

Birmingham City Council

Planning Committee

22 October 2020

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

| <u>Recommendation</u> | <u>Report No.</u> | <u>Application No / Location / Proposal</u> |
|---|-------------------|---|
| Approve – Subject to 106 Legal Agreement | 6 | 2020/03701/PA Land at Ryland Street, Broad Street and Grosvenor Street West City Centre Birmingham Demolition of existing buildings and development of a 35 storey tower building with a 6 storey shoulder building and 1 storey podium containing residential apartments (Use Class C3), plant, storage, reception, communal residential amenity areas and cycle parking; an 8 storey hotel building (Use Class C1) with flexible ancillary ground floor uses (Use Classes A1, A3, A4, A5 and D2) including dining and bar; and creation of a private external square and associated works |

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|-----------------|------------|---------------------|---------------|
| Committee Date: | 22/10/2020 | Application Number: | 2020/03701/PA |
| Accepted: | 19/05/2020 | Application Type: | Full Planning |
| Target Date: | 18/08/2020 | | |
| Ward: | Ladywood | | |

Land at Ryland Street, Broad Street and Grosvenor Street West, City Centre, Birmingham

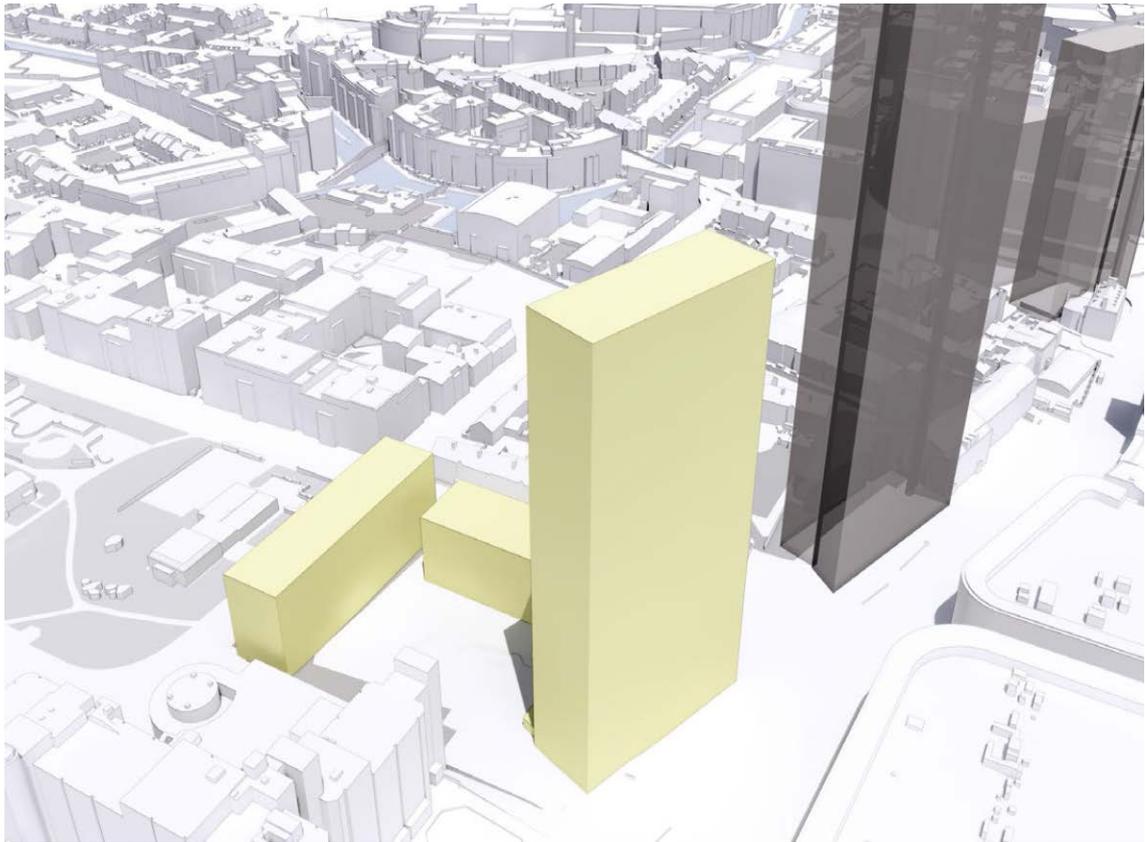
Demolition of existing buildings and development of a 35 storey tower building with a 6 storey shoulder building and 1 storey podium containing residential apartments (Use Class C3), plant, storage, reception, communal residential amenity areas and cycle parking; an 8 storey hotel building (Use Class C1) with flexible ancillary ground floor uses (Use Classes A1, A3, A4, A5 and D2) including dining and bar; and creation of a private external square and associated works

Recommendation

Approve Subject to a Section 106 Legal Agreement

1. Proposal

- 1.1. This application seeks full planning permission for demolition of the existing buildings and clearance of the site and the construction of a high-quality residential and hotel development.
- 1.2. The development would deliver 440 homes for rent across buildings A and B, adjoined by a podium, comprising a mix of one and two bedroom units. The scheme would also deliver communal facilities for residents, including: a gym, running track, multi-use activity area, a cinema room, dining and lounge areas, a creche and work/meeting spaces. Building C would be a mid-market hotel comprising 229 bedrooms and flexible associated uses at ground floor level likely to include a bar and restaurant.
- 1.3. The massing of the development has been established responding to the site context and surrounding uses. The principal tower, block A, is 35 storeys, linking into block B that is 6 storeys alongside Ryland Street. Shared amenity spaces between the two residential blocks are located at ground level with shared access to the external amenity spaces in the courtyard.
- 1.4. The hotel located on Grosvenor Street West is proposed at 8 storeys, with ground floor leisure spaces providing visual connectivity between the street and the courtyard.



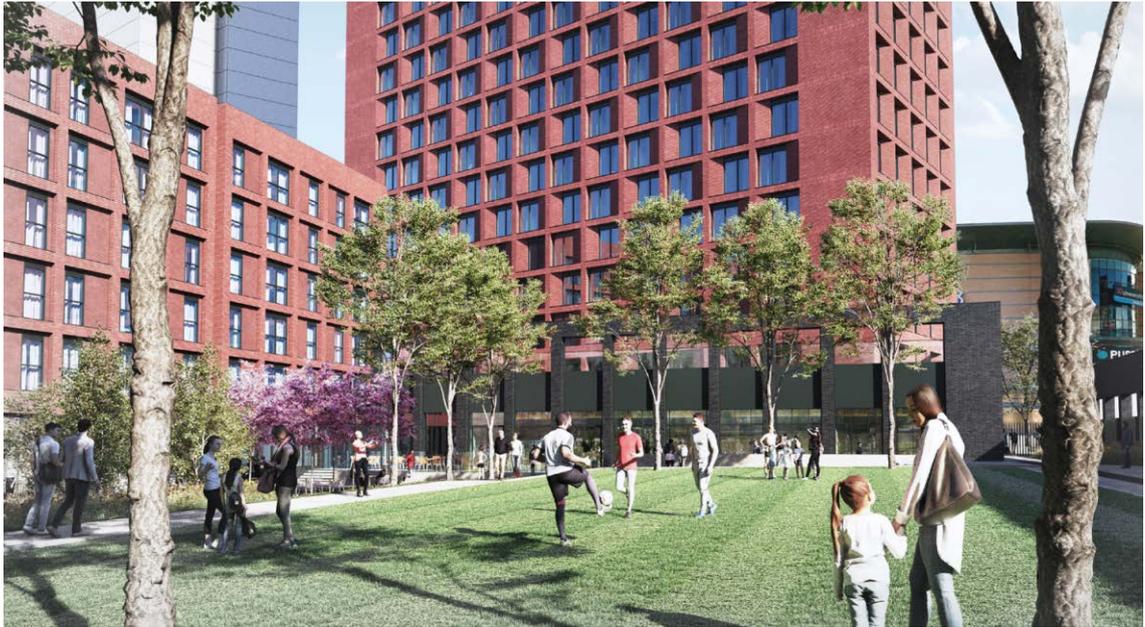
Proposed Massing Diagram

- 1.5. The elevations for Building A are generated by utilising an overall structural grid across the site that defines the plan, section and elevation as a square. The elevation is defined and expressed as red brick geometry with brick infills. Different orders are developed to create a defined base, middle and crown detail within the same grid format.



View along Ryland Street showing Buildings A and B in the foreground and Building C in the background

- 1.6. The elevations for Building B are similar to Building A. The scale of the squares is reduced in response to the 6-storey massing of the building. The elevation is defined by a grid which again is expressed as red brick geometry with red brick infills.
- 1.7. The elevations for Building C were again generated in a similar way to buildings A and B. In comparison with the tower, the scale of the squares is again reduced in response to the 8-storey massing of the building. The elevation is defined by the principal grid which is alternated horizontally as a light grey brick geometry with charcoal brick infills.
- 1.8. The proposed development accommodates a variety of apartment sizes. The number of homes proposed by the application is 440 units, to be delivered, managed and retained within the private rented market. The proposed development incorporates the mix shown in the table below.
- 1.9. A key element of the scheme is the amenity offer for future residents. Buildings A and B offer the following private internal space that would help to build a community:
- 1.10. The crown of the tall building would be defined by a continuous 6m cantilevered brick colonnade framing a 360-degree roof terrace. Access would be obtained by 3 high-speed lifts with two dedicated club rooms to allow for different type of residents spaces and providing access to the terraces.
- 1.11. A gym is proposed for residents with the ability to extend out into the courtyard for outdoor training zones. 2 separate studios provide space for different specialist exercise areas that can also be doubled as private amenity space. The residents would also have access to a cycle workshop including storage lockers, repair space and social spaces.
- 1.12. Residents would also be able to use an external space within the private courtyard. The landscape courtyard will be developed with a 200m running track to encourage 5 to 1K exercise targets, with trim stations located on the perimeter for focused exercise regimes. Different zones in the courtyard landscape scheme provide areas for different activities and also allow interaction with the lounge and work spaces.



View of Courtyard

- 1.13. Residential access to the building is at the corner of Broad Street and Ryland St with an area of enhanced public realm on the corner. Hotel access is directly off Ryland Street with a route linking into the courtyard for shared amenities between residents and guests. Principal service access is off Grosvenor Street West via the undercroft of the hotel, with a turning head within the courtyard space to allow access to all the development.
- 1.14. Drop-off, loading and unloading can also be made through the designated layby space off Ryland Street and Grosvenor St West to allow access for both service vehicles and private vehicles. A space has been allocated on site for 4 No electrically charged pool cars for residents with access via the hotel undercroft. Cycle parking is proposed with Building A and would make provision for 168 cycles.
- 1.15. The application is supported by the following documents:-
 - Aerodrome Safeguarding Assessment
 - Air Quality Assessment
 - Arboricultural Impact Assessment
 - Archaeological Assessment
 - BREEAM Pre-Assessment
 - Daylight, Sunlight and Shadowing Assessment
 - Design and Access Statement
 - Ecological Impact Assessment
 - Flood Risk Assessment
 - Flue and Ventilation Strategy
 - Heritage Assessment
 - Housing Mix Assessment
 - Landscape Workbook
 - Lighting Impact Assessment
 - Noise Impact Assessment
 - Phase 1 Site Investigation
 - Planning Statement
 - Route to Zero Statement
 - Schedule of Accommodation

- Solar Glare Assessment
- Statement of Community Involvement
- Sustainable Construction and Energy Statement
- SUDs Assessment, Operation and Maintenance Plan and Drainage Strategy Report
- Telecommunications Impact Assessment and TV and Radio Baseline Survey
- Townscape and Visual Impact Assessment
- Transport Statement and Travel Plans (Residential and Hotel)
- Utilities Report
- Viability Assessment
- Waste Strategy
- Wind and Microclimate Assessment

1.16. In addition an Environmental Impact Assessment screening opinion request was submitted and the City Council confirmed that an Environmental Statement was not required.

1.17. [Link to Documents](#)

2. Site & Surroundings

2.1. The application is located on the south western side of Birmingham City Centre, approximately 1.5 km walk from Victoria Square.

2.2. The site consists of a part three, part four storey, brown brick building comprising commercial office accommodation arranged around a shared landscape courtyard with perimeter private parking spaces for occupants. The site is served by three vehicular access; two onto Ryland Street and one onto Grosvenor Street West. The topographic survey shows that the site slopes down along Ryland Street by approximately 1.3m, and slopes up towards Five Ways by a further 1.3m.

2.3. The existing building on the application site faces onto Ryland Street to the north east, Grosvenor Street West to the north west and Broad Street to the south east. Ryland Street contains two runs of terraced, three storey residential properties whilst the New Meeting Church and its associated curtilage faces onto Grosvenor Street West. To the south west, the site is flanked by Broadway Residences, a seven to ten storey building originally designed for office use but recently converted to residential use. On the opposite side of Broad Street, to the south east, is Five Ways, a five-six storey leisure development.

2.4. Broad Street is generally categorised by commercial development at ground floor including night time economy leisure spaces, with a series of towers punctuating the skyline at what is one of the highest land points in the city. Tall buildings to the south of Broad Street are generally arranged at right angles to the road, however recent developments on the north side of Broad Street are less structured and tend to follow the line of the road. Broad Street is undergoing substantial change, with proposed redevelopments of buildings together with major public realm improvements and the introduction of the new tram line.

2.5. The site is not located within a conservations area, although it is located between the Jewellery Quarter, Edgbaston and Colmore Row conservation areas. There are no designated heritage assets on the site although there are several listed buildings and monuments in the surrounding area.

Site Location

3. Planning History

Application Site

- 3.1. 2017/05868/PA – Prior Approval for change of use from offices (Use Class B1[a]) to 98 residential apartments (Use Class C3) – approved on 11/8/2017. This consent has not been implemented and has now expired.

Nearby Permissions

- 3.2. 2015/00738/PA – Lansdowne House, Hagley Road - Development of a 18 storey residential building comprising 206 residential units, coffee shop (A1) with ancillary gym, infrastructure, parking and landscaping at the land adjacent to no.1 Hagley Road (former Metropolitan House), and associated works
- 3.3. 2017/04628/PA – Land rear of Park Regis, Broad Street – Erection of 228 residential units varying between 6 & 17 storeys together with 6 no. ground floor retail units (Use Class A1), car parking & associated works
- 3.4. 2017/08357/PA - 212-223 Broad Street – Full planning application for the demolition of existing buildings and development of a 42 storey residential building with 14 storey shoulder and 3 storey podium, containing 481 no. residential apartments (Use Class C3), 1,663 sq m of retail floorspace (GIA) (Use Class A1,A2,A3,A4 and A5), 1,512 sq m of flexible office work space (Use Class B1), plant, storage, reception, residential amenity areas, site access, car parking, cycle parking and associated works
- 3.5. 2014/09348/PA & 2016/08890/PA – Sheepecote Street & Broad Street – Full Planning permission for the development of a 22 storey residential building (C3) containing 189 apartments including ground floor restaurant and retail space (A1 and A3) and a 17 storey hotel building (C1) with ancillary retail and leisure uses, including a ground floor restaurant space (A3). The development includes part demolition of the Grade II listed 78 - 79 Broad Street and will also provide associated hard and soft landscaping, infrastructure and engineering works & Full planning permission for the development of a 31 storey residential building (Class C3) containing 205 apartments including ground floor restaurant use (Class A3), internal and external residential amenity space, associated hard and soft landscaping, infrastructure and engineering works
- 3.6. 2019/05158/PA – 100 Broad Street – Demolition of existing buildings and erection of 61 storey tower to include 503 apartments (Use Class C3), ground floor commercial/retail units (Use Classes A1-A5 , B1a, D1 & D2), flexible upper floor uses (Use Classes A3, A4 and D2), ancillary residents amenity and all associated works
- 3.7. 2019/05777/PA – 211 Broad Street – Demolition of existing buildings and construction of a 37 storey tower of serviced apartments (Use Class C1), cafe / restaurant (Use Classes A3) bar (Use Class A4) and gym (Use Class D2)

4. Consultation/PP Responses

- 4.1. Adjoining occupiers, residents' associations, Westside BID, local ward councillors and MP notified. Site and Press notices displayed.
- 4.2. Objection from LRJ Planning on behalf of the 15 charities based in The Square. These charities are experiencing significant difficulties with Covid-19 and this planning application compounds the issues that they are all facing. The grounds of objection are summarised below.
- The application has failed to demonstrate that the proposal will not result in the loss of important community uses that operate from the site and provide much needed services to the community within the local and wider area. The submission is silent on the existing community uses (charities) and how these vital services can continue to be delivered to the community. Moreover, insufficient detail has been provided on the need for the hotel within this area, where it appears that there is an oversupply and this is likely to be compounded due to Covid-19.
 - Given the substantial size and contemporary appearance of the new development, it will appear as an incongruous within the street scene and will significantly harm the character and appearance of the adjacent Conservation Area and nearby listed buildings. Overall, the proposal also fails to preserve or enhance the character of the Conservation Area, which the NPPF identifies should be given great weight. There are no public benefits that outweigh this harm.
 - The proposal will result in an increase in traffic, in an already busy part of the highway network and will have an unacceptable impact on highway and pedestrian safety. Furthermore, the intensification in activity at the site will lead to a detrimental impact on the amenity of neighbouring residential properties.
- 4.3. Letter from Knight Frank on behalf of two nearby hotel operators objecting on grounds that:-
- the proposed development will result in a significant loss of office floorspace;
 - the quantum and type of proposed hotel floorspace;
 - the application lacks sufficient information regarding how the hotel will be managed;
 - concerns regarding the proposed design of the hotel; and
 - lack of affordable housing.
- 4.4. Birmingham Civic Society – no objections. The Heritage Statement appears thorough and it is positive that it has considered this proposal in the context of surrounding committed development to assess the cumulative impact and agree that it would result in less than substantial harm to the historic environment. This tall building is in a 'landmark' location, but part of an emerging cluster of towers located along this spur of the city ridge. The existing buildings on the site have very little merit, and redevelopment of the site would be beneficial. The design approach is to some degree distinctive, but the lower buildings particularly are rather anonymous.
- 4.5. In addition 7 letters of objection have been received from local residents commenting that:-
- the design of the scheme is very poor, particularly the high level of contrast between charcoal and red brick. The proposals are 'heavy' in their design, with the proportion of brick to windows very high, especially on the south-eastern and north-western elevations. The level of contrast in the other elevations between

the charcoal brick and red brick is visually unappealing. The wide band of brick at the edge of each elevation, giving the impression of a frame/surround to the windows, is very heavy in its appearance and does not produce a building which is appealing to the eye.

- the other towers within this emerging Broad Street cluster utilise predominantly glass and unitised cladding panels. Concrete or buff brick may tie into the other schemes by better; pulling cues from the gold/sand colour utilised in these schemes.
- the proposed plan massively reduces sunlight to the existing neighbouring residential properties (i.e. 24 flats at No 10-20 Ryland Street), this has been detailed in the findings of the Daylight, Sunlight and Shadowing Report.
- the proposed plan does not include adequate parking provision, so this will likely put additional pressure on the surrounding on-street parking scheme.
- concerned that existing tenants will be moved / re-housed. Will there be an option to move into the new homes within the new development and will there be compensation / financial help for the upheaval?
- there has been a lack of consultation

4.6. BCC Transportation Development - no objections subject to the conditions to secure:-

- s278 agreement for removal of redundant footway crossings, new vehicle access, TRO changes and possible layby provision with additional public footway
- Construction management plan;
- Servicing and delivery management plan, and;
- Cycle parking provided before development is occupied.

4.7. BCC Regulatory Services –

- Do not support residential facing Broad Street due to the impact of the entertainment activities / night-time economy on the amenity for future residents. However, planning consent has been granted for similar developments. It would have been better to have the hotel development facing Broad Street as this would then shield the residential use from the noise generated by the night-time economy.
- Due to the current pandemic and restriction on entertainment premises the noise assessment submitted with this application is based on data from assessment submitted in support of other applications and calculations. Based on current circumstances this is probably the best that can be done. They agree with the conclusions of the noise assessment that the results should be verified by means of an on-site survey as soon as feasible. Suitably worded conditions are suggested to secure this together with noise mitigation measures, noise insulation.
- The Air Quality report concludes that the facades facing Broad Street will be affected by elevated concentrations of nitrogen dioxide up to and including the 3rd floor. The report recommends that this is mitigated by the use of an MVHR system. The proposed filtration system or similar into the MVHR system for the affected units is acceptable in principle. However, a condition should be attached to secure details of the filter
- Conditions are also suggested to secure details of fume extraction / odour control equipment, noise from plant, a land contamination remediation scheme and verification report.

- 4.8. BCC Education (School Organisation Team) - request a contribution of £1,052,470.18 as the development would impact on the provision of places at local schools.
- 4.9. BCC Employment Access Team - request Employment Obligations be secured either by way a S16 Legal Agreement or Employment Conditions.
- 4.10. BCC Leisure Services - no objections. An off-site public open space contribution of £878,800 should be sought to be spent on the provision, improvement and/or biodiversity enhancement of public open space, and the maintenance thereof at Chamberlain Gardens or other sites within the Ladywood Ward.
- 4.11. Local Lead Flood Authority – no objections subject to the inclusion of the following planning conditions to require a sustainable drainage scheme and Sustainable Drainage Operation and Maintenance Plan
- 4.12. Sport England - no objections subject to securing a s106 contribution of £172,135 towards playing pitch investment.
- 4.13. Historic England - do not wish to offer any comments.
- 4.14. Environment Agency - no objections subject to a condition to secure a remediation strategy to deal with the risks associated with contamination of the site.
- 4.15. Severn Trent Water - no objections subject a condition to secure drainage plans for the disposal of foul and surface water flows.
- 4.16. Centro / Metro Alliance – Edgbaston Extension – awaiting comments.
- 4.17. Birmingham Airport – no objection subject to a condition to secure a construction and a crane management plan. No crane or lifting operations to exceed 262m, unless assessed against BAL's Instrument Flight Procedures and approved by Birmingham Airport Limited prior to construction.
- 4.18. West Midlands Fire Service - approval of Building Control will be required with regard to Part B of the Building Regulations 2010. Where fire mains are provided in the building there should be access to the riser inlet within 18 metres and each access point should be clearly visible. Blocks of flats with a floor more than 30m above ground level should be fitted with a sprinkler system, throughout the building.
- 4.19. West Midlands Police -
- a robust access control system should be fitted at the communal entrance;
 - recommend that suitable site-wide CCTV scheme and lighting be installed;
 - commercial units should be protected by an alarm that is linked to a monitoring centre;
 - consideration should be given to the application of anti-graffiti coating to all accessible surfaces of the proposed works;
 - planting should not impede the opportunity for natural surveillance and way finding, and must avoid the creation of potential hiding places;
 - management and maintenance plan for trees and shrubbery should be conditioned;
 - access to the roof should be controlled and anti-suicide measures should be in place, and;

- all internal apartment doors and the door to the bike store should be of a suitable security standard.

In addition, they have raised a number of queries

- will access be controlled to prevent non-residents accessing the site?
- what is the proposed boundary treatment between blocks A and C where it meets the Broadway building
- with zero parking spaces available for guests and residents, how will the use of laybys being used as 'parking spaces' be 'policed'.
- what is the procedure for residents moving in and out or having large items of furniture/white goods delivered?
- does the development (in particular the hotel) offer no accessible parking spaces?
- will the vehicular access via the 'undercroft' at the hotel entrance be subject of access control?

5. Policy Context

- 5.1. Birmingham Unitary Development Plan (UDP) (Save Policies 2005); Birmingham Development Plan (January 2017); High Places SPG (2003); Car Parking Guidelines SPD (2012); Public Open Space in New Residential Development SPG(2007); Affordable Housing SPG (2001, threshold amended 2006); Lighting Places SPD (2008); Access for People with Disabilities SPG; Places for Living SPG (2001); Places for All SPG (2001); Guidance note on Sustainable Construction and Low and Zero Carbon Energy Generation (June 2019); the emerging Development Management in Birmingham DPD and Revised National Planning Policy Guidance.

6. Planning Considerations

Land Use Planning Policy

- 6.1. The site is located where two of the BDP growth areas overlap, the City Centre Growth Area (GA1) and the Greater Icknield Growth Area (GA2). The site is located adjacent to the boundary of Edgbaston (Five Ways) District Centre (BDP policy TP21). The site is identified in the SHLAA (site reference CC74) for 98 dwellings based on a previous Prior Approval for conversion of the existing offices to residential.
- 6.2. Within the City Centre Growth Area the site is within the Westside and Ladywood Quarter (GA1.3) which has the objective of: Creating a vibrant mixed use area combining the visitor, cultural, commercial and residential offer into a dynamic well connected area, which supports development in the Greater Icknield Growth Area. GA1.1 identifies the Role and Function of the City Centre as the focus for retail, office, residential and leisure activity. The policy also supports residential development where it provides well-designed high-quality living environments; it should also provide flexible and adaptable accommodation meeting a range of needs including for families. In terms of the Greater Icknield Growth Area, GA2 and the Greater Icknield Masterplan identify housing growth as a key aim for the area.
- 6.3. Residential use - The submission demonstrates that the proposal meets the requirements of BDP policy TP28 (the location of new housing) and given the policy context set out above, with both GA1 and GA2 supporting residential development in this location, there is no policy objection to the principle of residential development on this site.

- 6.4. BDP Policy TP30 sets the requirements for the type, size and density of new housing which is based on the SHMA 2013. The applicant asserts that the SHMA evidence is now out of date and they have prepared their own Housing Mix Assessment to support their proposed mix (440 one and two bedroom units split as 46.4% one bed and 53.6% two bed). Although the proposed development consists of 1 and 2 bedroom apartments, given the site's City Centre location, I consider that a higher proportion of smaller house types appropriate.
- 6.5. The quality and liveability of the residential accommodation is central to the applicant's private-rented sector philosophy. All of the apartments meet or exceed the nationally described space standards and significant communal facilities are provided. I therefore consider that the scheme would provide a good standard of living accommodation.
- 6.6. Hotel use - the proposal includes a 229 bed hotel. BDP policy TP25 supports the provision of well designed and accessible hotels to support the City's tourism economy. As noted above, GA1 identifies the City Centre's role and function to focus on, amongst other uses, leisure. In addition, the aspiration for the Westside and Ladywood quarter (GA1.3) includes visitor facilities as part of a mix of uses. There is therefore no objection to the principle of the proposed hotel use in this location.
- 6.7. Ancillary uses - the proposal description includes flexible ancillary ground floor uses (Use Class A1, A3, A4, A5 and D2) including dining and bar within the hotel building. Paragraph 38 of the Planning Statement states that the flexible uses are likely to include a bar and restaurant. The proposed uses (A1, A3, A4, A5 and D2) would fall within the NPPF definition of 'main town centre use' and so would normally be subject to a Sequential Test (BDP Policy TP21) as the site is not located within a defined centre. However, I note the proposed floor area is relatively modest in comparison to the overall development and it is normal for hotels to have ancillary uses such as those proposed. A condition is suggested to allow flexible use of the ground floor but to ensure that the floorspace remains ancillary to the main development.
- 6.8. In principal, I therefore welcome redevelopment of this site, which would not only help meet the city's housing needs but also have positive economic benefits and as recommended by the City Council's Employment Access Team a condition is attached to secure local employment and training.

Urban Design

- 6.9. As the proposed building would be 35 storeys in height the City Council's SPG on tall buildings "High Places" applies. It advises that this site falls within the Central Ridge Zone where tall buildings may be appropriate. High Places advises that tall buildings should respond positively to the local context and be of the highest quality in architectural form, detail and materials. They should also be well lit; not have an unacceptable impact in terms of shadowing and microclimate; help people on foot to move around safely and easily; be sustainable, and consider the impact on local public transport
- 6.10. The application site comprises three sides of a city block with a principal frontage onto Broad Street (south east) and two further secondary frontages on to Ryland Street (north east) and Grosvenor Street West (north west). Accordingly the development responds to this block plan with three blocks fronting these streets,

with a tower fronting the principal street to acknowledge the hierarchy of this principal historic route into the city centre over the other two. The blocks along Broad Street and Ryland Street are linked and are residential, whilst the Grosvenor Street West block is a hotel and extends onto the corner of Ryland Street.

- 6.11. The three blocks are each inset from the site boundary so as to accommodate improved public realm and address different townscape merits on each frontage. In the case of the tower, the additional apron along Broad Street helps accommodate this taller structure and create a proportionate public realm along this corridor and a better alignment with the emerging townscape.
- 6.12. This widened apron extends round onto Ryland Street, forming a wide piece of public realm on the corner where the entrance is located, before extending along Ryland Street in order to retain the existing trees. This offers a green link to the hotel entrance on the northern corner of the site and through to the green space beyond. The setback along Grosvenor Street West is again proportionate to the scale of this building and the modern arrangement of the rest of this block.
- 6.13. The base of the tower offers up activity along back of pavement from the entrance part way back along Broad Street, and much of the frontages along Ryland Street and Grosvenor Street West are also active ensuring the development responds to the vibrancy of this part of the city centre as a destination.
- 6.14. The central space is a very generous open amenity space for residents and will be glimpsed on the approach from Fiveways. The layout is simple, yet responds well to connections to the site (in terms of the placement of public realm and entrances) movement through the site, and amount and quality of open space.
- 6.15. The building heights along Ryland Street and Grosvenor Street West are modest in terms of the regeneration of this part of the city. These aspects of the development sit comfortably with the existing post war development in the area, as well as the future strategy for Ladywood.
- 6.16. The tower is 35-storeys in height and responds to an historic and emerging townscape of towers along the Broad Street corridor. Tall buildings are supported in this area through the High Places SPD which indeed identifies a cluster of tall buildings leading up to Fiveways Island.
- 6.17. The Design and Access Statement illustrates the setting of the tower and identifies the developing townscape, including a recently approved 61-storey tower (known as 100 Broad Street) on the adjacent site towards the city centre proper. Together, and in conjunction with the completed 32-storey tower (Known as The Bank Apartments) further east, and the 42-storey tower (known as The Mercian) currently under construction on the opposite side of the road, this is developing into an interesting skyline of tall buildings of varied form, height and architectural design.
- 6.18. By allowing the adjacent 61-storey tower to be the dominant structure on the Broad Street skyline, this tower plays into the crescendo of architectural form when viewed along Broad Street from Fiveways, from Ladywood (to the north) and from Highgate (to the south).
- 6.19. The tower is a slab that runs parallel with Broad Street and this is similar to the arrangement of the adjacent 61-storey tower to the east, only smaller. This sets up a pattern of development along the northern side of Broad Street, quite different

from the linear form of towers, abutting onto Broad Street at 90-degrees as is developing on the southern side.

- 6.20. The architecture of towers in Birmingham is evolving and this proposal makes real progress in delivering a tower using a single material in a clean and concise manner. The over application of materials and design concepts can too often distract from the overall form and quality of application. As with other towers along Broad Street, a simple pallet has been selected and robustly applied.
- 6.21. The idea of constructing a brick tower was proposed from the start and the design has gone through a rigorous journey and has been carefully and robustly scrutinised by the City Design Manager to refine it down to a number of strong components.
- 6.22. At the start a busy assortment of red and blue brickwork on two separate planes, set out in staggered bays and groupings of windows resulted in a weak and uncertain design. It was requested that the blue brick be deleted and an approach using just red brick be explored. A series of different bay arrangements and detailing were explored and eventually the present proposal was fixed.
- 6.23. The tower applies solid areas of brickwork between paired windows, which alternate from one floor to the next. On the principal elevations this consists of long chamfered reveals facing one another across the handed arrangement. The brickwork is monumental in its form and it is these robust slabs of brickwork that define the buildings character.
- 6.24. Details of the bonding have been agreed to be in Flemish bond and to ensure the solidity and mass of the property of the brickwork is delivered, the brickwork will extend back under the full length and depth of the window reveals and soffits (and this will be conditioned as such).
- 6.25. The base of the building is proportionate to its height and continues the language of the main body of the building in a giant order arcade of flat arches. The crown of the building entirely follows through the main body of the building into a large parapet and is a confident terminus to the building. A terrace, lift overruns and plant will not disrupt the profile of the structure and instead an elegant and simple form is achieved.
- 6.26. The design of the block extending along Ryland Street is sympathetic to the tower in architectural arrangement and materiality and therefore gives unity to the residential aspects of the proposal.
- 6.27. The hotel changes the tempo in architectural rhythm as well as materiality applying two tones of grey brick to its elevations. The building is less convincing than the residential elements however responds to the existing modern flats on the opposite side of Grosvenor Street West.
- 6.28. For both the blocks along Ryland Street and Grosvenor Street West it will be important that the depth of window reveals and the execution of the brickwork is as robust and well delivered as the tower in order to compensate the simpler design



View along Broad Street showing the growing cluster of tall buildings

Impact on Heritage Assets

6.29. The heritage statement (Archway Heritage, May 2020) which accompanies this application sets out the relevant planning legislation, policy and guidance and identifies a study area of a 250m radius from the application site. It employs a sound and recognised methodology to assess the impact of the proposed development on the setting of the identified heritage within the study area and appraises the scheme well. The heritage statement concludes the following levels of impact on the setting of heritage assets:

- Edgbaston Conservation Area and listed buildings within- negligible to minor visual effect
- Jewellery Quarter Conservation Area- negligible effect
- Listed buildings on Broad Street- negligible effect
- Listed buildings at Five Ways- negligible to minor visual effect
- Listed buildings along Ladywood Middleway- negligible effect
- Listed buildings on Grosvenor Street and Bishopgate Street- negligible effect

- 6.30. The Statement concludes a minimal level of less than substantial harm to some nearby heritage assets and my Conservation Officer broadly concurs with this assessment. As some harm has been identified then the requirements of paragraphs 196 and 197 of the NPPF will need to be satisfied and the harm outweighed by the public benefits of the scheme which are generally noted as:
- High quality designed development
 - Distinctiveness of place-making in the City Centre Ridge Zone
 - Desirable residential development in a sustainable location
 - Introducing people into the area and improving vitality of the city centre including positive effects on listed buildings
 - Height of proposed development reflective of character and scale of surrounding built form
 - Responds positively to local character
- 6.31. Whilst my Conservation Officer, raised concerns about the standard of design of the scheme as originally submitted, design improvements have been negotiated through the planning process. In conclusion, therefore, applying the relevant statutory test in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the policy tests set out in the NPPF, whilst attaching great weight and importance to the less than substantial harm that the development would cause to the significance of heritage assets, it is concluded that the public benefits of the development identified above would outweigh such harm.

Noise

- 6.32. Whilst under a separate regulatory regime, the application site is located within one of the licensing cumulative impact areas within Birmingham; these are areas where the high concentration of licensed/entertainment premises are considered to have a noticeable impact on the environment. Many of the premises have a licence to remain open to 0600 and the applicant's noise assessment has highlighted that night-time noise is similar to day time noise.
- 6.33. BCC Regulatory Services do not support residential facing Broad Street in principle due to the impact of the entertainment activities / night time economy on the amenity for future residents. However, they acknowledge that planning consent has been granted for similar developments. Due to the current pandemic and restriction on entertainment premises the noise assessment submitted with this application is based on data from assessment submitted in support of other applications and calculations. Based on current circumstances they agree that this is probably the best that can be done. They agree with the conclusions of the noise assessment that the results should be verified by means of an on-site survey as soon as feasible. Suitably worded conditions are suggested to secure this together with noise mitigation measures such as noise insulation.

Access and Parking

- 6.34. The Transport Statement notes that the development proposals comprise the demolition of the existing building (office use but had consent for residential use previously), and the construction of 440 apartments and a 229 bed hotel within high rise buildings. The development will be car-free, and will provide no onsite car parking spaces with the exception of four car club bays.
- 6.35. The site is in a very sustainable location, with excellent opportunities for pedestrian, cycle and public transport travel (including bus, tram and train). The accessibility of

the site will be further improved by the opening of the Phase Two Metro extension along Broad Street. The site is therefore well located for car-free development, and is comparable to the consented car-free residential apartment development at 100 Broad Street, and the consented car-free serviced apartment/hotel scheme at 211 Broad Street.

- 6.36. The proposed development would include four electric car club bays, and secure cycle parking with 168 spaces for residents in the apartments and additional space for hotel users.
- 6.37. It is proposed that all deliveries and servicing for the hotel, and the apartments in Block A, would be via a rear service entrance on Grosvenor Street West. The service road would measure 5 metres in width. Suitable space is provided to allow refuse vehicles to enter, turn around, and then exit onto Grosvenor Street West in a forward gear. In addition, it is proposed to provide a layby on Ryland Street adjacent to the small refuse store within the apartment Block B. It is proposed that deliveries and servicing vehicles arriving and departing the site would be managed via a Delivery Management Plan.
- 6.38. The total proposed development would generate 85 two-way vehicle movements in the morning peak hour and 79 two-way vehicle movements in the evening peak hour. This is less than the 134 two-way trips generated by the existing office use. Furthermore, the proposed development would not have on-site car parking, so the proposed trips would be a combination of taxis to and from the site, and private car trips distributed across the network travelling to and from the several nearby car parks, and the latter would therefore not materialise on the highway network in the immediate vicinity of the site. Therefore, the proposed development would not have a severe impact on the operation of the highway network, or cause an unacceptable impact on highway safety.
- 6.39. BCC Transportation Development advise that parking guideline seeks 100% minimum cycle parking provision. The applicant has indicated that given the site is in a highly sustainable location, with opportunities for pedestrian, cycle and public transport travel, they consider it not necessary to provide any more spaces. A 50% provision was accepted at 100 Broad Street, adjacent to the proposed development. I therefore consider the level of cycle parking sufficient. In addition, as recommended by BCC Transportation Development conditions are attached to secure
- s278 agreement for removal of redundant footway crossings, new vehicle access, TRO changes and possible layby provision with additional public footway.
 - construction management plan.
 - servicing and delivery management plan.
 - cycle parking provided before development is occupied.
- 6.40. Overall, the proposed development would accord with the aims of the NPPF. Safe and suitable access can be achieved by all modes of travel, and the development would not cause a severe impact to the operation of the highway network or cause an unacceptable impact on road safety. Therefore, it would be unreasonable to prevent the development on highways grounds.

Daylight and Sunlight

- 6.41. The potential effects of the proposed development on daylight and sunlight to surrounding residential properties, main back gardens and amenity spaces has been assessed using the methodology recommended in the BRE guidelines. Both daylight and sunlight studies illustrate that the effects on neighbouring properties adjacent to the site are generally negligible with well over 90% of the neighbouring building facades complying with the primary daylight (VSC) and sunlight (APSH) assessment criteria.
- 6.42. The primary effects are to blocks 10, 12, 16 & 20 Ryland Street which are to the north of Ryland Street. Here the reductions are in excess of the assessment criteria but the average retained daylight for those windows on the primary building façade will remain in excess of 15% and 33% for sunlight.
- 6.43. In shadowing terms the analysis illustrates full compliance with the criteria and very minor effects overall and only isolated infringements in excess of the assessment criteria when adding in the consented massing for 100 Broad Street.
- 6.44. It is necessary to take into consideration that the numerical guidelines in BRE Guidance should be interpreted flexibly, as natural lighting is only one of many factors in site layout design and consideration of amenity. Paragraph 123 of the NPPF is clear that local planning authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making use of a site; as long as the resulting scheme would provide acceptable living standards. The isolated areas of non-compliance with the BRE Daylight & Sunlight recommendations are not unusual in the context of a high-density urban development. Give the marginal and isolated nature of the daylight sunlight related shortfalls I am of the opinion that on balance the development has an acceptable impact on the sunlight received by the neighbouring properties.

Wind

- 6.45. A wind report has also been submitted and considers the impact of the proposal with and without emerging proposals at 100 Broad Street and 211 Broad Street. It concludes that in general, pedestrian wind comfort conditions at the surroundings of The Square building complex are favourable for people. At none of the measuring locations the conditions can be considered as uncomfortable. Furthermore, the wind safety assessment showed that at no measurement location the conditions can be characterized as “unsafe”. No specific wind mitigation measures are therefore required.

Solar Glare

- 6.46. The technical analysis shows that for the majority of the year there would be a negligible solar glare effect. The nature of the proposed material cladding does mean that reflected solar glare may be unavoidable at certain times of the day, assuming that there are actually clear skies at these times to allow the sun to reflect off the building façades. The analysis shows, however, that at worst this would be a highly local, short term potential effect of minor adverse significance, lasting only seconds at any one time as a driver passes a certain point. The analysis therefore shows that there would be a potentially negligible or local, short term minor adverse effect from solar glare, but that this should not be detrimental to the safe movement of traffic and road users.

Air Quality

- 6.47. The Air Quality report (Redmore Environmental. Reference: 3477r3. Dated 15 May 2020) has been reviewed. The report concludes that the facades facing Broad Street will be affected by elevated concentrations of nitrogen dioxide up to and including the 3rd floor. The report recommends that this is mitigated by the use of an MVHR system. BCC Regulatory Services have no issues with the description of the scheme as set out in the revised Flue and Ventilation Statement. They confirm that inclusion of the Quaire NOx filtration system or similar into the MVHR system for the affected units is acceptable in principle. However, the specific type of filter or where it is to be located is not presented in the report and as recommended by BCC Regulatory Services a condition to secure further details is attached.

Aviation, Communication and Safety

- 6.48. The Aerodrome Safeguarding report notes that the development does not impact the Instrument Flight Procedures serving Birmingham Airport. The proposed building has a maximum height of 262m AOD, exceeding the Obstacle Limitation Surfaces of Birmingham Airport, which sets a maximum height of 242m AOD. However, Birmingham Airport have confirmed that they have no objections subject to a crane management plan and no crane or lifting operations to exceed 262m, unless they are assessed against BAL's Instrument Flight Procedures and approved by Birmingham Airport Limited prior to construction. Conditions as recommended by Birmingham Airport are attached.
- 6.49. A baseline television reception survey was undertaken for the proposed development in July 2020. It is possible that no adverse effects will occur due to the current reception quality in the surrounding area and the scarcity of residential receptors in the immediate shadow zone. A condition is therefore attached to secure a post construction assessment to investigate any reports of interference in order to determine whether these are attributable to the proposed development. If this is found to be the case, mitigation can be applied. With regard to telecommunications no mitigation measures are required for the identified links.

Building Safety

- 6.50. Site wide access for Fire Tenders is available to the 3 main sides along the existing highways, with access to the laybys if required. Access off Grosvenor Street west allows access to the courtyard space, with emergency access to the entire development possible within the courtyard space. Sprinklers are featured throughout all blocks, accommodation and public spaces. Central cores ensure distances to all apartments are limited for ease of access for fire personnel.
- 6.51. Block A – Apartments Emergency access can be achieved via the main entrance or via the emergency exit doors located on Broad Street. This provides dedicated access to a protected shaft containing a fire lift and stair for emergency access to all floors. Block A contains a pressurised wet riser with dedicated wet riser water storage tanks located at ground level.
- 6.52. Block B – Apartments Emergency access can again be achieved via the main entrance on Ryland Street or via the emergency exit doors located further down Ryland Street. This provides dedicated access to a protected shaft containing a fire lift and stair for emergency access to all floors. Block B contains a dry riser with dedicated with access points on each level.

- 6.53. Block C – Hotel - Fire access is directly off Grosvenor Street West, with dedicated escape cores located adjacent to the lift and at the end of the building to provide an alternative means of escape.

Flooding / Drainage and Land Contamination

- 6.54. The development site is located within Flood Zone 1 and is not at significant flood risk. There are minor surface water flood risk areas shown on highways in the vicinity, following the natural gradient down towards the adjacent land which falls away from the site. However, the provision of a formal drainage system and minor ground re-profiling will reduce the residual risk of surface water flooding. An outline surface water drainage strategy for the site is provided in a separate report and presents a management strategy that will seek to reduce the surface water flood risk to the development and the surrounding area. As recommended by Severn Trent Water and the Local Lead Flood Authority safeguarding conditions are attached.
- 6.55. Given previous uses on the site, it is likely that the land is contaminated. Therefore, as recommended by BCC Regulatory Services and the Environment Agency conditions are attached to secure land remediation strategy.

Trees, Landscaping and Biodiversity

- 6.56. Trees are present along the site boundaries, which form established street trees and components of the existing soft-landscaping scheme. However, none of the trees are subject to a Tree Preservation Order nor are they high arboricultural value. A total of 7 trees will be removed to facilitate the development, this includes 4 trees of moderate value and 3 trees of low value. Trees located on-site that will be retained as part of the development include 3 trees located within the site entrance plaza space at the corner of Ryland Street and Broad Street, and 1 tree located within a new landscape arrangement at the corner of Ryland Street and Grosvenor Street West.
- 6.57. The City Councils Tree Officer notes that the proposal involves the loss of seven trees but ten will be planted in mitigation as well as other soft landscaping. On balance I therefore have no objection loss of the 7 trees subject to conditions to secure a suitable landscaping scheme. In addition, BCC Landscape Team have no objections to the proposed tree, shrub, and hedge planting, green walls and planters subject to high quality, frequent, on-going maintenance. However, they but would like to see tree, shrub, hedge, feature shrub planting and public realm improvements along Grosvenor Street West frontage and the Broad Street. Landscaping conditions are therefore attached.
- 6.58. The City Council's Planning Ecologist considers that the scheme is acceptable subject to conditions. The site has very limited ecological value and the likelihood of protected/notable species being present is low. Nevertheless, good practice precautionary measures should be implemented during site clearance to minimise the risk of harm to nesting birds and to ensure compliance with protected species legislation. A condition should be attached to secure this mitigation.
- 6.59. The proposals will result in some habitat loss, although the proposed layout allows for the retention of some street trees, amenity grassland and shrub planting. Where losses occur, compensatory planting is required, and overall the scheme should deliver a biodiversity net gain. Conditions are attached to secure further details of the above ecological enhancement measures.

Sustainable Construction and Energy

- 6.60. The BDP supports the Council's commitment to a 60% reduction in total carbon dioxide (CO₂) emissions produced in the city by 2027 from 1990 levels (Policy TP1) and a number of policies in the plan seek to contribute to achieving this: Policy TP2 (Adapting to climate change) requires residential schemes to demonstrate ways in which overheating is minimised; Policy TP3 (Sustainable construction) sets out a number of criteria which should be considered to demonstrate sustainable construction and design; TP4 requires new development to incorporate low and zero carbon forms of energy generation, unless it is unviable to do so. The Council has published a guidance note which sets out what is required to meet the requirements of TP3 and TP4.
- 6.61. A Sustainable Construction and Energy Statement has been submitted. The Statement meets the requirements of TP3. A BREEAM pre-assessment certificate has also been submitted which demonstrates the proposed hotel could achieve Excellent which is the level required by the policy. A condition is suggested to ensure that the BREEAM standard is achieved. Additionally the applicant has assessed various low carbon technologies and have considered their pros and cons and have highlighted that they will be using all electric heat pumps and domestic hot water ambient loop system for various heating purposes. I consider that this strategy is acceptable and consistent with the aims of Policy TP4.

Response to Knight Frank Objection

- 6.62. Knight Frank on behalf of two hotel operators have objected to the application on grounds that the proposal will lead to loss of office floor, there is an oversupply of hotels, there is no hotel management plan and lack of affordable housing
- 6.63. Policy TP20 seeks to secure the retention of existing employment sites, in 2017 Prior Approval was granted for the change of use of the existing building from offices to residential. This application established the principle of loss of offices and creation of residential development on this site as acceptable. Whilst the implementation period for the prior approval has now expired, and the changes to legislation have introduced access to adequate light and the impact of commercial noise test, there have been no material changes to the permitted development rights that would be likely result in the City Council refusing to grant prior approval again on this site in some form. In light of the above, the fallback position is a realistic prospect which outweighs any conflict with policy TP20. Furthermore, the proposal will generate employment through operation and management of both the hotel and the residential development as a build-to-rent scheme. It is anticipated that each use will create approximately 40 jobs, totalling circa 80 jobs to be delivered on-site.
- 6.64. The appropriateness of a hotel use is established in policies GA1, GA1.2 and GA1.3. The strategic approach set out by these policies is supported by Policy TP21, Policy TP24 and Policy TP25. No policies within the Local Plan require an assessment of hotel needs to demonstrate acceptability of a site within the city centre due to its location at the top of the hierarchy of centres, and the objectives of seeking to emphasise its importance of the city centre a tourist destination. In addition, a hotel management plan can be conditioned.
- 6.65. Policy TP31 – Affordable Housing makes allowances for reductions in affordable housing provision where justified through a viability assessment. The applicant has submitted a viability assessment which has been independently assessed to determine the level of contribution that the scheme can sustain.

Response LRJ Planning Objection

- 6.66. LRJ Planning on behalf of the 15 charities based in The Square, have objected to the application on grounds of loss of community services, impact on conservation area and adequacy the traffic statement.
- 6.67. Paragraph 92 of the NPPF identifies that decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs. It is important to note that Paragraph 92 of the NPPF identifies examples of community facilities as including local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship. Whilst it is acknowledged that this is not an exhaustive list, it is evident that an office building is not comparable to any of the identified facilities.
- 6.68. Furthermore, the building on the application site is not identified through the Local Plan as a community facility to be protected, nor is the building designated as an Asset of Community Value. The designated and lawful use of the building is as offices. Whilst the offices are currently occupied by an occupier who provides a service to the local community, this does not justify designation of the building as a community asset.
- 6.69. As detailed in the Heritage section above, the City Council's Conservation Officer, is of the view that the proposal will lead to less than substantial harm to heritage assets. Moreover, Historic England has not objected to the planning application. The identified harm is considered to be 'less-than-substantial' and in this instance is outweighed by the public benefits of the proposed development.
- 6.70. The Transport Statement submitted with the application is considered sufficient given the limited car parking provision on-site and the location of the application site within a highly sustainable location. Furthermore, the highway impact of the proposed development must be considered against the movements associated with the use of the existing building on-site. Due to the proposals resulting in a lower level of vehicles trips than the existing building, the proposals offer a betterment to highway capacity and no further assessment is necessary. The consultation response from BCC Transportation Development has raised no objection to the method of assessment submitted.

Objections from Local Residents

- 6.71. A local resident has raised an objection about lack of consultation. At pre-application stage the applicant carried out consultations with
- Westside Business Improvement District
 - Midland Metro
 - Cllr Ian Ward – Leader of the Council
 - Cllr Sir Albert Bore – Ladywood Ward Member
 - Cllr Kath Hartley – Ladywood Ward Member
 - Cllr Waseem Zaffar – Cabinet Member for Transport and Environment
 - Shabana Mahmood MP – MP for Ladywood
- 6.72. In addition, the City Council has undertaken statutory consultation and the points raised have been duly considered and responded to.

CIL and Planning Obligations

- 6.73. The scheme is liable for a CIL payment of circa £2.179m for the residential element and £0.225m for the hotel. In addition, given the number of proposed apartments the City Councils policies for Affordable Housing and Public Open Space in New Residential Development apply. The applicant is not able to meet in full the affordable housing or off-site public open space requirements. Accordingly, the applicant has submitted a Viability Statement to justify relaxing the policy requirements in this instance.
- 6.74. The Viability Statement has been independently assessed by the City Council's assessor, who concludes that the provision of 1% (4 no.) affordable private rented units is the most that the scheme is able to sustain without impacting on viability and deliverability. BCC Education, BCC Leisure Services and Sport England have also requested financial contributions, however, in this instance I consider that affordable housing is the greater priority.

7. Conclusion

- 7.1. In principle, redevelopment of this underused city centre site with a high density residential and hotel scheme would be consistent with land use planning policies. The location of the development is suitable for a tall building and the proposed tower would contribute to a cluster of building of well-designed tall buildings that would enhance the Westside quarter of the city centre and raise the quality of this section of Broad Street. Moreover, the public benefits of the scheme outweigh any "less than substantial harm" to heritage assets.
- 7.2. Whilst I note the objections raised, I do not consider that the proposal would have such significant adverse impacts to justify refusal. On balance, I therefore consider that the application is acceptable subject to a legal agreement to secure affordable housing and safeguarding conditions.

8. Recommendation

- 8.1. That consideration of application 2019/07805/PA be approved following the completion of a legal agreement to secure the following:
- a) 1% (4 no.) affordable private units (APR) at a proportionate mix of 1 and 2 bedroom apartments provided at 80% of market rent;
 - b) a financial contribution of £1,500 for the administration and monitoring of this deed to be paid upon completion of the agreement.
- 8.2. In the absence of a suitable legal agreement being completed to the satisfaction of the Local Planning Authority by the 22nd November 2020, planning permission be refused for the following reason:
- a) In the absence of a legal agreement to secure affordable housing, the proposal conflicts with Policy 8.50-8.54 of the adopted Unitary Development Plan, Policy TP31 Affordable Housing of the Birmingham Development Plan 2017 and Affordable Housing SPG.
- 8.3. That the City Solicitor be authorised to prepare, seal and complete the appropriate legal agreement.

8.4. That in the event of an appropriate legal agreement being completed to the satisfaction of the Local Planning Authority by the 22nd November 2020, favourable consideration be given to this application, subject to the conditions listed below

-
- 1 Requires the prior submission of a contamination remediation scheme
 - 2 Requires the submission of a contaminated land verification report
 - 3 Requires the prior submission of a sustainable drainage scheme
 - 4 Requires the prior submission of a drainage scheme
 - 5 Requires the prior submission of a Sustainable Drainage Operation and Maintenance Plan
 - 6 Requires the prior submission of a method statement for the removal of invasive weeds
 - 7 Requires the submission of a scheme for ecological/biodiversity/enhancement measures
 - 8 Clearance of trees
 - 9 Requires the submission of extraction and odour control details
 - 10 Limits the noise levels for Plant and Machinery
 - 11 Requires the prior submission of noise insulation (variable)
 - 12 Requires the submission of a noise survey and mitigation details
 - 13 Requires the prior submission of a ventilation scheme
 - 14 Requires the submission of brickwork details
 - 15 Requires the submission of window details
 - 16 Requires the submission of roof terrace details
 - 17 Requires the submission of sample materials
 - 18 Requires the submission of a CCTV scheme
 - 19 Requires the submission of hard and/or soft landscape details
 - 20 Requires the submission of hard surfacing materials
 - 21 Requires the prior submission of earthworks details
 - 22 Requires the submission of boundary treatment details
 - 23 Requires the submission of a landscape and ecological management plan
-

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- 24 Requires the submission of a lighting scheme
 - 25 Requires the submission of details of green roofs
 - 26 Requires the prior submission of level details
 - 27 Requirements within pre-defined tree protection areas
 - 28 Requires tree pruning protection
 - 29 Requires the prior submission of a demolition works statement/management plan
 - 30 Requires the prior submission of a construction method statement/management plan
 - 31 Requires an employment construction plan
 - 32 Requires the prior submission of a crane management plan
 - 33 Requires the submission of cycle storage details
 - 34 Requires the submission of details of a servicing and delivery vehicle management scheme
 - 35 Requires the submission and completion of works for the S278/TRO Agreement
 - 36 Requires the submission of the low and zero carbon energy generation system
 - 37 Requires the submission of the Final Certificate to meet BREEAM for the hotel
 - 38 Requires a post completion telecommunications reception assessment
 - 39 Requires the scheme to be in accordance with the listed approved plans
 - 40 Removes PD rights for telecom equipment
 - 41 Implement within 3 years (Full)
 - 42 Ground floor commercial uses ancillary to main use
-

Case Officer: David Wells

Photo(s)



View along Ryland Street



View along Broad Street towards Edgbaston

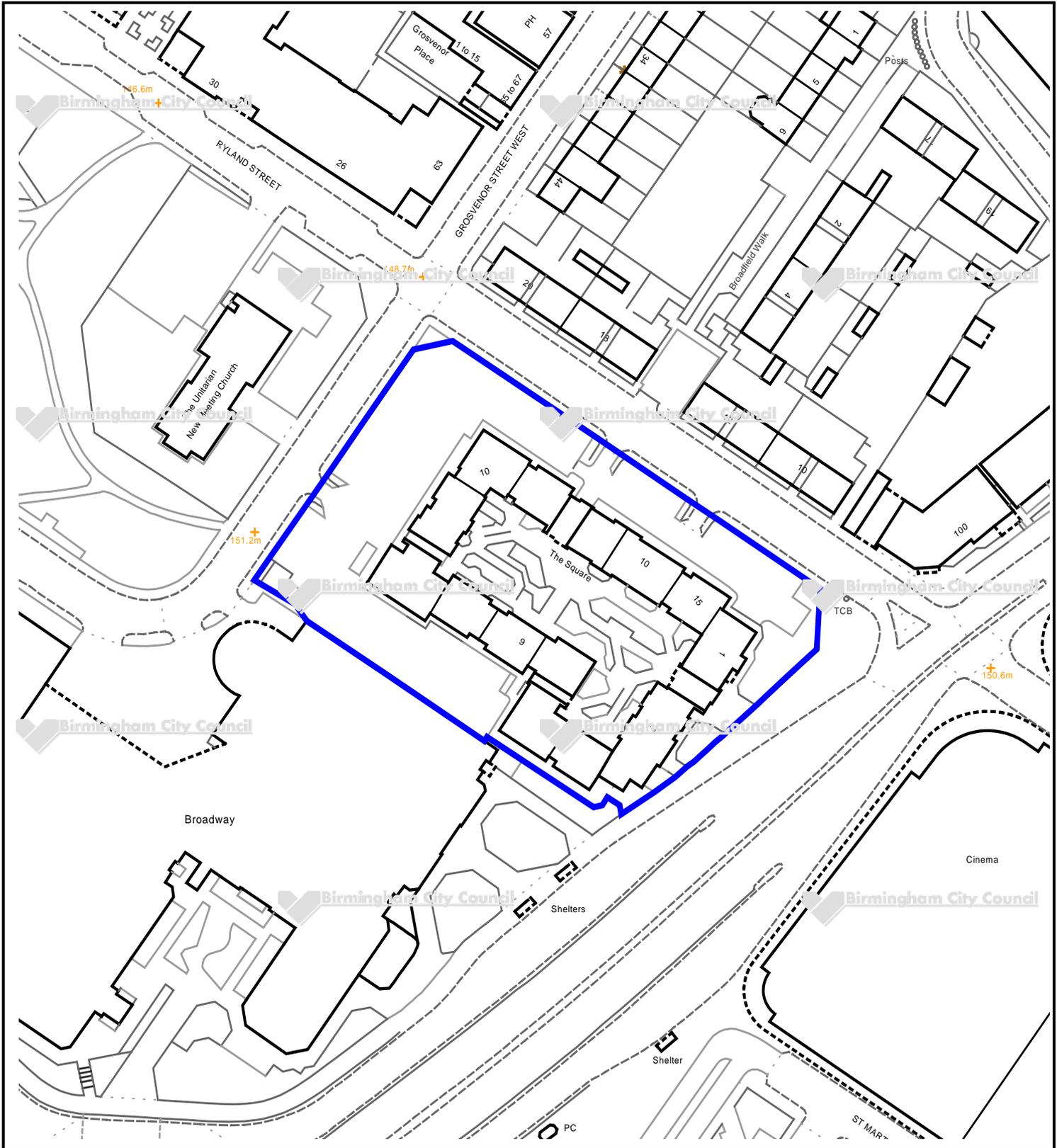


View along Grosvenor Street North



View along Broad Street towards the City Centre

Location Plan



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Birmingham City Council

Planning Committee

22 October 2020

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

| <u>Recommendation</u> | <u>Report No.</u> | <u>Application No / Location / Proposal</u> |
|-----------------------|-------------------|--|
| Approve – Conditions | 7 | 2020/05745/PA Mucklow Park Land off Battery Way Tyseley Birmingham B11 3DA Full planning application for the development of a single employment building, comprising general industrial, storage and distribution (Use Classes B2/B8), with ancillary office use, decked van storage and associated infrastructure and landscaping |

| | | | |
|-----------------|------------|---------------------|---------------|
| Committee Date: | 22/10/2020 | Application Number: | 2020/05745/PA |
| Accepted: | 28/07/2020 | Application Type: | Full Planning |
| Target Date: | 27/10/2020 | | |
| Ward: | Sparkhill | | |

Mucklow Park, Land off Battery Way, Tyseley, Birmingham, B11 3DA

Full planning application for the development of a single employment building, comprising general industrial, storage and distribution (Use Classes B2/B8), with ancillary office use, decked van storage and associated infrastructure and landscaping

Recommendation

Approve subject to Conditions

Proposal

Background to this Report

Members will be aware of this former industrial/factory site and redevelopment area which was originally called 'Signal point'. History of redevelopment dates back to 2007 (outline permission) with the land coming forward for redevelopment for industrial and employment uses as part of the wider regeneration of the area in a phased manner.

One of the main influences over the opening up of this site for redevelopment was the infrastructure improvements made by the new link road (Battery Way), which provides a link between Warwick Road to Reddings Lane and Olton Boulevard West (see history), project by BCC highways.

- 1.1. This planning application relates to the third phase of industrial redevelopment of the site for the proposed erection of a single industrial employment building for (B2/ B8 use), with ancillary office facilities and linked van storage unit for use as a 24Hour parcel distribution facility. This development is supported by associated infrastructure, with particular reference to off-site highways works (Section 278) at Warwick Road junction.
- 1.2. The proposal comprises the creation of a total of 11208 sq.m of B2/ B8 (General industrial & Storage & distribution) and ancillary office, with associated infrastructure.
- 1.3. The proposed building would measure approximately 73m wide x 127m deep x 15.4m high. The building would be constructed of a typical steel portal frame with insulated composite cladding panels alongside metal profiled cladding panels and composite roof cladding panels to achieve a large span weather tight unit. The roof profile will have a shallow pitched appearance.
- 1.4. The materials would be cladding panels for the roof and walls will be a mixture of textures with a horizontal and vertical appearance to break up the bulk of the building which will take reference from the previous phases.

- 1.5. The roof will be finished in Goosewing Grey (RAL 7038). The walls will be a mixture of Merlin Grey (RAL 180 4005), Hamlet (RAL 9002) and Alaska Grey (RAL 7000). Personnel doors and docks in Anthracite (RAL7010) and feature eaves detailing in Sargasso Blue (RAL 5003) flashing.
- 1.6. As part of the warehouse building, an office unit will be at first floor and wrap around on three sides (mainly south east). The eastern elevation of the warehouse unit would include a canopy above a number of loading bays for deliveries and dispatch. This canopy is 25m wide and 104m deep.
- 1.7. Beyond this would be the deck parking and service yard which has a ground and single upper floor for 359 vans. This building will be 96m wide x 120m deep x height of 7.3m. The materials will mirror the warehouse building with feature colours/fins breaking up the bulk of the building.
- 1.8. A car parking area is proposed to the south and west frontages of the proposed unit which would accommodate 126 cars, including the provision of 6 car share spaces, 6 disabled car parking spaces and 8 spaces with EVCP with future passive provision of 46 spaces.
- 1.9. Separate access to the HGV access would be provided off the service road (Innovation Way) into a secure service area with turning facilities and HGV loading bays, along with a waiting area for HGV's.
- 1.10. Additionally, a proposed secure cycle store to accommodate 40 bicycles and space for 5 motorcycles would also be provided with a brown roof, along with a smoking shelter with a brown roof and security huts for the barrier service, car park and van deck.
- 1.11. Dedicated pedestrian routes/access would be incorporated into the areas of car parking and hard standing to navigate to the building.
- 1.12. The proposed development is distanced from the boundary to allow the introduction of a meaningful and biodiverse landscape buffer with feature gabions facing Battery Way. The landscape buffer would comprise a mixture of tree and shrub species which would seek to provide visual interest and create habitats for native wildlife.

The application is supported by the following documentation:

- 1.13. Design and Access Statement (including Consultation Statement and sustainability Statement
- 1.14. Planning Statement
- 1.15. Transport Assessment and Framework Travel plan
- 1.16. Ecological Impact Assessment
- 1.17. Landscape Design Statement;
- 1.18. Flood Risk Assessment and Drainage Strategy
- 1.19. Noise Impact Assessment
- 1.20. Air Quality Assessment

- 1.21. Summary of Environmental conditions
- 1.22. Energy Statement
- 1.23. Construction Environmental Management Plan
- 1.24. An Environmental Impact Assessment (EIA) screening opinion was issued by the Local Planning Authority concluding that the development proposed does not require an Environmental Impact Assessment.



Fig. 1 - CGI Visual of battery Way (showing planting when established)

[Link to Documents](#)

2. Site & Surroundings

- 2.1. The application site is a large cleared site (former 'Yusa' battery site) and forms part of the southern side of Battery Way link road. The areas especially to the north east and west are in commercial/industrial use which is well established in the wider area.
- 2.2. Towards the south of the site is Formans Road which is mixed with residential properties and commercial properties the largest of these is a large meat processing centre.
- 2.3. Immediately west are the previously approved units (Units 1 and 2) which form part of Mucklow Park with access from Innovation way (see history). The Al-Furqan Primary school, along with a community hall, prayer facilities and gym is located immediately east of the proposed site and beyond this are more established residential, new residential redevelopment and commercial properties including a new school (Olive School).

- 2.4. As noted previously, the site has been cleared and is largely level. The brickworks wildlife site is located further to the west of the cleared site.
- 2.5. The application site is designated a Core Employment Area.



Fig: 2 - Site location - Aerial image: Source: Google Maps (Earlier phases visible)

[Site Location](#)

- 3. Planning History
 - 3.1. 09.08.2007 - 2007/02828/PA Outline Application for B1 (light Industrial) B2 General Industrial and B8 (Storage and Distribution) on former Yuasa Site. Granted
 - 3.2. 12.08.2010 - 2010/03120/PA Outline application to replace 2007/0282/PA to extend time period for implementation. Granted
 - 3.3. 08.10.2013 – 2013/04953/PA Outline application to replace 2010/03120/PA to extend period for implementation. Granted
 - 3.4. 11.10.2018 - 2018/04301/PA- Full planning for single warehouse building B2/B8 and associated infrastructure – Granted
 - 3.5. 29.09.2018 - 2018 /05863/PA – Full application for the construction of two B2 General industrial and B8 (Storage and Distribution) buildings – Granted

Related Applications

3.6. 28.09.2017 – 2015/02506/PA Creation of link road between Battery Way, Reddings Lane and Olton Boulevard West to amend the site boundary and minor alignment to the road - Granted

4. Consultation/PP Responses

4.1. **Transportation Development** – No objections, subject to conditions including the conclusion of the S278. Detailed comments received outlining the details in the TA and ongoing works and discussion for the S278 – The TA provides details on the development and the impact on the local and wider highway networks. It is clear that junction improvements are required at the A41 and as such a S278 agreement is currently being considered.

4.2. **Environment Agency** – No objections - Area is known to be contaminated and further to the west of the site the land was used as a former landfill. Land conditions should be advised by local advisors.

4.3. **Regulatory Services** – Will require land contamination conditions. Note contents of Noise report and confirm the reasoning – require some clarifications of vehicle movements at sensitive times and confirmation that 24 hour use has been assessed against the modelling – Further comments have now been received raising no objections subject to a raft of conditions tying the development to the mitigation measures as outlined and further detailed clarifications received.

4.4. **Local Lead Flood Authority** – No objections, subject to the latest drainage details and the agreement of Severn Trent in terms of discharge and any changes ST may require.

4.5. **Severn Trent** – No objections (previous drainage run off rates and details noted).

4.6. **Fire Service** – No Objections. Water supplies for firefighting should be in accordance with National Guidance Document on the Provision for Fire Fighting which would be required for approval under part B of Building Regulations.

4.7. **West Midlands Police** – No objections.

4.8. Site and press notices displayed.

4.9. MP, Ward Members and Tyseley and Sparkhill North neighbourhood Forum and 307 local neighbours and premises notified – two representations received and are as follows:

- Potential for traffic congestion, however this will bring much need employment in the area in an established industrial location.
- What details for priority employment of local residents will there be.
- Concerns about 24 hour use and disturbance from staff.
- Block View/Outlook impact.
- What Landscape trees to soften the appearance of the development.

5. Policy Context

- 5.1. National Planning Policy Framework;
Birmingham Development Plan (2017);
Birmingham Unitary Development Plan Saved Policies (2005);
Car Parking Guidelines SPD (2012);
Places for All SPG (2001).

6. Planning Considerations

6.1. **Principle of Development**

- 6.2. The application site is part of the portfolio of employment land identified in policy PG17 and located within a Core Employment Area as identified Policy TP19. The proposal seeks to deliver a modern purpose-built industrial facility, as part of the wider area regeneration of the former 'Battery site, 'with primary access along with Battery Way. This further phase will bring back this former employment site into new employment uses fit for the 21st Century.
- 6.3. The application site is identified as good quality employment land and consequently the Local Planning Authority considers that this development protects this part of the portfolio of employment land as a valuable resource to the economy which will help meet current and longer term employment land requirements for the City. Based on the proposal the development could create the equivalent to 146 FTE jobs. This proposal also meets aspirations in the LEP for local employment opportunities.
- 6.4. The application proposals are also closely connected with the City's Highway Improvement Line (HIL), identified in Policy TP44 as the road improvement project which was delivered in conjunction with investment by the site owner.
- 6.5. Rising demand for good quality employment sites has resulted in Phase I and Phase II of the scheme being let. This later proposed phase is still considered to comply with relevant planning policies for core employment land and is considered to be acceptable and in accordance with policies TP19 and TP 20 of the Birmingham Plan.

Highway Safety/Highway Impact

- 6.6. A full Transport Assessment (TA) has been submitted in support of the application proposal which assesses the proposal against existing and previous conditions experienced at the site. This assessment contains modelling scenarios which are based around the use as a distribution centre as a worst case scenario.
- 6.7. The access to the development will be made from Battery Way, with van access from the eastern most access and the HGV access from the 'Innovation link Road' (west), along with staff access which is separate from the van access arrangements.
- 6.8. The TA has robustly considered the impact on the local and wider highway network via modelling and road safety audits and has identified that Battery Way/Warwick road Junction (A41) would be approaching or over capacity once the development was operational. It clearly identifies the need for further highway improvements around the A41 junction to ensure that the proposal can be accommodated without impact on the wider highway network.

- 6.9. In this instance, the improvements will comprise (amongst others requirements) the signalisation of the existing priority junction which has been agreed in principle with BCC (highways) and these works will be secured via a S278 agreement which is being progressed concurrently and is at an advanced stage alongside this planning application.
- 6.10. A total of 126 car parking spaces will be provided. Within this total, 6 spaces are allocated for car share, along with 6 disabled spaces and 8 spaces with active EVCP. Further infrastructure is proposed to be installed to provide for 46 passive EVCP spaces for future use. Infrastructure is also to be installed to enable the future provision of EV charging for the van storage spaces with an end user working toward use of electric delivery vans in future.
- 6.11. 5 motorcycle and 40 cycle spaces will also be provided as part of the development. Transportation Development has raised no objections in principle to the new unit and considers the parking provision would be adequate to service the new unit which is also in line with the Car parking Guidelines SPD and parking SPD.
- 6.12. As part of the scheme the proposal will also provide 359 van storage bays in the form a decked area and separate 9 (+2) HGV docks, 1 waste bay, 50 launch bays, 50 van waiting bays and 50 cage staging bays to meet the end users requirements.
- 6.13. The LGV (vans) will enter and leave from their own separate access and follow a designated route to the van waiting area, prior to proceeding to cage staging and launch bays before departing the site.
- 6.14. Dropped kerbs and tactile paving will be provided across the access locations on Battery Way and the internal access road. A pedestrian refuge is also provided on Battery Way, east of the site access, to accommodate pedestrians crossing Battery Way.
- 6.15. As noted, vehicular access to the development will be provided via two existing accesses directly off Battery Way that adjoin the site's northern boundary. The western most access, at Innovation Drive, currently provides access to the first two phases of development at Mucklow Park and will link to a new dedicated entrance for inbound HGV's to a service yard north of the proposed building. The site access has the benefit of a HGV waiting area prior to the service yard gates and this will ensure that HGV's do not wait within the private access road.
- 6.16. Staff and visitor car parks will be located at the site's west and south-western boundaries and will be directly accessible via the existing Innovation Drive south of the service yard and warehouse building.
- 6.17. Innovation Drive is 7.3m wide and is considered suitable to accommodate two-way HGV traffic. Double yellow lines are proposed on the internal access road to ensure the free-flow of vehicles by discouraging indiscriminate parking.
- 6.18. The delivery van access/egress will occur from the south-easternmost access on the south side of Battery Way, at the north centre of the site. The outbound van deliveries are proposed to be segregated from the staff access, and inbound HGV delivery access thus reducing the likelihood of any conflicting movements.
- 6.19. Battery Way already has good pedestrian connectivity with 2m wide footpaths and a dedicated cycle lane which will enable the development to encourage alternative means of transport and there are also a number of bus stops within walking distance

which provide links back to the City and beyond. The site is within an area well provided by public transport and walking distance of 3 train stations (Tyseley, Spring Road and Hall Green) which connect the suburbs, Shirley and Solihull to the City.

- 6.20. The applicant has also provided a Framework Travel Plan to promote a modal shift of staff towards alternatives to the car mode of transport which can be implemented/secured via a suitably worded condition.
- 6.21. The applicant has worked closely with Transportation Development who has raised no objections in principle to the new unit and considers the parking provision would be adequate to service the new unit in line with parking standards.
- 6.22. In this case, Transportation Development have recommended a number of conditions to ensure the safe and functional operation of the site based on the supporting information provided. On this basis, it is considered beneficial that such conditions are attached to the granting of planning permission to ensure the development continues to comply with policy TP44 the Birmingham Plan.

Land/Contamination

- 6.23. Historically the wider area was a former battery facility and parts of the area (moreover more recent plots 1 and 2) were found to be on former landfill (former brick pit) and made ground. The development under consideration falls outside the former landfill and findings have confirmed soil contamination in line with the former industrial uses.
- 6.24. It is important to consider the impact to human health from site contamination and groundwater contamination. However, the site will be mainly covered by hardstanding and the reports suggest that there will be a low risk to human health and appropriate mitigation measures will be installed to ensure the development takes account of any unexpected contaminants.
- 6.25. The Environment Agency has considered the reports and raises no objections and is satisfied that subject to the imposition of conditions by the regulatory authority and mitigation measures that the development is considered acceptable.
- 6.26. Regulatory Services are satisfied that with appropriately worded conditions, that this previously developed site may be redeveloped with no risk to human health, to ensure compliance with Policy PG3 and these requirements have been requested in conditions to be accordance with the reports as submitted.

Drainage

- 6.27. The application has been supported by a Flood Risk Assessment and Drainage Strategy. The Environment Agency have raised no objections to these as the site falls within Flood Zone 1 and is a low risk of flooding.
- 6.28. The applicant has also sought to ensure that surface water is adequately controlled. Given its previous industrial use, a detailed drainage strategy has been devised for the site and is considered suitable to allow runoff to SUD's or discharge direct to ground via infiltration features. Therefore, the application proposals would continue to use the existing connection to the on-site sewer, however the runoff from the development would be attenuated via the use of underground cellular storage systems and hydro-brake flow controls which will limits discharge into the public sewers at 41.60 l/s. which was agreed on the previous phases.

- 6.29. Severn Trent have raised no objections to this strategy which is in line with the previously approved drainage strategy for the previous phases and the Local Lead Flood Authority have confirmed that they have no objections to the drainage provisions as suggested subject to the details as provided and to accommodate any requirement from Severn Trent. Therefore, the application proposals ensure that the suitable detailed drainage provisions will be provided to serve the site in accordance with policy TP6 of the Birmingham Plan.

Design and Layout

- 6.30. The application is accompanied with full of plans and elevations and a Design and Access statement which details the design approach of this site and the remaining phases on the site. This is complimented with a materials/ samples specification.
- 6.31. The proposed building is of typical industrial design, with a steel portal frame and varied cladding systems with coordinating colour scheme and feature highlights amounting to a vast floor space consistent with the requirements for industrial space/ warehousing and distribution use, along with a van distribution network building.
- 6.32. The application proposals also incorporate a smaller area of office space and associated staff facilities which will effectively wrap around the southern side of the building and form the principle entrance to the building for visitors and staff. This element adds visual interest and would improve the appearance in respect of the role of the site as a large warehouse/distribution centre.
- 6.33. Your City Design officer has considered the scheme in detail and has noted the continuity of the previous phases to this one and has noted that the amendments to move the acoustic fence towards the building and its associated reduction in height by 1m improves the appearance of the development when viewing the site and this has also allowed an improved and wider landscape buffer around the periphery and as such has formally raised no objections.

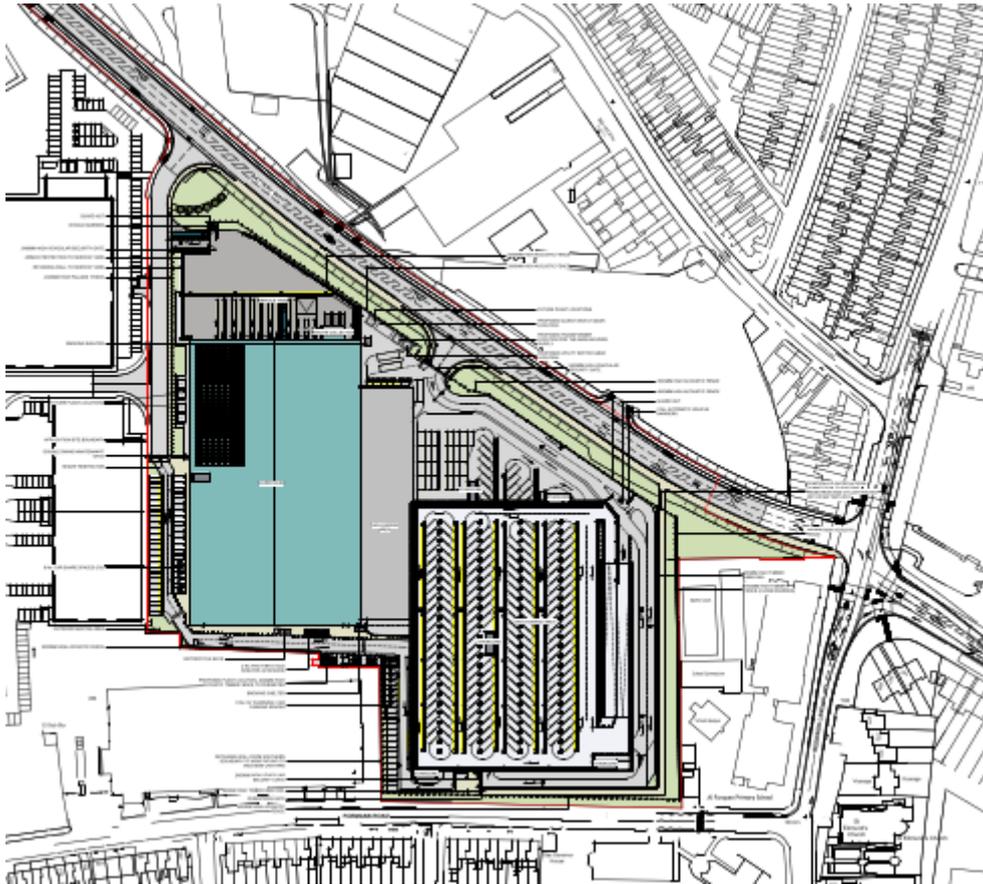


Fig. 3 - Site layout as proposed

- 6.34. The proposed layout of the site is considered to be acceptable, with a large area of landscape buffers and with car parking, nearest to the office, with footpaths for pedestrian access.
- 6.35. Separate HGV and car access is provided from the industrial park service road and a landscaping buffer is proposed around the buildings. The proposed site layout is a considerable improvement on the previous composition of the site given the site has been vacant for some considerable time. The applicant has also provided CGI visuals showing the site layout and appearance from two viewpoints and these are included in the report.

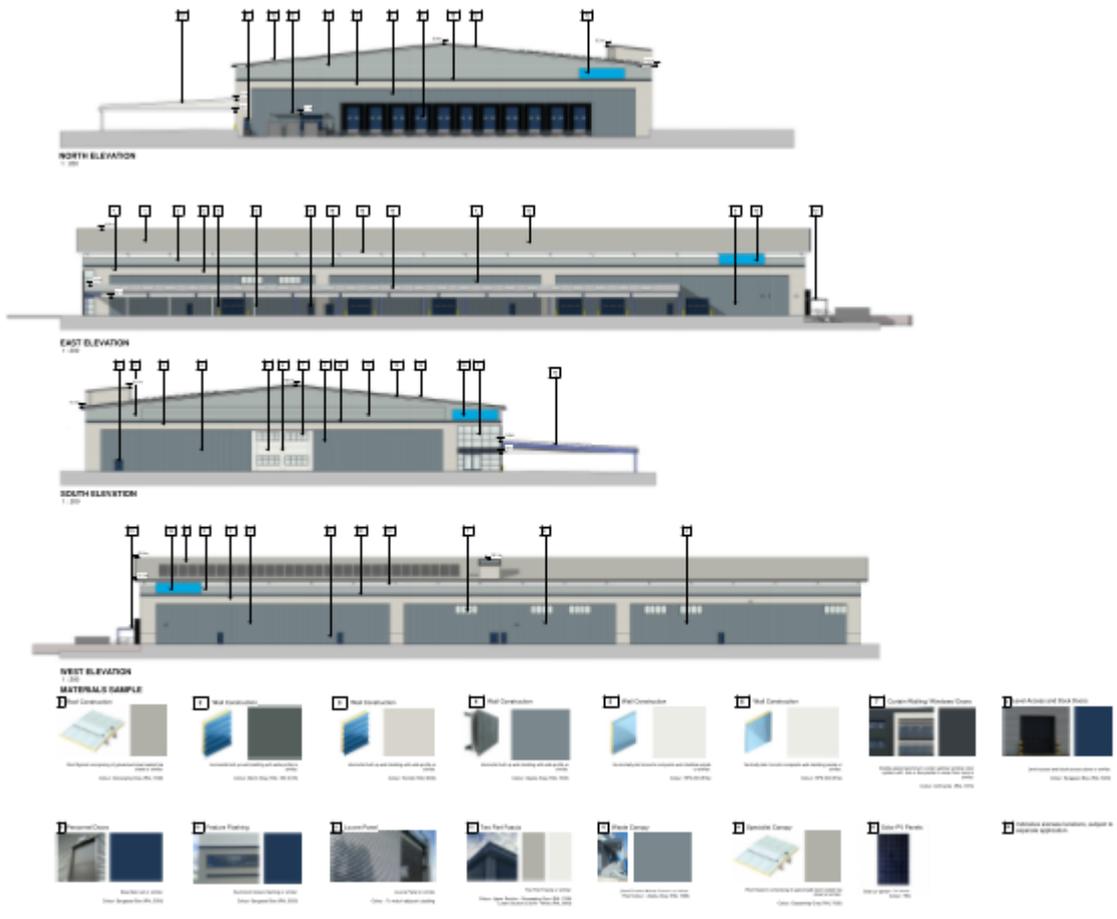


Fig 4 – Warehouse Elevations

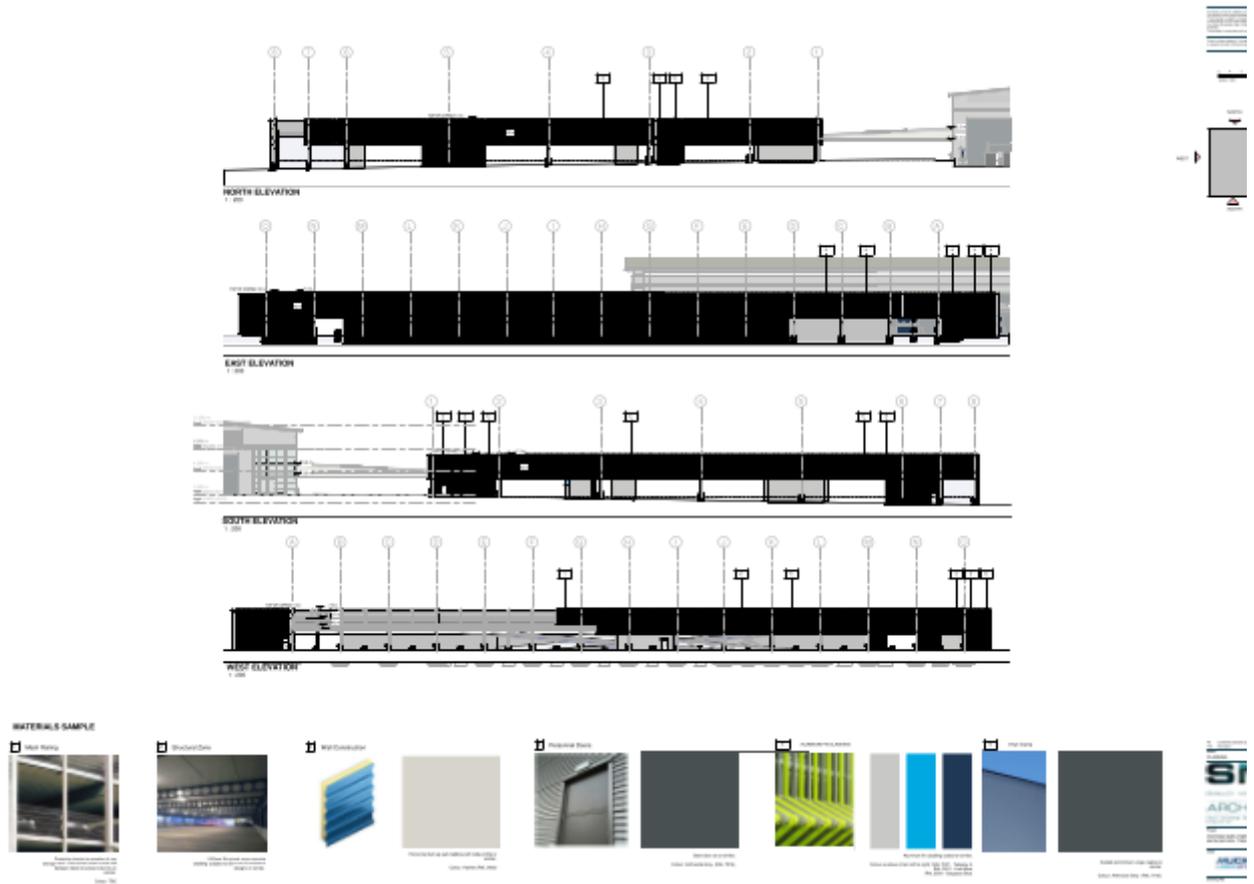


Fig. 5 - Van Deck Elevations

- 6.36. The scale and mass of the building is considered to be acceptable and the proposed height is appropriate within the context of the locality. The design and layout is functional industrial warehousing space that can accommodate the emerging occupier requirements, including suitable loading bays.
- 6.37. I consider that the proposed building would have an acceptable impact on visual amenity and would be a considerable improvement on the current appearance of the site, which comprises a derelict large area of hard standing punctuated with rough self-set areas of planting and spoil piles.
- 6.38. The following is an aerial visual (CGI) of the site from Formans Road.



Fig. 6 - CGI Visual of Formans Road (planting when established)

Landscape

- 6.39. The proposals incorporate the provision of comprehensive landscape areas around the site. The focus will be towards completing a planting area at the entrance and around the periphery of the building to help soften the appearance of the development. This planting will include nectar rich wildflower grass and planting of native shrub and standard trees focused on the more sensitive boundaries of the residential, educational and commercial uses, for instance which is 6.5m deep behind a landscape trip rail adjacent to Formans Road.
- 6.40. The Council's Landscape Officer has no objections to the landscaping plans and recommends conditions to ensure the landscaping is maintained and that it continues to positively link to the tree lined boulevard of Battery Way and the wider site.
- 6.41. On this basis, it would be considered beneficial that such conditions were attached to any grant of planning permission, to ensure the retention of the boundary treatments and planted areas, hard and soft landscaping, landscape management to improve the visual appearance and attractiveness of the site.

Ecology

- 6.42. A Preliminary Ecological Assessment (PEA) was carried out in 2015 and updated in 2018 which confirmed that there were no significant ecological constraints across the site. Previous appraisals found form of the existing habitat created a mosaic habitat linked to the wider site located to the west. The assessments found the site could be developed subject to suitable mitigation as implemented through the landscape in former plots 1 and 2.

- 6.43. A further Ecological Impact Assessment was undertaken in July 2020 and found a mix of surfaces including concrete tarmac and scrub. The report found no protected species potential for foraging and commuting bats. The soil heaps and scrub had potential for bees and wasps, however overall the site was low on ecological significance. The report identified mitigations for the loss of these benefits
- 6.44. The landscaping scheme includes planting of nectar rich wildflowers grassland shrub planting and standard trees along with steel gabions with invertebrate bays at the east and south western end of the site along with hedgehog hibernation and bird boxes along with and 3 brown roofs over the cycle and smoking huts which would mitigate for any perceived loss of habitat.
- 6.45. Your Ecologist has raised no objections to the schemes detailed initial landscaping proposal. The scheme is considered to have beneficial impacts on wildlife and this can be conditioned in line with the landscaping of the site which would amount to a significant improvement in the landscape, ecology and drainage of the site as it currently operates and would achieve wider benefits for the immediately surrounding area in accordance with TP8 of the Birmingham Plan.

Impact on Residential Amenity

Noise

- 6.46. The application site is located within an established employment site which comprised of a number of units. The site has been vacant for some time pending comprehensive redevelopment as proposed as part of the wider original master plan. This application represents a further phase.
- 6.47. The nearest residential properties to the site are located in Formans Road, Reddings Lane and Weston Lane. The site backs onto properties which are located on Foremans Road to the south and the Al-Furqan Primary School to the east. In this regard, the applicant has provided an Environmental Noise assessment and addendum to establish the impacts of this development on the existing surroundings. The noise report has found in the modelling exercise that the most likely cause of noise would be from the movement of vehicles and materials outside of the building near the docking bays and the van movements on the deck. This has been considered in detail, particularly as the end user wishes to operate over a 24 hour period.
- 6.48. In this instance, a number of measures are proposed to mitigate for the potential nuisance in the form of acoustic seals to the docking bays and an acoustic barrier which varies in height between 3m and 4m (around the HGV service area), along with a wider landscape buffer.
- 6.49. Regulatory Services have considered the report and addendum in detail and have confirmed that the proposals would have a greater impact on the residential amenity of the site than that which was experienced previously but note that the traffic movement would be focused around Battery Way which is further away from the properties.
- 6.50. Furthermore, the introduction of the increased landscape buffer and the associated new tree planting would help ensure that satisfactory amenity levels are maintained and would improve the current outlook. Regulatory Services have requested further clarification on the potential of sensitive early hours operations in respect to movements and timings. These have been provided and assessed and it is found that the reports/addendums are based on 'worse case scenarios' so specially

worded conditions have been suggested to mitigate for the conditions and the details provided in the reports to ensure residential amenity is secured. A condition to restrict the number of vehicles entering the site from Battery Way is considered unreasonable and difficult to enforce and as such has not been attached.

Visual Impact

- 6.51. The development will clearly be visible from the surroundings and this aspect is not in dispute. Comments have been received in respect to the visual impact, moreover the landscaping of the site particularly from Foremans Road. City Design and the Landscape officers initially raised some queries regarding the depth of the landscape buffer and how the acoustic wall could effectively be softened.
- 6.52. The applicant has considered the visual impact of this and the need to maintain suitable acoustic standards and has moved the acoustic wall a further 1m into the site towards the deck and warehouse and has reduced the proposed acoustic wall to 3m and this then allows a wider landscape buffer of 6.5m and wider to be planted up and include a kick rail protection for this landscape buffer which is just over 30m away from residential properties. Given this the City design and Landscape officer have confirmed that this is acceptable.
- 6.53. The development of the deck is nearest to the adjacent Al-Furqan primary school which will have acoustic treatment to reduce noise. It is acknowledged that there will be some impact from the development, but given the reduced height of this deck building and the angle of the school buildings it is not considered detrimental enough to warrant any refusal on outlook grounds.

Air Quality

- 6.54. An air quality assessment has also been undertaken by the applicants. This has been based on a number of predictions. In this instance the AQA confirmed that the operational effects of the development would not be significant and residential amenity levels can be adequately maintained without further AQ interventions.
- 6.55. The applicant has also provided a Construction Environmental Management Plan which also outlines how the site will be managed during the construction phase which is considered suitable to protect local amenity to the neighbouring houses and school. The CEMP document also contain details on dust suppression for construction which is also suggested by way of a condition.

Sustainability

- 6.56. The building proposed is designed to address the potential for carbon saving and the use of renewable energy relevant to seek BREEAM Standard of 'Excellent'.
- 6.57. The applicants Design and Access Statement and Energy Statement make reference to numerous measures that have been identified for incorporation into the building. Measures include Improvements to the building construction/glazing materials to achieve higher standards than for current Building Regulations. Water saving systems and energy efficient lighting. Air handling thermal wheels for heat recovery with 75% of waste heat tempering incoming air. VRF Ground Heat pump for the office use.

- 6.58. 1000sqm photovoltaic cells have been proposed for the roof area which is considered acceptable and will meet and exceed the requirements of policy TP3 and TP4 of the BDP.
- 6.59. As previously indicated this proposal also includes installation of Electric Vehicle charging points and ducting for increased/passive use which ensures provision is provided in accordance with the Birmingham Plan TP3 and TP4 of the BDP.

Use

- 6.60. Members will be aware of the Town and Country Planning (Use Classes) Amendment order 2020 which encompasses B1(c) use with other uses under a Class E Use. This application was submitted prior to the 1st September commencement date of the amendment and should be considered as B1c. However, the amendment to the use classes order would enable the use to be changed to any other Class use without planning permission. As a change of use to retail, restaurant or non-residential institution would have a detrimental impact on the provision of employment land it is recommended that the use be restricted by condition to use be defined by B1(c), B2 and B8 uses in the 2015 use classes order.

7. Conclusion

- 7.1 The development takes into account the strategic objectives of the NPPF and the BDP 2017 as this is an established industrial area and this development would effectively and efficiently reuse a former brownfield site providing employment and is located in a sustainable location.
- 7.2 The site layout and design are effective and achieves a successful scheme with robust planting and landscape which offers the benefit of ecological benefit and sustainable drainage. The credentials of the building and the redevelopment seek to secure a BREEAM Excellent standard in an effective and efficient way and offer a good standard of employment accommodation in this location. Therefore, the scheme is supported and recommended for approval.

8. Recommendation

- 8.1. That planning permission is granted subject to conditions

-
- 1 Implement within 3 years (Full)
 - 2 Requires the scheme to be in accordance with the listed approved plans
 - 3 Requires the submission of sample materials
 - 4 Requires the submission of a contaminated land verification report
 - 5 Requires the submission of unexpected contamination details if found
 - 6 Requires level details
-

-
- 7 Requires the implementation of the Flood Risk Assessment
 - 8 Requires the submission of a sustainable drainage scheme
 - 9 Requires the submission of hard and/or soft landscape details
 - 10 Requires landscape management plan
 - 11 Requires the submission of boundary treatment details
 - 12 Requires the implementation of the submitted mitigation/enhancement plan
 - 13 Requires the submission of details of green/brown roofs
 - 14 Limits the noise levels for Plant and Machinery
 - 15 Construction Employment Plan to be provided
 - 16 Dust Suppression shall be carried out in accordance with Construction Management Plan
 - 17 Restriction of use
 - 18 Noise mitigation measures shall be fully implemented
 - 19 Details of Acoustic barrier to be provided
 - 20 Details of Air Quality Assessment
 - 21 Requires the lighting scheme to be provided
 - 22 Requires submission of a construction method statement/management plan
 - 23 Requires the prior installation of means of access
 - 24 Prevents occupation until the service road has been constructed
 - 25 Prevents occupation until the turning and parking area has been constructed
 - 26 Requires the submission of a parking management strategy
 - 27 Requires the submission of a commercial travel plan
 - 28 Requires the delivery and service area prior to occupation
 - 29 Requires the parking area to be laid out prior to use
 - 30 Requires the submission of details of a delivery vehicle management scheme
 - 31 Requires the submission and completion of works for the S278/TRO Agreement
 - 32 Requires reinstatement of Dropped Kerbs
-

Case Officer: Sarah Willetts

Photo(s)



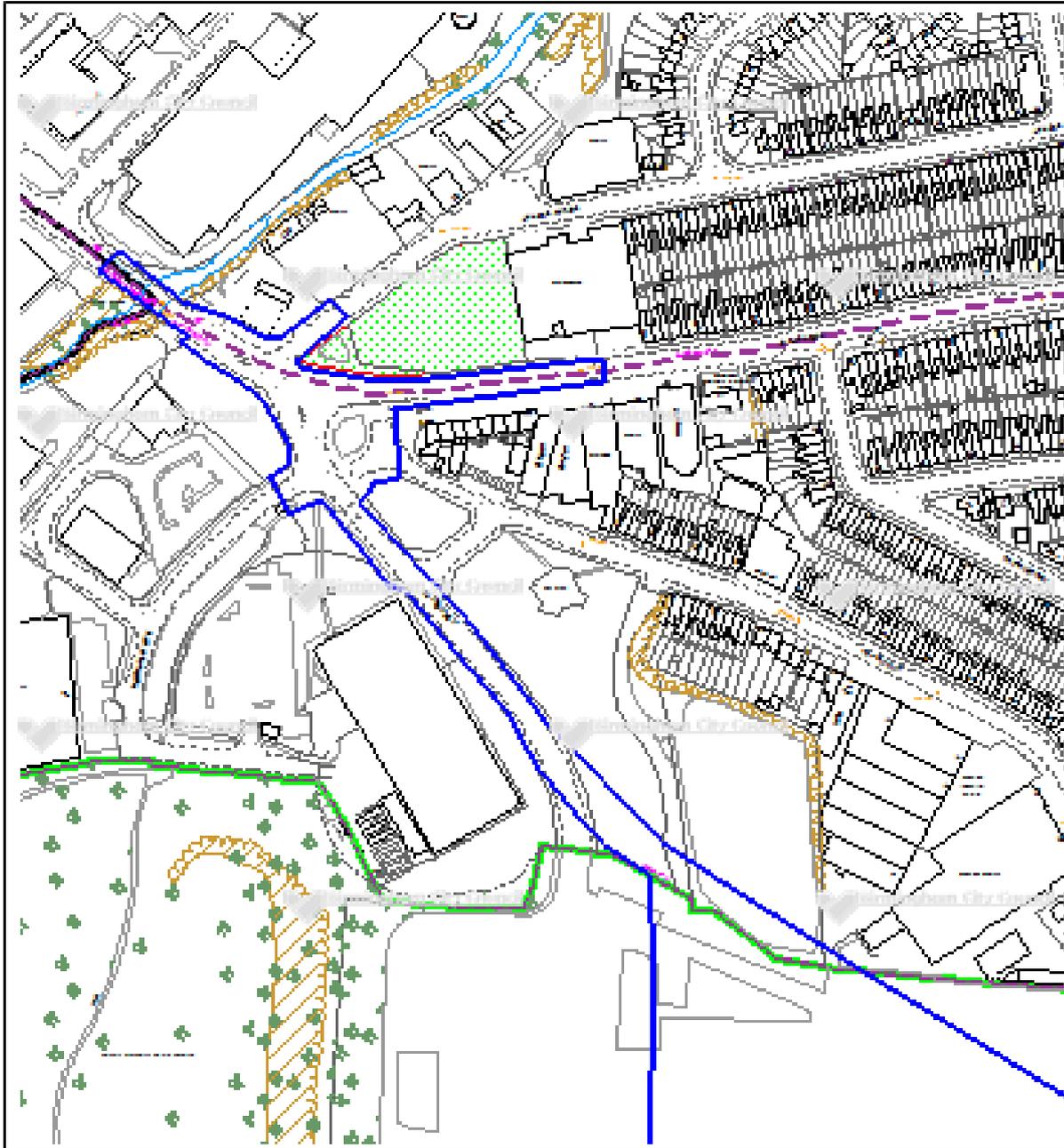
View 1 Land at Foremans road – Site to left adjacent to 24hours meat processign plant



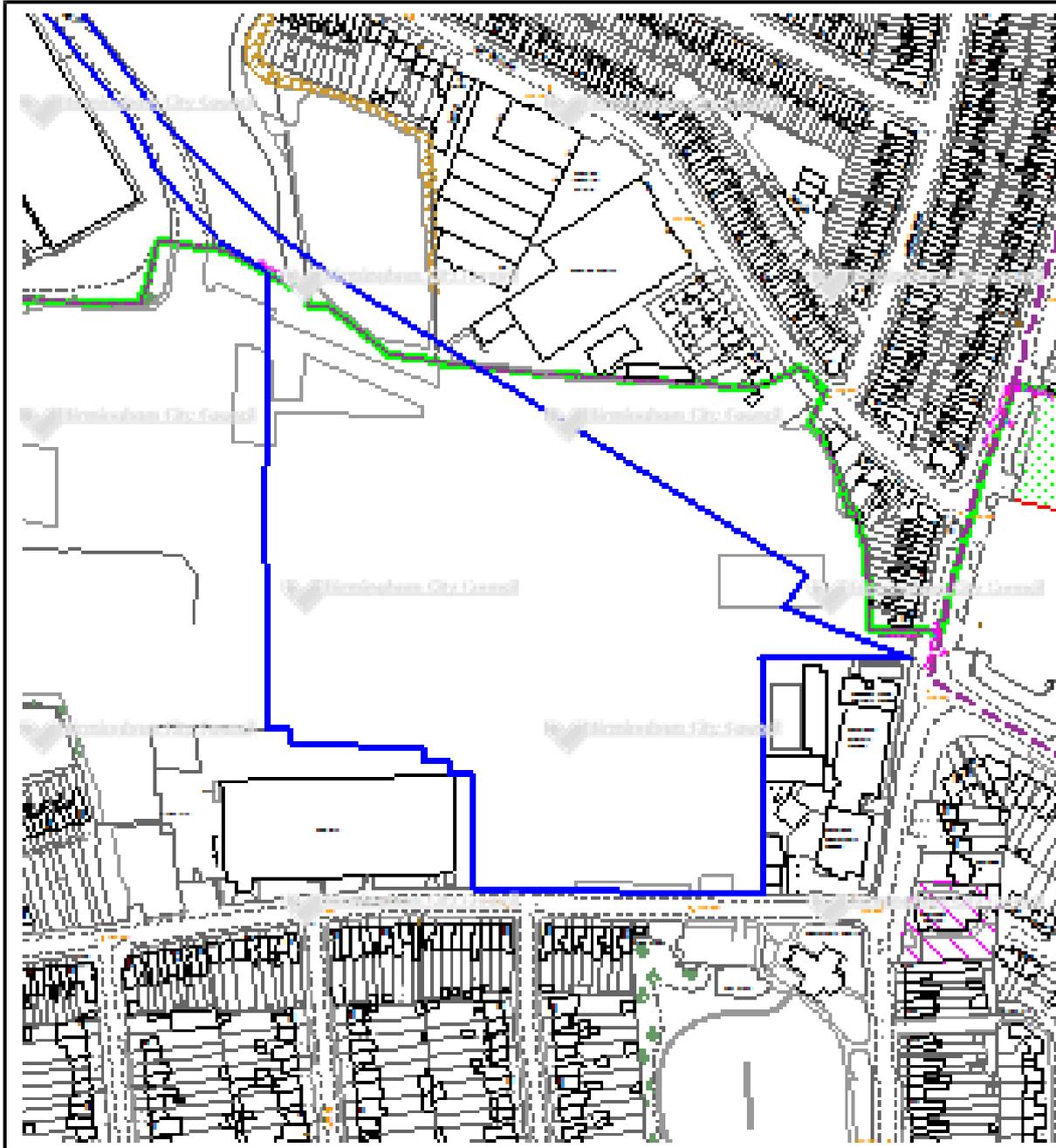
View 2 – Land in foreground with AI –Furqan Primary School beyond



View 3 - Site from Battery Way with earlier phases in background



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Birmingham City Council

Planning Committee

22 October 2020

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> |
|-----------------------|-------------------|---|
| Approve - Conditions | 8 | 2020/06475/PA Plot 5 - Advanced Manufacturing Hub Aston Hall Road Aston Birmingham B6 7LG Development of an advanced manufacturing industrial building (Use Classes B1(c) / B2), ancillary office accommodation and site access, together with their ancillary servicing, parking areas and landscaping |

| | | | |
|-----------------|------------|---------------------|---------------|
| Committee Date: | 22/10/2020 | Application Number: | 2020/06475/PA |
| Accepted: | 20/08/2020 | Application Type: | Full Planning |
| Target Date: | 19/11/2020 | | |
| Ward: | Nechells | | |

Plot 5 - Advanced Manufacturing Hub, Aston Hall Road, Aston, Birmingham, B6 7LG

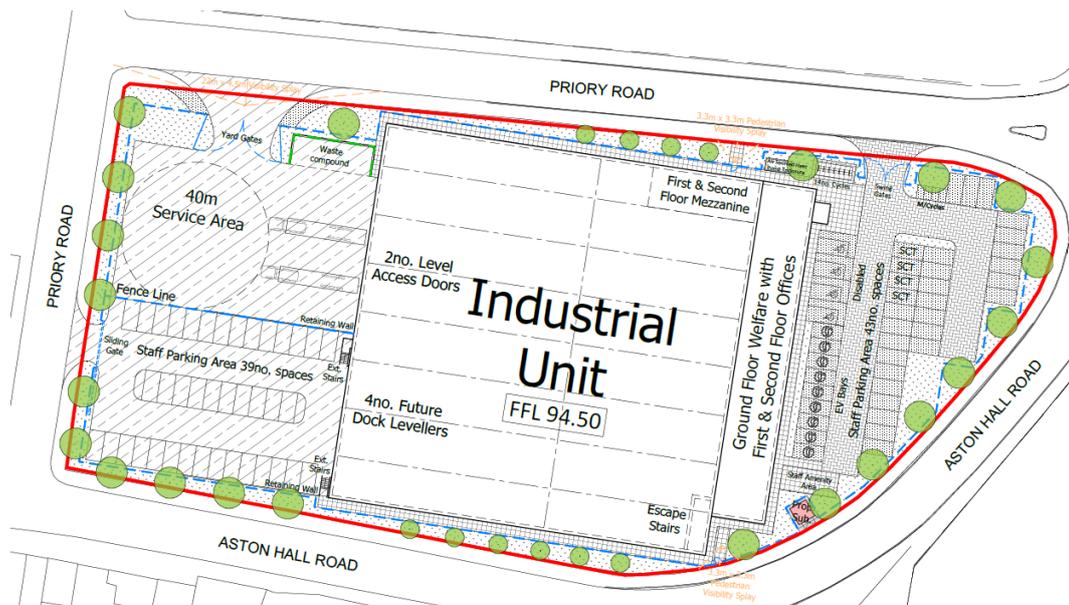
Development of an advanced manufacturing industrial building (Use Classes B1(c) / B2), ancillary office accommodation and site access, together with their ancillary servicing, parking areas and landscaping

Recommendation

Approve subject to Conditions

1. Proposal

- 1.1. The proposal is for the erection of a single industrial building for B1c (Light Industrial) and B2 (General Industrial) uses. The building will be 71m by 62m with a height of 13.25m to eaves and 15.35m to the highest point. Internally the ground floor will provide B1c/ B2 use and office and welfare space, at first floor and second floor is office space.
- 1.2. The submitted plans show a rectangular building with a curved roof, similar to Hydraforce. It is proposed to be finished in a combination of different colour coated, profiled, metal cladding panels shown in shades of grey with blue feature panels, eaves, window frames and doors. The east elevation is the three storey office section with rows of windows serving these spaces and a full height glazed section defining the front entrance of the building. This design wraps around the corners of the building. The west elevation has two roller shutter service doors and there are two rows of high level windows shown on the north elevation.
- 1.3. The building is positioned with the offices on the corner and elevation facing towards the new roundabout on Priory Road and Aston Hall Road. Landscaping is proposed around the site boundaries. Three accesses are proposed, all off Priory Road.
- 1.4. Between the building and the roundabout is staff and visitor car parking providing 43 spaces of which 3 are shared spaces, 4 disabled spaces and 9 electric vehicle charging spaces off one access. This area also provides 4 motorcycle spaces, provision for 14 cycles, a staff amenity area and an electricity substation. To the west of the building is the service yard and waste compound served by a second access and a further 39 staff parking spaces off a further access. The service yard shows access, manoeuvring and unloading space for HGVs and LGVs but no on-site parking for larger vehicles.
- 1.5. The following plan shows the proposed layout:



- 1.6. The application has been submitted with the following supporting documents: Planning Statement, Design and Access Statement, BREEAM Pre Assessment, Energy and Sustainability Statement, Flood Risk Assessment and Drainage Strategy, Transport Assessment, Travel Plan, Geo-Environmental Assessment, Noise Impact Assessment, Air Quality Assessment, External Lighting Assessment, Preliminary Ecological Appraisal.
- 1.7. During the consideration of the application the agent also submitted a written response to the consultee comments received, revised landscaping plan, plans showing visibility splays and boundary treatments, an addendum to the noise assessment, a BREEAM statement and an addendum to the drainage strategy.
- 1.8. The scheme falls under Schedule 2, 10b “Urban development projects” of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. However, as the site is previously developed land, within an urban environment, less than 5ha in area and results in less than 10,000sqm of new commercial floorspace the Council have screened the application as not requiring an Environmental Impact Assessment.
- 1.9. The application has been submitted on behalf of a specific end user; an existing Birmingham based employer who needs space to grow. The user wants to be in occupation of the new building by summer 2021 and will relocate 176 jobs and will grow to over 200 once relocated.
- 1.10. [Link to Documents](#)
2. Site and Surroundings
 - 2.1. The application site is 0.96 hectares and currently vacant following demolition of the industrial buildings which previously occupied the site. It is surrounded by Priory Road, which forms the west and north boundaries, and Aston Hall Road, which forms the east and south boundaries. Both roads have footpaths. The site previously contained industrial buildings in the western half and overgrown grass and trees on the eastern half. The site has been cleared and is currently enclosed with palisade fencing.

2.2. To the north, on the opposite side of Priory Road, is the recently completed Y International building, Hydraforce sits to the northeast with Aston reservoir and the A38 beyond. Plots 3 and 4 AMH lie to the east and have recently gained planning permission for the development of 18 small industrial units. To the west are other, older, industrial uses and to the south, on the opposite side of Aston Hall Road, are predominately industrial uses and disused land with a single retail unit, with residential flat above, on the corner with Sutherland Street.

2.3. The site is 0.2 miles from Aston train station and 0.8 miles from the junction with the M6. It lies within a Core Employment Area, is part of the Regional Investment Site and within the Aston, Newtown and Lozells Area Action Plan area and growth area. It is just outside the area covered by the Local Development Order for Aston Advanced Manufacturing Hub.

2.4. [Site Location](#)

3. Planning History

3.1. 2019/00637/PA – Site remediation works including demolition of existing buildings – Approved subject to conditions 12.09.2019.

3.2. 2018/06873/PA – Application for prior notification of proposed demolition of existing buildings – Prior approval required and approved with conditions 27.09.2018.

3.3. 2009/01189/PA – Continued mixed use for general industry (B2), storage and distribution (B8) and vocational training related to the construction/ engineering/ manufacturing trades only – approved subject to conditions 24.07.2009.

4. Consultation/PP Responses

4.1. Adjoining occupiers, local councillors and local MP notified as well as site and press notices displayed. No comments have been received as a result of this consultation.

4.2. Transportation – Requested amendments to provide a footway on both sides of the to the staff car park and gates to be moved into the site to allow for the largest vehicle to wait off the highway. Also recommend conditions relating to S278, TRO, vehicle and pedestrian visibility splays, cycle storage and a final travel plan.

4.3. Environment Agency – No objections. Recommend a condition to deal with unexpected contamination and provided advice to the applicant.

4.4. LLFA – No objection subject to standard conditions to require a sustainable drainage scheme and management plan and finished floor levels being at least 150mm above the ground level to minimise the risk of flooding the building.

4.5. Severn Trent Water – No objections to the proposals subject to a condition to require the details of the foul and surface water drainage to be submitted for approval.

4.6. Regulatory Services – No objections subject to amendment of the hours of construction. Recommend conditions for construction method statement, dust

management, contamination remediation and verification, noise levels for plant and machinery, extract and odour control details and site delivery hours.

- 4.7. West Midland Police – Recommends Secured by Design Commercial Guide 2015. Also recommends a site wide CCTV system, an intruder alarm system and on-site security. Supports 2.4m paladin fencing, parking, cycle storage and lighting scheme, recommends maintenance of landscaping to keep it at an appropriate height.
- 4.8. West Midlands Fire Service – Provided advice on access for fire fighting vehicles, fire hydrants and water supplies.
- 4.9. Employment Team – Requested S106 or conditions to secure local employment during construction and post completion.

5. Policy Context

- 5.1. The following policies are applicable:
 - Birmingham Development Plan 2017
 - Birmingham Unitary Development Plan (saved polices)
 - Car Parking Guidelines SPD
 - Places for All SPD
 - Aston, Newtown & Lozells Area Actin Plan
 - Aston Advanced Manufacturing Hub Development Framework (July 2016)
 - Revised National Planning Policy Framework 2019

6. Planning Considerations

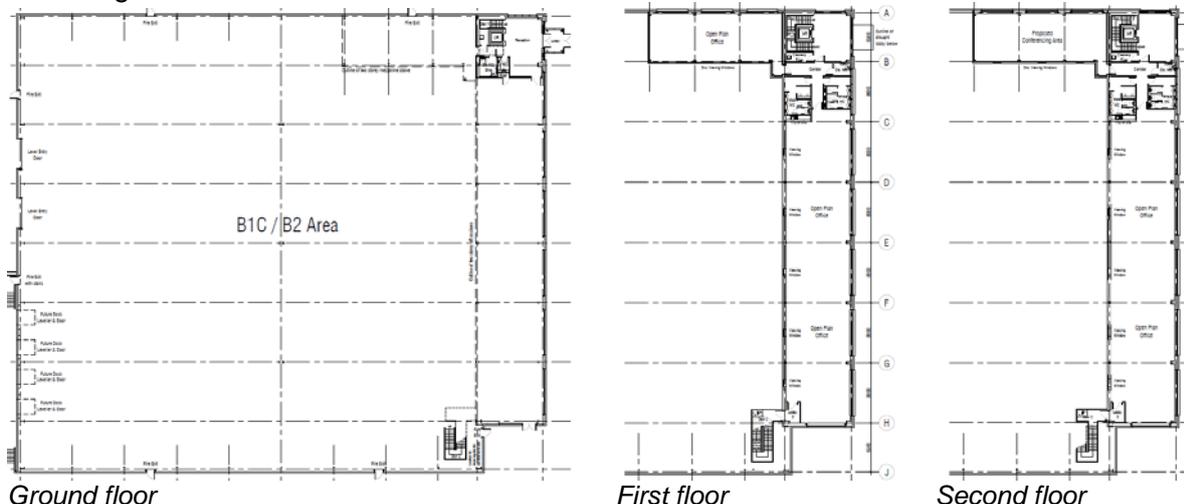
Policy and principle of development

- 6.1. The application has been considered against the above planning policies with specific regard to PG3, TP17 and TP18 of the Birmingham Development Plan (BDP). The site is part of Aston Regional Investment Site (RIS) which is allocated to support the City's economy and deliver large, high quality, investment sites. The policy advises that uses within the RIS will be restricted to B1 and B2.
- 6.2. The application site is within the Aston, Newtown and Lozells Area Action Plan (AAP). This sets the vision and strategy for regeneration and development in the area with a view to maintaining a supply of employment land and also create sustainable neighbourhoods. It sets a target of 1,700 new homes and 5,160 new jobs, of which 3,000 will be in the 20ha RIS.
- 6.3. The site is also part of the Aston Advanced Manufacturing Hub (AMH). The AMH Development Framework was adopted by the City Council as guidance to attract investment and create an attractive business environment, including promoting high quality design and place making. It therefore supports the aims of both the BDP and the NPPF. The framework sets principles for the whole of the AMH which include (amongst other matters) providing for pedestrian movement, marking key junctions, screening service area from the public realm, providing landscaping where the site is adjacent to housing and setting security fencing back within landscaping.

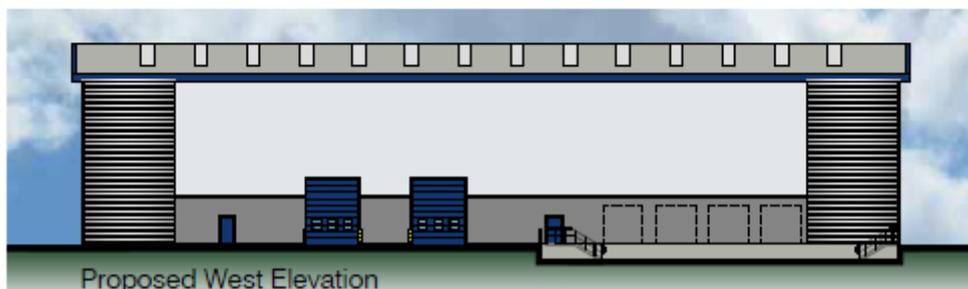
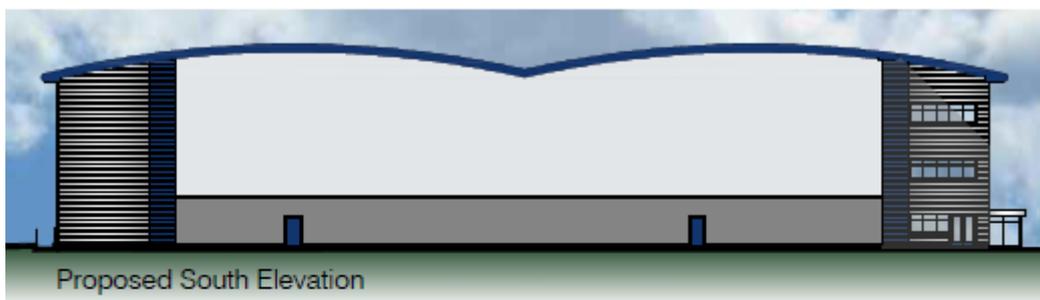
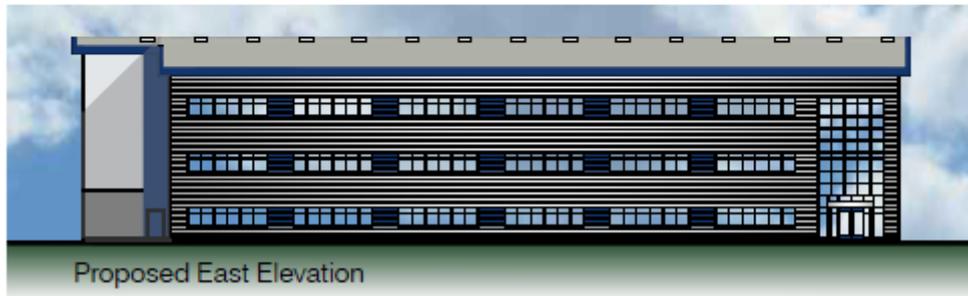
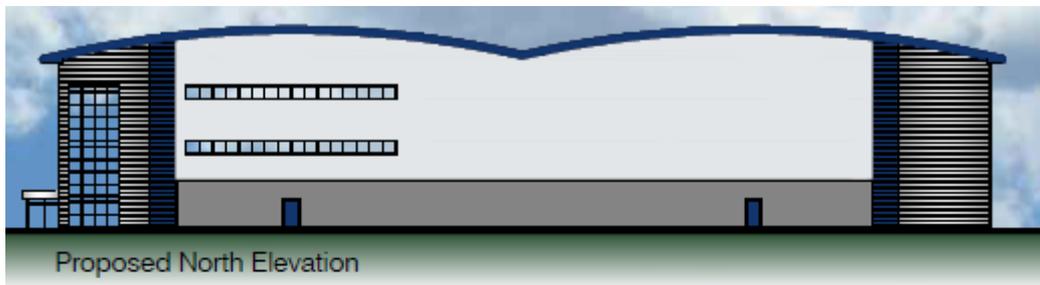
- 6.4. The application site is identified as part of Area A (Salford Park edge) along with the area to the north of the road, which now contain Hydraforce and Y-International. The Framework notes that this area, as a whole, is the largest area of the AMH.
- 6.5. The guidance for this specific area is as follows:
- Buildings to be a maximum of 15m high,
 - Main entrances positioned in the most publicly prominent parts of the site to create an attractive and coherent sequence of buildings along Aston Hall Road,
 - New tree planting required to complement existing landscaping.
- 6.6. Plot 5 also has a Council produced design development brief to set out key design considerations including the need for offices to be prominent, for the building to have active frontages, strong landscaping and screen service yards. The development brief identifies the northeast corner, onto the roundabout, and the southwest corner as key locations which need special consideration.
- 6.7. As noted in section 1 above, the current application has been submitted on behalf of an existing Birmingham employer looking to relocate and expand. It is not a speculative proposal. The principle of new industrial units on this site is acceptable and supported by local and national policy and the proposal complies with these principles.
- 6.8. Members will be aware of the Town and Country Planning (Use Classes) (Amendment) 2020 which encompasses B1c uses with other uses under a new Class E use. This application was submitted prior to the 1st September commencement date of the amendment and as such should be considered as a B1c use. However, the amendment to the use classes order would enable the use to be changed to any other Class E use without planning permission. As change of use to retail, restaurant or non-residential institution would have a detrimental impact on the provision of employment land officers recommend that the use be restricted by condition to uses defined by B1c and B2 in 2015 use classes order.

Layout, scale and appearance of proposed buildings

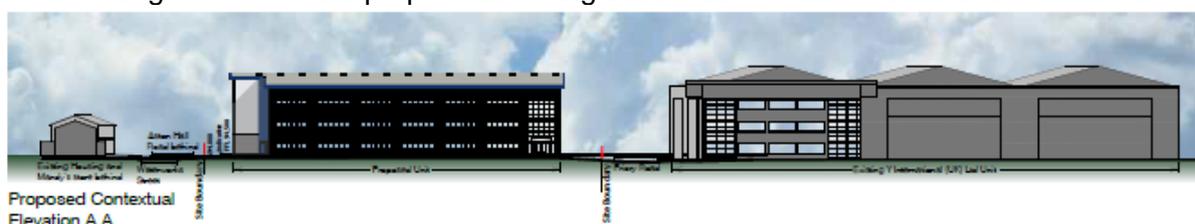
- 6.9. The proposal is for a single building providing B1C and B2 use on the ground floor and two floors of offices in an L shaped office over part of the ground floor. The plans below show the floors with the ground floor shown in full and indicating the area of the upper floor offices. The first and second floor plans are partial plans showing the office floorspace only. The remainder of the building will be open to the ground floor.



- 6.10. As noted above the proposed layout positions the building with the offices on the eastern elevation of the building, facing towards the new roundabout on Priory Road and the eastern edge of the site. To the west of the building is one staff and visitor car park, to the east is a second staff car park and the service yard. The site is enclosed with landscaping and 2.4m high paladin fencing.
- 6.11. The submitted plans show a rectangular building with a curved roof. It is proposed to be finished in a combination of different colour coated, profiled, metal cladding panels shown in shades of grey with blue feature panels, eaves, window frames and doors. The east elevation is the three storey office section with rows of windows serving these spaces and a full height glazed section defining the front entrance of the building. This design wraps around the corners of the building. The west elevation has two roller shutter service doors and there are two rows of high level windows shown on the north elevation.



- 6.12. Within the DAS the agent comments that the varied coloured cladding will provide interest and texture and by breaking up the elevations into multiple components of differing materials, incorporating a change in horizontal and vertical emphasis that not only allows for it to be integrated successfully into the long views, but when seen from closer public environs the building has significant variety and interest to create the high quality business park aesthetic that is sought by the client and occupier.
- 6.13. The AMH Framework advises that buildings are to be a maximum of 15m high. The proposed building is just over 15m to the top of the curve and as such it just exceeds the guidance on the height in the Framework. However, as noted by City Design, the building height is similar to the Hydraforce building and Y International which are both 15m high. It is acknowledged that the proposed development will have a greater height than the units approved on the adjacent plot, which are 11.3m to ridge, however the units on the adjacent plot are smaller units, with smaller footprints. The proposed building will be in context with the wider area and not substantially taller than the smaller units on the adjacent site. The following diagrams show the proposed building in context with the houses and Y International:



- 6.14. My City Design Officer is supportive of the layout and the, well glazed, 3 storey office/ welfare space on the full length of the east façade which results in architectural interest, activity and opportunity for landscaping. In relation to the proposed cladding City Design consider that the proposal provides interest and successfully breaks up the apparent scale and mass. The details and specifics of the materials will need to be submitted and this can be done through a standard condition.
- 6.15. Overall the layout of the site is considered to be acceptable, subject to landscaping considerations below, the scale, design and materials are also appropriate and will relate to the recently completed large scale industrial units (Hydraforce and Y International) as can be seen on the following street view shot showing both of these buildings (the current application site is the plot in the foreground to the left of the road):



Impact on surrounding area and residents

- 6.16. The proposal is for a single industrial building with offices on the eastern elevation facing towards the roundabout of Aston Hall Road and Priory Road. The service yard is to the west of the building. As noted in section 2 above the immediate surrounding uses are predominately industrial with Y-International to the north, older industrial units to the west and a mix of industrial units and disused land to the

south. The nearest residential properties are to the south east of the site. A retail unit, with residential above sits on the corner of Sutherland Road with residential dwellings beyond.

- 6.17. The flat above the retail unit is approximately 22m from the proposed building and the nearest house, number 30 Waterworks Street, is 28m from the proposed building. There are office windows in the proposed building which will face the flat and retail unit, however the office windows are over 30m and as such will not result in unacceptable overlooking and there will not be any impact daylight to these houses.
- 6.18. A Noise Assessment has been submitted with the application which notes that the site is on the edge of an industrial estate but also close to residential properties. On-site noise surveys were carried out to establish the existing noise levels and also an assessment was made of the applicant's existing business premises to establish the potential noise. The report also advises that deliveries to the site will use 4 HGVs and 32 vans and generally be between 07:30 and 16:00 Monday to Thursday and 07:30 to 12:30 on Fridays.
- 6.19. The Noise Assessment concludes that, even if all of the deliveries were to arrive/leave within the same hour, the noise levels would be below the LOAEL (lowest observable adverse effect level), the noise from within the industrial unit would also be comfortably below LOAEL and noise from additional traffic on the roads would be negligible.
- 6.20. Regulatory Services have raised no objection on noise grounds and initially recommended a construction method statement and restricting the hours of construction works to deal with noise during construction operations. For post development Regulatory Services have recommended conditions to limit the noise levels from plant and machinery and restrict site delivery hours to 07:30 to 17:00 Monday to Friday.
- 6.21. During the consideration of the application the agent submitted a suite of documents to satisfy the pre-commencement requirements of a construction method statement condition and Regulatory Services have confirmed that the documents are satisfactory and that a condition could be worded to ensure compliance with the submitted documents rather than needing further information.
- 6.22. The agent has also queried the delivery hours restriction advising that the site will be a 24 hour operation but that deliveries will mainly be between 07:30-17:00. A revised noise assessment was submitted which confirms that, given the level of vehicle movements associated with the development and the location of the service yard, not imposing restrictions on delivery hours would not have an impact on the amenities of neighbouring residents. The comments from Regulatory Services on this additional information have yet to be received. However, I consider that, due to the position of the service yard, the limited vehicle movements and the position of the nearest housing that a condition restricting the hours of delivery is unnecessary on this application.
- 6.23. An air quality assessment has also been submitted with the application acknowledging that the site is in an area where NO₂ is already above target guideline levels (though PM₁₀ is within objectives). However, the submission predicts that the development will not increase NO₂ or PM₁₀ by a detectable amount and as such considers therefore that the impact will be negligible.

Regulatory Services have accepted this conclusion and the recommendation within the air quality report.

- 6.24. Lighting details have also been provided showing external lighting for the proposed development. The scheme proposes illumination of the parking and service areas, pedestrian access and building perimeter, controlled by photocells and time clocks with presence detection in areas of intermittent pedestrian traffic. The scheme has been designed to comply with national standards and minimise light pollution and has been fully detailed in the submission. As such I consider there is no requirement for a further condition and the details can be approved as part of this consent.
- Highway impact, access and parking*
- 6.25. A Transport Statement (TS) and Draft Travel Plan (TP) have been submitted with the application. The TS notes that there have been recent highway improvements in the immediate area. These include Lichfield Road/ Aston Hall Road junction improvements, the new roundabout adjacent to Y International and improvements to junction 6 of the M6. Recent improvements to Aston train station are also noted. The TS also describes the existing highway widths and parking restrictions, accident data and the proximity of bus stops.
- 6.26. The existing vehicular access points are to be closed and the footways reinstated. Three new vehicular accesses are proposed, all off Priory Road. Two serve car parking areas and the third the service yard. Two pedestrian accesses are also proposed, one off Priory Road and one off Aston Hall Road. In response to the recommendation from Transportation Development regarding the provision of footways turning into the site on both sides of the car park access the agent has advised that the pedestrian access off Priory Road is separate from the vehicular access due to the gradient of the vehicle access not being suitable for ambulant users (ie steeper than 1 in 12) and also for security reasons.
- 6.27. Car Parking Guidelines SPD would require 1 space per 45sqm of office and 1 space per 90sqm of industrial floorspace. This would equate to 177 spaces as a maximum. The scheme proposes 82 car parking spaces of which 9 are electric charging spaces, 4 car share spaces, 4 disabled spaces and 4 motorcycle spaces. 14 cycle spaces are also proposed, within a shelter inside the site security fence. Both the car parking and cycle parking are sufficient for the proposed use, when considered against the SPD.
- 6.28. As noted above the application is submitted on behalf of a specific end user who is relocating from an existing facility. The traffic related to the business, both staff and deliveries, are already on the local highway network. The car parking provision for the new site has also taken into consideration the existing business needs and a staff transport survey carried out.
- 6.29. The layout of the site has been designed with space for HGV deliveries and manoeuvring but with no HGV parking/ waiting areas. The submitted TS advises that deliveries are mainly carried out by courier vans, approximately 25-30 per week. With only 5-7 HGVs per week and waste collection twice a week. As such the large vehicle movements are limited and on-site parking for HGVs is not required.
- 6.30. Transportation Development did request that the gates be set back within the site to allow for the largest vehicle to wait off the highway. However, the agent has advised that this would not be possible due to the constraints on the size of the site as it would reduce manoeuvrability. The applicant's transport consultant has commented

that the traffic surveys of the road show that Priory Road has low traffic levels and that most of the traffic will be associated with the proposed development. As such they consider that vehicles waiting on the highway will not result in severe highway impact as such I do not consider that this amendment is necessary.

- 6.31. A draft Travel Plan has been submitted which sets targets and objectives for reducing the proportion of staff travelling by private car, especially single occupancy. The TP notes that there is significant potential for car share, use of bus and train due to the proximity of these facilities, walking and cycling, as 11% of the staff live within 5km. The TP advises that a Travel Plan Co-ordinator will be employed to promote the TP. On site showers/ changing facilities and cycle repair kits will be available along with the cycle parking, information will be available on public transport and car share and umbrellas will be available for staff who walk.
- 6.32. During the consideration of the application a Construction Management Plan was also submitted which is site specific and details the proposed management of the construction site. This includes detail on fencing, access, arrangements for site storage, parking and delivery hours (outside of peak hours). The submitted information shows that the site compound will be within the part of the site which will become the service yard and staff car park on the west of the building. The details can be approved through an appropriately worded condition. The other conditions recommended by Transportation Development are reasonable and relevant to the proposal and are therefore recommended below.
- Drainage and contamination*
- 6.33. Due to the size of the site a Flood Risk Assessment (FRA) has been submitted with the application. The site is mostly flood zone 1 with a narrow strip on north, adjacent to Priory Road, in flood zone 2. The ground levels vary from 95m AOD in the southwest to 93.6m AOD in the northwest corner. The site is within an area identified as susceptible to ground water flooding, there is a risk of flooding from the Aston Reservoir and River Thame but there is no evidence of sewer flooding.
- 6.34. The site is not functional flood plain and as such the development will not displace flood levels. Furthermore, the site is allocated within the Council's adopted policies for industrial use which are classed as "less vulnerable" uses. The Council have carried out a Strategic FRA and confirmed that the principle of industrial development on this site is acceptable in flood risk terms.
- 6.35. The drainage submission has calculated greenfield run-off rates and recommends mitigation of surface water drainage through cellular storage and attenuation tanks to control run-off to the main sewer to the greenfield rate. The LLFA have raised no objection to the proposal and recommended standard conditions and that the finished floor levels should be a minimum of 150mm above ground level to reduce the risk of the building flooding.
- 6.36. Foul drainage is to be discharged to mains and the submitted drainage report has identified existing drains in both Aston Hall Road and Priory Road. The agent has confirmed that a connection enquiry has been made to Severn Trent Water. Their response to the planning application consultation raises no objection, subject to a standard condition to require the details of foul and surface water drainage to be submitted and approved.
- 6.37. The submitted geo-environmental report notes that the site previously contained industrial buildings (brass works) and a school. The site has since been cleared and there has been a number of previous geo-environmental assessments. Given that

the previously carried out work is unclear the report recommends a risk assessment, watching brief for UXO, contamination and made ground and further ground gas monitoring. Subsequent remediation is also recommended. Regulatory Services agree with the report and recommend site specific contaminated land conditions.

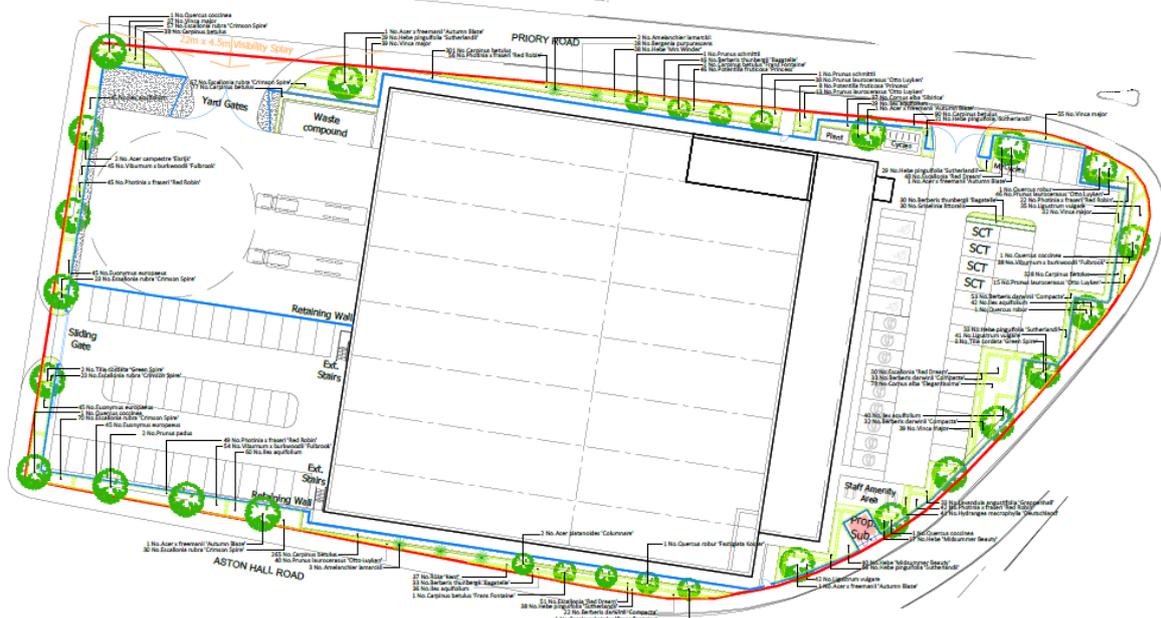
Sustainability

- 6.38. The scheme proposes the use of photovoltaic panels and air source heat pumps. An amended plan was received to show the position of these on the development. The construction of the buildings will also seek to use materials that are responsibly sourced, energy efficient lighting, high efficiency boilers, low water use sanitary ware, use of natural light and solar gain.
- 6.39. CHP systems have been discounted as the City Council operated systems are too far from the site and on-site hot water demand is too low to make a site specific CHP system viable.
- 6.40. The applicant is aiming for BREEAM “very good” rating. BDP policy does seek BREEAM excellent for this type and scale of development. However, given the constraints on the site and that the Council have accepted “very good” on the other plots on the Advanced Manufacturing Hub I consider that a “very good” rating on this development would be acceptable and would be in line with the spirit of TP3 and the AAP.

Ecology and landscaping

- 6.41. Within the Preliminary Ecology Appraisal (PEA) the applicant notes that the site is currently dominated by bare ground with pockets of ruderal plants on the edge. All previous, significant vegetation has been removed. As such the report advises that existing site conditions do not support habitats for great crested newts, reptiles, bats or birds and there is no evidence of badgers. The site may be used by bats and birds as part of wider foraging habitat but the impact is not considered to be significant. The proposed development includes native species, wildlife friendly, planting and sensitive lighting.
- 6.42. My Ecology Officer has advised that the development will result in the loss of the limited areas of vegetated habitat, which have minimal intrinsic ecological value or value for protected/notable species. Further details of ecological enhancement measures, ie landscape planting and bird boxes, should be secured by condition. With regard to the lighting scheme Ecology have noted that the external lighting strategy shows lighting levels which exceed recommended lux levels that would minimise disturbance to bats (ideally 1 lux or below). However, in the context of this highly urbanised location and likely levels of bat activity, amendments to the proposed lighting scheme to reduce lux levels around the boundaries are unlikely to significantly improve conditions for bats.
- 6.43. My Ecologist has also noted that, given the site’s current ecological characteristics and taking account of its previous commercial/industrial uses, the provision of an ecologically-led landscaping scheme will result in a biodiversity net gain. The Council Tree Officer has noted that the site has been cleared and that there are no trees affected by the development. However as submitted the proposed landscaping was not acceptable and additional landscaping, species mix, flowering lawns and other ecological benefits were sought.
- 6.44. The Landscape Officer discussed additional landscaping requirements with the agent. A revised landscaping scheme has been submitted and is now considered to show a greater extent of landscaping which will help to reduce the visual impact of

the proposed development and provide a landscaped boundary to the site as shown in the landscaping plan below:



Other matters

6.45. West Midlands Police Architectural Liaison Officer has made recommendations regarding CCTV and intruder alarms. A condition is therefore recommended. The Council Employment Team have requested a condition to require local employment. TP26 of the BDP encourages the recruitment and training of local people during the construction phase, and where appropriate the end use.

7. Conclusion

7.1. The scheme proposes industrial unit on land that is within a Core Employment Area; the Regional Investment Site; Aston, Newtown and Lozells Area Action Plan; and the Aston Advanced Manufacturing Hub area and is supported in principle by local and national policy. The layout, scale and design of the development and the proposed landscaping, as amended, and boundary treatments are all considered to be appropriate and reflect the other recent industrial developments in the area.

7.2. Due to the layout and precautionary measures the development will not have a significant detrimental impact on the amenities of neighbouring residents and sufficient parking and manoeuvring space is provided within the site for the predicted traffic resulting from the development. All other matters can also be dealt with through appropriate conditions and overall the scheme is highly beneficial to Birmingham and the priorities of the Council.

8. Recommendation

8.1. That planning permission be granted subject to the conditions listed below;

-
- 1 Requires the scheme to be in accordance with the listed approved plans
 - 2 Requires the construction to be in accordance with the submitted details
 - 3 Requires the prior submission of a construction employment plan.
 - 4 Requires the work to be in accordance with submitted dust management statement
 - 5 Requires the work to be in accordance with the submitted contamination remediation scheme
 - 6 Requires the submission of a contaminated land verification report
 - 7 Requires the submission of unexpected contamination details if found
 - 8 Limits the noise levels for Plant and Machinery
 - 9 Requires the submission of extraction and odour control details
 - 10 Requires the submission of foul and surface water drainage details.
 - 11 Requires the prior submission of a sustainable drainage scheme
 - 12 Requires the prior submission of a Sustainable Drainage Assessment and Sustainable Drainage Operation and Maintenance Plan
 - 13 Requires the submission of hard and/or soft landscape details
 - 14 Requires hard surfacing materials to be as approved
 - 15 Requires boundary treatment to be as approved
 - 16 Requires the submission of a landscape management plan
 - 17 Requires the submission of a scheme for ecological/biodiversity/enhancement measures
 - 18 Requires the prior submission of details of bird/bat boxes
 - 19 Requires the implementation of the submitted mitigation/enhancement plan
 - 20 Requires the submission of sample materials
 - 21 Requires the levels to be as approved
 - 22 Requires the submission of details of window and door details
 - 23 Requires the submission of a CCTV scheme
 - 24 Requires vehicular visibility splays to be provided
 - 25 Requires pedestrian visibility splays to be provided
 - 26 Requires the submission and completion of works for the S278/TRO Agreement
-

-
- 27 Requires the applicant to enter into an agreement to find/implement a review and alterations to Traffic Regulation Orders
 - 28 Requires the submission of cycle storage details
 - 29 Requires the provision of a vehicle charging point
 - 30 Prevents the use from changing within the use class
 - 31 Implement within 3 years (Full)
-

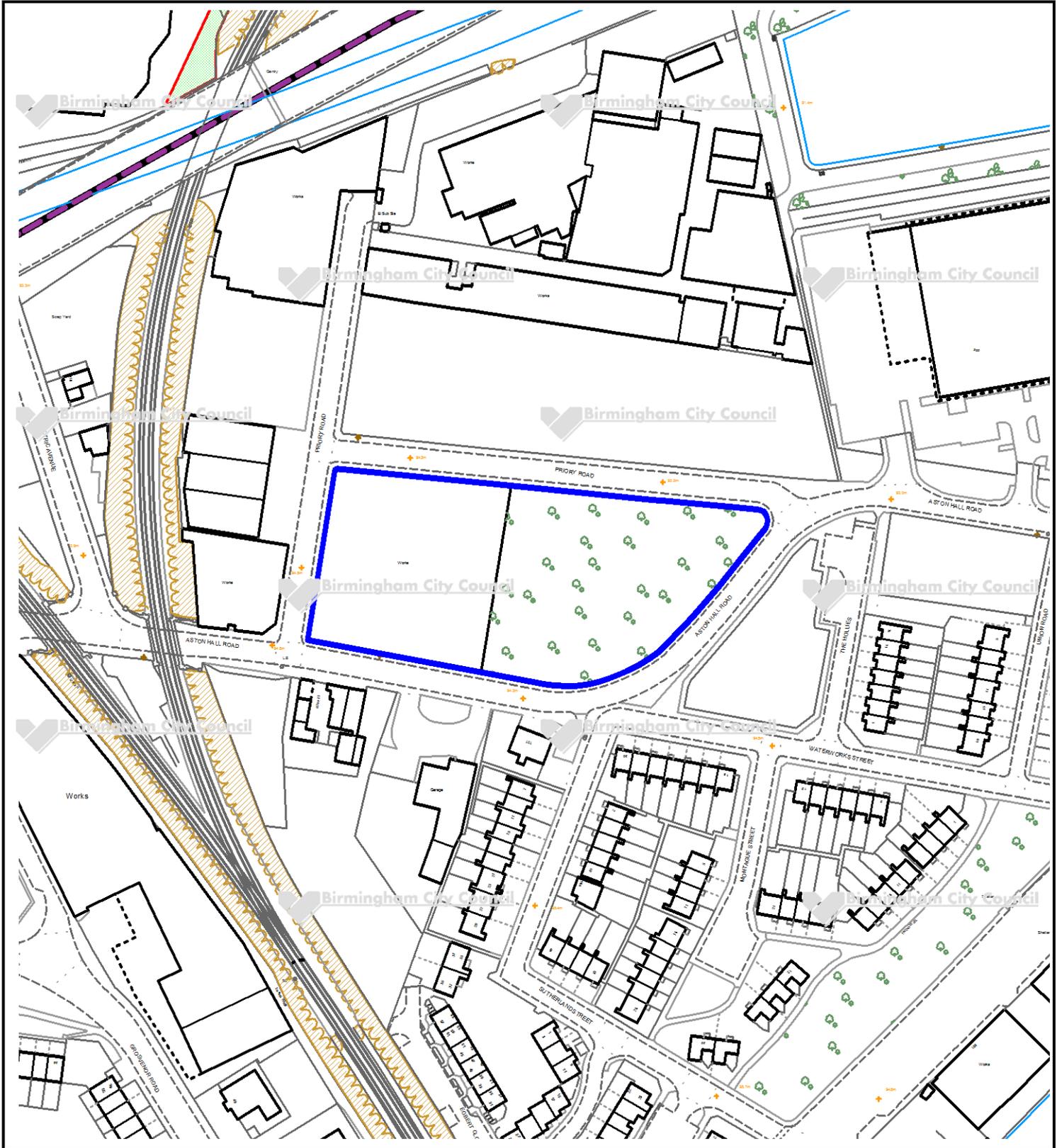
Case Officer: Karen Townend

Photo(s)



Aerial photograph of site (cleared)

Location Plan



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Birmingham City Council

Report to Planning Committee

22 October 2020

Subject: Birmingham Local Enforcement Plan (BLEP)

Report of: Ian MacLeod, Acting Director, Inclusive Growth

Report author: Mark Franklin

Email Address: mark.franklin@birmingham.gov.uk

Does the report contain confidential or exempt information? Yes No

If relevant, provide exempt information paragraph number or reason if confidential :

1. Executive Summary

- 1.1. The purpose of this report is to set out and update the Committee on the draft Birmingham Local Enforcement Plan which is currently under consultation. The BLEP is attached.

2. Recommendations:

- 2.1. That the content of this report and draft BLEP be noted.

3. Background:

- 3.1 The purpose of this report is to update Committee in relation to the newly drafted BLEP which is currently under consultation. The National Planning Policy Framework advocates that Local Planning Authorities should consider publishing a Local Enforcement Plan to manage enforcement proactively, in a way that is appropriate to their area.
- 3.2 The BLEP relates to Birmingham City Council's planning enforcement service and outlines the purpose of the service and how it will be delivered.
- 3.3 The BLEP explains the Council's policy and procedure for dealing with reports of alleged breaches of planning control and handling planning enforcement issues. It identifies local priorities for enforcement action so that the Council's enforcement resources are put to the best use in dealing with breaches of planning control. The BLEP has been designed to meet the current needs of the city rather than producing an "off the shelf" version similar to other Local Planning Authorities.

- 3.4 Although taking enforcement action is discretionary, it is acknowledged that the integrity of the Development Management process depends on the Council's commitment to take effective action against unauthorised development.
- 3.5 The BLEP will therefore ensure that officers, councillors and the general public will be aware of the approach to planning enforcement and provides greater certainty for all parties engaged in the development process.
- 3.6 The BLEP is being consulted on publicly from the 5 October 2020 until 16 November 2020. Following the consultation, responses will be reviewed, and any revisions will be made before the final version is reported to Cabinet to approve adoption of the document.
- 3.7 There is no requirement to consult on this document. However, it was agreed consultation would be a helpful tool to publicise the work of the team and how the Local Planning Authority intends to deal with suspected breaches of planning control, as well as giving the public the opportunity to comment. The consultation is on BeHeard and has been sent to the full list of consultees held on our Planning Policy database.

Ian J. MacLeod

Ian McLeod
Director of Inclusive Growth (Acting)

Contact Officer: Mark Franklin
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Birmingham

Local Enforcement Plan

Consultation Draft • October 2020

 Birmingham
City Council



Contents

| | |
|--|----|
| Foreword | 3 |
| Introduction | 4 |
| Purpose of planning enforcement. | |
| Legislation and policy. | |
| Challenges | 7 |
| The principles of good enforcement | 8 |
| • What is breach of planning control? | |
| • Enforcement action is discretionary. | |
| • What is harm? | |
| Using the BLEP and our enforcement powers | 12 |
| • Formal action. | |
| • Power of entry onto land. | |
| • What happens when we take formal enforcement action. | |
| • What can you expect if you report an alleged breach of planning control? | |
| • How will we prioritise your complaint? | |
| • Priority categories. | |
| Process | 19 |
| • Acknowledgement. | |
| • Site inspection. | |
| • How long is the process likely to take? | |
| • What happens if an allegation is made against you? | |
| • No evidence of a breach. | |
| • The development is immune from enforcement action and thus lawful. | |
| • Negotiations take place to find a solution. | |
| • Invite a retrospective application. | |
| • There is a breach of planning control, but it is not considered expedient to pursue. | |
| • How to report an alleged breach of planning control. | |
| • Confidentiality. | |
| Monitoring | 22 |
| • Proactive compliance. | |
| • Benefits of proactive compliance. | |
| • Complaints about the service. | |
| • Other contacts and sources of advice. | |



FORWARD

Foreword

The Birmingham Local Enforcement Plan sets out our vision and a strategy for an effective and efficient planning enforcement service.

The City faces a number of challenges that will need to be addressed if we are to achieve our ambition for Birmingham to be renowned as an enterprising, innovative and green City.

The population is projected to grow by an additional 156,000 people by 2031, requiring new homes and jobs to be created, as well as quality environments in order for residents, workers, businesses and visitors to thrive.

The Birmingham Local Enforcement Plan has a central role in how we address these challenges. The Plan sets out a framework that will provide a planning enforcement service which is a clear, consistent, proportionate and transparent. It is recognised that establishing effective controls over unauthorised development assists in conserving the natural and built environment whilst helping to protect the quality of people's lives and maintaining the City's.

Councillor Ian Ward

Leader,

Birmingham City Council

Introduction

This Birmingham Local Enforcement Plan (BLEP) relates to Birmingham City Council's planning enforcement service and describes the purposes of the service and how it will be delivered.

Although planning enforcement is discretionary and not a mandatory function of Local Planning Authorities, it is commonly recognised that the integrity of the Development Management process depends on the Council's commitment to take effective action against unauthorised development.

The BLEP explains the Council's policy and procedure for dealing with reports of alleged breaches of planning control and handling planning enforcement issues. It identifies local priorities for enforcement action so that the Council's enforcement resources are put to the best use in dealing with breaches of planning control.

The BLEP will therefore ensure that officers, councillors and the general public will be aware of the approach to planning enforcement and provides greater certainty for all parties engaged in the development process.

Purpose of planning enforcement

The purpose of planning enforcement is to ensure that development is undertaken in accordance with regulations and planning permissions and where it is undertaken without permission to ensure that harmful development is dealt with effectively.

Development requiring planning permission includes:

- Most types of building works.
- Engineering works.
- Material changes of use to land including buildings.

Planning Enforcement cannot take action if there is no breach of planning control, or the dispute concerns boundary disputes, covenants, deeds or civil issues.

Legislation and policy

The Town and Country Planning Act (T&CPA) 1990 (as amended) provides the statutory basis for most planning enforcement matters, including trees. Tree enforcement is also governed by the Town and Country Planning (Tree Preservation) (England) Regulations 2012. The statutory powers for Listed Building enforcement are provided principally by the Planning (Listed Buildings and Conservation Areas) Act 1990.

The Birmingham Development Plan (BDP) was adopted by Birmingham City Council on 10 January 2017. It sets out the City's vision and strategy for the sustainable growth of the City for the period up to 2031. It is the City's key statutory strategic planning document, guiding decisions on all development and regeneration activity to 2031 and is therefore fundamental in guiding decisions relating to breaches of planning control.

The BDP conforms to the National Planning Policy Framework ('the Framework') which was first introduced in March 2012 and updated in February 2019. Paragraph 58 of the Framework states that:

"Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate." (NPPF)

In addition to the Framework the Planning Practice Guidance document titled "Ensuring effective enforcement" provides national guidance in responding to suspected breaches of planning control. (Planning Practice Guidance)

In preparing this plan the City Council has followed the National Planning Policy Framework and the Planning Practice Guidance.

INTRODUCTION



CHALLENGES

Accommodating the City's increasing population and ensuring that economic growth is delivered in a sustainable and inclusive way, meeting the objectives of the Council's priorities, is a key challenge for the City.

Growth must be managed in the most positive, effective and sustainable way possible to ensure that development is guided to the right location, is of a high standard, fit for purpose and that inappropriate development is deterred.

The conversion and reuse of existing buildings for housing can help to meet the changing housing needs of the city. There has been a significant trend for this form of housing in the private rented market in Birmingham in recent years. This trend has emerged in part due to the accommodation needs of the city's substantial student population, but also to cater for transient populations and to address a general need for low cost accommodation for young professionals unable to afford home ownership. The impact of Houses in Multiple Occupation (HMO) growth is a challenge in Birmingham. In order to manage the growth of HMOs in the City, the Council made a decision to introduce a city-wide Article 4 Direction which will mean a planning application must be submitted for proposals to convert family houses (C3 Use Class) to small Houses in Multiple Occupation (HMOs) (C4 Use Class). The direction came into force on 8 June 2020.

Birmingham has 1,500 Listed Buildings ranging from Grade I (buildings of exceptional quality), Grade II* (particularly important buildings) and Grade II (majority of Listed Buildings of special interest).

Listed Buildings are considered nationally important and have extra legal protection within the planning system. Challenges occur when historic fabric is removed to accommodate the demand for new uses and more accommodation and floor space, or poor quality alterations and adaptations take place that compromise these buildings.

Privately owned buildings and land left to deteriorate can cause significant harm to the amenity of the local area, blots on the urban landscape or the urban street. When this happens they not only become wasting assets in their own right, but they degrade the quality of the surrounding environment too. One of the challenges is to reduce the number of these sites.

In light of these challenges and within the constraints of existing resources, the objectives will be:

- To ensure that the distribution and concentrations of HMOs across the City can be managed.
- To protect and enhance the City's heritage assets and historic environment.
- To preserve significant buildings in Conservation Areas and ensure that any development maintains or improves the special character of those areas.
- To protect the amenity of occupiers and nearby residents/ occupiers.

PRINCIPLES

The principles of good enforcement

The integrity of the planning system and the service for the Birmingham City area depends on the City Council's readiness to take enforcement action when it is appropriate to do so. Planning laws and policies are designed to control the development and use of land and buildings in the public interest; they are not meant to protect the private interests of one person against the activities of another.

The City Council is committed to providing an effective planning enforcement service. In order to undertake effective investigations, it is essential that there is co-operation between the City Council departments and other agencies, such as the Police, Environment Agency, HMRC and the Health and Safety Executive. The City Council will continue to develop these relationships in the future in order to make best use of all our available resources.

The City Council will not condone wilful breaches of planning control and will exercise its discretion to take enforcement action if it is considered expedient to do so.

The City Council will investigate all reports about alleged breaches of planning control, except those reported anonymously, to determine whether a breach has as a matter of fact occurred, and if it has, will then determine the most appropriate course of action,

mindful to the basic principles of enforcement:

- Proportionality - enforcement action will be proportionate to the risks and seriousness of any breach, including any actual or potential harm caused by the breach.
- Helpfulness - where it should be possible for breaches of control to be quickly remedied, officers will give owners/developers a chance to quickly rectify matters. All correspondence will identify the officer dealing with the matter and give contact details. Officers will not tolerate abusive language or aggressive behaviour.
- Targeting of enforcement action - focusing enforcement action on the most serious risks and recognise that it is not possible to prioritise all issues of non-compliance or to take action against breaches causing no significant harm.

- Consistency of enforcement approach - consistency does not mean uniformity, however a similar approach will be taken in similar circumstances with the appropriate exercise of individual discretion and professional judgement.
- Transparency of how enforcement operates and what can be expected - where non-compliance has been identified, officers will explain what must be done to remedy the breach, clearly explain the reasoning behind their decision, give reasonable timescales for compliance and provide clear instructions of what will happen if they do not comply.
- Accountability for our actions - members of the public and businesses will know what to expect when an officer visits and how to raise any complaints they may have, and we will report back on our performance.

What is a breach of planning control?

Planning enforcement aims to enforce against planning breaches, which is described in the Town and Country Planning Act 1990 ("the 1990 Act") as;

"carrying out development without the required planning permission; or failing to comply with any condition or limitation subject to which planning permission has been granted' (s.171A).

Section 55 of the 1990 Act defines development as;

"the carrying out of building, mining, engineering or other operations in, on, or over land, or the making of any material change of use of any building or other land."

This could involve such matters as the unauthorised erection of a building or an extension to a

building, a material change of use of land or a building, or the display of unauthorised advertisements. Other breaches of planning control may consist of the following:

Unauthorised works to Listed Buildings - most works to Listed Buildings require consent and it is a criminal offence to carry out works without such consent. Prosecution proceedings can be instigated under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Alternatively, the Act also gives local planning authorities the power to serve Listed Building Enforcement Notices to which there is a right of appeal.

Unauthorised works to trees subject of a Tree Preservation Order (TPO) or in a Conservation Area - it is an offence to carry out unauthorised work to trees protected by a Tree Preservation Order. Where works are proposed to trees in

a Conservation Area, the Local Planning Authority should be notified, and permission obtained in advance. In both instances the Council has the power to prosecute offenders and require the planting of replacement trees.

Unauthorised demolition of a building which is located within a Conservation Area - It is a criminal offence to demolish a building, which is located in a Conservation Area, without consent.

Breaches of Planning Conditions - A breach of condition notice can be served where there is a failure to comply with any condition imposed on the grant of planning permission. There is no right of appeal against a breach of condition notice.

Untidy land where it affects the amenity of the area - where land or premises have become an eyesore, the Local Planning Authority has the power to serve a notice under section 215 of the Town and Country Planning Act, requiring steps to be taken to remedy the condition of land. There is a right of appeal to the Magistrates Court.

Deliberate concealment of unauthorised building works or changes of use - where a person deliberately conceals unauthorised

development, the deception may not come to light until after the time limits for taking enforcement action (Section 171B of the Town and Country Planning Act 1990) have expired. A Planning Enforcement Order enables the council to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

Not building in accordance with the approved plans that form part of a planning permission - In some cases this can result in the whole development being deemed as unauthorised.

Unauthorised engineering operations, such as raising of ground levels or earth bunds - these matters may involve engagement with the Environment Agency.

Enforcement action is discretionary

Once a breach of planning control has been identified, the extent of the breach must be assessed to establish what, if any action should be taken to remedy the breach and whether it is considered expedient to do so. It is at the City Council's discretion to use enforcement powers.

In accordance with section 172 of the 1990 Act 'expediency' is assessed with reference to national and local planning policies and to any other material considerations (e.g. amenity, design).

If it is likely that the unauthorised development would have been approved, had planning permission been initially applied for, taking formal enforcement action would be unlikely. Taking enforcement action must be in the public interest. Enforcement action will not be taken simply because a breach has occurred.

Expediency test - In cases where it has been established that a breach of planning control has occurred at the initial stage, the Planning Enforcement Officer will undertake an assessment of expediency to determine which next course of action should be taken.

An expediency test will usually involve the Planning Enforcement Officer assessing:

- Whether the breach is in accordance with the policies of the Local Plan.
- The breach against any other material planning considerations.

- Whether had a planning application been submitted before the development occurred, permission would likely to have been granted.
- Whether the breach unacceptably affects public amenity.
- Whether the breach unacceptably affects any existing land, use or buildings which merit protection in the public interest.
- Whether action would be proportionate with the breach to which it relates.
- Whether action would be in the public interest.

What is harm?

Significant harm that results from a breach in planning control could concern residential amenity or highway safety issues. Examples of significant harm could include noise nuisance, loss of daylight or privacy, or danger from increased traffic flows.

The following are NOT examples of harm:

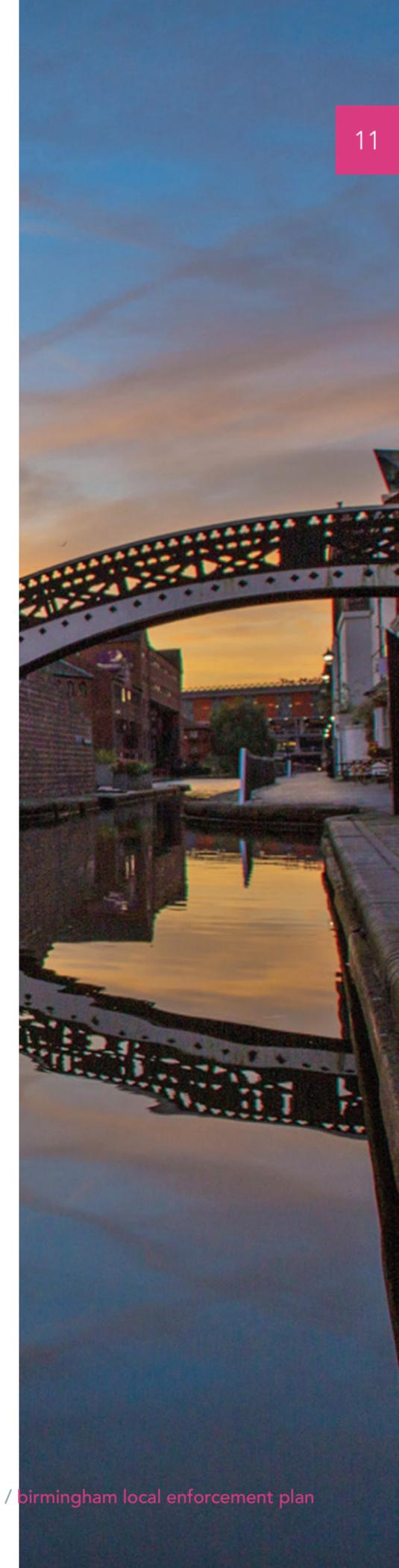
- Loss of value to a neighbouring property.
- Competition to another business.

- Loss of an individual's view or trespass onto someone else's land.

It may be possible to address issues such as these by way of civil action, although this is a matter for the individual to pursue and is not an area where the City Council would be involved.

This means that the City Council may not take formal enforcement action in all cases where a breach of planning control has been identified. It is part of the normal duties/responsibilities of the investigating Enforcement Officer with the Head of Enforcement and/or the Principal Enforcement Officer and Area Planning Officers to ensure decisions not to pursue formal enforcement action can be properly justified having regard to the Local Enforcement Plan and the Birmingham Development Plan (BDP).

There is no right to appeal the City Council decision not to take enforcement action. However, if someone is dissatisfied with the decision making, they can proceed to follow the City Council's Corporate Complaints Procedure, details of which are towards the end of the document.





Using the BLEP and our enforcement powers

Enforcement plays a pivotal role within the planning system and maintaining its integrity. The Birmingham Local Enforcement Plan identifies and sets out the challenges that affect development pressures within the City and also sets out a clear direction in the face of these challenges whilst complimenting the priorities of the Birmingham Development Plan 2032. It will be important to utilise the tools that are in place under legislation to tackle these challenges which will assist in the delivery of the overall vision for Birmingham.

Formal action

The City Council has a range of formal powers under the Town and Country Planning Act 1990 that it can use to remedy breaches of planning control. The more common forms of enforcement action are:

- The service of a Planning Contravention Notice (PCN) - Section 171(c) enables the service of a notice requiring persons to provide information in relation to land or activities on land where a breach of planning control is suspected. This is usually carried out very early in an investigation where further information is required.
- The service of a Request for Information (RFI) - Section 330 enables a notice to be served requesting details to be provided of any owners, occupiers or any other persons with an interest in the land. This is usually served prior to a formal enforcement action being taken.

- The service of an Enforcement Notice - Section 172 enables the service of a notice which requires specific steps to be undertaken to remedy the breach of planning control.
- The service of a Breach of Condition Notice (BCN) - Section 187(a) enables the service of a notice to secure compliance with conditions imposed on a planning permission.
- The service of a Section 215 Notice - Section 215 of the Town and Country Planning Act 1990 (the Act) provides a local planning authority (LPA) with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears that the amenity of part of their area is being adversely affected by the condition of neighbouring land and buildings, they may serve a notice on the owner requiring that the situation be remedied.

These notices set out the steps that need to be taken, and the time within which they must be carried out. LPAs also have powers under Section 219 to undertake the clean-up works themselves and to recover the costs from the landowner.

- The service of a Stop Notice (SN) or a Temporary Stop Notice (TSN) - Section 183 and Section 171(e) enables the service of a notice requiring the cessation of unauthorised activities. A Stop Notice may only be served in conjunction with an Enforcement Notice referred to above. SN and TSN action are reserved for much more serious breaches that are causing serious harm to amenity.
- In addition to the above further action is available by way of the service of Injunctions, the taking of direct action to remedy a breach or to instigate prosecution proceedings for non-compliance where it is deemed necessary to do so. As above, this action would only be taken in very severe cases.

- The City Council will always look to recover costs from an offender where evidence suggests offenders have profited from the illegal works, as a deterrent and to remedy the breach. We may place a charge on the land to aid future recovery or seek confiscation under the Proceeds of Crime Act 2002.

Power of entry onto land

Section 196(a) of the Act 1990, the Planning (Listed Buildings and Conservation Area) Act 1990 and Part 8 of the Anti-Social Behaviour Order Act 2003 gives Officers of Planning and Regeneration the power to enter land and/or premises at all reasonable hours in order to undertake his/her official duties. Wilful obstruction of a person exercising a right of entry is an offence. The above does not allow the admission to any building used as a dwelling house to be demanded as a right by virtue of the legislations unless twenty-four hours prior notice of the intended entry has been given to the

occupier of the building. Failure to comply with the City Council's request can lead to a request to the Courts for a warrant to enter.

What happens when we take formal enforcement action?

A formal Enforcement Notice will be served on the owner of the property along with any other party with a legal interest in the land or building in question. The Enforcement Notice will specify what action is required to remedy the breach and will give a period for compliance.

The recipient of the Enforcement Notice has a minimum of 28 days to appeal against the notice to the Planning Inspectorate. Where an appeal is lodged, we can take no further action until the appeal has been decided. It is not unusual for the appeal process to take several months.

We will always vigorously defend any appeal but if it is allowed (i.e. if the appellant wins), we can take no further action. If it is dismissed however, the Enforcement Notice will take effect, although the Inspector can amend its requirements, including the period for compliance.

It is a criminal offence not to comply with an Enforcement Notice once the compliance period has passed. If the notice is not complied with the Council will consider prosecution. However, such action does require evidence to prove the offence is being committed by a named individual or company 'beyond reasonable doubt'. Collecting this evidence can sometimes be a lengthy and time-consuming exercise and in some cases pre-trial delays may be unavoidable.

The City Council will comply with the provisions of the Police and Criminal Evidence Act 1984 when interviewing persons suspected of a criminal offence and with the Criminal Procedures and Investigations Act 1996 and Section 222 of the Local Government Act 1972, when carrying out prosecutions.

What can you expect if you report an alleged breach of planning control?

We will investigate all alleged breaches (unless considered vexatious or anonymous) of planning control reported to the City Council via the online complaints form.

- Always keep your personal details confidential, unless required to disclose as part of court proceedings.
- Register your complaint where possible within 3 working days and provide you with an acknowledgement and reference number with a named officer as the main point of contact.
- Keep you informed of the progress of the case and of any decisions made about whether the City Council is to take action and if any, what action will be taken, and the likely timescales involved.
- Actively pursue your complaint where it is in the public interest to do so.
- In cases where there may be a technical breach of planning control, but the harm caused is not sufficient to warrant formal action we will notify you of the reason for not taking formal action and close the case.
- Where appropriate, we will negotiate with those responsible for any breach of planning control, allowing them the opportunity to resolve the matters of concern before serving a formal notice unless the breach is so serious it warrants immediate action or where negotiations become protracted with no real likelihood of successful resolution.

Your complaint will be:

- Given a priority based on the City Council's published priority table which is contained in this Plan.
- Investigated and a site inspection undertaken in line with the published timescales, where possible, contained in this Plan.
- Pursued until such a time that the matter is satisfactorily resolved, regularising the breach or if the development is found to be lawful or until a decision is taken that it is no longer expedient to pursue the matter.
- If a formal notice is served and not complied with, the case to which your complaint relates may be pursued through to the Magistrates Court or higher court where necessary.
- Where prosecutions are pursued, in the more severe cases, the Council will consider the use of Confiscation Orders under the Proceeds of Crime Act 2002 to recoup the financial benefit gained from the breach of planning control.

Anonymous complaints will not be investigated because there is no way for the Council to ascertain further detail about the alleged breach and whether the complaint may be malicious. All complainants are required to provide their full name, a postal address and where possible an email address. Fundamentally this approach aims to ensure that public resources are not spent unnecessarily

investigating hoax or malicious complaints. This information is also essential as the Council may need to contact the complainant prior to any site inspection being carried out to seek further information or clarification regarding the details of the alleged breach and to obtain feedback from the complainant as the case progresses. All details provided by a complainant will always remain totally confidential, unless the information is required for use as evidence in court. If this does happen, the Council will make all reasonable efforts to check with the complainant before disclosing any information.

The City Council recognises that, on occasion, a complainant may feel that a complaint has not been resolved to their satisfaction. However, in a minority of cases members of the public pursue their complaints in a way that is unreasonable. The Council will not continue to register and open cases for the same reported breach of planning control if no breach has been found on previous investigations. Equally, we reserve the right not to investigate complaints raised due to recipients of notices being unhappy with action that the City Council is taking against them.



How will we prioritise your complaint?

In order to make the best use of the resources available to the City Council it is important to prioritise the complaints received in accordance with the seriousness of the alleged breach. This will initially be decided by the City Council following receipt of the complaint but may be subject to change following a site inspection or when further information comes to light.

Priority categories

To make the most effective use of resources, all incoming enforcement cases are prioritised when registered, based on information provided by the complainant, and an assessment of any planning history. This will determine the time frame for making an initial site visit and will be affected mainly by the assessment of the type and extent of the harm caused. There are three enforcement priorities:

Priority 1

Where irreversible harm is likely to be caused if the Council do not act immediately.

Example: Unauthorised works to Listed Buildings; unauthorised felling/pruning of protected trees.

Priority 2

Where there is significant public concern or where there is (or is the potential for) significant harm to be caused to residential amenity in the surrounding area.

Example: Breaches of planning conditions specifically identified to meet expressed public concerns, such as hours of operation; unauthorised uses/activities which are causing significant harm; illegal advertisements, particularly larger scale advertising on hoardings.

Priority 3

Smaller scale infringements which do not result in significant immediate or irreversible harm.

Example: Single storey rear extensions and rear dormer windows, unauthorised building of walls/fences; unauthorised installation of satellite dishes.

Complaints will not be registered if they do not concern breaches of planning control. Matters that are not breaches of planning control include:

- Internal works to a non-Listed Building.
- Boundary/ownership disputes.
- Party Wall Act issues.
- Opposition to business competition.
- Non-material planning considerations such as loss of property value or loss of view.
- Obstruction of a highway or public right of way (PROW).
- Parking of vehicles on the highway or on grass verges.
- Parking caravans on residential driveways or within the curtilage of domestic properties if they are incidental to the enjoyment of the property.
- Running a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity.
- Land ownership disputes or trespass issues.

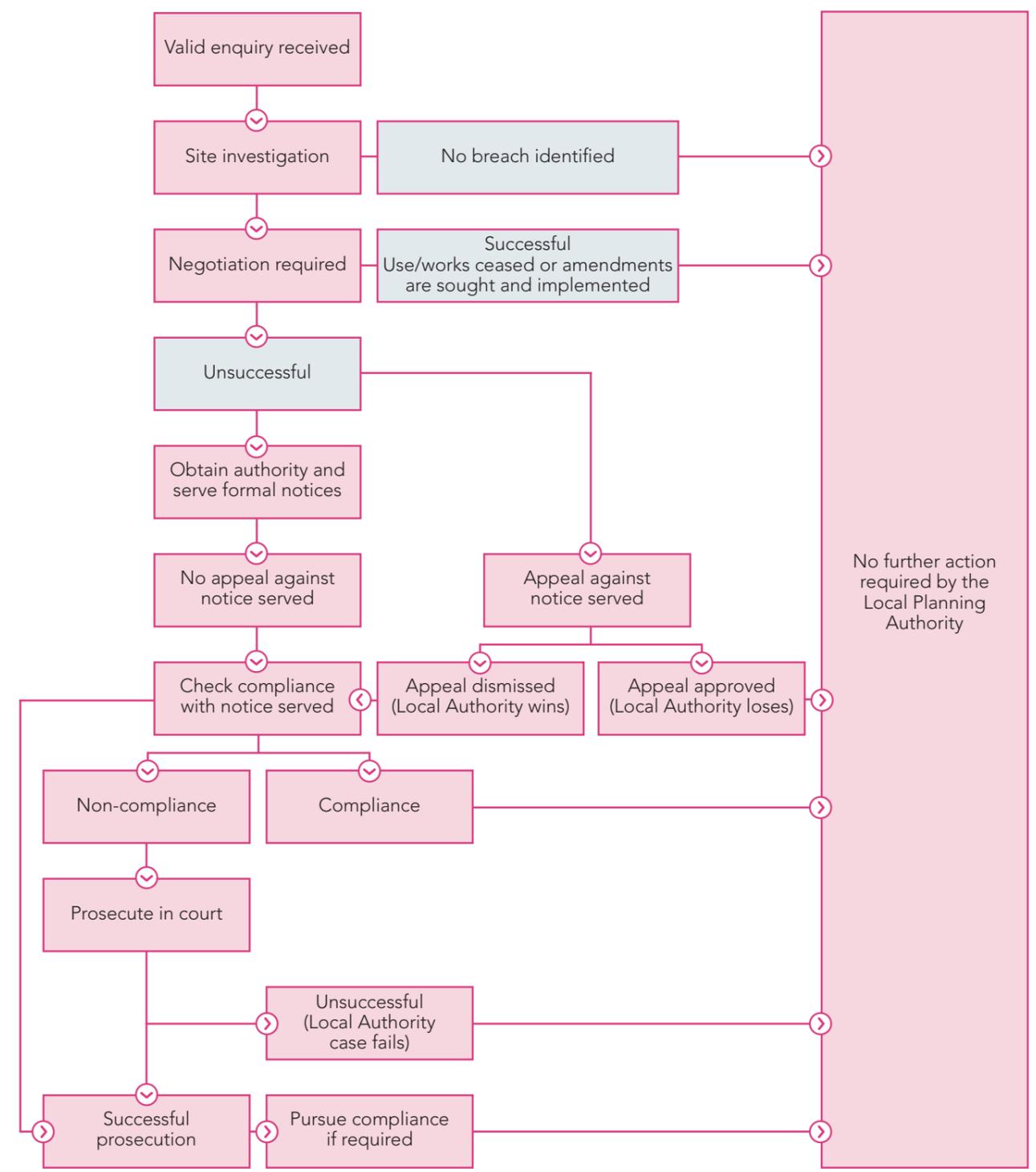
- Covenants imposed on property deeds.
- Any works that are deemed to be 'permitted development' under The Town and Country Planning (General Permitted Development) (England) Order 2015 and or substituted.
- Advertisements that are not subject to deemed or express consent requirements under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and as such are excluded from direct control.
- Dangerous structures or other health and safety issues such as those that fall within the remit of the Health and Safety Executive (HSE).
- High hedge disputes (evergreen hedges) - however, these are dealt with by Planning and Regeneration and are investigated by the City Council Arboriculturist Officers.
- Dangerous and defective structures are dealt with under the Building Act by Building Control officers.
- Failure to comply with a Section 106 agreement.

| Aim | Priority | | |
|---|---|------------------------|------------------------|
| | 1 | 2 | 3 |
| Register and allocate to case officer | Immediate background/history check | Within 3 working days | Within 3 working days |
| Site visit (date following registration) | Within 1 working day | Within 10 working days | Within 30 working days |
| Where possible contact complainant with case assessment and commence negotiations (date following initial visit)* | Within 5 working days of the site visit | Within 20 working days | Within 30 working days |
| Commence legal action or resolve | As soon as possible if irreversible | Within 10 weeks | Within 10 weeks |

* Complainant can contact officer for update

PROCESS

How the process works



Acknowledgment

You will receive an acknowledgement letter following the registration of your complaint. This provides you with the name and contact details of the enforcement officer who will be investigating your enquiry.

Site inspection

In most cases the enforcement officer will visit the site within 10 working days following the despatch of the acknowledgement letter, to obtain detailed factual information about the alleged breach and take photographs.

Where a more serious breach has been alleged, such as works to Listed Buildings/buildings within a Conservation Area or works to protected trees, the site will usually be visited within 3 working days following the despatch of the acknowledgement letter.

How long is the process likely to take?

Dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably as does the time taken for their resolution. It is for this reason that it is not possible to give a standard time for dealing with enforcement cases in full.

The Enforcement Officer will endeavour to provide you with updates when key events take place in a case, such as the serving of an Enforcement Notice. However, should you wish to enquire about the enforcement case, you can contact the investigating officer for an update.

What happens if an allegation is made against you?

If a complaint is received that affects you then the first thing that will happen is either you will be contacted in writing asking you to contact us within 7 days or the site in question will be visited by an

enforcement officer. The purpose of this visit is to establish the facts of the case and whether there is any basis to the allegations made. The officer will, where necessary take measurements and photographs of the development or activity taking place. This site inspection may be undertaken without any prior notification.

If there is a breach of planning control you will be advised of the details of the breach and what steps need to be taken to either rectify the breach or regularise the situation. You may be served with a Planning Contravention Notice (see above) which will ask further questions pertaining to the alleged unauthorised development.

You will be given a reasonable period of time (subject to the nature of the breach) to resolve any breach(es) of planning control. If compliance is not secured through negotiations or the submission of a retrospective planning application, formal action may be instigated.

No evidence of a breach

Following a site inspection it may be found that there is no breach of planning control because for example the unauthorised use has ceased, or the development is permitted development.

The development is immune from enforcement action and thus lawful

Section 171B of the 1990 Act restricts the Council's ability to take enforcement action after certain periods of time have elapsed. These time periods are dependent on the type of breach. In these instances, development without planning permission becomes immune from enforcement action.

- For building, engineering, mining or other operations, action cannot be taken after four years beginning with the date on which operations were substantially completed.

- For a change of use of a building to a single dwelling house, action cannot be taken after four years beginning with the date of the breach.
- For any other breach, action cannot be taken after ten years beginning with the date of the breach, including a continuous breach of planning conditions.
- It should be noted that there is no time limit in respect of Listed Buildings and in this regard enforcement action can be taken at any time.
- Time limits also do not apply when there is evidence of deliberate concealment.

Negotiations take place to find a solution

In accordance with Government guidance the priority is to try and resolve any breaches of planning control through negotiation.

Only when such negotiations fail to secure a solution should formal action be considered. The Council will however try to avoid negotiations becoming protracted where there is a need to make the development acceptable or where there is a requirement for a particular use to cease.

Invite a retrospective application

The submission of a retrospective application may be appropriate where it is considered that there is a reasonable likelihood that planning permission may be granted in line with local and national planning policies or where a development may be made acceptable by way of the imposition of conditions.

Minor or technical breaches of planning control may not be pursued if a retrospective application has been requested and not submitted or where it is not considered expedient to do so.

There is a breach of planning control, but it is not considered expedient to pursue

Just because a breach may exist does not automatically mean that formal action will follow. Enforcement powers are discretionary and minor technical breaches may not be considered expedient to pursue as they may be de minimis for example too minor to warrant the time and expense involved in pursuing them.

How to report an alleged breach of planning control

The City Council registers approx. 1800 cases per year. In order that your complaint can be dealt with as soon as possible it is important that you provide us with as much information as you can.

You can submit your enquiry via:

https://www.birmingham.gov.uk/info/20160/planning_applications/23/planning_complaints_enforcement

Confidentiality

The name and address of the person making the enquiry, or any other information allowing the enquirer to be identified, will be kept confidential and not made public. However, we may have to disclose the identity of the enquirer where we are commencing enforcement action in cases where the enquirer has been asked to collect or provide evidence to support the investigation. In these cases, the identity of the enquirer may need to be disclosed where they have consented to give evidence at any Court hearing.

To ensure that we are meeting the standards that we set ourselves, we will:

- Report the number of enforcement complaints received, the number of cases closed and the number of outstanding cases to Planning Committee members on a biannual basis.
- Report the outcome of all enforcement appeals to members of the Planning Committee.
- Report the outcome of all enforcement court proceedings to members of the Planning Committee on a biannual basis.

We do not intend to publicise details of individual enforcement cases under investigation, as, until our investigations are complete, it is not possible to confirm the status of an alleged breach of planning control. It would therefore be inappropriate and potentially unfair to publicise the details of an individual, business, site or operation which ultimately may be found not to have breached planning controls. However, any formal notice served on a property will be revealed in a Land Charges Search and, if a specific question is asked for example as part of a request for information under the Freedom of Information Act or Environmental Information Regulations, we may have to reveal that there is an ongoing investigation.

Proactive compliance

In addition to the service's role in reacting to complaints regarding alleged unauthorised developments or breaches of condition, the City Council is committed to carrying out some proactive monitoring of large-scale developments to ensure compliance with conditions, planning permissions and other consents where it is appropriate.

It should be noted that it is the responsibility of individual developers to comply with the conditions imposed on any planning permission or consent or

with any terms identified in legal agreements, such as Section 106 agreements. However, failure to comply can affect not only the quality of the environment in the City or the amenity of neighbouring properties but also undermine the reasons and justification for granting planning permission or other consents in the first instance.

Proactive monitoring will encourage and enable compliance with conditions to ensure that large scale development remains acceptable in planning policy terms whilst maintaining an attractive, high quality environment. By carrying out proactive compliance monitoring in this way the number of retrospective enforcement complaints received can be managed.

Benefits of proactive compliance

The benefits of proactive compliance can be felt by the City Council, community and the development industry. By being proactive, the City Council can be aware of identified sites and can try and prevent major problems occurring. For the community, this means that the City Council can be confident that requirements and conditions within agreements and permissions or consent will be complied with ensuring a high quality of built development, while being efficient with our resources and reducing any

potential harm caused as a result of the development. For the development industry, there are benefits in raising the profile and need to comply with requirements and conditions to ensure future conveyance requests and solicitors queries can be dealt with. A clear process of compliance can only aid these future requests.

Complaints about the service

If you are unhappy about the level of service you have received from the Planning Enforcement Team or how the process has been managed then you may firstly discuss your concerns with the Head of Enforcement. Additionally, you can take the matter further through the Council's Corporate Complaints Procedure. If you remain unhappy then you may write to the Local Government Ombudsman who may investigate your complaint. However, please note that the Local Government Ombudsman will only investigate to establish if the City Council is guilty of maladministration. The Local Government Ombudsman does not have powers to make the City Council take formal enforcement action when it has previously decided not to.

This is the link to the Council's complaints and comments service: www.birmingham.gov.uk/yourviews

The website allows you to submit an on-line complaint or, alternatively, you can contact Planning's Customer Service co-ordinator to raise your concerns. The Customer Service Co-ordinator can be contacted by:

Email: planningcustomerservice@birmingham.gov.uk

Telephone: (0121) 675 2086

Or by writing to:
Planning and Regeneration,
Customer Service Co-ordinator,
Planning and Regeneration,
Birmingham City Council,
1 Lancaster Circus,
Birmingham,
B1 1TU.

If someone is not satisfied with the response they receive, they can take their complaint to the Local Government Ombudsman. The Ombudsmen is unlikely to consider a complaint unless it has already been fully investigated by the City Council.

The Local Government Ombudsman can be contacted at:
Local Government Ombudsman,
PO Box 4771,
Coventry,
CV4 0EH.

www.lgo.org.uk

Telephone: 0300 061 0614
(Monday to Friday 8.30am to 5pm)

Other contacts and sources of advice

City Councillors are an important source of local knowledge and advice and may be contacted and lobbied. However, it is important to bear in mind that they operate under a formal Code of Conduct and they will not be able to express an opinion on any development that they intend to consider formally at a later stage.

You may also find that your Member of Parliament may have information or knowledge of development that has taken place. Other sources of advice and guidance include private planning consultants and Planning Aid who may be able to provide you with free, professional and Independent planning advice.

Finally, the planning enforcement services at Birmingham City Council only has powers to enforce certain breaches of planning regulations. It may be that other organisations, such as the Environment Agency, Birmingham City Council Regulatory Services or the Health and Safety Executive have additional or more appropriate powers to enforce against any alleged unauthorised development or activity. Where appropriate we will refer reported breaches to the appropriate organisation.

IMPORTANT

Planning permission and building regulations approval (building control) are different, being two separate pieces of legislation of which you may require both, only one or none at all. This guide relates to planning permission ONLY. If you are unsure whether you require building regulations approval then you should contact Acivico Building Consultancy on (0121) 675 7006 or email them at: building.consultancy@acivico.co.uk



Contact

Planning and Development
Inclusive Growth Directorate
Birmingham City Council

E-mail:
blep@birmingham.gov.uk

Web:
www.birmingham.gov.uk

Telephone:
Mark Franklin
(0121) 464 3513

Office:
1 Lancaster Circus
Birmingham
B4 7DJ

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PO Box 28
Birmingham
B1 1TU

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The Birmingham Local Enforcement Plan produced by
Birmingham City Council, Planning and Development, Inclusive Growth Directorate.

Birmingham Local Enforcement Plan

Consultation Draft

October 2020

