

Birmingham City Council

Planning Committee

03 February 2022

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

<u>Recommendation</u>	<u>Report No.</u>	<u>Application No / Location / Proposal</u>
Determine	6	2021/05399/PA Site Bordered by Gooch Street North, Kent Street and Lower Essex Street Birmingham Demolition of all buildings and construction of 7 to 12 storey buildings (excluding basement) comprising 456 apartments (1 & 2 bed) (Use Class C3); 517sqm commercial floorspace (Flexible Use Classes E(a)/E(b)/E(c)/E(e)/E(f)/E(g)(i)); landscaped private courtyard and private garden terrace; new public thoroughfare

Committee Date:	03/02/2022	Application Number:	2021/05399/PA
Accepted:	05/07/2021	Application Type:	Full Planning
Target Date:	30/04/2022		
Ward:	Bordesley & Highgate		

Site Bordered by Gooch Street North, Kent Street and Lower Essex Street, Birmingham

Demolition of all buildings and construction of 7 to 12 storey buildings (excluding basement) comprising 456 apartments (1 & 2 bed) (Use Class C3); 517sqm commercial floorspace (Flexible Use Classes E(a)/E(b)/E(c)/E(e)/E(f)/E(g)(i)); landscaped private courtyard and private garden terrace; new public thoroughfare

Applicant:	Oasis Southside Ltd 31 Homer Road, Solihull, West Midlands, B91 3LT
Agent:	PJ Planning Cradley Enterprise Centre, Box No 15, Maypole Fields, Cradley, B63 2QB, United Kingdom

Recommendation
Determine

Report Back

1. This application was previously reported to the meeting of 9th December 2021 when it was deferred to allow further discussions regarding a potential additional agent of change with the Fox public house. The Fox hosts live music and is located opposite the application site in Lower Essex Street that has a beer garden to the rear. Members considered that relying on noise mitigation via the proposed building envelope whilst allowing residents to open their windows would not be adequate in terms of safeguarding this important LGBTQ+ venue, and that the applicants should endeavour to agree noise mitigation at source as per the approach taken in respect of the Nightingale via an agent of change agreement.

Response to Publicity

2. The day before the application was reported to Planning Committee two objections were received. Both were reported verbally during the meeting. The first was from Kings Chambers on behalf of the operators of the Nightingale Club and The Fox. In summary it raised concerns regarding:
 - The City Council has been involved in facilitating Agent of Change discussions between the Nightingale and the developer of 16 Kent Street. Those negotiations are now well advanced and involve planning conditions precluding occupation until the satisfactory resolution of noise mitigation measures not only at the new development but also in the form of works at the Nightingale

itself which will be reflected in a Section 106 Agreement, currently under consideration. Any derogation from these commitments by the Council would be likely to result in a legal challenge by The Nightingale.

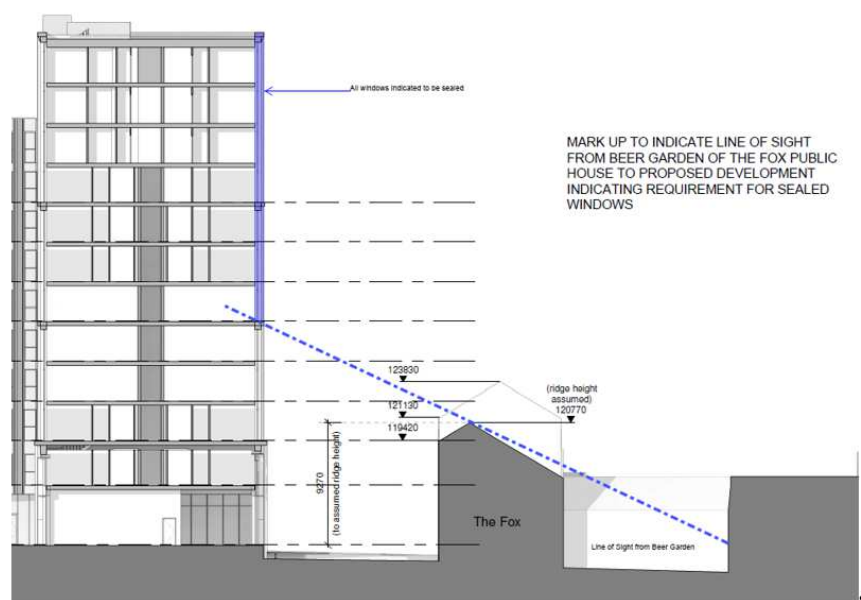
- Regulatory Services response reflects that non-opening windows is not considered to be a satisfactory resolution of noise issues, in light of the impact it has upon residential amenity. Numerous previous Council decisions attest to this approach, and the Council is expected to act consistently. The mitigation at the Nightingale will have no effect on noise from the Fox. Regulatory Services recommended refusal and The Fox is clearly referenced. These are matters that need to be discussed and resolved as between the Nightingale, the Fox, the developer at 16 Kent Street and the current applicant. These matters must move to a satisfactory resolution that could be reflected in conditions, and a Section 106 agreement, possibly together with a deed of easement, to safeguard the same interests that the City Council has already committed to with regard to the Nightingale.
- The City Council is now establishing an impressive reputation in using the Agent of Change principle to protect its valuable community assets and harmonise new development in continued beneficial co-existence with new residential development. The Committee is respectfully invited to act in accordance with the commitments already given and to facilitate the Agent of Change principle, which depends upon finding an acceptable solution to the protection of these entertainment premises, before any planning permission can be granted.

The second objection received was from Councillor Gareth Moore (in summary):

- Object due to the impact on the Nightingale and the Fox.
- Whilst an Agent of Change agreement is in place for the development at 16 Kent Street to help provide better noise mitigation for the Nightingale, the recommendation does not sufficiently address the possibility that this development may be completed prior to 16 Kent Street and would allow this developer to renege on any mitigation leaving the Nightingale at severe risk of complaints from future occupiers about noise nuisance.
- The report suggests that mitigation for the Fox is not needed and future occupiers can close their windows at noisy times. This has been shown time and again to not be an effective form of mitigation, with a number of LGBT venues including the Loft, Missing and Sidewalk being subject to noise complaints from neighbouring residents who were not willing to close their windows. Providing residential accommodation adjacent to a late night entertainment venue will generate and should be avoided. If there is not a suitable form of mitigation then the application should be refused.
- There is no onus on the developer to ensure that future occupiers are aware that they will be living next to late night entertainment venues and other applications.
- Should the Committee be minded to approve the application the Section 106 agreement includes an affordable housing provision. Given the recent homophobic violence this money could be put to better use by enabling better street lighting and CCTV which has been asked for by members of the LGBT community. Ask that the Section 106 agreement be amended so that this contribution could be better used to protect a community under attack.

Proposed Amendments

3. Rather than seeking to resolve an agent of change agreement with the operators of the Fox the applicants have decided to seal a number of the units that have windows facing the pub. They have explained that achieving an agent of change agreement would firstly be a technical challenge as it would need to ensure that the existing external garden would be soundproof. Secondly it would be time consuming taking many months to agree, as was the case with the Nightingale. Furthermore the applicants have pointed out that although this has been a current application for a number of months representations on behalf of the Fox were only submitted on the day before the application was presented to Committee.
4. The revised plans indicate that a total of 49 out of the 456 units would have sealed windows; 35 units would be fully sealed and 14 units partially sealed where the units are positioned at the corners with windows facing away from the Fox. The sealed units would be on the 5th to 11th floors where the Fox building itself does not provide any physical screen from the entirety of the rear garden area.

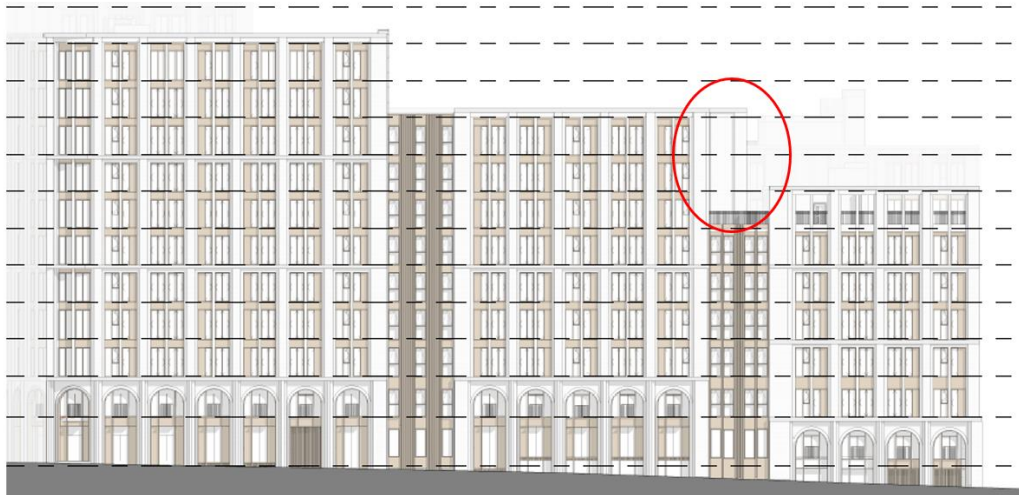


Section through the Application Site and The Fox
showing Floors 5 to 11 with Sealed Windows

5. Latest comments from Regulatory Services - The reliance upon closed or sealed windows is not a solution that Regulatory Officers approve of and therefore the previous objection remains. However sealing the windows with a line of sight is effective. There may be some grazing incidence and diffraction over the roof and for effective noise reduction sealing the fourth floor in addition to the fifth to the eleventh floors would be advisable. A ventilation scheme including predicted internal noise levels would be required if sealed windows are to be relied upon. Sealed windows present a risk of overheating and an overheating assessment would be required. Pre-occupation testing is necessary and this should include an assessment of the noise from mechanical ventilation. There are no windows through which noise from the front façade of the commercial part of the Fox could break out however the ground floor includes a number of doors. Suggest clarification is sought on which

doors are used and whether they include an internal lobby. Photographs indicate that the ground floor area inside the building is likely to be used for entertainment purposes. This would result in noise emanating on access and egress if no internal lobby exists. Installing a lobby would address noise and could be achieved through a relatively simple agreement.

6. There are points in favour and against the sealing of windows. First it is anticipated that the sealed windows would mitigate against noise and disturbance that may otherwise lead to statutory nuisance complaints by future occupiers against the Fox. As such there would be less risk to the night time economy that this part of the City is renowned for. It would also provide much needed housing in a sustainable location; reference to the Council's five year housing land supply is made below. However sealing windows would remove occupiers' choice of whether they wish to open their windows, particularly during the day time when noise levels are expected to be acceptable. Therefore there is an adverse impact upon living conditions and amenity. Secondly there is the cost of providing sealed windows due to the requirement for replacement purge ventilation and air conditioning. The applicants have estimated this additional cost to be approximately £200,000, and this figure has been independently assessed. Consequently this cost would need to be deducted from the amount of affordable housing. Previously a total of 44 affordable units were proposed. This would be reduced to a total of 40 units as a mix of 20 No 1 beds and 20 No 2 beds that would be provided as low cost home ownership at a 20% discount to market value. This represents an overall affordable housing provision of 8.8%.
7. Sealed windows have been approved in Southside and at other City Centre locations where there was/is anticipated to be a conflict between proposed residential uses and the night time economy:
 - 2017/09461/PA Timber Yard, Southside (approved October 2018)
 - 2020/07829/PA Moseley Street, Digbeth (approved July 2021)
 - 2020/01796/PA Bordesley Wharf, Digbeth (approved March 2021)
 - 2017/07207/PA Lunar Rise, Digbeth (approved February 2018)
 - 2014/09348/PA Left Bank, Broad Street (approved November 2015)
8. It is considered that the provision of a proportion of sealed units would provide sufficient mitigation for the Fox in accordance with Policies DM2 and DM6 of the Development Management DPD.
9. The plans have also been amended to allow for an enclosed fire escape stairwell. This would face Gooch Street North but would be set back approximately 6.8m from the front façade, so that it would not dominate or detract from the overall elevation. Therefore the scheme continues to demonstrate high quality design in accordance with Policy PG3 of the BDP and Policy DM10 of the Development Management DPD. Neighbours have been re-consulted with regards to the elevational changes and the proposed sealing of a proportion of the apartments. Any comments received will be reported verbally.



Proposed West Elevations Facing Gooch Street North
with Fire Escape Stairwell Circled

10. Since the application was previously reported the BDP has become more than five years old. 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. 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.

Updated Conditions

11. The previous list of conditions have been amended to refer to the relevant policies of the recently adopted Development Management DPD. In addition:
- Condition 4 was originally proposed to secure the Agent of Change agreement to ensure the implementation of sound proofing works to the Nightingale. It stated that:-
- No development shall take place until:
- i) a detailed specification of noise mitigation works based on the 'Noise Mitigation Measures as agreed on site with The Nightingale Club on 17th February 2021 - Rev H 14th May 2021 Revised Proposals by K4 Architects' has been submitted to and approved by the Local Planning Authority for approval;
 - ii) an agent of change agreement has been entered into between the developer and all relevant parties with a legal interest in the Nightingale to secure the completion of the noise mitigation works at the Nightingale at the developer's expense in accordance with the detailed specification that has been approved in writing by the Local Planning Authority;

iii) any necessary planning permission(s) required from the local planning authority to enable the carrying out of the approved noise mitigation works at the Nightingale have been granted; and
iv) a methodology for the post completion noise commissioning test has been submitted to and approved by the Local Planning Authority.

In line with the recent agreed at 16 Kent Street it is now proposed that in the Section 106 Agreement the applicant and the Nightingale (along with the leaseholder and freeholder of the building) enter into a binding agreement to enter into an Agent of Change Agreement in a form attached to the S106 Agreement on the same day as the S106 Agreement. The second point of condition 4 is therefore amended to read:-

“ii) a copy of the agent of change agreement that has been entered into between the developer and all relevant parties with a legal interest in the Nightingale to secure the completion of the noise mitigation works at the Nightingale at the developer's expense in accordance with the detailed specification to be approved in writing by the Local Planning Authority has been submitted to the Local Planning Authority;”

- Condition 7 (Submission of a Noise Mitigation Scheme) has been amended to take account of the units with sealed windows;
- Condition 8 (Submission of a Noise Mitigation Scheme) has been amended to require details of Materials to the Building and Boundary Treatments;
- Condition 12 (Green and Brown Roofs) has been removed proposed roofs would not have the loading capacity required (as reported at Committee last time);
- Condition 14 (Prior to First Use or Occupation of any Residential Apartment: Submission and Implementation of Noise Commissioning Testing) has been amended to take account of the units with sealed windows. In response to the comments raised by Regulatory Services this would also ensure that the proposed sealed units on the 5th to 11th floors are sufficient to mitigate noise or determine whether it is also necessary to seal windows on the 4th floor;
- Condition 19 (Prior to Use of Ground Floor for Class E(d) (Indoor sport and recreation): Submission of Noise Assessment and Mitigation Plan) has been removed as it is not relevant to the ground floor uses proposed (as reported verbally at Committee last time); and
- A condition has been added to ensure that the sealed windows are retained as such.

Conclusions

12. Policy DM6 of the Development Management DPD and the NPPF seek to ensure that new development is integrated effectively with existing businesses, which in this case is dominated by late night entertainment venues. Noise mitigation via an Agent of Change Agreement would secure mitigation works to the Nightingale whilst sealing a proportion of apartments facing the Fox is considered adequate mitigation for this venue. Sealing windows does however reduce the quality of the living environment for occupiers of those sealed apartments contrary to Policy GA1.1 of the BDP. However as stated in the main report the scheme would make an efficient use of this brownfield site in accordance with national policy and Policies GA1.1 and TP28 contributing to the City's need for residential accommodation, a consideration that is

to be given increased weight now that the Council cannot demonstrate a five year supply of deliverable housing sites. In addition it is anticipated that the proposed mitigation would help to maintain the night time economy within Southside in accordance with Policies TP24 and TP25.

13. On balance greater weight is given to these latter policies that support residential uses and promote a diversity of uses within in the City Centre. These public benefits in addition to the economic benefits during and after construction and social benefits of creating a place with good connectivity continue to outweigh the low level of harm to the setting of the Fox, an undesignated heritage. The proposed detailed design of the scheme remains acceptable and in accordance with Policy PG3.

Updated Recommendation

14. It is proposed that the Section 106 Heads of Terms be amended to include reference to the Agent of Change Agreement. A further reason for refusal is also included in the event that the legal agreement is not completed.
15. Approve subject to the prior completion of a planning obligation to secure the following:
- a) The delivery of The Avenue with a minimum expenditure of £1,041,000 upon those items listed in the External Works – S106 cost plan (Rev. 5 dated 1st June) prior to the first use or occupation of the development;
 - b) The provision of a total of 40 affordable housing units split as 20 x one bedroom units and 20 x two bedroom units to be provided for low cost home ownership tenure at 20% discount to market values in perpetuity;
 - c) Should the works to mitigate noise from the Nightingale Club not have taken place prior to commencement of the development to require:
 - i) The entering into of an Agent of Change Agreement between the Developer and the Nightingale in respect of the noise mitigation works; and
 - ii) the applicants to submit a new FVA that takes account of the costs of the works to the Nightingale and this sum be deducted from the affordable housing equivalent monetary value resulting in fewer affordable housing units. An independent assessment of the revised FVA to be paid for by the developer.
 - d) Payment of a monitoring and administration fee associated with the legal agreement, subject to a maximum of £10,000.
16. That the City Solicitor be authorised to prepare, seal and complete the planning obligation.
17. That, in the event of the above legal agreement not being completed to the satisfaction of the Local Planning Authority on or before 30th April 2022, planning permission be refused for the followings reasons:
- (a) That in the absence of any suitable legal agreement to secure the provision of on site affordable housing and improvements to the public realm the proposal

conflicts with Policies TP31 and PG3 of the Birmingham Development Plan, the Affordable Housing SPG and the NPPF.

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

- 18. That in the event of the planning obligation being completed to the satisfaction of the Local Planning Authority on or before 30th April 2022 or such later date as may be authorised by officers under delegated powers, favourable consideration be given to this application, subject to the conditions listed at the end of the original report as updated under paragraph 11 above (that may be amended, deleted or added to providing that the amendments do not materially alter the permission).

End of report back

- 1. Proposal

- 1.1 The application seeks permission to demolish the existing buildings and redevelop the site to provide two commercial units of 268sqm and 238sqm and a total of 456 apartments. The footprint of the development would provide a continuous frontage set around the square perimeter of the site with a central courtyard creating street frontages to Gooch Street North, Kent Street and Lower Essex Street, and it is proposed to create a new street within the site bordering the southern boundary.
- 1.2 The proposed development is split into distinct blocks with an 11 and 12 storey block marking the front two corners facing Kent Street. The blocks then step down in height towards the rear of the site with 8 and 10 storey blocks at the rear corners overlooking the new route. Two south west facing roof top terraces are proposed atop the eighth floor.



CGI of Proposed Development from Corner of Kent Street and Lower Essex Street

1.3 The proposed apartment mix would provide the following:

1 bed 2 person = 178

2 bed 3 person = 235

2 bed 4 person = 33

2 bed duplex = 10

Total = 456 (39% 1 bed & 61% 2 bed)



Illustrative View along Gooch Street North and The Avenue

- 1.4 The duplex apartments are located at the southern end of the development. They would have direct access from the proposed new route through the site set behind a private ground floor terrace.



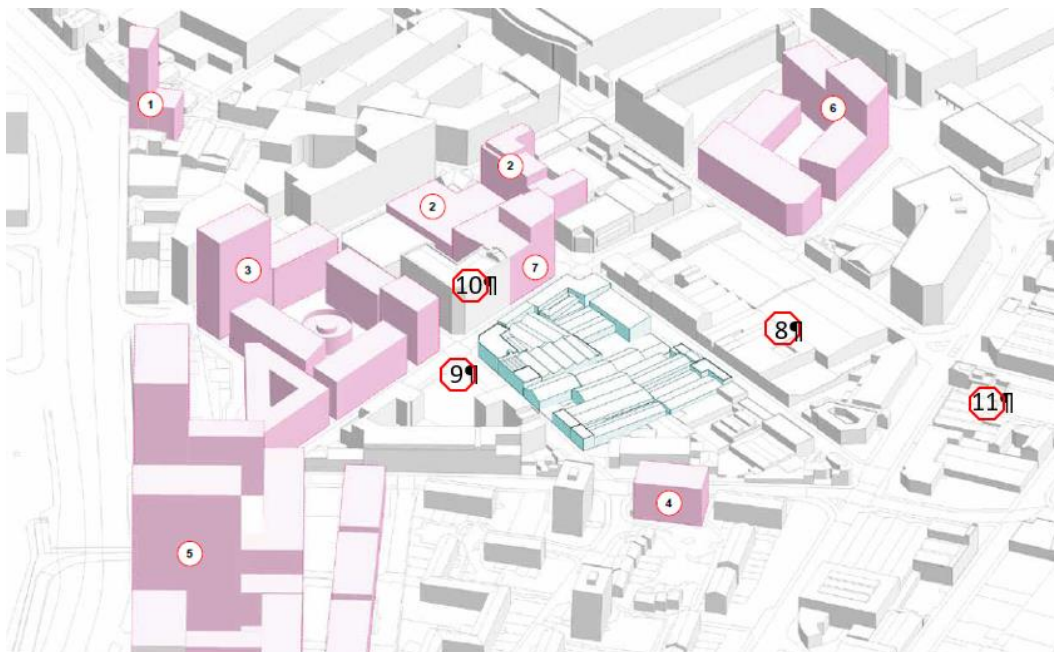
Kent Street Elevation

- 1.5 The commercial units would accommodate the following within Use Class E:
- a) Shop other than for the sale of hot food;
 - b) Food and drink which is mostly consumed on the premises;
 - c) Financial /professional services;
 - e) Medical services;
 - f) Non-residential creche, day centre or nursery; and
 - g) (i) office
- 1.6 A total of 26 parking spaces are proposed within the basement accessed via a ramp off Lower Essex Street. The basement would also accommodate 160 cycle parking spaces in addition to 250 on the ground floor.

1.7 [Link to Documents](#)

2 Site & Surroundings

- 2.1 The application site is located south of the City Centre, within the Southside district. It fills the northern half of a block bordered by Lower Essex Street to the north east, Kent Street to the north west, Gooch Street to the south west and the remaining buildings and structures that lie in the southern part of the block.
- 2.2 There are a number of post war buildings in varying states of repair and occupancy currently located on the site. The majority proposed to be demolished are two to three storey in height. There are currently a range of uses on site including leisure, retail, a place of worship, warehousing and offices.
- 2.3 The site sits to the west of the Rea Valley and south west of Smithfield within the LGBTQ+ cultural area adjacent the Chinese Quarter. The Nightingale club and Medusa Lodge are to the west both having a frontage to Kent Street. The Fox public house also lies opposite the site in Lower Essex Street. Within this part of the City many of the surrounding sites have been redeveloped or are approved for redevelopment with a dominance of residential led apartment blocks.



Application site in centre (outlined in blue)

(Below – list of surrounding developments, see planning history for further information)

- 1 – Bristol Street/Essex Street (Approved)
- 2 – Unity House & Armouries (Approved)
- 3 – Kent Street Baths (Approved)
- 4 – 77 Wrentham Street (Approved)
- 5 – Former Monaco House (Approved)
- 6 – Timber Yard (Approved)
- 7 – 16 Kent Street (current application awaiting S106 Agreement)
- 8 – Lower Essex Street/Hurst Street/Sherlock Street (current application)
- 9 – Kent St/Gooch St. North (current application)
- 10 – Priory House (Approved)
- 11 – Sherlock Street (Approved)

- 2.4 There are no heritage assets within the site. The Fox opposite on Lower Essex Street is a non-designated heritage asset and Unity House, a locally listed building indicated as number 2 on the plan above, is positioned 60m away. A terrace of locally listed buildings front onto Bristol Street at numbers 74-104. These adjoin the Grade II listed Wellington Hotel and numbers 99 to 102 Bristol Street, which are also locally listed.

3. Planning History

Within Application Site

- 3.1 None relevant

Beyond Application Site

- 3.2 Land at the corner of Essex Street and Bristol Street - 2020/02766/PA - Demolition of existing buildings and site clearance for the erection of 28 storey tower to include 154 apartments (Use Class C3), ground floor commercial/retail unit (Use Classes A1/A3),

with ancillary resident amenity space and all associated works (Approved 18/12/2020)

- 3.3 Unity House & Armouries - Variations of conditions attached to permission 2010/02473/PA for erection of 2 buildings and retention of Unity House to provide 162 apartments, 395sqm of ground floor commercial floorspace (A1, A2, A3, A4, B1, D2) and 98 car parking spaces (Approved 07/08/2013)
- 3.4 Sherlock Street - 2020/09624/PA - Demolition of all existing buildings and erection of a residential-led mixed-use development comprising part 30, part 13, part 12, part 10, part 9 and part 5 storey blocks providing 551 residential apartments (Use Class C3), ancillary internal residential amenity space, flexible ground floor space to be used as commercial, business and service uses (Use Class E), drinking establishments, and/or hot food take-away (Sui Generis), access, car and cycle parking, landscaping, public realm and all other associated works (delegated approval granted subject to signing of a S106 Agreement)
- 3.5 Land at Lower Essex Street, Hurst Street and Sherlock Street - 2021/05033/PA - Demolition of existing buildings and erection of 3 residential blocks to provide 642 apartments together with associated amenity/commercial (Use Class E) floorspace, parking and landscaping. Block A - 27 storey tower with 9 storey shoulder, Block B - 12 storey taller element and 8 storey shoulders, Block C - 8 storeys (awaiting determination)
- 3.6 Former Kent Street Baths, Land bounded by Bromsgrove Street, Gooch Street North, Kent Street and Henstead Street - 2017/09434/PA - Clearance of site and erection of a residential mixed use development comprising of 504 dwellings (Use Class C3), 955 Sq.m (Gross Internal Area) of flexible retail, restaurant, leisure and office uses (Use Class A1/ A2/A3/D1/D2/B1(a)), car parking and associated developments.
- 3.7 77 Wrentham Street - 2017/09468/PA - Demolition of existing building and erection of a six/seven storey building to provide 24 no. apartments and associated development (Approved 10/072018)
- 3.8 Land at Pershore Street and Skinner Lane (timber Yard) - 2017/09461/PA - Erection of 6-14 storey building comprising 379 residential apartments (Use Class C3), ground floor commercial units (use Classes A1-A5 and B1a), associated car parking and amenity space. (approved)
- 3.9 16 Kent Street - 2021/03783/PA – Demolition of existing buildings and redevelopment to provide 116 apartments with a ground floor of 2 commercial units to include Use Classes E(a), E(b), E(c), E(e), E(f) public houses, wine bars, and/or drinking establishments (sui generis) and E(g)(i) (delegated approval granted subject to signing of a S106 Agreement)
- 3.10 16 Kent Street - 2018/03004/PA - Demolition of existing buildings and residential-led redevelopment to provide 116 apartments and 2no. commercial units (Use Classes A1-A4, B1(a) and D1) in a 9-12 storey building (Current appeal pending against non determination)

- 3.11 Kent Street/Gooch Street North - 2021/00081/PA - Erection of 8-12 storey building providing 133 no. residential apartments (Use Class C3) together with ancillary ground floor amenity and commercial space (Use Class E) (awaiting determination)
- 3.12 Priory House , Gooch Street North/Kent Street - 2020/04784/PA - Conversion and refurbishment of Priory House, including change of use from Use Class B1(b) to include 79 residential apartments (Use Class C3), ancillary internal and external resident's amenity areas, secure car and cycle parking and other associated works (Approved 18/12/2020)
4. Consultation/PP Responses
- 4.1 Transportation – No objections subject to the following conditions:
- a) Grampian style condition for the various highway works to be carried out before the development is occupied (Note - a S278 Highway Agreement is required for the redundant crossings to be reinstated, new/modified access points and associated Traffic Regulation Order changes along with any other highway alterations);
 - b) Cycle parking and car parking to be provided prior to occupation;
 - c) EV charging to be included; guidelines seek 10% provision;
 - d) Boundary treatment to be defined to prevent cars parking across the forecourt strip and footway around the site; and
 - e) A Construction Management Plan is submitted to define any highway impacts and implementation commenced before any demolition takes place.
- 4.2 Severn Trent Water - No objections subject to conditions to require an agreed drainage plan is implemented before the development is first brought into use.
- 4.3 BCC Education – The School Organisation Team request a contribution for £1,219,111.29.
- 4.4 Sport England (SE) – Object. In the absence of an agreed package of S106 contributions to meet the needs for sport that arise from this development. The occupiers of new development, especially residential, will generate demand for sporting provision. The existing provision within an area may not be able to accommodate this increased demand. Therefore, new developments should contribute towards meeting the demand that they generate through the provision of on-site facilities and/or providing additional capacity off-site.
- 4.4.1 The additional population, estimated to be 775 people, will generate additional demand for sports facilities. Sport England's Sports Facilities Calculator (SFC) indicates that the following contributions be sought:
- Sports Hall Sum - £134,604
 - Swimming Pool Sum - £138,434
 - Playing Pitches Sum - £180,776
 - Total Sum - £453,814
- 4.4.2 The site offers some opportunities for the provision of outside space for physical activity within the courtyard and roof terrace which should be large enough to cater for pop-up activities. Choice of materials, lighting, street furniture etc will be important to accommodate as broad a range of activities as possible. Nonetheless,

being high density development in the City Centre, residents will also need to access facilities off-site for sport and recreation activities. The development should be provided with high quality cycle facilities to maximise the benefits of the City Centre location, and in particular connectivity to bus and rail services, including HS2. There may be opportunities to enhance accessibility to existing open space via improvements to wayfinding and other public realm enhancements.

- 4.4.3 Police - Calls to service are high, the highest recorded crimes currently are violence and sexual offences, anti-social behaviour, public order and shoplifting. The location falls within the 'Night-time Economy' area that brings with it its own challenges. Noted that the proposed courtyard and terraces are for residents only and this is supported. Ask that a suitable boundary treatment is installed around the terrace to adequately prevent accidental falls over the boundary or intentional attempts to self-harm. Recommend that any furniture that is installed on the terraces is suitably located and secured so it cannot be used as a climbing aid to scale the boundary.
- 4.4.4 The public through route raises some concerns as access to the private spaces could be compromised. Security measures such as access control, lighting, CCTV and signage will be pertinent here. Controlled access into the basement is supported, with the correct standard of door/access security. With entrances off the street, two layers of security are recommended to prevent 'tail-gating'. Access control at the residents entrance should have an intercom facility (preferably video linked for a development of this size). Note there is defensible space between the street and the ground floor residences this is supported. Ground floor (and easily accessible) windows should be fitted with restrictive openers to prevent opportunistic theft. Recommend current safety standards for laminated, toughened glass and other safety glass, from ground floor up to the 4th floor.
- 4.4.5 Note there are no employment details but there will be a management office in reception. Ask that a management and maintenance plan for trees and shrubbery is subject to a planning condition. Ask that adequate lighting is also subject to a planning condition. Access control into the site should be extended to throughout the development, including lifts and stairwells. Recommend that a suitable site-wide CCTV scheme be installed. Cameras should provide coverage of the communal public space areas on the site, cycle store and car parking spaces, the main pedestrian and vehicle route into and throughout the site.
- 4.5 Environment Agency - no objections. This site appears to have been the subject of past industrial activity which poses a risk of pollution to controlled waters. We advise that you consult with your Regulatory Services officers for advice on generic aspects of land contamination management.
- 4.6 Civic Society - There is potential to support the application but would encourage the following points to be addressed. The redevelopment for residential use is acceptable in policy terms. The Birmingham Development Plan (BDP) policy GA1.2 'Growth and wider areas of change' supports a mix of uses in the Southern Gateway area.
- 4.6.1 Heritage – There would be a minimal impact on the settings of heritage assets such as the Grade II listed Rowton Hotel. There is the loss of a number of buildings that contribute to local character, but this did not raise an objection from our committee.

- 4.6.2 The energy strategy shows that passive design measures and efficient building services that the development is estimated to achieve a 17.05% reduction in CO2 emissions. The study concludes that photovoltaics are the most suitable means of making up the shortfall, mounted on the roof.
- 4.6.3 Design – the scheme has a number of positive characteristics including design which has been well considered through a considerable process of refinement. Material quality and detailing were felt to be appropriate.
- 4.6.4 Landscape and amenity space have been well considered and are of an appropriate scale and quality for this location. Can any reassurance be made that the roof top tree illustrated will be maintained?
- 4.6.5 Local character - Strong concerns regarding the loss of potential sites for gay venues and the future of the provision for the community as a whole due to current scale of development in this area. It is disappointing that such a large urban block does not contain say any commercial units that might support future venues. We would recommend a S106 agreement be used to support appropriate charities or local uses that will mitigate the impact of this development on the gay community.
- 4.6.6 Affordable housing – It is disappointing that there is no affordable housing provision due to viability, despite this being an extremely attractive city centre location, adjacent to Smithfield where very high levels of investment are being made. Cannot support the application for this reason.
- 4.7 Regulatory Services – Air Quality - Content with the revised air quality report.
- 4.7.1 Contaminated Land - concerns around the submitted Phase 2 Geo Environmental Assessment specifically around how the data has been treated. Contaminated land may need further investigation and will require remediation and verification.
- 4.7.2 Noise - Recommend refusal. There is the potential for a significant adverse impact on the proposed development that could lead to harm to health and quality of life for future residents due to noise from nearby commercial uses, and it would introduce a noise sensitive use in an existing area in circumstances where the resulting residential noise climate may represent a statutory nuisance which may have an adverse impact on the operation of existing businesses and potential loss of employment activities.
- 4.7.3 An agent of change scheme is required to address the source of entertainment noise from the Nightingale club and the Fox, similar to the approach in respect of 16 Kent Street. If the applicant agrees, further discussions are needed to scope out the mitigation works.
- 4.7.4 The concerns about noise from the Nightingale club and the Fox are that the mitigation only works if the windows are closed and use mechanical ventilation. Windows that are openable is not acceptable and would not avoid future residents being exposed to a statutory noise nuisance when windows are open. Windows being sealed is detrimental to residential amenity.

- 4.7.5 The noise assessment has not considered outdoor amenity areas such as the courtyard, roof top amenity areas and private areas.
- 4.7.6 Noted that the developer is amenable to contributing towards works to the Nightingale club. Any agreement should be worded so all developments included will share in the cost in a fair and reasonable way. Noise from the Fox also needs to be considered.
- 4.7.7 It cannot be assumed that the 16 Kent Street development will go ahead or that the 16 Kent Street works have been accepted by the Nightingale and therefore no reliance can be placed on this mitigation scheme being fully implemented; however it will have no effect on noise from the Fox.
- 4.7.8 The Fox building itself would provide screening to the ground level courtyards. However, a noise level in the outside amenity areas is required not an estimated reduction. There is no objection in principle to external amenity areas, subject to an assessment to ensure that it achieves the community space standard in respect of noise.
- 4.7.9 The consultants suggest the only method to control noise from the Fox is enclosing the beer garden, and that this is not possible, therefore they suggest closed windows. In order to satisfy the noise hierarchy more consideration must be given. There is no evidence of discussions with the owner and landlord of the Fox.
- 4.7.10 Other Matters - Pleased to see that the consultants agree that a mixed commercial and residential development would require a condition to ensure residential amenity to the properties above. Appropriate levels of vehicle charging would be required to address the introduction of additional vehicles into the CAZ. There is commercial use at ground floor level as well as a gym. Noise resulting from these activities affecting the building and surrounding area would need to be addressed through conditions. A construction site management plan would be required to reduce the risk of dust and noise nuisances during construction.
- 4.8 Local Lead Flood Authority – No objection subject to conditions to require the submission of a sustainable drainage scheme and drainage operation and maintenance plan.
- 4.9 BCC Leisure Services – No comments.
- 4.10 The application has been advertised in the press, site notices posted on site and neighbours notified. In addition the Local MP, local residents groups and forums and Southside BID have been consulted. One objection has been received raising the following concerns:
- there are already many apartments being constructed around this area;
 - the development will block vital sunlight into my building;
 - it will cause a prolonged period of noise during the construction period and will disturb home working;
 - it will bring in more traffic through the street, which already is at an unacceptable level; and

- there is very little town planning in the area (e.g no recreational parks) to enhance the area, which with more apartments will only depreciate the value of properties.

5. Policy Context

- 5.1 Birmingham Development Plan 2017; Development Management DPD (2021); Places for All SPG; Places for Living SPG; Car Parking Guidelines SPD (2021); Public Open Space in New Residential Development SPD; Lighting Places SPD; Affordable Housing SPG; Loss of Industrial Land to Alternative Uses SPD and the revised National Planning Policy Framework.

6. Planning Considerations

Principle of Redevelopment

- 6.1 The application site falls within the City Centre Growth Area identified by Policy GA1 however Policy TP20 seeks to protect employment land and resources where it contributes to the portfolio of land needed to meet longer term requirements. According to Policy TP20 there is a general presumption against the loss of employment premises unless it is a non-conforming use, has actively been marketed or it can be demonstrated that continuing an industrial development is not viable. The current employment floorspace does not comprise of non-conforming uses and the applicants have not demonstrated that there is marketing or viability justification to support the proposed loss of existing premises. Therefore the proposed loss of employment premises is contrary to this BDP Policy TP20 and any material considerations should be assessed to ascertain whether they should be given greater weight to outweigh this Policy conflict. First there is a requirement for future growth and change in and around the City Centre as identified within the BDP. Strategic Policy PG1 identifies a need for significant levels of housing, employment, office and retail development along with supporting infrastructure in Birmingham over the plan period. The Policy refers to a target of 51,100 additional homes although this falls short of Birmingham's objectively assessed need which is stated to be 89,000 homes.
- 6.2 Next Policy GA1 establishes the City Centre as the focus for a mix of uses including residential, retail, employment and leisure to improve the overall mix of uses and the vitality of the City Centre. Cultural, entertainment and residential activities are supported in Southside by Policy GA1.3, complemented by high quality public spaces and pedestrian routes. Paragraph 121 of the NPPF also states that authorities should take a positive approach to applications for the alternative use of land which is currently developed but not allocated for a specific purpose in plans, where this would help to meet identified development needs. In particular, they should support proposals to use retail and employment land for homes in areas of high housing demand, provided that this would not undermine key economic sectors or sites, or the vitality and viability of town centres.
- 6.3 The application seeks permission for a range of uses at ground floor level, including retail and office. It is noted that the site lies 400m outside of the City Centre retail core however Policy GA1 supports appropriate scale retail development where it complements the existing retail core as part of mixed-use redevelopments. As the

proposed commercial units total only 517sqm, and would be split between two units, this floorspace can be deemed as ancillary to the main residential development.

- 6.4 Whilst the loss of the existing businesses is regrettable, they are not intensive employers and it is considered that the employment created by the construction of the proposed development and the expenditure created by the occupiers of the proposed 456 apartments should outweigh compliance with Policy TP20, particularly at a site where there is policy support for growth in this part of the City under Policies GA1.1 and GA1.3 and the location of the proposed housing complies with Policy TP28. It is therefore considered that the proposed uses would, in principle be acceptable at this location. Furthermore with a dominance of 2 bed units whilst not fully in accordance with Policy TP30 that requires a range of dwellings, the proposed mix is considered satisfactory for this City Centre site.

Proposed Design - Layout

- 6.5 The proposed layout is simple providing a perimeter of 8 connected blocks around an internal courtyard space, generating a clearly defined urban edge and creating a safe external amenity area for residents. As part of the proposal a new street ranging in width between 10.8m and 13.8m would be sited to the south eastern end of the plot. This pedestrian route, referred to as The Avenue would increase connectivity as it would provide a tertiary route through this urban block linking to Hurst Street and into Smithfield beyond. The Avenue would provide a tree lined boulevard to the residential front doors and gardens serving the ground and basement floors of the southern block and alternative stepped access to two of the residential cores the south. The south side of the Avenue Would be enclosed by a semi- permanent landscape treatment of robust steel framed mesh trellis system with climbing plants and space for temporary art installations. It is envisaged to become a living street and social space. Secondly the route would allow the redevelopment of the remainder of this block to the south.



Proposed Layout with an Indicative Layout for Phase 2 to the South of the Site

- 6.6 The proposed courtyard would provide a communal space of 2,100sqm and has been designed to incorporate a variety of level routes linking all four cores, together with a perimeter stepped path to give service access to the ground floor commercial and amenity spaces.



CGI of Proposed Courtyard

- 6.7 In addition two south west facing roof terraces of 101sqm and 534sqm are proposed atop the southern blocks overlooking The Avenue with views over south Birmingham.
- 6.8 Aside from the individual frontages from The Avenue the main point of entry would be from Kent Street. Controlled access into the basement is from Lower Essex Street via a short ramp that would lead to parking in the form of disabled, electric and car club spaces and cycle parking.

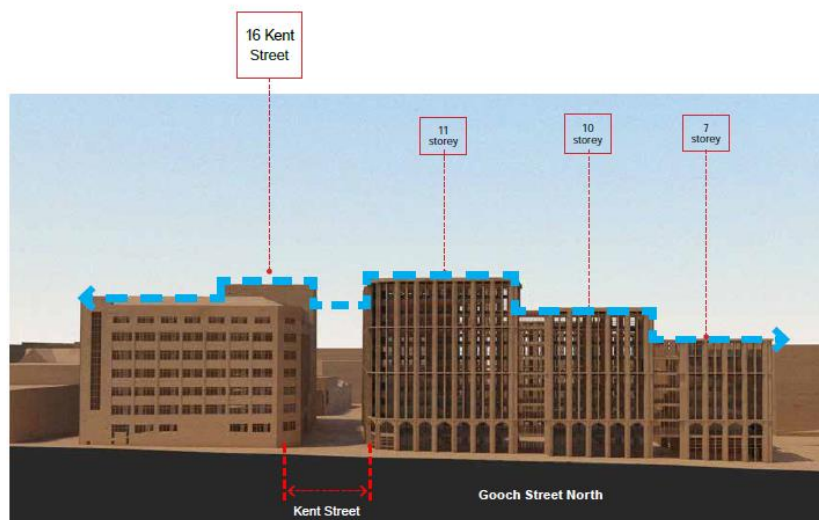


Proposed Upper Ground Floor Plan

- 6.9 It is considered that the layout would provide a high quality place with good connectivity in accordance with Policy PG3 of the BDP.

Proposed Scale and Massing

- 6.10 The scale of the development ranges between 7 storeys to the south of the site and 12 storeys in height to the north. This would align with the rising topography of the site towards the City Centre and would mark the key node and main entrance into the development at the junction of Kent Street and Lower Essex Street.



Elevation to Gooch Street North

- 6.11 Thereafter the overall massing is broken down into a series of more identifiable parts by dividing the massing into a series of blocks connected by linking segments of contrasting material.

- 6.12 The scale and massing is also relevant to the impact upon sunlight and daylight received by surrounding properties. An objection has been received regarding the loss of light to apartments opposite in Gooch Street North. A report has been submitted based on the various numerical tests laid down in the Building Research Establishment (BRE) guide 'Site Layout Planning for Daylight and Sunlight'. The report provides results of two tests in respect of daylight (Vertical Sky Component and Daylight Distribution) and a single test in respect of sunlight availability.
- 6.13 A total of 884 windows have been tested, of which, 459 have a requirement for daylight. Of the 459 windows, 129 fall short of the Vertical Sky Component (VSC) test at Priory House, the Former Kent Street Baths site and at Gooch Street North, including the objectors apartment. 28 of the 129 shortfalls are borderline and a number of windows that fall short serve bedrooms.
- 6.14 The report has also considered the proposed central courtyard area where it meets the BRE overshadowing to gardens and open spaces test.
- 6.15 The proposed scale broadly correlates with the new emerging scale of the wider area whilst the reduction in massing to the south correlates with the site topography allowing greater light into the central courtyard. As such the proposed scale and massing is considered appropriate and in accordance with design policy.
- 6.16 Whilst a large proportion of the windows to neighbouring properties tested fall short of the BRE guidelines they are only guidelines that are intended to be used flexibly, with the BRE acknowledging that natural lighting is only one of many factors in site layout design. They should also be considered in the context of the NPPF, which stipulates that local planning authorities should take a flexible approach to daylight and sunlight to ensure the efficient use of land. It is considered that the loss of light would not be so significant as it should outweigh material considerations relating to the siting of the development, streetscene and the efficient use of land, particularly at this City Centre location where, due to the density of development, it is considered that such guidelines should not be so stringently applied.

Proposed Appearance

- 6.17 The proposed facades are divided horizontally into three main parts with the massing reduced by horizontal bandings that group floors together. Windows align vertically to roof level giving the elevations a simple and calm rhythm. The City Design Manager comments that the round headed arches at the ground floor, *"look dated and difficult to achieve and run the risk of looking like a 1980's postmodernist office scheme. One improvement is the removal of metal cladding within this arcade of blind arches within inset windows to full glazing. The design remains odd but is less poor in its finish."*



Current Drawing

- 6.18 The current drawings show the removal of the metal infill panels at ground and lower ground levels, except where plant and entrances exist and the replacement of the horizontal cladding below the arch windows with ceramic backed glazed spandrel panels. The amendments are considered to be more in keeping with the glazing to top and bottom. In addition the horizontal banding is shown as reverting to brickwork.
- 6.19 The development is designed around a simple and robust palette of materials and textures. The approach is welcomed as it pulls the blocks together and allows the architecture itself to define the development and its massing. Whilst the original concerns raised by the City Design Manager with respect to the round headed arches at ground floor still remain the proposed detailed design of the scheme is considered acceptable subject to conditions and in accordance with Policies GA1.1 and PG3.

Impact of Noise

- 6.20 A key consideration is the impact upon the night time economy. Notably the site lies within a part of the City Centre that is known for its vibrant late night venues with the Nightingale club on Kent Street at a distance of approximately 30m and The Fox public house opposite on Lower Essex Street. Both venues are open seven days a week into the early hours.
- 6.21 The NPPF advises that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Policy DM6 of the adopted Development Management DPD states that where potential adverse impact is identified, the development should include details on how the adverse impact will be reduced and/or mitigated.
- 6.22 A noise assessment has been submitted based on three sources of data. As a result of covid restrictions the first source is archive noise data that includes a monitoring exercise carried out in late 2019 early 2020 by the Nightingale to support a planning application at 16 Kent Street, which have been previously agreed by BCC Regulatory Services as being an accurate assessment of break out noise from the club. The second source is archive measurement data for a pub beer garden in Moseley that

has live music and has been used to replicate events at The Fox public house. The third source is data collated from noise measuring equipment placed at three different positions on the application site that recorded noise during October and November 2020.

- 6.23 The results indicate that the general noise climate is dominated by road traffic on Bristol Street to the west, but with additional intermittent traffic noise from other roads in the vicinity. Additional noise occurs during the late evening and night time periods, particularly on Thursday to Saturday, which is attributable to the Nightingale Club together with associated pedestrian and vehicle activity on nearby streets.

The Nightingale Club

- 6.24 The Assessment advises that the structural components of the building envelope including appropriate glazing would adequately mitigate noise from late night premises, however where windows are open noise conditions would exceed British Standards for habitable rooms on roadside elevations, and alternative ventilation would be necessary. These conclusions are made with respect to the Nightingale club in its current form, however the applicants have agreed to undertake a range of works to address the primary sources of break out noise from the Nightingale club. The principle of these works have been agreed with Regulatory Services in association with the current scheme for residential development at 16 Kent Street. The works are as listed below and are estimated to cost approximately £661,000:
- a redesigned and acoustically treated smoking area on the ground floor;
 - replacement of existing ground floor fires doors with acoustically rated fire escape doors;
 - incorporation of additional noise mitigation to the walls on the corner of lower Essex Street and Kent Street;
 - the creation of a new first floor and second floor open smoking area to the side and rear of the building mitigated with acoustic barriers;
 - closure of the first and second floor balconies;
 - incorporation of additional noise mitigation to the windows on the first and second floors;
 - incorporation of noise mitigation measures to the existing extraction outlets on the roof; and
 - provision of new general building extraction acknowledging that all current external openings will be sealed shut and with the associated plant suitably acoustically mitigated and located on the roof.
- 6.25 The first preference for mitigating noise is to address it at the noise source via an agent of change agreement. Therefore the proposed works to the Nightingale club would result in future occupiers of the proposed scheme being able to open windows without a significant adverse impact upon their amenity. The completion of the noise mitigation works at the Nightingale club would be secured through planning conditions, which would require all of the following to be in place before the residential development commences:
- (i) a technical specification for the works to be submitted and approved;
 - (ii) an agent of change agreement being entered into between the developer and those with a legal interest in the Nightingale to secure the carrying out of the approved mitigation works at the developer's expense; and

(iii) planning permission for the mitigation works being granted.

- 6.26 Further conditions would require a commissioning test prior to occupation of the residential development to ensure the mitigation works achieve the desired noise mitigation. In addition, safeguarding conditions are attached to secure the proposed mitigation in terms of the proposed building envelope and glazing.

The Fox Public House

- 6.27 The Fox allows live music until midnight on Mondays to Thursdays, 02:00 on Fridays and Saturdays and 00:30 on Sundays. Similar mitigation, in the form of structural wall configuration and appropriate glazing is proposed with regards to break out noise. Again the Noise Assessment refers to an alternative means of ventilation to enable residents to close windows as required. Regulatory Services object on the basis that, with respect to the Fox, the only mitigation would be via the building envelope. Regulatory Services officers consider such a situation would lead to potential noise nuisance if windows were opened by the residents and they consider it is not reasonable to request windows be closed, even if they have alternative mechanical ventilation.
- 6.28 There is a range of relevant national planning policy, noise policy statements and British Standards (BS) guidance. The NPPF states that planning policies and decisions should ensure that new development is appropriate for its location taking into account the likely effects, including cumulative effects of pollution on health and living conditions. The DEFRA Noise Policy Statement for England (NPSfE) 2010 that advises that the aim is to minimise noise as far as is reasonably practical and National Planning Practice Guidance provides general guidance on how noise impacts should be considered in the context of the planning system. The NPPG states that the planning process should try to avoid exposing people to noise that would change their behaviour (e.g. by closing windows) at the plan making stage. However it then goes on to give the example of closing a window for most of the time as a potential method of mitigation (and the need to consider the impact of this upon the living environment). It adds that the agent of change (or the developer) must clearly define the mitigation being proposed and that whilst this may not prevent all complaints from new residents it will help to achieve a satisfactory living environment and mitigate the risk of a statutory noise nuisance being found; again the NPPG gives the example of closing windows when those effects are occurring.
- 6.29 The Noise Assessment considers that the worst-case noise break out conditions would occur when a live band is playing in the beer garden. In the case of the Fox mitigation could only be achieved by enclosing the entire garden. Therefore mitigation is proposed in the form of the building envelope that includes occupiers closing windows during live music events. According to the Noise Exposure hierarchy table within the NPPG having to close windows for some of the time because of noise equates to the 'Lowest Observed Adverse Effect Level' and the advice is to mitigate the noise to reduce it to a minimum.
- 6.30 With respect to the Fox the rear beer garden is screened from the application site by the building that is approximately 9 metres in height. On this basis, the lower floors of the proposed development would benefit from a degree of screening. Whilst the upper floors would not have the benefit of this physical screen the potential for noise

nuisance would be reduced by the separation distance. Furthermore the need to close windows would, generally, be at times when residents might normally expect to close windows, during the late evening and night time. The noise consultants consider that residents should have the ability to open windows at their choosing during the majority of the day. Plus, during those periods when entertainment noise occurs and residents might choose to close their windows, full ventilation in accordance with Building Regulations would be provided, with a mechanical system providing better ventilation rates than an open window. A mechanical ventilation system also offers the opportunity to filter and condition fresh air entering the apartment unlike an open window that may provide little filtration during calm conditions.

- 6.31 On the basis of the licensing hours of the Fox, the position and size of the primary source of noise sited to the rear of the building and the potential requirement for occupiers to close their windows some of the time it is considered that the mitigation proposed via glazing and the building envelope would be sufficient to accord with Policy DM6 and the NPPF whilst still providing the future occupiers adequate living conditions. This form of mitigation would be secured via a condition. Future purchasers and occupiers would also be advised that a range of late night entertainment premises are located in this part of the City Centre and that residents may need to close windows to mitigate noise during the late evening.
- 6.32 The NPPG states that where external amenity spaces are an intrinsic part of the overall design, the acoustic environment of those spaces should be considered so that they can be enjoyed as intended. The centre of the ground level courtyard is approximately 100m from the Nightingale club and The Fox and fully screened from these premises by the proposed development that would exceed the height of the nearby entertainment premises. The noise consultants have indicated that sound levels in the courtyard would be of the order of 30dB (1,000 times) lower than the levels that occur at the building facades. Meanwhile the rooftop amenity areas are located on the southern side of the site and approximately 160m from the entertainment premises. These amenity areas are also positioned several floor levels below the height of the blocks facing to Lower Essex Street and Kent Street and, consequently, would be fully screened from the entertainment premises. As such the noise levels would be approximately 35dB (3,000 times) lower than levels that occur at the building facades nearest to the entertainment premises. Likewise the private gardens facing The Avenue would be screened from Nightingale club and The Fox. As such it is considered that the proposed communal and private amenity areas would be enjoyed as intended and accord with the Policies GA1.1, PG3 and DM6.

Impact Upon Heritage Assets

- 6.33 A Heritage Assessment (HA) identifies 27 designated and non-designated heritage assets within a 750m study area. The HA concludes that 8 of these assets, as listed below, have a setting with some sensitivity to the site and in all cases this is due to the visibility of the site from each heritage asset:
- The Fox public house, Lower Essex Street - non-designated heritage asset;
 - Unity House, 134-135 Bromsgrove Street - locally listed;
 - 74-104 Bristol Street - locally listed;
 - Wellington Hotel, Bristol Street - grade II listed ;

- 99-102 Bromsgrove Street - locally listed;
 - St. Catherine's of Siena R.C. Church -locally listed;
 - Smallbrook Queensway Ringway Centre - locally listed; and
 - The Rowton Hotel - grade II listed.
- 6.34 The proposed development is deemed by the HA to have a predicted negligible adverse impact on the setting of all but one of the above heritage assets. The exception is the Fox that would experience a change in the scale of development within its setting, resulting in a predicted low adverse impact. Overall, the impacts are judged by the HA to be of a magnitude that is not significant and that in NPPF terms represent no harm to the heritage significance of any built heritage asset. The Conservation Officer considers that there would be a degree of harm to the significance of The Fox. According to paragraph 203 of the revised NPPF the significance of a non-designated heritage asset should be taken into account and a balanced judgement is required having regard to the scale of the harm and significance of the heritage asset. In this instance the low level of harm identified is clearly outweighed by the significant public benefits associated with the development, noting that the public benefits test set out in the NPPF is confined to designated assets.
- 6.35 The archaeological potential of the site has been assessed. The Council's Archaeological Officer agrees that no further investigative works are necessary.

Sustainability

- 6.36 An Energy Statement has been submitted as required by Policy TP4. The Statement has demonstrated that through the implementation of passive design measures and efficient building services that the development is estimated to achieve a 17.05% reduction in carbon dioxide emissions over Building Regulations Approved Documents. The statement concludes that photovoltaics (PV) would be the most suitable LZC energy source for the development and the incorporation of PV systems would further reduce CO2 emissions for the development by a further 1.95% bringing the total reduction to 19%. A condition is attached to require details of the PV.

Transportation

- 6.37 The scheme proposes a basement car park with 26 spaces and 100% cycle parking. There are refuse stores adjacent to Gooch Street North and Lower Essex Street that could be accessed via the highway fronting the site using the existing on-street parking restrictions. The site is close to the City Centre; a 10 minute walk to New Street Station and a 15 minute walk to the proposed Curzon Street Station for HS2. Transportation welcome the proposed link, known as The Avenue to the south of the site as a beneficial connection for pedestrians however further details are required on its design and intended use. Such details would be secured via a condition.

Ecology

- 6.38 An Ecological Appraisal has been submitted identifying the majority of the buildings on site as having negligible potential for bats. Four buildings are classified as having low potential and 6 buildings that were unable to be fully assessed must also be classified as being at least of low potential. The Council's Ecology Officer has

therefore advised the submission of a Construction Ecological Management Plan (CEcMP) that would include the requirements for the bat activity survey to be undertaken at an appropriate time prior to demolition.

- 6.39 The area also has the potential for red data book bird species such as Black Redstart. The Appraisal states that none were noted on site the date of the survey was outside the survey period for this partially migratory species. Therefore given this potential the CEcMp condition would also allow consideration of nesting birds at the demolition and construction stages.
- 6.40 The Ecology Officer comments that the landscape plans for the central courtyard and rooftop garden and should provide some biodiversity interest. The proposed landscaping would not however cater for black redstarts in terms of nesting features, nor for bats, and it is considered reasonable to require a brown roof for reasons of ecology and sustainability. Therefore ecological conditions are attached.
- 6.41 Finally in order to secure a fully detailed planting scheme is implemented with adequate rooting volume for trees a suitable landscape condition is attached. It is noted that there are existing trees to the south of the application site, however the Tree Officer has commented that they should be sufficiently clear of the proposed development not to be affected.

Land Contamination

- 6.42 Regulatory Services have raised concern at the site investigation report submitted insofar as an insufficient number of boreholes and samples have been undertaken leading to potentially flawed assumptions. A condition to require further investigative works, remediation and verification are attached.

Other

Public Sector Equality Duty

- 6.43 The Equality Act 2010 introduced a new public sector equality duty (the PSED), which cover nine protected characteristics including sexual orientation. This is relevant to the current proposals that could potentially have an impact upon the Nightingale and The Fox, both key venues for the LGBTQ community.
- 6.44 In the context of this duty the Civic Society has raised concern at the loss of potential sites for LGBTQ venues and the future of the provision for the community as a whole due to current scale of development in this area. Disappointment is expressed that such a large urban block does not contain units that might support future venues. The Civic Society recommends a S106 agreement be used to support appropriate charities or local uses that would mitigate the impact of this development on the LGBTQ community. In response the applicant is willing to mitigate noise from the Nightingale at source whilst it is considered that the development itself would offer sufficient mitigation to avoid adverse effects from the Fox. Plus the proposed commercial units could offer additional floorspace to extend the LGBTQ quarter and could provide more activity and natural surveillance to increase safety in this part of the City Centre. As such, it is considered that there would be no significant adverse

impact upon the current operation of the nearby venues and therefore no significant risk to the demise of the LGBTQ quarter by this development.

Planning Obligations

- 6.45 Policy TP31 of the BDP requires 35% of the total number of dwellings to be affordable on sites of 15 dwellings or more and TP9 seeks either on site public open space at 2ha per 1000 population or a contribution towards off site provision for developments of 20 or more dwellings. In addition obligations have also been requested from the following consultees:
Education - £1,219,111.29; and
Sport England - £453,814.
- 6.46 The applicants contend that the development would be unable to meet the Policy requirements outlined above and still deliver a sufficient developer's return. Therefore a Financial Viability Appraisal (FVA) has been submitted and independently assessed. This sets out the costs associated with the development including £1,041,000 for the creation of The Avenue, the pedestrian boulevard linking Gooch Street North to Essex Street, that will include a green wall, feature art pieces, trees, raised fruit gardens and seating. The independent assessment tests the reliability of the submitted costs and the receipts that the developer should receive against the value of the land and an appropriate profit margin. It concludes that the proposed development is able to sustain the provision of 44 No. affordable apartments units as a mix of 22 one bedroom units and 22 two bedroom units. These would be provided for low cost home ownership tenure at 20% discount to market values into perpetuity. This represents an overall affordable housing provision of 9.65%. The equivalent monetary sum in lieu of the circa 10% affordable housing provision is £1,485,000.
- 6.47 Other requests for contributions have been received with respect to education and from Sport England. However it is not likely that the proposed development would deliver a significant proportion of family housing, whilst the scheme would provide approximately 2,735sqm of outdoor space for physical activity. Therefore the preference is to comply as far as possible with Policy TP31 by providing on site affordable housing.
- 6.48 There is also the matter of the necessary works to upgrade sound insulation at the Nightingale club. As with the development at 16 Kent Street the owner of the club has agreed to these works to help to secure the future of the business and to help protect against it against noise complaints in the future that may arise from residential occupiers living in close proximity. The cost of the works has been estimated by the 16 Kent Street applicants at approximately £661,000. The application at 16 Kent Street has received delegated authority to approve subject to the signing of a Section 106 Agreement. However should the current application be approved it is not known which development would be implemented first; 16 Kent Street or this current application. Therefore the Section 106 Agreement would need to encompass two scenarios as follows.
- The delivery of The Avenue with a minimum expenditure of £1,041,000 upon those items listed in the External Works – S106 cost plan (Rev. 5 dated 1st June) prior to the first use or occupation of the development; and

- The provision of 22 No one bedroom units and 22 No two bedroom units, to be provided for low cost home ownership tenure at 20% discount to Market Values into perpetuity.

However should the works to mitigate noise from the Nightingale Club not have taken place prior to commencement of the development:

- The delivery of The Avenue with a minimum expenditure of £1,041,000 upon those items listed in the External Works – S106 cost plan (Rev. 5 dated 1st June) prior to the first use or occupation of the development; and
- Require the applicants to submit a new FVA that takes account of the costs of the works to the Nightingale and this sum be deducted from the affordable housing equivalent monetary that would result in fewer affordable housing units. The independent assessment of the revised FVA to be paid for by the developer.

7. Conclusion

- 7.1 The site is located within the City Centre Growth Area under Policy GA1.1. The scheme would make an efficient use of this brownfield site in accordance with local and national policy and contribute to the City's need for residential accommodation. It is considered that the scale and massing would be appropriate for the emerging context with the provision of a pedestrian link to improve connectivity eastwards towards Smithfield to create a good place in accordance with Policy PG3.
- 7.2 There are however concerns surrounding noise from the surrounding late night premises and Policy DM6 of the Development Management DPD and the NPPF seek to ensure that new development is integrated effectively with existing businesses. In this instance mitigation via an agent of change has been agreed to secure mitigation works to the Nightingale whilst it is considered that mitigation offered by the proposed building envelope would be adequate to mitigate against the Fox public house.
- 7.3 There is also some harm to the significance of the Fox as a heritage asset due to the scale of the proposed development within its setting, however as the Fox is an undesignated heritage asset the scale of harm is considered to be low with this harm outweighed by the public benefits of the scheme. These comprise the provision of housing, the economic benefits during and after construction and social benefits of creating a place with good connectivity.
- 7.4 Whilst the City Design Manager has commented on detailed design matters it should be noted that there is overall agreement to the scale of the development, the setting out of the elevations and their materiality and the layout in terms of The Avenue, the central courtyard and the roof terraces.
- 7.5 I consider that the proposed scheme is acceptable subject to:
- a) completion of a legal agreement to secure the delivery of The Avenue and on site affordable housing (potentially less the cost associated with the noise mitigation works at the Nightingale club); and
 - b) safeguarding conditions.

8. Recommendation

- 8.1 That consideration of planning application 2021/05399/PA be deferred pending the completion of a planning obligation to secure the following:
- a) The delivery of The Avenue with a minimum expenditure of £1,041,000 upon those items listed in the External Works – S106 cost plan (Rev. 5 dated 1st June) prior to the first use or occupation of the development; and
 - b) The provision of 22 No one bedroom units and 22 No two bedroom units, to be provided for low cost home ownership tenure at 20% discount to Market Values into perpetuity.
 - c) Should the works to mitigate noise from the Nightingale Club not have taken place prior to commencement of the development to require the applicants to submit a new FVA that takes account of the costs of the works to the Nightingale and this sum be deducted from the affordable housing equivalent monetary resulting in fewer affordable housing units. An independent assessment of the revised FVA to be paid for by the developer.
 - d) Payment of a monitoring and administration fee associated with the legal agreement, subject to a maximum of £10,000.
- 8.2 That the City Solicitor be authorised to prepare, seal and complete the planning obligation.
- 8.3 That, in the event of the above legal agreement not being completed to the satisfaction of the Local Planning Authority on or before 31st January 2022, planning permission be refused for the followings reason:
- That in the absence of any suitable legal agreement to secure the provision of on site affordable housing and improvements to the public realm the proposal conflicts with Policies TP31 and PG3 of the Birmingham Development Plan, the Affordable Housing SPG and the NPPF.
- 8.4 That in the event of the planning obligation being completed to the satisfaction of the Local Planning Authority on or before 31st January 2022, favourable consideration be given to this application, subject to the conditions listed below (that may be amended, deleted or added to providing that the amendments do not materially alter the permission).

1	Pre - Demolition: Submission of Demolition & Construction Management Plan
2	Pre - Demolition: Submission of Construction Ecological Management Plan (CEcMP)
3	Prior to Commencement of Development Submission of a Construction Employment Plan.
4	Pre - Demolition: Submission of details of the Noise Mitigation Measures at the Nightingale
5	Prior to Commencement of Development (excluding demolition): Submission of

Sustainable Drainage Scheme

- 6 Prior to Commencement of Development (excluding demolition): Submission of a Contamination Remediation Scheme
 - 7 Prior to Commencement of Development (excluding demolition): Submission of a Noise Mitigation Scheme
 - 8 Prior to Commencement of Development (excluding demolition): Submission of a Noise Mitigation Scheme
 - 9 Prior to Above Ground Works: Submission of Hard and Soft Landscaping and other Minor Artefacts within The Avenue
 - 10 Prior to Above Ground Works: Submission of Hard and Soft Landscaping and other Minor Artefacts within the central Courtyard and Roof Terraces
 - 11 Prior to Above Ground Works: Submission of details of bird/bat boxes
 - 12 Prior to Above Ground Works: Submission of details of green/brown roofs
 - 13 Prior to Above Ground Works: Submission of Details of Photovoltaics
 - 14 Prior to First Use or Occupation of any Residential Apartment: Submission and Implementation of Noise Commissioning Testing
 - 15 Prior to First Use or Occupation of any Residential Apartment: Submission of a Commissioning Test for the Mitigation Works at the Nightingale
 - 16 Prior to First Use or Occupation: Submission of Package of Highway Measures
 - 17 Prior to First Use or Occupation of Development: Submission of a Contaminated Land Verification Report
 - 18 Prior to Use of Ground Floor for Class E (b) (Food and drink which is mostly consumed on the premises): Submission of Extraction and Odour Control Details
 - 19 Prior to Use of Ground Floor for Class E(d) (Indoor sport and recreation): Submission of Noise Assessment and Mitigation Plan
 - 20 Prior to First Use or Occupation of Development: Submission of a Sustainable Drainage Operation and Maintenance Plan
 - 21 Prior to First Use or Occupation: Implementation of Approved Cycle Parking and Car Parking with Electric Vehicle Charging
 - 22 Prior to First Use or Occupation: Submission of Noise Insulation Between Commercial and Residential Uses
 - 23 Prior to First Use or Occupation: Submission of a CCTV scheme
 - 24 Rating Levels for cumulative noise from all plant and machinery
 - 25 Implementation within 3 years (Full)
 - 26 Implementation in accordance with Approved Plans
-

27	Removal of Temporary Wall to Aligning Common Boundary to South of Site
28	Limits the hours of operation/deliveries/collections regarding Ground Floor Commercial Uses

Case Officer: Julia Summerfield

Photo(s)



Kent Street (application site on rhs, Nightingale club in distance to lhs)

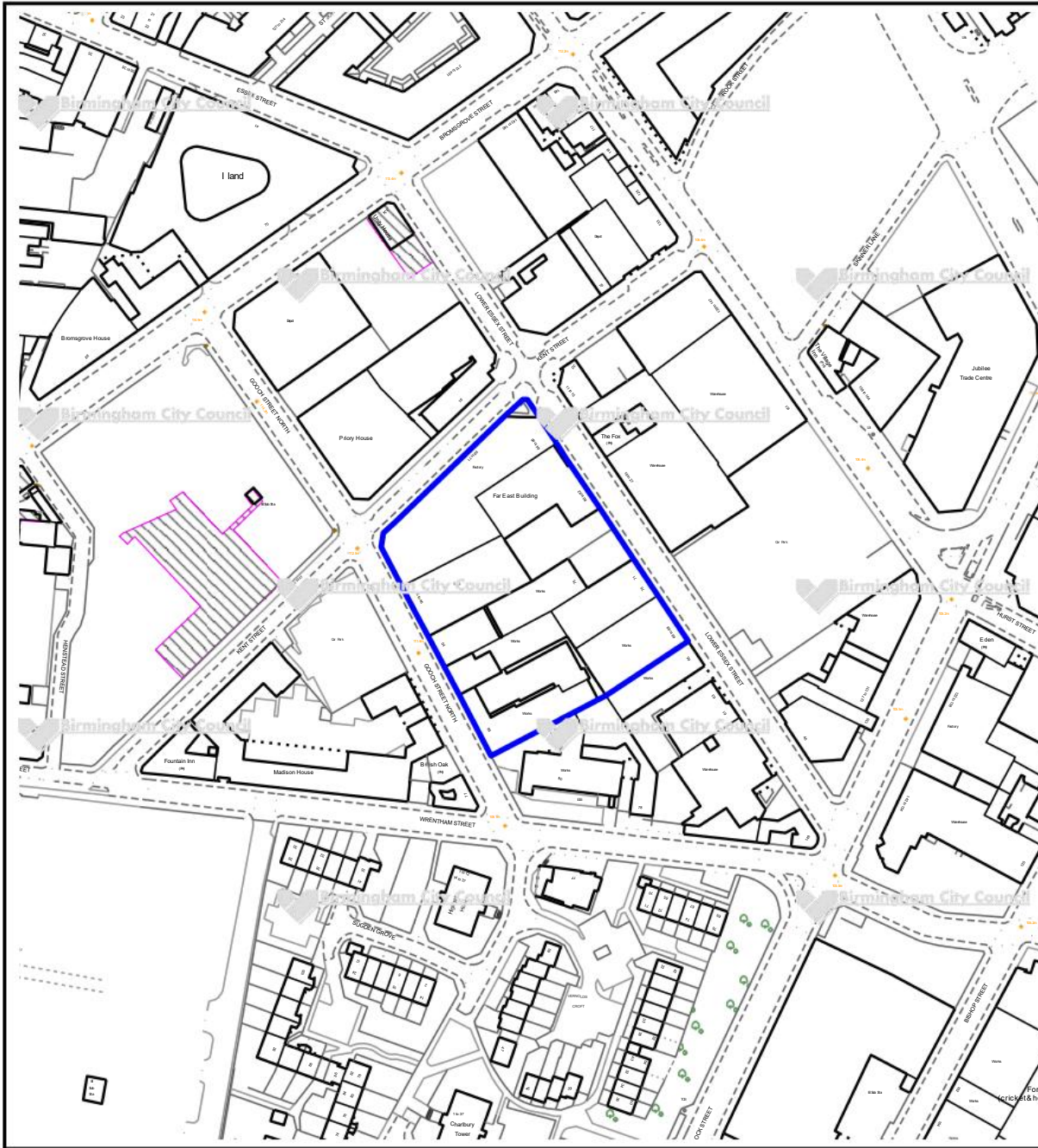


Lower Essex Street



Upper Gooch Street North

Location Plan



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Birmingham City Council

Planning Committee

03 February 2022

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

<u>Recommendation</u>	<u>Report No.</u>	<u>Application No / Location / Proposal</u>
Determine	7	2021/05314/PA Land off Barnsley Road Edgbaston Birmingham B17 8ED Demolition of existing structure on site, to allow for the erection of a two storey detached building to provide 17no. assisted living residential units, with associated car parking and landscaping works.

Committee Date:	03/02/2022	Application Number:	2021/05314/PA
Accepted:	30/06/2021	Application Type:	Full Planning
Target Date:	04/02/2022		
Ward:	North Edgbaston		

Land off Barnsley Road, Edgbaston, Birmingham, B17 8ED

Demolition of existing structure on site, to allow for the erection of a two storey detached building to provide 17no. assisted living residential units, with associated car parking and landscaping works.

Applicant:	Edgbaston SSL Ltd C/o Icen Projects, Da Vinci House, 44 Saffron Hill, London, EC1N 8FH
Agent:	Icen Projects Da Vinci House, 44 Saffron Hill, London, EC1N 8FH

Recommendation
Determine

Report Back

- 1.1. This application was presented to Planning Committee on the 20th of January, 2022. At the meeting, Members were minded to refuse the application on the grounds that the proposed residential units did not meet the Nationally Described Space Standards, and provided a poor-quality living environment for future occupiers. Members also had concerns regarding the provision of outdoor amenity space, which was also considered to be substandard, falling below the Council's adopted guidelines.
- 1.2. Officers have however, upon further review of the submitted plans, found that all of the proposed apartments and bungalows would either meet or exceed the Nationally Described Space Standards, for one bed, one person units. The incorrect figures, reported within the original committee report, at paragraphs 1.2 and 6.21 were due to Officer error. The accurate figures are further detailed below for each of the individual units.

Flat / Bungalow	Floor Space in Square Metres
Flat 1	42.43
Flat 2	41.57
Flat 3	42.12
Flat 4	40.23
Flat 5	39.02
Flat 6	43.67
Flat 7	42.41
Flat 8	43.34
Flat 9	39.60
Flat 10	42.36
Flat 11	42.19
Flat 12	42.06
Bungalow 1	46.12
Bungalow 2	45.71
Bungalow 3	41.45
Bungalow 4	47.35
Bungalow 5	47.08
Nurse Hub	44.68

(Figure 1 – table to show floor space figures)

- 1.3. It is therefore considered that a refusal on the basis of the above figures cannot be substantiated.
- 1.4. With reference to the proposed outdoor amenity space, the figures reported within the original committee report at para. 6.22 did not take into account the land identified on the submitted plan as “garage spaces”. Upon further review the following can be confirmed.
- 1.5. Bungalows:
 - All of the ground floor bungalows have their own private garden, as these individuals require a greater level of care.
 - The garden sizes are now confirmed to measure between 28sqm and 40sqm, complying with the Council’s Places for Living SPG which requires a minimum figure of 30sqm per unit, with the exception of one bungalow falling slightly short.
- 1.6. Apartments:
 - A total of 12 apartments are proposed and Places for Living SPG would require a minimum outdoor amenity space of 360 sqm.
 - When combining the main areas of outdoor private communal space within the site, (linear areas to the east and north of the main building), 307sqm is provided. However, also taking into account the smaller areas elsewhere within the site (each individually larger than 10sqm), it exceeds the minimum requirement.
- 1.7. Whilst it is noted that in numerical terms sufficient outdoor amenity space is provided for the occupiers of the apartments, Members may wish to consider the qualitative issue. The majority of the space referred to above is a linear strip located between the proposed building and the access road, alongside the parcel of space located to the north of the car park. The additional areas referred to above are small parcels of space

that are located to the corners of the site between the site boundary and the boundaries to the bungalow gardens.

- 1.8. If Members are minded to refuse the application on these grounds, the following is suggested:
- The proposed development would not provide sufficient private useable outdoor amenity space for the intended occupiers, contrary to the provisions of Policies DM10 and DM12 of the Development Management in Birmingham DPD, guidance given in 'Places for Living' SPG and the NPPF.

Original Report

1. Proposal
- 3.1. Proposed demolition of existing single storey garages and erection of 2 storey detached building consisting of 17no. assisted living, self-contained apartments and bungalows; with ancillary landscaping and car parking.



Image 1: Proposed site plan within site context.

- 1.2. The proposed L shaped block would be erected to the site's south-west, the building would be set in at first floor level, towards the west of the site, with the western most section being single storey only. There is a nurse's station and 8 self-contained units at ground floor; 5 to the west and south described as 'bungalows' with private external terraces and 3 apartments to the east. At first floor, a further 9no. apartments would be created. All of the units would be circa 28sqm in size and would feature a kitchen, living space and separate bedroom, with either an in-suite or separate bathroom.



2: Proposed ground and first floor layout plans.

- 1.3. To the north, 10no. car parking spaces would be created, alongside a cycle store. Small pockets of communal amenity space would be created to the east and west.
- 1.4. A small strip of landscaped land labelled as “garage plots” on the submitted plans is anticipated to be landscaped and retained as open space. However, a condition should be attached to ensure that this parcel of land is landscaped and retained as communal amenity space for residents. Access to the rear of properties on Barnsley Road would also be retained.
- 1.5. The end user would be “Eden Futures”, who are a care provider for people with disabilities and other support needs. The company currently manages upwards of 600 service users and have over 1000 staff across a number of properties, UK wide. The supporting statement has stated that this application has been prepared together with the local commissioner of the NHS. This site is said to have been selected due to being close to local amenities and for having good transport links and demand for such a service within the area. The applicant adds there are also ample staff residing within a 6-mile radius.

- 1.7. The bungalows are individual units served by a safety corridor, with all access points monitored and controlled by staff. The flats are safeguarded in a similar fashion and have a separate access point. The dwellings are used as short term transitional accommodation, typically for 18 months and are not designed for long term use.
- 1.9. The care levels of each individual vary, with the residents within the bungalows requiring a greater and much more intense level of care, when compared to residents within the apartments. As care staff are situated within a 6-mile radius, no on-site sleeping or shower facilities are provided for the staff and CCTV will remain operational 24/7 and this includes the external amenity spaces.
- 1.10. Up to 12no. staff would be on site at any one time during the day and a maximum of 6no. staff during the night shift. Residents receive on average 2 visitors per week, including health care professionals during morning hours or early evenings. None of the residents are likely to own a private vehicle and the car parking spaces are earmarked for staff and visitors only. All staff will be encouraged to use sustainable transport as opposed to driving to and from the site.
- 1.11. The application is supported by the following documents: Energy statement; Flood risk assessment and drainage strategy; Ecological appraisal; Design and access statement; Tree report; Residential noise survey; Planning statement; Sustainable construction statement; and Sustainability statement.
- 1.12. [Link to Documents](#)



Image 3: Aerial photo of site, within wider context.

2. Site & Surroundings

- 2.1. The application site is between residential dwellings on Barnsley Road, Poplar Road, Anderson Road and Drayton Road. The land has a single access point to its south-eastern corner, accessed via Barnsley Road. The site is largely vacant. The Poplar Road properties are Victorian terraced 2-storey houses with gardens circa 20-40m long. Dwellings on Anderson Road are 3-storey, terraced dwellings, with 12m long rear gardens. To the east, the houses form part of Barnsley Road Conservation Area and are distinctive late Victorian / Edwardian 2-storey semi-detached houses with 16m rear gardens.

2.2. The site had previously been used to house a number of single storey prefabricated garages, relating to dwellings on Barnsley Road. The wider site remained open, with pockets of vegetation and trees throughout, as seen on the aerial image above. A number of these trees and areas of vegetation however have since been removed and cleared. The site is not protected by any TPO's.

3. Planning History

3.1. 2002/02757/PA – erection of 8 dwelling houses – approved.

4. Consultation/PP Responses

4.1. Education services – no objections.

4.2. Transportation – no objection subject to conditions: Appropriate pedestrian visibility splays to be provided, gates to be set back into the site a minimum of 5.5m and parking spaces to be clearly marked out on the ground within the site.

4.3. Lead Local Flood Authority – no objection subject to conditions: the prior submission of a sustainable drainage scheme and a Sustainable Drainage Assessment and Sustainable Drainage Operation and Maintenance Plan.

4.4. Regulatory Services – no objections subject to conditions: Construction Management Plan, Contamination Remediation Scheme, Contaminated Land Verification Report and the use of electric vehicle charging points.

4.5. BCC Employment – no objections.

4.6. Severn Trent Water – no objections subject to a condition to secure the disposal of foul and surface water flows.

4.7. West Midlands Police – no objections and make a number of recommendations, relating to crime prevention and safety measures.

4.8. West Midlands Fire Service - no objections and make a number of recommendations.

4.9. School organisation team – no comments.

4.10. Press and site notices posted. MP, Councillors, Residents' Associations and neighbouring occupiers notified. 36no. letters of objection have been received, raising the following comments:

- Lack of sufficient consultation with local residents and neighbours;
- Inaccuracies within the information submitted;
- Lack of clarity of the existing garages on site and the rights of their current owners;
- Clearance of the ground and removal of existing trees on site, without consent or consultation with neighbours;
- Exasperation of existing pollution and traffic/congestion problems within the area;
- Additional noise and anti-social behaviour that will be generated by this new development;
- Residents with mental health issues likely to cause noise/nuisance, engage in antisocial behaviour and result in an increase in crime;
- Health and safety concerns for the residents;

- Increased crime and anti-social behaviour for existing neighbouring residents as a result of the scheme;
- The unnecessary additional pressure on already over stretched police and ambulance services, serving this area;
- Increased light pollution and impact upon neighbouring residential amenity;
- Cramped form of parking will result in additional on streetcar parking pressure;
- Impact upon natural wildlife at the site;
- Overlooking;
- Drop in property values within the area;
- No provision for green or outdoor space for new residents;
- Disproportionate number of HMO's and exempt accommodation within the area already;
- Negative impact upon conservation area;
- Cramped living spaces proposed for residents;
- Loss of green space and the visual aspects of this for existing neighbouring residents;
- Right of way and use of existing garages remains unclear;
- Accessway too narrow for development;
- Problems turning and getting onto the surrounding roads;
- Shoehorned development;
- Treatment of Japanese Knotweed on site;
- Existing issues around fly-tipping;
- Loss of light for neighbouring dwellings;
- The site is not brownfield;
- The applicants do not own the site;
- The site should be repurposed for community use;
- The development should use a vacant building elsewhere within the city;
- Intimidation from developers to sell land;
- Confusion over future of car parking and garage spaces;
- Scale and massing of development is disproportionate for size of site;
- Replacement tree planting is required;
- Residents would come from outside of Birmingham;
- Inaccuracy of submitted information; and
- Increase in emergency services attending site.

4.11. A petition has also been submitted siting reasons set out above for objection to the development with 90 signatures.

4.12. A single letter of support has also been received.

4.13. A letter of objection from the MP Preet Gill has also been received, setting out the below reasons for objection:

- Limited response time was allowed for comments from neighbours;
- Inaccuracy of information submitted;
- Clearance work took place without consultation;
- Unclear why the number of units proposed is required;
- Unclear if existing buildings have been reviewed for use?
- Existing concern of anti-social behaviour and crime;
- High concentration of HMO's within the area;

- Impact upon Police resources;
- No outdoor amenity space for residents;
- Impact upon privacy of neighbouring residents;
- Development too large for the site;
- Issues around land ownership; and
- Site not suitable for this type of development.

4.14. A letter of objection from Councillors Carl Rice, Sharon Thompson, Ahmad Bostan (SMBC) and Nicky Hinchliff (SMBC) has also been received, setting out the below reasons for objection:

- No demand for such accommodation within the area;
- Overconcentration of such uses within the Ward;
- Impact upon local streetcar parking;
- Impact upon the amenity of existing residents;
- Impact of the site limitations on the end service users;
- Small entrance will lead to noise and nuisance;

4.15. A letter of objection from John F. Spellar MP for Warley has also been received, who:

- Would like to endorse the points raised by MP Preet Gill.

5. Policy Context

5.1. National Planning Policy Framework (2019); Birmingham Development Plan (2017); Birmingham UDP saved policies (2005); Development Management in Birmingham, Places for Living SPG (2001); Car Parking Guidelines SPD (2012); Public Open Space in New Residential Development SPG (2007); and Affordable Housing SPG (2001).

6. Planning Considerations

Principle

6.1. The application site is designated as a SHLAA site (S485) and has a previous planning permission for housing which has now expired for 8no. 2 and 3 storey houses.

6.2. The proposal is for 17no. assisted living residential units, as short-term transitional units, providing different levels of care. As such, the proposal is meeting a specific need for the City in relation to assisted living accommodation, whereby residents in support of specialist, affordable housing can be housed. This specific need is identified within Policy TP31 of the BDP and Policy DM12 of the Development Management in Birmingham DPD (DMB).

6.3. Policy DM12 from Development Management in Birmingham focuses on Residential Conversions and Specialist Accommodation. The policy stipulates that such schemes will only be supported if:

- A. It will not lead to an unacceptable adverse impact on the amenity, character, appearance, parking, public and highway safety of the area, taking into account the cumulative effects of similar uses in the area;
- B. The accommodation and facilities, including outdoor amenity space and provision for safety and security, is suitable for the intended occupiers;
- C. It is accessible to local shops, services, public transport and facilities appropriate to meet the needs of its intended occupiers;
- D. The scale and intensity of the proposed use is appropriate to the size of the building;

E. It will not result in the loss of an existing use that makes an important contribution to the Council's objectives, strategies and policies.

- 6.4. In terms of the cumulative impact of similar uses within the area, a search of residential properties within a 100m radius of the application site was undertaken both within Birmingham as well as Sandwell. Policy DM11 of the DMB contains a 10% threshold for HMOs within a 100m radius. 10no. HMOs and 2no. exempt accommodation premises were identified representing a total of 10.9%. However, the proposal is not for a HMO and as such would not impact upon this figure.
- 6.5. Policy DM12, which is relevant to this proposal as forming specialist accommodation, does not specify any threshold. When looking at other uses a guest house and 14 properties converted to provide self-contained apartments were identified. The search failed to identify any uses similar to that proposed and the proposal would not be replacing existing residential accommodation and would be the only such purpose-built assisted living accommodation premises. As such it is considered to comply with the NPPF and Policy TP27 in providing a wide choice of housing size, type and tenure to ensure balanced communities catering for different groups in the community. Local concerns are recognised but it is not considered that the proposal would result in an unacceptable cumulative impact that would erode the character of the area to warrant the refusal of the current scheme.
- 6.6. With reference to section B, this has been discussed within the residential amenity section of this report and this policy is met. The proposals are also considered to meet section C, D and E of the above-mentioned policy. As such, the development is considered to be acceptable.

Sustainability

- 6.7. The applicant has submitted an Energy Statement setting out the baseline energy use and stating that the development will achieve a CO2 reduction of 19% through various energy saving measures. The feasibility of renewable energy generation concluded that the most appropriate cost-effective renewable energy technology for the proposed development would be EV panels and the submitted details have been considered acceptable. The applicant has also submitted a sustainable construction statement which Planning Policy colleagues considered complied with Policy TP3.

Heritage

- 6.8. The application site is partly situated within the Barnsley Road Conservation Area, alongside being situated within the setting of the Grade II Listed Sandon Road Methodist Church. The former, now removed garages on site were considered to be in a poor condition and did not contribute to the significance of the Conservation Area, as such their demolition is considered acceptable.
- 6.9. The proposed building is two storeys in height and sits back from the boundaries of the Conservation Area and as such this is not considered to have a harmful impact upon the setting of either the Conservation Area or the nearby Listed Church. The only part of the proposed development that would be situated within the Conservation Area would be the proposed gates and bin store, details of which have been submitted. These have been considered acceptable by the Conservation Officer and as such the development is considered to make a neutral impact upon the setting of the nearby Listed Church and Conservation Area and is not considered to harm their significance.

Design

- 6.10. The building is located in the southern part of the site, with a small car park to the north. The 'bungalow' units positioned on the southern and western elevations have enclosed private gardens, while the first floor is accommodated within the roof space, in order to reduce the building's scale and keep it below the height of surrounding houses, creating a large expanse of sunken flat roof which has been utilised to provide PV panels. The siting, scale and massing minimises impacts on residents of existing houses and is considered acceptable. It should also be noted that this remains lower when compared to the former approval on site.



Image 4: CGI of aerial shot of proposed development in site context.

- 6.11. The building has a coherent, well-proportioned appearance with red and buff bricks, a standing seam metal roof and dormers, and dark grey uPVC window surrounds. Additional interest is created by detailing of brick work around the windows, alongside vertical and horizontal brick banding. The design approach is considered acceptable.



Image 5: details of proposed materials.

- 6.12. Detailed landscape proposals have not been provided at this stage, but there remains scope to provide trees and other planting for visual and biodiversity interest that will benefit the amenity of both the users of the proposed housing and existing residents of adjacent homes. Suitable conditions to secure details for the proposed: landscaping, materials and architectural details are attached.

Residential Amenity

- 6.13. There are a number of residential dwellings in close proximity. In terms of overlooking, the development is considered to achieve sufficient distances from existing nearby dwellings, in order to avoid any undue overlooking concerns and would meet the distance separation guidelines for ground floor and first floor habitable room openings, as set out within the Spaces for Living SPG. It is noted that 2no. openings do not meet this distance at first floor level for flats 5 and 6, however these do not overlook a private rear garden and are thus found to be acceptable.



Image 6: CGI showing relationship between proposed development and neighbouring dwellings.

- 6.14. The development is not considered to result in any new undue loss of light or overbearing concerns, for nearby existing residential occupiers, given the low-lying scale of the development and flat roof.
- 6.15. Regulatory services have no concerns with reference to noise and nuisance, however, given the close proximity of residential occupiers, a condition to secure a construction method statement and management plan has been recommended. This will help safeguard the amenity of neighbouring residential occupiers during demolition and construction.
- 6.16. Furthermore, in order to further maintain the privacy and amenity of neighbouring land users a condition for boundary treatment details, will be attached, which will ensure at least a 1.8m perimeter is erected across the site.
- 6.17. In addition, a condition to secure a suitable lighting scheme to minimise and site lights in such a manner which causes the least level of harm to neighbouring adjoining occupiers will be attached. This will minimise any light pollution/spill into the garden areas of neighbouring occupiers.
- 6.18. A further condition to limit the number of occupants will be attached to safeguard the amenity of neighbouring residents.

Amenity for Future Occupiers

- 6.19. Regulatory services have no objections.
- 6.20. The floor plans show all apartments as having a good level of light and outlook for future occupiers. 2no. bedrooms have been fitted with obscure glazing; however, these will also feature roof lights and would have openings which are top hung, above 1.8m, from internal floor level.

- 6.21. It is noted that the apartments do not meet the standards as set out within the Nationally Prescribed Space Standards for 1 bed apartments. This would be circa 37sqm, whereas the proposed units are roughly on average circa 28sqm. However, the type of accommodation is not a typical C3 use, and as such a degree of flexibility is required, when dealing with supported living style accommodation, such as that proposed. As such, it is considered that although the apartments and bungalows do not meet the guidelines, these are considered suitable for the type of accommodation on offer. Given their short-term use and the needs of future residents, on balance, this level of space is deemed acceptable.
- 6.22. Places for Living requires 30sqm of private amenity space per apartment, equating to 510sqm for the proposed development. The applicant is proposing circa 100sqm of private amenity space in the form of a private terraces and shared amenity areas. However, as this is not a typical form of C3 development, a degree of flexibility is required, and it is noted that the needs of residents will be very different to those of typical residential schemes. Lightwood Park remains a short distance away, available for the use of future residents.
- 6.23. Bearing this in mind, the level of private amenity space on offer is considered acceptable. A condition to ensure that the development remains a specialist form of supported living accommodation will be attached to ensure that the development does not become standard C3 accommodation for which a different type of outdoor amenity space is required.

Highway Safety / Parking

- 6.24. 10no. car parking spaces are proposed on site, these are likely to be used by staff and visitors, as the proposed residential occupiers are unlikely to own or use a private vehicle, given the type of accommodation. Transportation Development have no objections and recommend conditions, which include: the gates to be setback from the highway, vehicle visibility splays to be provided and for the parking spaces to be made available, prior to first use. These conditions are considered both appropriate and reasonable and are attached.

Ecology

- 6.25. The Council's Ecologist raises no objections and recommends the conditions relating to bird and bat boxes and an ecological enhancement scheme.
- 6.26. Although comments have been made regarding Japanese Knotweed presently on site. The applicant has confirmed that this is presently being removed and the Ecologist has raised no objections. The submitted survey work, further did not identify any flora risks associated with the scheme for existing wildlife that may be using the site.

Trees

- 6.27. The site has had a number of trees removed from it previously which the current proposal does not adequately demonstrate how these would be replaced on site. As such the Tree Officer has recommended a condition to secure high quality tree planting at the site be attached. The applicant is proposing to retain all trees on site which lie on the site periphery and the trees which have been removed were not protected under a TPO and were outside the Conservation Area boundary and as such had no level of protection. Future tree planting will however be a key component for the redevelopment of the site and a carefully worded condition to ensure high quality planting is attached.

West Midlands Police

- 6.28. West Midlands Police have not raised any objection with reference to the proposals and have not recommended the use of any specific conditions, however, have made a number of security related recommendations, which have been passed onto the applicant. Following the review of these comments it is considered that a suitable CCTV system, alongside a detailed lighting strategy is needed at the site for the security of proposed residents as well as those nearby. Suitable conditions are included.

Contaminated Land

- 6.29. Regulatory services recommend conditions which require the submission and approval of a ground investigation report and remediation scheme, prior to any works commencing on site. Appropriate conditions are included.

Flood Risk and Drainage

- 6.30. Severn Trent Water raise no objections subject to a condition to safeguard against foul water. The condition is attached accordingly.
- 6.31. The LLFA raise no objections subject to conditions to secure the prior submission of a sustainable drainage scheme and the prior submission of a Sustainable Drainage Assessment and Sustainable Drainage Operation and Maintenance Plan. These conditions are attached.

Planning Obligations

- 6.32. The City Council require 35% affordable housing upon all residential schemes in excess of 15no. residential units unless a financial viability assessment demonstrates that the site is incapable of making this offer. This is alongside a financial contribution to support the provision of off site public open space.
- 6.33. In this case, the applicant has submitted a supporting statement which sets out that the development as proposed is not a typical residential scheme, but one for assisted living, providing specialist care for residents. The applicant has thereby stated that they are not able to make any contribution towards affordable housing or public open space, as it would make the scheme unviable and further argue any such requirement should not be made, given its end intended use, differing it from a typical residential scheme.
- 6.34. A condition will be added restricting the use to a specialist care provider only, which will mean the development would not be able to form standard residential development. As such, it is therefore considered that given the clear difference it has from a standard residential scheme, that an affordable housing contribution or any other s106 contribution should not be sought from this development and instead a means to prevent this from becoming a typical residential scheme be attached.

Other Matters

- 6.35. Matters relating to land ownership, devaluation of nearby dwellings and suggestions around alternative uses are not material planning considerations and cannot be considered as part of this application.
- 6.36. All necessary public consultation, in line with Council's statutory requirements were carried out as part of this application and the representations received have been accurately set out above.

- 6.37. The applicants have confirmed that the supporting statements are accurate. The Council's Tree Officer, Conservation Officer, Ecologist, Flooding and Drainage Officer and Regulatory Service Officers have no comments with reference to the accuracy of the information submitted.
- 6.38. In terms of the level of care and safety of future residents, Eden Futures is an established and known provider of assisted living accommodation and known to offer a suitable level of care and support to those who require it; the scrutiny of this service is however not a planning matter.
- 6.39. There is no evidence to suggest that the development would increase antisocial behaviour within the area and the Police have raised no objections. It is not a matter for planning to consider the backgrounds of any future residents. A balanced judgement on the level of accommodation has been made and its likely impacts upon the wider area and given the consultation with the Police and other consultees the proposals are considered acceptable.
- 6.40. Matters relating to fly tipping, the removal of trees and clearance works which have taken place cannot prejudice the determination of this application.
- 6.41. Finally, representations also note that the applicant has not considered the use of other buildings, that the applicant will bring residents to the site who are not from the city, alongside matters relating to conversations between neighbours and the applicant. The site has been considered appropriate for the form of development proposed. The other matters raised are not material planning considerations.
- 6.42. Furthermore, for clarity, the site is brownfield development and not greenfield as set out within the various representations.

7. Conclusion

- 7.1. The application proposals would see the development of a brownfield site, in order to provide a high quality and highly sustainable new supported living residential development. The development would see the erection of 17no. transitional units for residents with different degrees of care requirements. The development is further seen to rationalise the site area and provide a good range of on-site private amenity space, while also maintaining the privacy of nearby existing residential occupiers. The proposals are further considered to offer a suitable level of car parking and the development would further use sustainable technology for onsite energy generation and offer EV charging points for the use of visitors and staff. 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.

8. Recommendation

- 8.1. Approve subject to the below conditions:

-
- | | |
|---|--|
| 1 | Implement within 3 years (Full) |
| 2 | Requires the submission of sample materials |
| 3 | Requires the submission of architectural details |
| 4 | Requires the scheme to be in accordance with the listed approved plans |
-

-
- | | |
|----|--|
| 5 | Requires the prior submission of a contamination remediation scheme |
| 6 | Requires the submission of a contaminated land verification report |
| 7 | Requires the prior submission of a Sustainable Drainage Operation and Maintenance Plan |
| 8 | Requires the prior submission of a sustainable drainage scheme |
| 9 | Prior submission of foul and surface water flows |
| 10 | Requires the submission of a scheme for ecological/biodiversity/enhancement measures |
| 11 | Requires the prior submission of details of bird/bat boxes |
| 12 | Requires the submission prior to occupation of hard and soft landscape details |
| 13 | Requires the submission of a lighting scheme |
| 14 | Requires the submission of a CCTV scheme |
| 15 | Requires the submission of boundary treatment details |
| 16 | Restricts the use of the site to Assisted Living only |
| 17 | Requires the provision of a vehicle charging point |
| 18 | Requires gates to be set back |
| 19 | Requires the submission of cycle storage details |
| 20 | Requires pedestrian visibility splays to be provided |
| 21 | Requires the parking area to be laid out prior to use |
| 22 | Construction Management Plan |
| 23 | Limits the maximum number of residents to 17 |
| 24 | Prevents the use of the flat roof area as amenity space |
| 25 | Communal amenity space |
-

Case Officer: Idris Gulfraz

Photo(s)

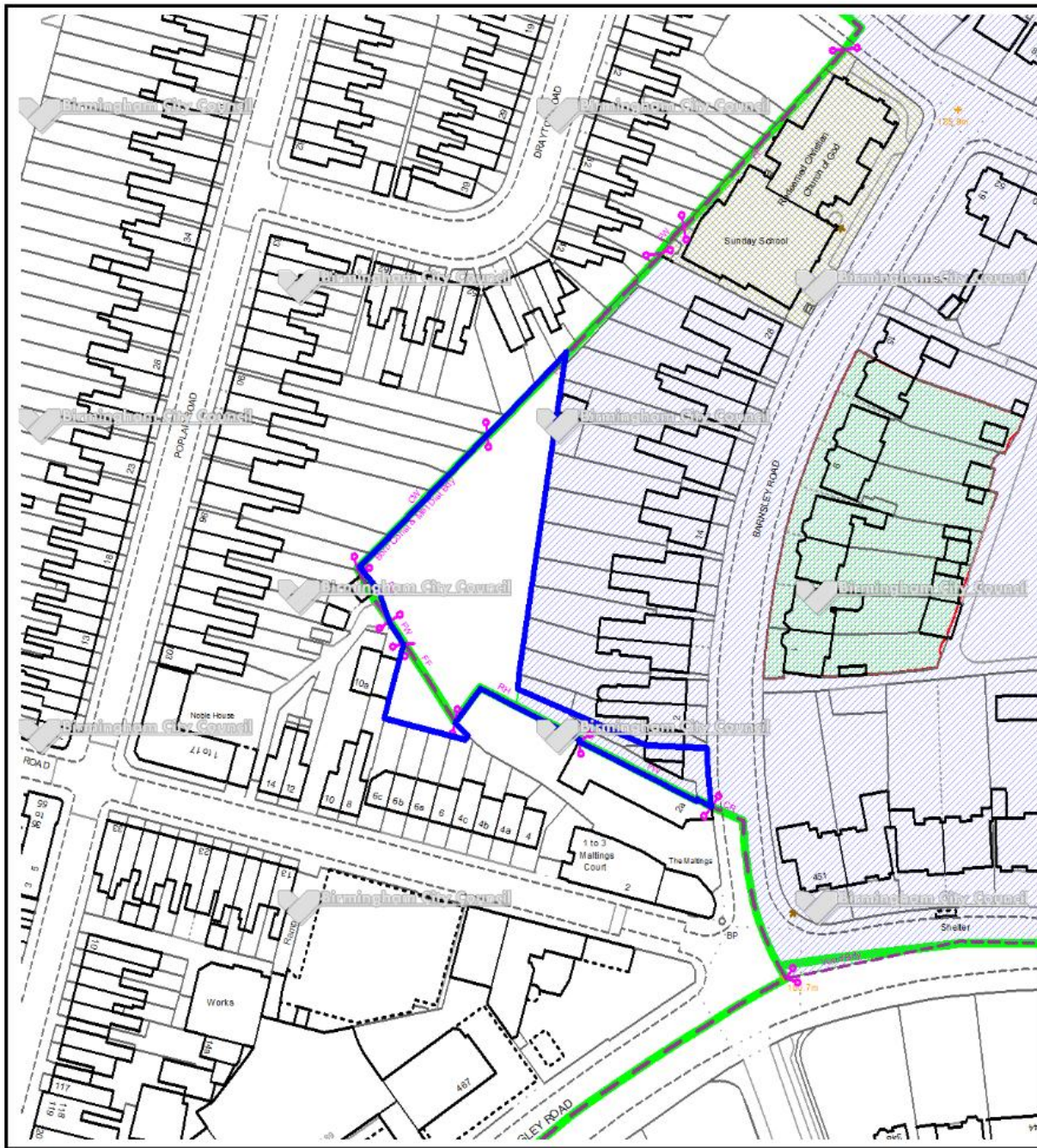


Picture 1 – showing site internally facing accessway off Barnsley Road.



Picture 2: Site access when viewed from Barnsley Road.

Location Plan



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Birmingham City Council

Planning Committee

03 February 2022

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 - Temporary Until 30 September 2022	8	2021/09658/PA University of Birmingham The Vale Edgbaston Birmingham B15 2TT The erection of temporary overlay structures to provide an Athletes' Village during the hosting of the Commonwealth Games.

Committee Date:	03/02/2022	Application Number:	2021/09658/PA
Accepted:	12/11/2021	Application Type:	Full Planning
Target Date:	11/02/2022		
Ward:	Edgbaston		

University of Birmingham, The Vale, Edgbaston, Birmingham, B15 2TT

The erection of temporary overlay structures to provide an Athletes' Village during the hosting of the Commonwealth Games.

Applicant:	Birmingham Organising Committee for the 2022 Commonwealth Games Ltd
	One Brindley Place, Birmingham, B1 2JB
Agent:	Atkins
	The Axis, 10 Holliday Street, Birmingham, B1 1TF

Recommendation

Approve Temporary

1. Proposal

1.1 The application seeks permission for the erection of temporary overlay structures across the site to support its use as an Athletes' Village during the Birmingham Commonwealth Games 2022. The temporary structures would include provision of;

- Operations compound
- Catering and dinning units
- Leisure units
- Polyclinics
- Broadcast area
- Ceremony area
- Security fencing (freestanding, max height 2.1m)
- All of which would require a wide variety of different sized temporary structures such as tents (fig 1 below), platforms, rigging and containers.

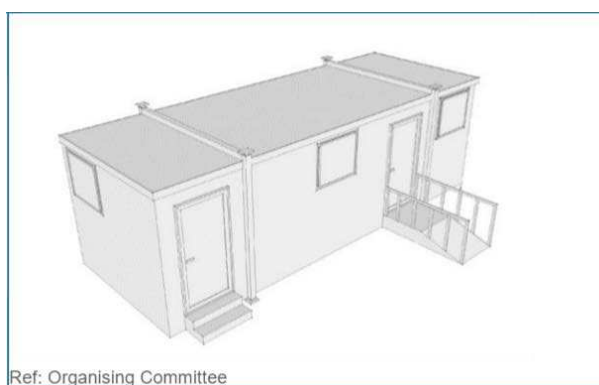
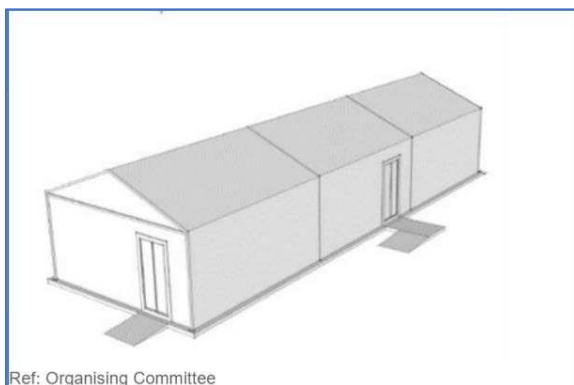


Figure 1: example tent and box structures

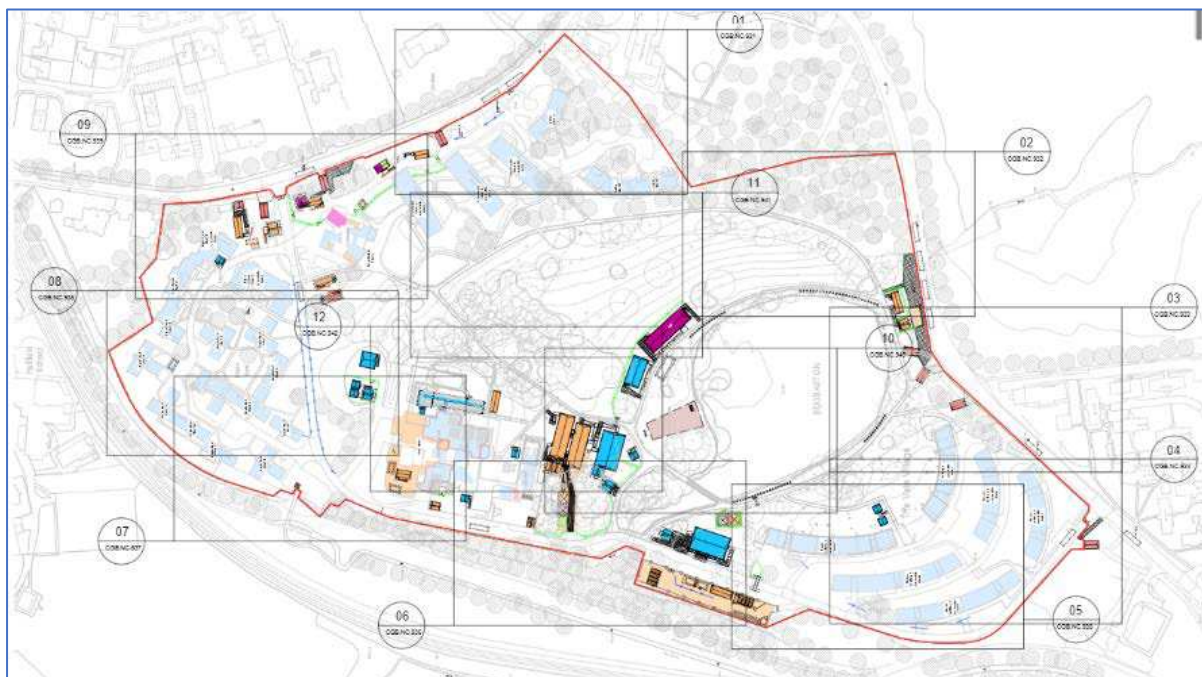


Figure 2: Proposed overview site plan (more detail within specific plans available on app file).

- 1.2 The site would be used by athletes and Games family only. The structures would be erected June 2022, used for the games July/August, and decommissioned with the site re-instated by the end of September 2022.
- 1.3 Information submitted in support includes an Arboricultural Impact Assessment, Ecological Impact Assessment, Flood Risk Assessment and Drainage Strategy, Heritage Assessment, Design and Access Statement, Planning Statement (including Energy Statement) and Transport Statement. In addition, an EIA Screening request was submitted in support of the pre-application submission and it was determined that the development was not EIA development.
- 1.4 Members will recall they received an overview presentation of the various CWG overlay applications February 4th 2021 and whilst this site was not included at the time it follows the same principles.

1.5 [Link to Documents](#)

2 Site & Surroundings

- 2.1 The site is at the University of Birmingham Vale Student Village and is around 16.09 hectares in size, is approx. 15-20min walk from the main University campus and approx. 3km from Birmingham City Centre. The site currently accommodates 2,800 students within a purpose-built student village and includes dining and sports facilities. It is located within a wider residential area of Edgbaston.
- 2.2 The application site is located within The Vale Registered Park and Garden (Grade II), a Site of Importance for Nature Conservation (SINC), within flood zone 2 and 3 and within the Edgbaston Conservation Area. It is also adjacent to Birmingham Botanical Gardens (Grade II*), Edgbaston Hall (Grade II) and the Westbourne Town Road Registered Park and Gardens (Grade II). In addition, there are other designated and non-designated heritage assets including 5 Grade II Listed Buildings within close proximity.



Figure 3: Application site

2.3 [Site location](#)

3 [Planning History](#)

3.1 None relevant.

4 [Consultation/PP Responses](#)

4.1 Canal and River Trust – proposal will largely have a negligible impact on the canal infrastructure, but it will be important that temp lights are baffled/angled to prevent light spill to the canal corridor.

4.2 Environment Agency – no objection.

4.3 Garden's Trust – no comments.

4.4 Historic England – no objection.

4.5 Regulatory Services – no objection.

4.6 Transportation Development – no objection subject to a condition requiring the Local Area Traffic Management Plan to be agreed prior to commencement.

4.7 Police – no objection.

4.8 Local residents' associations, neighbours, Ward Councillors and the MP were notified. Site and press notices were also displayed. No comments received.

5 [Policy Context](#)

5.1 Birmingham Development Plan 2017, Development Management DPD, Places for All SPG, Access for People with Disabilities SPG, Car Parking Guidelines SPD, Floodlighting SPG, Nature Conservation Strategy for Birmingham 2017 and National Planning Policy Framework.

6 [Planning Considerations](#)

- 6.1 The application seeks consent for temporary structures to provide supporting accommodation when the site is used as an Athletes Village for athletes and Games Family only during the Commonwealth Games 2022.
- 6.2 The NPPF sets out the framework for national planning policies whilst locally the BDP sets out the strategy to achieve sustainable growth of the City for the period up to 2031. Policy PG2 and TP25 of the BDP highlight that Birmingham will be promoted as an International City supporting development that strengthens the City's position and reinforces its role as a centre for tourism, culture and events. Given the existing use of the site and the policy context identified the principle of the development is supported entirely.

- 6.3 The key issues for consideration are therefore visual impact, transportation and ecology.

Visual impact

- 6.4 The proposed overlay requires the erection of a wide variety of temporary structures in a mix of materials, of a functional appearance. The proposal would change the visual appearance of the site and the site is a registered park and garden (II*), within Edgbaston Conservation Area and there are a number of other heritage assets within the immediate vicinity, a Heritage Statement (HS) has therefore been submitted in support.
- 6.5 Section 66 of the Planning (Listed Building & Conservation Area) Act 1990, NPPF and TP12 of the BDP requires that careful consideration is given to development that would affect the settings of any designated or non-designated heritage assets.
- 6.6 My Conservation Officer has considered the HS and agrees that the introduction of the temporary structures will cause some harm to the significance of the setting of The Vale RPG. However, English Heritage have offered no objection and my Conservation Officer also agrees with the HS that the impact will be limited (and at the lower end of less than substantial) due to the temporary and reversible nature of the proposals. In addition, I note the very significant public economic and social benefits locally and nationally as a result of hosting the games from trade and investment opportunities, increased revenue spending across a myriad of areas from spectators, volunteers and athletes, improved transport networks and improved sporting facilities and opportunities at a number of sites across Birmingham and consider that these benefits outweigh any identified harm.
- 6.7 The structures are necessary to facilitate the sites successful hosting of the Commonwealth Games. Therefore, subject to conditions to secure removal of structures post games I consider the scale, appearance, and positioning of the structures would have an acceptable visual impact in line with policy.

Transport

- 6.8 The proposed overlay structures will provide additional supporting facilities, but residential capacity will not exceed existing use levels and no new accesses are proposed. In addition, I note there is a wide level of planning and coordination taking place to deliver the various CW Games events across the City with officers from BCC, TFWM and the Combined Authority as well as WM Police involved with the transport plans. The Transport Statement has been assessed by Transportation Development who consider it provides all the required information for this site and that the impact on the highway will be appropriately managed. Therefore, subject to a LATMP condition for construction and decommissioning they raise no objections, a view with which I concur.

Ecology

- 6.9 The site is set within a mature parkland which includes a wide range of flora, fauna and aquatic vegetation, The Vale SINC is within the site, a variety of protected species have been identified and other Potential Sites of Importance (PSI) and designated nature conservation sites are in close proximity. An Ecology Impact Assessment has therefore been submitted.
- 6.10 Most of the proposed development will be within areas already exposed to disturbance and of low ecological value, no tree/vegetation clearance is proposed, and the Ecological Impact Assessment identifies various requirements to further safeguard the existing ecological environment. Therefore, subject to conditions to secure works in accordance with the impact assessment and an ecological construction management plan (CeMP) my Ecologist raises no objection, a view with which I concur.

Other

- 6.11 Given the existing use no air quality, light or noise issues are identified in relation to the nearest residential occupiers.
- 6.12 LLFA have not responded however the EA raise no objection, the proposed structures are temporary, and no additional residential accommodation is proposed. Proposal would not be contrary to policies in relation to flood risk.
- 6.13 A lighting plan has been submitted and the agent has confirmed there will be no light spill to the canal.

7 Conclusion

- 7.1 The structures are necessary to support the hosting of an Athletes Village during the Commonwealth Games 2022. The structures are temporary in nature and safeguarding conditions ensure that the site will be returned to its current condition post event and that no long-lasting adverse impacts would occur. Proposal would have significant short and long term economic and social benefits in accordance with local and national planning policy and it should therefore be approved.

8 Recommendation

- 8.1 Approve temporary

-
- 1 Requires the implementation of the submitted mitigation/enhancement plan
- 2 Requires the prior submission of a construction ecological mitigation plan
- 3 Requires the structures to be removed within a timescale
- 4 Requires the scheme to be in accordance with the listed approved plans
- 5 Construction and Decommissioning Management Plan
-

Case Officer: Joanne Todd

Photo(s)



Figure 4: Google ariel photo

Location Plan



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