment conditions required.
- 4.10. Severn Trent Water – No objection, subject to conditions.
- 4.11. West Midlands Fire Service – No objection.
- 4.12. West Midlands Police – No objection.

#### 5. Third Party Responses:

- 5.1. Neighbouring residential properties, residents' groups, Local Councillors and Jess Phillips MP consulted. Site and press notice posted. Over 2000 objections (including a physical and online petition) have been received on this application.
- 5.2. Objections received from Jess Phillips MP on the following grounds:
- Impact amenities of local residents
  - Loss of green space and loss of grass playing fields in the area

- PPS demonstrates there is a shortfall in provision especially 11v11 pitches. It specifically mentions the Co-operative Sports and Social Club referring to the fact that it could be brought back to use to reduce local shortfalls and that this could be done within 1-2 years for a low cost
- No justification for erosion of pitch provision
- The replacement 3G pitch would be surplus to requirement in this part of Birmingham
- Replacement site is in a completely different ward, separating local users who are losing this amenity
- PPS demonstrates lack of
- Further housing growth in the City will create further demand
- The proposal remains in breach of Policy TP9 and thus should be refused.

5.3. Objections received from Andy Street, Mayor of WMCA on the following grounds:

- The site provides much needed green space in East Birmingham
- Surrounded by protected trees and wildlife
- Important priority as a mayor is to tackle health inequalities across the region. Sites like these are crucial to tackling health inequalities
- Green space provides other positive benefits in the form of air quality, biodiversity, positive effects of greenspace
- Need to target brownfield land, not greenfield land
- Site can be restored as a space for exercise rather than to be developed on
- The proposal has attracted cross-party opposition

5.4. Objections received from Councillor Deborah Harris presented a petition with 684 physical signatures and 1597 online signatures at Full Council. Councillor Harries has also objected on the following grounds:

- We should be protecting our playing fields and football pitches
- Why are we considering building houses and roads on green space, when there are plenty of brownfield sites
- Why are we not protecting our heritage and our green space on the edge of such an area
- All green spaces in Yardley are currently being assessed as part of the PPS, how can a planning application to build houses on this site be considered before the strategic work has been completed
- Replacement pitch at Waverly College is in a different ward and therefore no benefit to the people of Yardley
- An all-weather pitch is not a replacement for the loss of outdoor football pitches at Barrows Lane
- Yardley simply doesn't have the infrastructure to cope with a housing development of this size
- And at a time when Birmingham is basking in the glory of a Birmingham 2022 Commonwealth Games, and working on the legacy of this international, multi-sport event, as well as following a summer that saw a surge in the popularity of women's football with UEFA Women's Euro 2022, it is an anathema to me that we are looking to concrete over any of our outdoor football and sporting pitches
- Disappointed by the fact that such a valuable green resource has been closed and gated to local residents and neglected for so many years, as well as it being virtually impossible for the community to engage with the landowner, an organisation that most would consider to be community orientated



- This is a battle of local people, who have lived in Yardley for decades and whose children played on the football pitches, against big business and the multi-million-pound financial gains to be made from selling land for housing development. This is corporate versus community
- The community of Yardley have spoken very loudly and clearly that they don't want a large housing development on this green space off Barrows Lane

5.5. Objections received from local residents on the following grounds:

- Create greater levels of traffic congestion and parking issues
- More pressures on doctors, schools, police, gas electric, water and most importantly more trouble, anti social behaviour
- Development will harm wildlife
- People in Yardley think enough is enough as we feel councillors do not have our neighbour spirit at heart
- Area is being eroded by all these developments. Also will it devalue house properties in the area
- Playing fields could benefit the community once again as it has done historically
- This area is ideal to be revitalised as a new sports complex
- The development of this many house will bring more pollution and traffic in an area
- This proposal will permanently reduce the availability of sports pitches available for sports other than cricket, this area has laid fallow for far too long already
- Wavely School is too far away to be considered a suitable substitute to Barrows Lane
- Clubhouse will create noise disturbance issues
- Create more pollution in the area
- Poorly handled public consultation from the developers
- The land was bequeathed to the people of Yardley decades ago for recreation by the Barrows family and gave the Co op Guardianship, what right have they to sell and profit
- Already limited green space in Yardley, for years the site has been operating successfully as a sports facility for the benefit of the local community
- Developers only care for profit and not the wishes or needs of the local community
- Go and build on existing brown sites not on a wildlife haven which includes slow worms, owls, bats, hedgehogs, foxes already endangered
- Proposed dwellings will impact on privacy of existing residential occupiers
- Our property is located at the bottom of the sport field, the sports field is approximately 20ft higher than our garden. As per letters from Severn Trent (copies attached) we have already experienced issues with flooding and sewage due to the proximity of our property. Building on the sports field will exacerbate flooding issues as the pitch which currently soaks excess water will be developed upon
- Bats have been seen at the playing fields which are protected species
- Proposal will create dust and other building related problems
- Loosing this green space to housing, decreases children using outdoor activities to stay fit and healthy
- Birmingham Development Plan does not identify Barrows Lane, or this part of Yardley, for any spatial delivery of growth, affordable housing, housing regeneration, or new housing

- Co-op have been, and continue to be, disingenuous, misleading and in clear breach of their own founding principles
- Barrows Lane is a much valued green space in Yardley for the local community
- Protect greenfield sites from development when there are plenty of brownfield sites
- Legacy of the Commonwealth Games - we need our green spaces to benefit people young and old who need sports grounds for exercise, fresh air and well-being. This historic sports ground has been under used deliberately to create an excuse to build
- Loss of Wildlife and Green Space - This is `Money over Nature
- This will not protect the slow worm population or enhance wildlife
- A new pond proposed by the developers will not be adequate to let water sink away. The lower field has a big drainage problem. If this issue is not addressed by the developers (which is often is the case) the existing neighbourhood gardens and new gardens will have a flooding problem
- Co-operative have actively discouraged any local use of the facilities speaks very loudly against the community-first image they portray elsewhere in their marketing and advertising
- Persimmon consulted residents who live outside of Yardley, namely the ones who are going to benefit in terms of a shiny new football pitch and facilities
- There are many grassroots football teams who would jump at the chance to play at Barrows Lane again
- The land should remain for sport and leisure
- My grandson's local football team approached the Co-op as they were in need of a place to call home but were refused by them
- So many youngsters are interested in playing sports, especially following the Commonwealth Games and the win of the European cup by the England ladies team (Lionesses). Why would we be considering losing already available space for them
- Child obesity is of great concern across our nation and playing sports is not only good for physical health but mental health and wellbeing
- Without the correct facilities, we will lose the ability to be able to produce sporting talent
- I used to watch the games of football that were played at Barrows Lane. This is no longer possible since the Co-op decided to shut out the community in their quest for gain
- At night the field is dark as there is very little light from the surrounding properties. This relative absence of light pollution enables nocturnal animals to forage for food
- A three-story building in the middle of the development is simply not within keeping with the surrounding area
- Persimmon and Co-op want to build on two football pitches to make money, not for the benefit of the local community. They refer to the pitches as unused, this is a lie. For years teams have been prevented from using them. They are very much valued and needed in the area
- Co-Op have given Sport for Life International the running of these premises and they have continually refused to engage with our request to be allowed access
- Online public consultation was not reflective of the constituents of Yardley
- The consultation brochure states the FA have assessed the pitches as unusable. Question if this is a true statement from FA. Questions on the public consultation are very leading; Do you want new houses to tackle the

housing crisis?...Do you support affordable homes for key workers?...Do you support a reduction in the number of houses being built?. Yes/No answers in a consultation should not be relied upon

- The PPS was approved June 2018 and intended to last until 2031. Area 4 states that Co-op Sports and Social Club consider bringing pitch back into use to reduce local shortfalls. I would question therefore why this would still not be the case?
- The East Birmingham Inclusive growth strategy identifies compared to many other parts of the city, people in East Birmingham have shorter lives and are far more likely to experience ill health. The Council has made a commitment to support local cooperative and enable people to drive their local economy through community led economic development. People in Yardley want to bring the football pitches back to life as it would meet the of the East Birmingham Strategy
- Do not take away a valuable space that can provide young people in the ward a safe place to train, play, feel good, raise aspirations and build self-esteem

## 6. Relevant National & Local Policy Context:

### 6.1. National Planning Policy Framework (2023):

- 2. Achieving sustainable development
- 5. Delivering a sufficient supply of homes
- 8. Promoting healthy and safe communities
- 15. Conserving and enhancing the natural environment

### 6.2. Birmingham Development Plan (2017):

- PG3 Place making
- GA8 Eastern Triangle
- TP9 Open space, playing fields and allotments
- TP11 Sports facilities
- TP27 Sustainable neighbourhoods
- TP28 The location of new housing
- TP30 The type, size and density of new housing
- TP31 Affordable housing

### 6.3. Development Management DPD (2021):

- DM2 Amenity
- DM10 Standards for Residential Development

### 6.4. Supplementary Planning Documents & Guidance:

- Playing Pitch Strategy (2017)
- Birmingham Design Guide (BDG 2022)
- Nationally Described Space Standards (NDSS 2015)
- Birmingham Parking SPD (2021)

## 7. Planning Considerations

- ### 7.1.
- This application has been assessed against the objectives of the policies as set out above. The critical matters for consideration are the principle of the development, design and appearance, residential amenity and highway safety/parking, drainage, ecology and public open space (POS).

## **Background**

- 7.2. It is understood that the grounds originated as part of the former Barrows and Cadbury family land which formed part of the wider landscaped grounds around the main house before the family sold off and covenanted part of the land for community use. Under the management of Co-op Limited the site has been historically used as a sports facility, including 2 grass football pitches. Within the Playing Field Assessment the developer explains that the site ceased use as a pitch over seven years ago due to declining pitch quality and lack of demand.
- 7.3. The Local Planning Authority has carried out public consultation with local residents, local councillors and key politicians. The responses received as set out in section 5 of this report suggests that the site was previously in use by the local community for sporting activities including football. However, the management company closed the site which meant that the local community could no longer use the sports facilities.
- 7.4. In 2016 (App. No. 2015/09481/PA), the site was proposed for residential redevelopment. However, the planning application was refused due to highway access concerns and lack of suitable contributions to offset loss of playing pitches, open space and affordable housing. A further application for up to 108 dwellings was proposed in 2019 (App. No. 2019/08630/PA). The application was subsequently withdrawn. Since the first refusal in 2015, the Council has adopted the Birmingham Development Plan, Development Management Plan and a Playing Pitch Strategy. All of which form part of the material planning consideration for this current application.

## **Principle - Open Space**

- 7.5. Policy TP9 of the BDP states that planning permission will not normally be granted for development on open space except where it can be shown by an up-to-date assessment of need that the open space is surplus taking account of a minimum standard of 2 ha per 1,000 population and the accessibility and quality criteria, the lost site will be replaced by a similar piece of open space, if an area of open space has inherent problems that would result in the loss of a small part of the larger open space will be considered if compensation measures would result in significant improvements to the quality of the remaining area or if the development is for alternative sport or recreational provision.
- 7.6. Policy TP9 protects playing fields from development. Development will only be considered where they are either shown to be surplus for playing field use taking account of the minimum standard of 1.2 ha per 1000 population, through a robust and up to date assessment and are not required to meet other open space deficiencies, or alternative provision is provided which is of equivalent quality, accessibility and size.
- 7.7. The proposal would result in the loss of open space (in private ownership), consideration needs to be given to the land meeting other open space deficiencies. The Ward has a provision of 1.67ha of public open space per 1000 population. Whilst this is below the minimum standard of 2 ha per 1000 population it is noted that the application site and the southern section of the ward is well served by significant areas of public open space both within the ward as well as in adjoining wards.
- 7.8. In terms of open space, Old Yardley Park is some 250m to the north, whilst Gilbertstone Recreation Ground (Sheldon) is 450m to the south and Oaklands

Recreation Ground (South Yardley) is 815m to the southwest. These large areas of public open space have good access and contain a variety of sport, leisure and recreational facilities.

- 7.9. As per Policy TP9, development on playing fields will only be considered where they are shown to be surplus for playing field use through a robust and up to date assessment or alternative provision is provided which is of equivalent quality, accessibility and size. It is noted a Playing Field Assessment has been submitted as part of this application, however it does not assess whether the playing fields at the application site are surplus to requirement. The developer put forward a number of alternative sites instead to build a replacement pitch upon, however each has been discounted due to a number of reasons which will be explained in further detail below.

### **Principle - Loss of Playing Field**

- 7.10. Policy TP11 of the BDP states that the City Council will keep the provision of sports facilities within the City under review in light of changing demands and preferences, and where deficiencies and oversupply are identified in an up-to-date assessment will aim to work with partners to address this. Sports and physical activity facilities will be protected from development, unless it can be demonstrated that they are surplus to requirements through a robust and up to date assessment of need. Where there is identified need for particular sports and physical recreation facilities, the loss of existing sports facilities for these sports will not be allowed unless an equivalent or better quantity and quality replacement provision is provided.
- 7.11. The current sports grounds contain several facilities, including a club house, 2 x bowling greens, cricket pitch and two grass football pitches. It is understood that these privately owned pitches have not been offered for use for circa 7 years. Whilst they are no longer in use their redevelopment is still considered a loss of playing fields and green space that has been formally laid out as 2 football pitches and therefore the loss to the area/community for their value is assessed. In this case, the proposal represents the loss of approximately 2.3 hectares of playing field provision.
- 7.12. The applicant has provided a Playing Field Assessment in support of the loss of playing fields at Barrows Lane. Again, upon reviewing the Playing Field Assessment, the applicant is not seeking to argue that the playing fields are in fact surplus to requirement, rather seek to provide suitable mitigation and equitable replacement for the loss of the playing fields instead.
- 7.13. As part of this application, Waverley College was put forward as a replacement site for a 3G pitch as it was located circa 3km from the application site and presented as a site to improve sporting facilities in the area for the college and local community. However, upon reviewing the planning history at Waverley College, it was found that they already have a 3G pitch coming forward off the back of another permission at Heartlands Hospital (App. No. 2020/08224/PA) and therefore this site has now been discounted. A further assessment of this site has also been made by Sport England in their consultation response which will be expanded on within the subsequent section of this report.
- 7.14. The applicant subsequently put two further sites forward as a potential site for a replacement pitch; Gilberstone and Oaklands. Leisure Services were re-consulted to consider the two sites of which both were discounted due to the reasons set out below:



- 7.15. Gilberstone Recreational Ground: Site would only fit a junior pitch because residents have adopted the site as public open space for general recreation purposes. The site would require a new pavilion accessed off Manor House Lane to make it viable as a formal sports field and a club would need to be identified to manage this facility. There would be significant resident opposition to developing this site for formal sports as the community have aspirations to develop it for nature conservation and broader landscape improvements for casual recreation. The land is already in BCC's possession and does not therefore constitute additional or adequate compensatory provision. Without an interested club there is no sustainable solution as to how the Council would sustain football here.
- 7.16. Oaklands Recreation Ground: Pitches are already developed in this location with Tesco S106 monies and a club is already in occupation, and prepared to take on the pitches. The rest of the site has been laid out as a public park, which has seen recent investment providing good quality open space. The land is already in BCC's possession and does not therefore constitute additional or adequate compensatory provision. There is potential to extend the Vibe for changing facilities, but this is some distance from the pitches, but would work better than standalone changing rooms which historically have been vulnerable to vandalism.

**Principle - Playing Pitch Strategy (PPS 2017)**

- 7.17. The strategy seeks to provide planning guidance to assess development proposals affecting outdoor sports facilities, informing the protection and provision of playing pitches and Informing land use decisions in respect of future use of existing playing pitch areas and playing fields.
- 7.18. The strategy breaks the city into 4 areas for analysis. The application site falls within Area 4 of the 'study area'. In terms of the current picture for grass football pitches; a shortfall of 1.5 match sessions on youth pitches is identified. In terms of future demand (2031); a shortfall of 4 match sessions are identified on adult grass football pitches as well as shortfalls for youth football on grass pitches. When assessing demand for 3G pitches; current demand in area 4 is met and future demand for such pitches is also met.
- 7.19. The PPS concludes that there is a need to protect all existing playing pitch provision until demand is met; or there is a requirement to replace any lost provision to an equal or better quantity and quality before it is lost. In the main, there are no pitch surpluses and shortfalls expressed can be met by improving pitch quality to increase capacity. In some instances, however, there may also be a requirement for access to existing unused pitches and the restoration of disused/lapsed pitches.
- 7.20. Sport England have been consulted as part of this application and object to the loss of x2 football pitches at Barrows Lane. Within Sport England's Exception test; E1 requires a robust and up to date assessment has demonstrated; to the satisfaction of Sport England, that there is an excess of playing field provision in the catchment, which will remain the case should the development be permitted, and the site has no special significance to the interests of sport. Exception E4 requires the area of playing field to be lost as a result of the proposed development will be replaced, prior to the commencement of development, by a new area of playing field:
- of equivalent or better quality, and
  - of equivalent or greater quantity, and
  - in a suitable location, and
  - subject to equivalent or better accessibility and management arrangements.

- 7.21. Within their consultation response, Sport England states that there is no evidence presented by the applicant that the playing field is surplus to requirements under Exception E1. The applicant had put forward a site for a replacement pitch at Waverley College. On this, Sport England comments; *'The provision of an AGP on existing playing field at Waverley College would not be considered to meet Exception E4 as this will not provide a replacement area of playing field in quantity that is equitable to the area of playing field loss. Since the AGP would be located on an existing playing field, there would be a net loss of quantity (area). This is clearly explained in paragraph 69 of our guidance which states "Intensification or increasing the use of existing areas of playing field on the application site or off site, including marking out playing pitches on areas of a playing field not currently marked out for playing pitches, does not meet the requirements of this Exception 4. This is because it does not provide a new area of playing field (quantity) and may also cause deterioration in the quality of existing playing fields." We also take the view that the proposal would not accord with policy TP9 of the BDP or para 99b) of the NPPF for the same reason'*. As such, in the absence of a suitable site being agreed that would meet with Exception E1 and E4, Sport England have maintained their objection.
- 7.22. Sport England also note there is no evidence provided that there is a community need for a new 3G AGP in this location and that the existing PPS highlights this. As part of Sport England's consultation, they have consulted the Football Foundation who identified shortfalls of grass pitch capacity in all formats, advising that they object to the loss of grass pitches. They also comment that they are aware of previous club interest in using the pitches at Barrows Lane and so in their view there is demand for these pitches.
- 7.23. An extension of time was agreed with the applicants to allow consideration of an updated PPS which would highlight any potential suitable replacement sites to mitigate for the loss of the pitches at Barrows Lane. The latest PPS, whilst not formally published, is now finalised and has been reviewed by the Council to see if any suitable replacement sites can be identified. To take a pragmatic approach, our internal Leisure Services Department carried out a comprehensive review of potential sites within the emerging PPS, however each were discounted due to various reasons. This information has been shared with the applicant. However, given that the emerging PPS has not been published, the determination of this application has been based on the adopted PPS (2017).
- 7.24. Furthermore, a further analysis of the wording of policy TP11 and Sport England's Exception E4 highlights that the pitch would need to be either granted planning permission in tandem with this application or beforehand. This would mean identifying a pitch first, agreeing with relevant parties if it can sustain the level of spatial development required for a replacement pitch, suitability of floodlights (taking into consideration residential amenity/impact on ecology etc.), provision of changing facilities, car parking, ensuring there is local demand/clubs to sustain the provision of the pitch as well as everyday maintenance of the site.
- 7.25. Within their submission documents, the applicant has proposed the same financial package as previously set out in the withdrawn 2019 application to mitigate for the loss of the pitches and to secure funding for a replacement pitch/changing facility to be secured via a S106 package:
- AGP: £850,000
  - Changing Provision (Cricket Pavilion): £450,000 (current estimates for a 2 team changing room building are now in the region of £750k taking into account local site conditions)

- Parking: £200,000

- 7.26. However, as set out above, the policy requires a replacement pitch to be identified first. A financial package as put forward by the applicant would not be sufficient to justify the loss of playing fields in the absence of such a pitch.
- 7.27. Overall, the Council considers that the site at Barrows Lane is playing fields. Irrespective of the applicant's position and that its lack of use, and inability to be accessed, this does not negate their designation as playing fields and sports facilities and that the wider playing field site is in fact still in use. Thus far, the applicant has been unable to demonstrate that the Playing Fields are surplus to requirement/demand, nor have they been able to find a suitable replacement site to mitigate for the loss of the playing fields. The LPA has gone a step further to grant an extension of time to review the emerging PPS and whether it can identify any such potential sites, however no suitable sites have been identified. As such, the principle of residential development in this location is deemed unacceptable and contrary to policy TP9 and TP11 of the BDP, Exception 1 and 4 of Sport England's Playing Fields Policy and the NPPF 2023.

### **Housing Need/5 Year Housing Land Supply**

- 7.28. The applicant has stressed that the proposal would deliver much needed housing and crucially affordable housing at 35% on-site. The applicant argues that without the new sports facilities, the housing would not be delivered.
- 7.29. 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.
- 7.30. The Birmingham Development Plan became 5 years old on 10th January 2022. 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 now be calculated against the Local Housing Need figure for Birmingham. As of 10th January 2022, 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.
- 7.31. Policy GA8 identifies the Eastern Triangle as a growth area to deliver regeneration and around 1000 new homes. Several project areas are identified to deliver positive change including; Stechford, The Meadway and Shard End. The application site falls within this growth area boundary but is not specifically allocated for residential development.
- 7.32. Whilst it is acknowledged that the development would provide much needed housing (including affordable housing at 35% in line with Policy TP31) within the city's boundary, this should not be at the expense of losing valuable sports facilities. This is demonstrated through the protection afforded to such facilities via local and national planning policy.

## **Design/Appearance**

- 7.33. The applicant has worked pro-actively to engage with the comments made by the Council's City Design Officer who had concerns over a number of the house types not complying with the NDSS, lack of amenity space afforded to the apartments and the roof form lacking cohesion with surrounding existing properties.
- 7.34. The applicant has sought to ensure each property is NDSS compliant, as well as including additional amenity space for the apartment block in the form of balconies and communal amenity space and has sought to include some hipped roof designs and faux chimneys to a number of the properties. The Design Officer raised some concerns over the dominance of car parking within the site, however given the spatial constraints of the site it is considered the parking arrangement is acceptable given that a greater number of properties have parking to the sides of the property and each dwelling has a small landscape front amenity area which would aid to reduce the visual impact of the car parking areas.
- 7.35. Overall, the layout achieves good urban design principles with a good level of natural surveillance and security to the public realm. The houses would be a mix of 2 and 2.5 storey with the central apartment proposed as 3 storeys. Each house type has a similar continuity of materials (i.e. brick) and variations in style provided by brick detailing within the building facades and window surrounds. It is considered that the application demonstrates that the site could accommodate the proposed level of residential development in a manner which would have an acceptable impact on the character of the area.
- 7.36. The scheme proposes to create a realigned driveway from Barrows Lane where the existing clubhouse would be demolished to enable a widened access. The new pavilion would sit further north of the access. It would be designed as single storey, providing modernised facilities for the cricket pitches. The pavilion would be of a modest size and would provide a visually aesthetic and subservient building in comparison to what is existing. It would also sit within a landscaped area encompassed by trees so that it is spatially and visually separated from the residential part of the development.

## **Residential Amenity**

- 7.37. The applicant has made a number of amendments in an effort to address design and layout issues. The latest layout of the dwellings would largely meet NDSS requirement in terms of floorspace standards and bedroom standards, however, it is noted house type Danbury would have a 3rd bedroom measuring only 4.9sqm.
- 7.38. As per guidance set out in the Birmingham Design Guide, all residents should be able to access private outdoor amenity space, of sufficient size and quality to serve the occupants of the dwelling. As a minimum, the following requirements must be provided:
- 70sq.m minimum for a family home (3+ bed).
  - 52sq.m for 2 bed houses.
  - 42sq.m for a 1 bed house.
  - Balconies a minimum of 1.5m in depth.
  - For each apartment: 5sq.m (1 bed flat), 7sq.m (2 bed flat) and 9sq.m (3 bed flat)
- 7.39. A review of the Residential Standards spreadsheet and Planning Layout Plan submitted by the applicant suggests a number of plots within the following

housetypes would not meet the minimum garden size requirement as set out within the BDG: Saunton, Haldon, Wareham, Whinefell, Rendelsham, Barnwood, Haldon. The apartment block would provide adequate private amenity space.

- 7.40. All other separation distances would be met as per guidance set out in the BDG.
- 7.41. Overall it is considered, whilst amendments have been made to improve the site layout and overcome some key design issues, a large number of plots would fail to meet the residential amenity standards (particularly in terms of private amenity space) contrary to policy.
- 7.42. Regulatory Services have been consulted as part of this application and raise no objections to the scheme subject to conditions relating to electric vehicle charging and construction management plan.

### **Landscape/Trees**

- 7.43. A landscaping scheme has been prepared for the development which includes planting of native and ornamental species. The Tree Officer considers that most of the category U tree removals are advisable and canopy cover within the site would be considerably increased by the new landscape planting. A condition for an Arboricultural Method Statement is suggested by the Tree Officer.

### **Highway Safety**

- 7.44. A Transport Assessment and Road Safety Audit has been submitted in support of the application which has found that traffic forecast to be generated by the development would not result in a material impact on the local highway network nor would the development give rise to any highway safety issues.
- 7.45. The Transportation Officer hasn't raised any significant concerns however sought further clarity on the practicality of tandem parking, pedestrian visibility, refuse vehicle tracking and other transported related queries for the developer to address. The applicant has provided further clarity on these points.
- 7.46. Overall, Transportation Development do not raise any objections, subject to conditions relating to Construction Method Statement, Access conditions, parking (including cycle) conditions as well as a S278 Agreement and Section 38 application.

### **Other Issues:**

#### **Drainage**

- 7.47. LLFA initially raised concerns relating to the discrepancies in the size of the development site in respect of the submitted Flood Risk Assessment as the greenfield discharge rate would be based off this. LLFA also raised concerns on whether all suitable SUDs methods had been investigated. An amended FRA has been submitted in response to LLFA comments.
- 7.48. Clarification from STW to LLFA has been provided which confirms that the disposal of surface water into STW networks relates only to the roof area of the properties and not to the green open space, highways or driveways as part of the development. As such, STW will only accept surface water flows from the impermeable area of 1.25 hectares (impermeable spaces) set to 5 l/s which would result in a maximum



discharge rate of 6.25 l/s not 16.8 l/s as proposed. On this basis, LLFA object to the proposed development on drainage grounds.

## **Ecology**

- 7.49. A Preliminary Ecological Appraisal has been submitted in support of the application which has been informed by ecological records search, habitat survey and protected species scoping assessment, bat surveys and a reptile survey.
- 7.50. An area of POS including an attenuation basin and semi-natural grassland and scrub habitats is proposed to the eastern end of the site to mitigate impacts on slow worms which is considered reasonable.
- 7.51. The City Council's Ecologist initially had concerns on the level of Biodiversity Net Gain the proposal sought to achieve which stood at +0.37% and felt the scheme could go further in enhancing the ecological value of the site. A revised Biodiversity Metric spreadsheet and amended landscape drawings were provided by Persimmon which demonstrated a net loss of biodiversity of 17.21% in relation to area habitats contrary to Policy TP8 of the BDP and the NPPF.
- 7.52. To overcome this, either the layout would need to change to create more space for habitats or a suitable off-site location must be identified where BNG can be delivered which would be secured via a financial contribution. Persimmon proposed an off-site delivery of 7.49 Biodiversity Units (BU) at Gilberstone Recreation Ground to be secured via a financial contribution which the Ecologist considers acceptable. However, considers Sheldon Country Park is a more appropriate location to accommodate the habitat creation and enhancement interventions required to achieve a biodiversity uplift of 7.49 BU. The financial contribution for this would be £193,804.

## **Public Open Space (POS)**

- 7.53. Given the size of the proposed scheme, public open space including a junior play area would be required on site. Leisure Services comment that whilst green space is provided on the eastern corner of the site for which a size isn't specified in the application. Due to the inaccessible location of this from outside the development and the fact that it seems primarily designed for slow worm mitigation and SUDS purposes they would be of the view that this is not a meaningful POS in general recreational terms and would therefore discount it as an on-site provision. An off-site POS and play contribution of £316,375 would be required as such. The applicant has made no comment on this.

## **8. Conclusion**

- 8.1. It is considered that the consequences of the loss the playing fields at Barrows Lane cannot be suitably mitigated for as no suitable replacement site has been identified and agreed and therefore the principle of development would fail in terms of policy TP9 and TP11 of the BDP, Exception 1 and 4 of Sport England's Playing Fields Policy and the NPPF.

## **9. Recommendation**

- 9.1. That planning permission be refused for the following reason.

### Reason for Refusal

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|---|--|
| 1 | The present scheme fails to adequately provide for mitigation by way of a suitable and agreed site for the replacement sports pitches that are lost from the site. Without such an agreement for suitable replacement or equivalent / improved facilities the proposal remains contrary to policies TP9 and TP11 of the Birmingham Development Plan, Exception 1 and 4 of Sport England's Playing Fields Policy and the NPPF 2023. |
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Case Officer:                      Hiteshree Kundalia