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## Appeal Decision

Inquiry held between 30 April 2024 and 24 May 2024

Site visit made on 30 April 2024

**by C Dillon BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5<sup>th</sup> July 2024**

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### **Appeal Ref: APP/P4605/W/23/3336011**

**334-340 High Street and 8-22 Harborne Park Road, Harborne, Birmingham, West Midlands B17 9PU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Midland Properties and Finance (Birmingham) Ltd against the decision of Birmingham City Council.
  - The application Ref is 2022/06737/PA.
  - The development proposed is described as demolition of existing buildings and construction of 83 residential apartments across two new development blocks, central amenity space including soft landscaping and planting, cycle storage, bin stores, plant store and enabling works.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and construction of 83 residential apartments across two new development blocks, central amenity space including soft landscaping and planting, cycle storage, bin stores, plant store and enabling works at 334-340 High Street and 8-22 Harborne Park Road, Harborne, Birmingham B17 9PU in accordance with the terms of the application, Ref: 2022/06737/PA, and the plans submitted with it, subject to the conditions in the attached Schedule.

### **Application for costs**

2. The appellant has sought an award of costs against Birmingham City Council (the Council). That application<sup>1</sup> is the subject of a separate Decision.

### **Preliminary Matters**

3. Prior to the opening of the Inquiry, the main parties clarified that the description of the proposed development, submitted plans and site address had been revised prior to the determination of the planning application. As those changes were reflected in the Council's publicity, delegated officer report and decision notice I am satisfied that their acceptance would not be prejudicial to anyone.
4. The planning application was refused for 6 reasons. During the lead up to the Inquiry the parties sought to narrow their differences. In reviewing their case in the context of the submission of an up-to-date Viability Study and housing type and mix evidence, the Council confirmed before the Inquiry opened that it no longer sought to pursue reason for refusal Nos 2, 3 and 5. The main issues

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<sup>1</sup> Ref: ID19

for this appeal have been refined further following that change in the common ground reached and from what I have discerned from the witnesses.

5. A Case Management Conference (CMC) was held virtually with the main parties on 6 March 2024 to discuss the event arrangements. The Council was confronted with exceptional constraints which impacted on their ability to secure a suitable venue for the entire duration of this Inquiry. A consensus was reached that Day 1 would be run as an in-person event and thereafter, the remaining days would revert to a virtual format. As scheduled, an accompanied site visit took place on the afternoon of the opening day.
6. Upon resuming virtually on Day 2, there was an adjournment whilst the main parties remedied a technical issue with the live streaming facility. I am satisfied that the arrangements that were put in place thereafter ensured that no parties were prejudiced or prohibited from participating or observing the event.
7. During the Inquiry, a number of new documents were accepted to assist my determination. These are listed in the attached Inquiry Document Schedule and were made publicly available. Overall, I am satisfied that their acceptance was necessary and has not prejudiced the interests of anyone.
8. A short period of time was afforded to the main parties to seal the section 106 legal agreement relating to the proposed planning obligations. As such, the Inquiry was closed in writing on 24 May 2024.

## **Main Issues**

9. The main issues are:

- the effect of the proposed design on the character and appearance of the street scene
- whether or not satisfactory living conditions would be achieved for occupants of the appeal scheme and neighbouring properties; and
- the effect on the safety of highway users, with particular regard to the parking demands of the appeal proposal.

## **Reasons**

### Character and appearance of the area

10. The appeal site comprises 2 land parcels close to the busy junction of High Street and Harborne Park Road. This part of Harborne has a varied character and appearance derived from the mixture of apartments and commercial units that predominantly line either side of this part of High Street, coupled with the predominantly terraced dwellings along Harborne Park Road and the network of other nearby streets. Stepped forms and varying building heights are a common feature on High Street and to a lesser extent this part of Harborne Park Road.
11. The part of the appeal site fronting onto High Street is occupied by an existing large unremarkable 20th century retail unit with 6 flats above and external servicing areas and a garage block to the rear. During the Inquiry I was advised that these had been vacated. To one side of that unit is the 3 storey Cardamon Restaurant building. To its other side is Harborne West, a 7 storey former office block, since converted and extended to provide flatted units. This

- part of the site would be occupied by 'Block A', which would provide 1 and 2 bedroomed apartments and associated outdoor space, servicing facilities and 2 dedicated accessible parking bays. The High Street frontage of Block A would be expressed as 2 forms, with the left and right sides having a stepped form in both plan and elevation and ranging from 4-6 floors.
12. The remainder of the appeal site comprises an undeveloped roughly grassed area of land fronting directly onto Harborne Park Road. That land is currently separated from the remainder of the appeal site by the Cardamon Restaurant building, a stretch of high service yard boundary walling and the Kings Oak apartment block. That more recently constructed development straddles both High Street and Harborne Park Road, marking the junction between these main pedestrian and vehicular routes through Harborne. That part of the appeal site would be occupied by 'Block B', which would provide a smaller block of 1 and 2 bedroomed apartments over 4 floors.
  13. From my site observations, I was able to validate the character assessment provided by the appellant as an accurate starting point for making my assessment regarding this main issue. I address each of the disputed matters in turn, in the context of that character assessment.
  14. The dispute about the proposed scale of development is confined to the height of Block A and Block B. I accept that Harborne West forms part of the varied character and appearance of High Street. By virtue of its significant height it would also create a prominent built context to Block B when viewed from Harborne Park Road. Both the actual height and number of storeys proposed are relevant to my assessment of scale. However, I concur with the appellant's evidence that what is most crucial is not the highest point of each of the existing and proposed buildings, but how they interrelate with one another and with their wider context.
  15. I agree with the main parties that visually a step down from Block A to the Cardamon Restaurant building is essential. When assessed against the existing pattern of building heights in this part of High Street, I find that the differential proposed would not unduly disturb that varied rhythm; a defining feature of the character and appearance of this street scene. In particular, as designed, Block A would create a more sensitive stepped change between the taller Harborne West building and the existing surrounding lower built form, which includes the Cardamon Restaurant building.
  16. Although Block B would present as a 3.5 storey building, the appellant's evidence demonstrates that the height differential between the proposed ridgeline and that of the 2 and 2.5 storey properties on the opposite side of Harborne Park Road would be 400mm. When combined with the distance between the opposing buildings, that differential would be inconsequential when experienced from street level on approach in either direction along Harborne Park Road. Block B would not undermine or be jarring with the role of Kings Oak as a marker of the High Street and Harborne Park Road junction. Furthermore, the Council's reliance on an appeal decision<sup>2</sup> to justify their stance on character and appearance carries no weight as it was clearly demonstrated to be incomparable in its nature to the circumstances of the appeal before me.

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<sup>2</sup> Ref: CD 6.1

17. During the Inquiry, it became apparent that the outstanding dispute about appearance is centred on particular features of Block A only. My site observations corroborate the appellant's stance that, in terms of its form and proportions, the proposed pitched roof over its 5th storey section is not alien to the locality. Despite its finished height, I am satisfied that the proposed ridgeline would not be particularly visible within the immediate vicinity of the site from High Street given the angle of sight that would be available from street level. Furthermore, the roof would be receding in form when experienced from the surrounding streets and the properties opposite. It would be read in the context of the taller Harborne West building. Consequently, it would not be overly domineering so as to dictate a negative perception of the appearance of Block A which would harm the existing character and appearance of its context.
18. Furthermore, dormer windows are a common feature in the locality. The dimensions of those proposed would be in proportion with Block A. The Council's case did not demonstrate that these would be harmful to the character and appearance of the appeal proposal or its context.
19. The proposed multi-floor oriel window would be a unique architectural feature within this street scene. However, the somewhat unexpected presence would be lessened by the existence of protruding dormer and bay window features that are characteristic elsewhere of this locality. Furthermore, this bespoke design feature has been drawn from the creativity of the architect in line with City Note LW6. Significantly, it would successfully work in conjunction with other aspects of the frontage design of Block A to break up the expanse of this main elevation. It would also provide legibility to the main entrance of this residential block and the proposed form, scale and materials would reflect the mixed residential and commercial character and appearance of this locality. The Council's case has not clearly demonstrated that this feature would be harmful to the character and appearance of the area.
20. In terms of the proposed treatment of windows at the 5th floor of Block A, such diminishing proportions and positioning were demonstrated to be a traditional design feature of the locality. When experienced from public vantage points, these windows would not convey a cramped or contrived arrangement.
21. During the Inquiry, it was established that the outstanding dispute about massing relates to the density of development proposed. Policy TP30 of the Birmingham Development Plan (the BDP) expresses a target density as a minimum, not a maximum, with full consideration to be given to the site and its context. My site observations and the appellant's design evidence have confirmed that the appeal scheme would not be out of kilter with densities in the locality or with other nearby consented flatted schemes.
22. In overall summary, I do not find that Block A would be excessively tall, or that Block B would be in stark contrast with the dwellings opposite, the Southlink Charter Centre and the Baptist Church. Furthermore, the resulting appearance and massing would be such that overall the proposal would assimilate successfully with the character and appearance of the site's surrounding varied mixed use context.
23. In line with Principle 1 of the Design Supplementary Planning Document (the Design SPD), the appeal scheme would enhance this vacant site and introduce coherent architecture with well-proportioned and balanced facades as City Note

LW8 contained in the Healthy Living and Working Places City Manual to the Design Guide (the City Notes) expects.

24. Through my assessment I have also identified synergies between the proposal and its existing context to the extent that Principle 2 of the Design SPD and City Note LW7 expect. In line with Principle 14 of the Design SPD, the positive response which the appeal proposal would make to the site and its surroundings has been clearly demonstrated.
25. Furthermore, in line with Principle 11 of that guidance, the proposed increased density should not be resisted on design grounds here as it has not been proven to result in a negative impact on the surrounding character area.
26. For all these reasons, I conclude that the proposed design would not be harmful to the character and appearance of the street scene. In the absence of harm, the appeal proposal would not conflict with Policies PG3, TP27 and TP30 of the BDP or with Policy DM2 of the Development Management in Birmingham Development Plan Document (the DPD). Moreover, in view of my design related findings, there would be no conflict with the national approach to design set out in the Framework and the National Design Guide.

#### Living conditions

27. During the Inquiry it was confirmed that the Council's concerns about living conditions are confined to the qualitative aspects of the outdoor areas which would serve the occupants of the appeal scheme.
28. The appeal proposal would incorporate a large communal roof top terrace for each apartment block. As submitted, the plans show the rear outdoor area to be subdivided into a series of compact private green spaces for some of the ground floor units, balconies for some upper floor units as well as a larger communal green and paved space that would be available to all residents and would accommodate the proposed refuse and cycle stores and accessible parking bays.
29. I concur with the common ground reached during the Inquiry that, by way of condition No 13, the internal boundaries shown on the submitted layout plans could be revised to ensure that the amount of communal outdoor space provided would meet the adopted local policy requirement in quantitative terms.
30. In terms of siting and layout, many of the units would overlook the rear communal space. Furthermore, each unit would have unimpeded access to a reasonable choice of communal outdoor space at roof top and ground level which would be relatively secluded from public view, with the exception of some of the upper floor units of Harborne West and Kings Oak.
31. Admittedly, there would be some occasional disturbance from servicing vehicles and those accessing the 2 on site accessible parking spaces. Furthermore, those using the roof terrace could experience noise from vehicles and other activity on the surrounding streets. However, such activity would not be extraordinary in level and duration bearing in mind the decision to reside in this wider bustling urban context. The appellant's evidence demonstrated that conditions within the communal areas would not exceed the noise threshold of 55dB, above which annoyance could result. Furthermore, my attention has been drawn to British Standard BS 8233:2014. That makes reference to how

amenity space noise level may not always be achievable and that occupants of new dwellings may compromise on higher noise levels in amenity space for the convenience of living in an urban area with transport links to the main city centre. From the submitted evidence, I am satisfied that the proposed living accommodation and outdoor areas, including the roof terraces would fall within the upper tolerances of acceptability in terms of noise nuisance.

32. The design of the proposed communal refuse storage facility and the imposition of condition No 23 would ensure that it would be provided and managed in a way that would mean that its presence would not unduly impinge upon the quality and attractiveness of any of the proposed outdoor spaces in terms of odour, noise and appearance.
33. Furthermore, the outdoor areas could be set out in a manner that would secure adequate usable outdoor spaces made attractive through careful landscaping. This could be secured and maintained until established by a planning condition.
34. In terms of sunlight and daylight conditions, from my site visit and contrary to the Council's assertion, I observed that the proposed outdoor areas would benefit from the relatively unimpeded southerly rear aspect of the appeal site. This is corroborated by the appellant's solar analysis which confirms the limited effect the surrounding built form would have on this.
35. Overall, although the Council pointed to City Note LW13 to support their case, I am satisfied that the proposed outdoor areas would not present themselves as left over spaces or be contrary to that guidance note.
36. During the Inquiry, the Council confirmed that this particular main issue did not have a strong enough basis to have been relied upon as a standalone reason to justify the refusal of the appeal scheme.
37. Although not cited in the decision notice as a reason for refusal, concerns were raised by interested parties about the effect on their existing living conditions. An adequate separation distance would be maintained between Block A and properties on the opposite side of High Street and Block B and the opposing properties along Harborne Park Road so as to safeguard mutual privacy and outlook.
38. In terms of future lighting conditions and any potential for overshadowing, the positioning of Block A and Block B would ensure that there would be no breach of the Council's 45-Degree Code Supplementary Planning Guidance in relation to units in Pinner Court and also the main habitable windows to the rear of Kings Oak flats. The submitted Sunlight and Daylight Assessment concludes that when taking into account the baseline conditions including the previously consented scheme on part of the appeal site, the proposal would meet the relevant Building Research Establishment (BRE) criteria. Although this study is based on the original submission, its findings remain wholly applicable to the smaller revised scheme before me.
39. I do recognise that the existing windows in the gable end of the Kings Oak development would face directly onto the side elevation of Block B. Whilst some differential in terms of outlook and lighting would undoubtedly arise, given the size, positioning and secondary function of these windows I do not find that this change would amount to unacceptable harm that would pose a policy conflict.

40. My assessment in respect to privacy, outlook and lighting conditions for occupants of existing neighbouring properties is consistent with the Council's stance.
41. There is likely to be some disturbance to local residents during the construction phase. However, in conjunction with the Council's Regulatory Services Team, suitably worded planning conditions have been agreed between the main parties to secure the agreement and implementation of a Contamination Remediation Scheme, a Contaminated Land Verification Report, a Demolition Method Plan and Construction Method Statement and Management Plan. These would minimise and control any such effects so that they would fall within acceptable tolerances.
42. For all of these reasons, satisfactory living conditions would be achieved for occupants of the appeal scheme and neighbouring properties. In the absence of harm, there would be no conflict with Policy PG3 of the BDP and Policies DM2 and DM10 of the DPD in this regard.

#### Highway safety

43. The appeal site is situated near the junction of High Street and Harborne Park Road. These are main pedestrian and vehicular routes through this bustling part of Harborne. Given the age and nature of the surrounding terraced dwellings and commercial premises, private off street car parking is scarce here. From my site observations and the submitted evidence, there is a clear reliance on public car parks and restricted and unrestricted on-street spaces to support the transport needs of residents and their visitors, commuters to nearby employment destinations and those accessing the local services and facilities.
44. The appeal proposal would result in a net gain of 77 residential units. With the exception of 2 accessible parking bays, the appeal proposal would not provide any dedicated on-site car parking spaces for its residents and visitors. The use of these bays could be effectively managed by way of a planning condition to ensure their continued use for their intended purpose. I concur with the main parties that the appeal proposal is, for the purposes of policy interpretation, a 'zero car' scheme.
45. During the Inquiry, it was established that despite the absence of an objection from the Local Highway Authority, the Council's concerns relate to the harmful effect that they believe would arise to the safety of highway users. This is because of the absence of dedicated parking provision to meet the demands of a development of the density proposed. It was also established that the Council did not seek to advance an argument relating to the severity of any residual cumulative impacts on the road network or the effect on the living conditions of local residents in terms of parking matters.
46. There is likely to be some disturbance to users of the local highway network during the construction phase. However, a suitably worded planning condition has been agreed between the main parties to secure the agreement and implementation of a Demolition Method Plan and Construction Method Statement and Management Plan. These would minimise and control any such effects so that they would fall within acceptable tolerances.

47. In terms of the local parking capacity related concerns, during the Inquiry the main parties agreed a proxy figure for the number of vehicles that may be generated by the appeal scheme. The means by which the proxy figure was derived is based on relevant local Census data and was not demonstrated to be an unreasonable approach. A suitably justified alternative proxy figure was not put before me to challenge that assumption.
48. The Council's evidence in terms of local capacity and the likely impacts on safety of highway users was extremely limited. Through cross-examination the Council's written and oral evidence was demonstrated to have shortcomings. In particular, I am unconvinced that an alternative longer car length should be relied upon or that it would be inappropriate to include the existing restricted bays as part of the supply of parking spaces. Consequently, I attach very limited weight to the Council's highway evidence.
49. Interested parties sought to provide a local view of the existing parking conditions and provided a very recent parking survey<sup>3</sup>. However, much of that evidence was anecdotal and the parking survey had not been carried out to a sufficiently robust recognised methodology. The appellant demonstrated that at best very limited weight should be placed on any of that evidence.
50. The appellant has strongly disputed the concerns of the Council and interested parties in respect to this main issue and has submitted a car parking survey in a bid to rebut them. It was clearly demonstrated that the appellant's parking survey has been undertaken in accordance with the nationally recognised 'Lambeth' approach in the absence of a methodology bespoke to Birmingham.
51. Overall, I am satisfied that the approach of the appellant in assessing the likely effect of the appeal scheme in terms of proxy parking demands and current local capacity within a 200 metre radius of the appeal site is the most appropriate that has been put before me. There is no counter evidence before me that would clearly indicate that I should not give greater credence to the appellant's methodology.
52. Based on the parking survey and that proxy demand figure, the appellant's evidence concludes that there would be sufficient capacity to accommodate those additional vehicles within the streets falling within the defined survey area. I recognise that the true number of vehicles that would be attracted to the appeal proposal on a regular basis cannot be precisely quantified. This is because the habits of the future occupants remain unknown at this point in time. Furthermore, there may be future local changes which affect the current baseline and projected positions.
53. Overall, the approach of the appellant in calculating likely parking demand and supply is not unreasonable. I am satisfied that the restricted spaces, coupled with existing pay and display car parks would continue to serve those visiting the locality to access its services and facilities and so would not impinge on the viability of these. Furthermore, it is conceivable that motorists would not be adverse to parking beyond the 200 metre survey radius if parking conditions dictated that. No evidence was put before me to indicate that any such overspill could not be accommodated further afield.

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<sup>3</sup> Ref: ID10

54. In conjunction with these considerations, I find that the appeal site is well-placed in terms of accessibility to local services, facilities and employment destinations. From my site observations and the submitted evidence I have discerned that the appeal site also enjoys good public transport links to the city centre and other parts of Birmingham. On-site cycle storage facilities would be provided and managed to promote cycling opportunities. The on-site accessible parking spaces could be managed by way of a planning condition to ensure their continued ability to serve the needs of eligible motorists.
55. The submitted section 106 legal agreement would secure the implementation of the submitted Travel Plan to promote sustainable modes of transport and dissuade future occupants from relying on the private motor vehicle. Although that plan refers to the original scheme which proposed a slightly higher number of units, I am satisfied that its content is still relevant to the smaller scheme before me. This obligation would contribute towards promoting sustainable patterns of travel and the national shift towards carbon reduction and improving air quality.
56. In combination, the likely levels of car ownership, the potential local on-street parking capacity, the accessibility credentials of the appeal site and the implementation of the Travel Plan indicate to me that this locality could withstand the appeal scheme and also encourage a modal shift to promote more sustainable travel patterns.
57. I recognise that the appeal scheme may affect existing opportunities for some local residents and their visitors to park on-street. However, the evidence before me indicates that this would be in terms of proximity and convenience rather than overall available capacity in the wider locality. In view of this and given that these existing parking opportunities relate to the public highway, any such change would not in my view constitute unacceptable harm to those existing residents or be prejudicial to highway safety.
58. For all these reasons, there would be no harm to the safety of highway users, with particular regard to the parking demands of the appeal proposal. Consequently, in the absence of harm there is no conflict with Policies TP44 and TP45 of the BDP or Policies DM14 and DM15 of the DPD in this regard.

### **Planning obligations**

59. At the time the Council made their decision the appellant had not provided planning obligations in relation to parking impact mitigation, sustainable travel planning, affordable housing and public open space provision. A section 106 legal agreement<sup>4</sup> to secure these was submitted as part of the appeal along with a Community Infrastructure Levy (CIL) Compliance Statement<sup>5</sup>. I have necessarily assessed these obligations against the tests prescribed in Regulation 122 of the CIL Regulations (2010) and the Framework.
60. With the exception of parking impact mitigation, none of the planning obligations are in dispute. That particular obligation would secure a series of bi-annual parking surveys to monitor parking demands post commencement of the appeal scheme and also a parking impact commuted sum to contribute to any necessary future Traffic Regulation Order. Taking the appellant's case regarding parking matters that particular obligation would be unnecessary.

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<sup>4</sup> Ref: ID21

<sup>5</sup> Ref: ID2

Taking the Council's case it would not be sufficiently effective to address any harm.

61. However, I have found that no harm from the appeal scheme has been substantiated. Furthermore, I concur with the Council that such measures would likely be ineffective. Neither has it been demonstrated that such surveys would be able to distinguish between the effects of the appeal scheme and any unrelated contextual changes that may cause a reduction in the baseline position. Therefore, that planning obligation is not consistent with the CIL Regulations and the Framework. Consequently, I conclude that it should cease to have effect in line with the 'blue pencil' clause contained at section 10.9 of the legal agreement.
62. I have already found that the obligation to secure the implementation of the Travel Plan is relevant to the acceptability of the scheme in highway terms and would be necessary and reasonable for the scheme to accord with Policies TP44 and TP45 of the BDP and Policies DM14 and DM15 of the DPD.
63. Furthermore, the submitted legal agreement would secure a financial contribution in respect to the provision of off-site affordable housing within particular Wards of the South Birmingham area and also for public open space. Although both of these proposed levels of contribution are below the adopted policy requirements, they have been demonstrated as being the maximum that could be borne by the appeal scheme in terms of viability. In arriving at the sums agreed, the Council has placed a greater priority on affordable housing provision, and there is no basis before me to find otherwise. Consequently, there would be no conflict with Policies TP31, TP9 and TP47 of the BDP in regard to the necessary provision of affordable housing or open space. They are necessary for the disputed matters relating to reason for refusal Nos 2 and 3 to be adequately addressed.
64. Overall, with the exception of the proposed parking impact mitigation, these 3 remaining planning obligations are reasonably related in scale and kind to the needs generated by the proposed development. I therefore consider that these 3 obligations meet the necessary tests in law, and I have taken account of them in reaching my decision.

### **Other Matters**

65. In terms of the concerns expressed about the appropriateness of the proposal in addressing local housing needs, the appeal scheme would boost the supply of housing, including the provision of a contribution towards affordable housing. Furthermore, I concur with the Council's revised stance that the submitted evidence before this Inquiry demonstrates that the proposed mix of units in terms of tenure, bedroom size and flatted typology is appropriate to the area in terms of likely future demand. There is no conflict with the development plan in this regard.
66. The Air Quality Assessment<sup>6</sup> concludes that predicted N02 and PM10 concentrations are below the relevant Air Quality Objectives at all locations across the proposed site and therefore the location is suitable for the proposed use with best practice measures to protect future users from poor air quality. I am further reassured that the implementation of the submitted Travel Plan, the

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<sup>6</sup> Ref: CD1.24

integrated cycle storage along with the accessibility credentials of the site would encourage residents to opt for alternative modes of travel to the motor vehicle so as to maintain air quality. Consequently, the appeal scheme is acceptable in this regard and poses no policy conflicts.

67. In terms of the proposed loss of green space, the undeveloped part of the site on Harborne Park Road is a left over, unkept area of private land. The loss of this area to development would not reduce the availability of useable public open space in the locality. Development here would change the appearance of this particular street scene. However, I have already found that the appearance of the scheme and its relationship with neighbouring properties is acceptable. Consequently, the appeal scheme is appropriate in this regard and poses no policy conflicts.
68. Despite the concerns raised by interested parties, the Local Education Authority and Local Integrated Care Board have raised no objections to the appeal scheme in terms of their respective capacities. Furthermore, the appeal proposal is liable for CIL and thus will make a significant financial contribution towards improving infrastructure in Birmingham.

### **Conditions**

69. An agreed list of suggested planning conditions was submitted by the main parties which reflects the discussion on these that took place during the Inquiry. The necessity of certain conditions as pre-commencement conditions was demonstrated during the Inquiry and the appellant's written confirmation<sup>7</sup> of these has been provided.
70. Condition No 1 requires the scheme to be in accordance with the plans listed in order to define the permission in accordance with local and national policy. Condition No 2 specifies implementation within 3 years in order to comply with Section 91 of the Town and Country Planning Act 1990 (as amended) and the Framework.
71. Condition Nos 3, 6 and 7 respectively require the submission of samples of external materials, a CCTV scheme and a lighting scheme. These conditions would ensure that a high quality external environment is secured to protect and reinforce local character. Condition Nos 8 and 9 respectively require the prior submission of a Contamination Remediation Scheme and a Contaminated Land Verification Report. Condition Nos 11 and 17 respectively require the prior submission of site level details and a Construction Method Statement and Management Plan. Condition Nos 20 and 21 respectively require the submission and implementation of a Noise Insulation Scheme and a Demolition Method Plan. These 2 latter conditions seek to secure the satisfactory development of the appeal site and safeguard the living conditions of residents. Furthermore, collectively all of these conditions are necessary to ensure that the satisfactory development of the appeal site is secured in accordance with Policy PG3 of the BDP and the Framework.
72. Condition Nos 4 and 5 respectively require the prior submission of a Sustainable Drainage Scheme, Sustainable Drainage Assessment and Sustainable Drainage Operation and Maintenance Plan to manage flood risk, water quality and habitat. These conditions are necessary to ensure that the

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<sup>7</sup> Ref ID11

appeal scheme is in accordance with the Framework, Policy TP6 of the BDP, and the Council's Sustainable Drainage SPD<sup>8</sup>.

73. Condition No 10 requires the submission of a scheme for ecological and biodiversity enhancement measures in order to safeguard the nature conservation value of the site in accordance with Policy TP8 of the BDP, the Framework and the Nature Conservation Strategy for Birmingham Supplementary Planning Guidance. Condition No 12 requires the submission of hard and soft landscaping details in order to secure the satisfactory development of the site and ensure a high quality of external environment in accordance with Policies PG3, TP3 and TP7 of the BDP.
74. Condition No 13 requires the submission of boundary treatment details, including their positioning, in order to secure the satisfactory development of the appeal site. Condition No 14 requires the submission of a landscape management plan to protect the appearance of the appeal site over the longer term. These conditions are necessary to ensure that the appeal scheme is in accordance with Policies PG3 and TP7 of the BDP and the Framework.
75. Condition No 15 requires the provision of cycle parking prior to occupation. This is to secure the satisfactory development of the appeal site in the interests of highway safety, in accordance with Policies PG3, TP40 and TP44 of the BDP and the Framework. Condition No 16 requires the provision of electric vehicle charging points in order to secure the satisfactory development of the site in accordance with Policy TP5 of the BDP, the Birmingham Parking Standards SPD and the Framework.
76. Condition No 18 requires pedestrian visibility splays to be provided to ensure the safe movement of pedestrians using the adjacent highway. Condition No 19 requires the proposed gates to be set back in the interests of highway safety. These conditions are necessary to ensure accordance with Policies PG3 and TP44 of the BDP and the Framework.
77. Condition No 22 requires the submission of a Car Park Management Plan to ensure that the operational needs of the development are met in terms of provision for people with disabilities in accordance with Policies PG3 and DM15 and the Framework.
78. Condition No 23 requires the submission of a Refuse Management Plan to ensure that there would be no unacceptable adverse impacts on the amenity of occupiers of the appeal proposal in accordance with Policy DM2 of the DPD and the Framework.
79. These conditions would either avoid or minimise any conflict with the provisions of the development plan and the Framework and are therefore necessary. They are also relevant to planning and the development and are enforceable, precise and reasonable in all other respects. Consequently, they meet the tests for conditions prescribed by the Framework and Planning Practice Guidance. They are set out in full in the Schedule of Conditions contained at the end of this Decision.

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<sup>8</sup> Birmingham City Council Guide to Design, Adoption and Maintenance and Sustainable Management of Urban Rivers and Floodplains Supplementary Planning Document.

## **Conclusion**

80. In the absence of any harm, I have found no conflict with the development plan when read as a whole. Consequently, for the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be allowed.

*C Dillon*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

1. The development hereby approved shall be implemented in accordance with the details submitted with the application and shown on the following plans hereby approved :

844-D5A-00-00-DR-A-0002-Site\_Location\_Plan-A3-P01

844-D5A-00-00-DR-A-1001-Site\_Ground\_Floor\_proposed-A3-C03

844-D5A-00-00-DR-A-9401-Landscaping\_Plan-A3-C01

844-D5A-00-00-DR-A-0301-Block\_A-Ground\_Floor\_Plan-A3-C04

844-D5A-00-01-DR-A-0301-Block\_A\_First\_Floor\_Proposed-A3-C04

844-D5A-00-02-DR-A-0301-Block\_A\_Second\_Floor\_Proposed-A3-C04

844-D5A-00-03-DR-A-0301-Block\_A\_Third\_Floor\_Proposed-S3-C03

844-D5A-00-04-DR-A-0301-Block\_A\_Fourth\_Floor\_Proposed-S3-C03

844-D5A-00-05-DR-A-0301-Block\_A\_Roof\_Level\_Proposed-A3-C04

844-D5A-00-RF-DR-A-0301-Block\_A\_Roof\_Floor\_Plan\_Proposed-A3-C02

844-D5A-00-ZZ-DR-A-0411-Block\_A\_Elevations\_1\_2-A3-C04

844-D5A-00-ZZ-DR-A-0412-Block\_A\_Elevations\_3\_4-A3-C04

844-D5A-00-00-DR-A-0302-Block\_B\_Ground\_Floor\_Proposed-A3-C03

844-D5A-00-01-DR-A-0302-Block\_B\_First\_Floor\_Proposed-A3-C03

844-D5A-00-02-DR-A-0302-Block\_B\_Second\_Floor\_Proposed-A3-C03

844-D5A-00-03-DR-A-0302-Block\_B\_Roof\_Level\_Proposed-A3-C03

844-D5A-00-RF-DR-A-0302-Block\_B\_Proposed\_Roof-A3-C02

844-D5A-00-ZZ-DR-A-0421-Block\_B\_Elevations\_5\_6-A3-C03

844-D5A-00-ZZ-DR-A-0422-Block\_B\_Elevations\_7\_8-A3-C03

844-D5A-00-ZZ-DR-A-3101-Bay\_Study\_1-A3-C02

844-D5A-00-ZZ-DR-A-3102-Bay\_Study\_2-A3-C02

2. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
3. Samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted shall be submitted to and approved in writing

by the Local Planning Authority prior to their use. For the avoidance of doubt the materials submitted shall include:

- Masonry;
- Windows;
- Joinery (soffits, eaves, bargeboards, canopies);
- Rainwater goods;
- Roofing;
- Flashing;

The development shall be implemented in accordance with the approved details.

4. No development (excluding demolition) shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is completed and thereafter maintained.
5. No building hereby permitted shall be occupied until the sustainable drainage for the development has been completed in accordance with the approved Sustainable Drainage Assessment. The approved drainage system shall be operated and maintained thereafter in accordance with the approved agreement with the adopting party and the approved Sustainable Drainage Operation and Maintenance Plan.
6. A scheme for the provision of a network of closed circuit television cameras, including the proposed location of the cameras, mounting columns, proposals for the use and management of the system and proposals for its installation shall be submitted to and approved in writing by the Local Planning Authority prior to occupation. The CCTV system shall be installed in accordance with the approved details prior to the first occupation of any part of the development and thereafter maintained.
7. The development hereby approved shall not be occupied until a detailed lighting scheme has been submitted to and approved in writing by the Local Planning Authority. The detailed lighting scheme shall include site annotated plans showing lighting positions for the external spaces, facades, building elevations and structures they illuminate, site plans showing horizontal and vertical overspill to include light trespass and source intensity, affecting surrounding residential premises and details of the lighting fittings including: colour, watts and periods of illumination. All lighting works shall be implemented in accordance with the approved details and shall be completed prior to the first occupation of any part of the development and thereafter maintained.
8. No development (excluding demolition) shall take place until the following components of a remediation scheme to deal with the risks associated with

contamination of each phase for the intended use have been submitted to and approved, in writing, by the Local Planning Authority:

- i) A preliminary risk assessment, which has identified:
  - all previous uses
  - potential contaminants associated with those uses
  - a conceptual model of the site indicating sources, pathways and receptors
  - potentially unacceptable risks arising from contamination at the site.
- ii) A site investigation scheme, based on (1) to provide information for a detailed risk assessment of the risk to all receptors that may be affected, including those off site.
- iii) An options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken, timetable of works and site management procedures.
- iv) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components will require the prior written consent of the Local Planning Authority. The scheme shall be implemented as approved and must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 (and subsequent legislation) in relation to the intended use of the land after remediation.

9. Prior to occupation of any part of the development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a long-term monitoring and maintenance plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.
10. An Ecological Enhancement Strategy shall be submitted to and approved in writing by the Local Planning Authority. The ecological enhancement measures shall be agreed with the Local Planning Authority prior to their implementation, with all measures to be completed prior to the first occupation of any part of the development. The development shall thereafter be implemented in accordance with the approved details.

11.No development shall take place (excluding demolition) until details of finished site and ground floor levels in relation to the existing site levels, adjoining and opposing land and buildings on High Street and Harborne Park Road have been submitted to and approved in writing by the Local Planning Authority. The details shall include the proposed grading and mounding of land areas, cross sections through the site and relationship with the adjoining landform and buildings. The development shall be implemented in accordance with the approved details.

12.Details of hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. The hard and soft landscape works shall be agreed with the Local Planning Authority prior to their implementation, with all measures to be completed prior to the first occupation of any part of the development hereby approved.

These details shall include:

- proposed finished levels or contours,
- means of enclosure,
- hard surfacing materials,
- minor artefacts and structures,
- proposed and existing functional services above and below ground,
- fully annotated planting plans to a scale of 1:100, showing, where used, locations of individually planted trees, areas of woodland, shrubs, hedges, bulbs, and areas of grass.

Within ornamental planting areas, plans should be sufficiently detailed to show the locations of different single species groups in relation to one another, and the locations of any individual specimen shrubs. Other information shall include planting schedules, noting species, plant sizes and proposed numbers / densities and details of the proposed planting implementation programme.

All hard and/or soft landscape works shall be implemented in accordance with the approved details. The works shall be implemented prior to the first occupation of any part of the development or in accordance with a programme agreed with the Local Planning Authority and thereafter maintained.

Any trees or shrubs which, within a period of two years from the completion of the development, die, are removed or become seriously diseased or damaged, shall be replaced in the next planting season with others of similar size and species.

13.Notwithstanding the details shown on plans 844-D5A-00-00-DR-A-1001-Site\_Ground\_Floor\_proposed-A3-C03 and 844-D5A-00-00-DR-A-9401-Landscaping\_Plan-A3-C01, the final positioning of the boundaries for the private amenity spaces is not approved.

Details of the proposed boundary treatment of and within the site shall be submitted to and approved in writing by the Local Planning Authority prior to its installation. These details shall include plans showing the locations of existing, retained and proposed new boundary treatments and scaled drawings indicating the positions, height, design, materials, type and colour of proposed new boundary treatments. The approved scheme shall be implemented before the first occupation of any part of the development hereby permitted and shall be retained thereafter.

14.A landscape management and maintenance plan, including a survey of the existing landscape and its condition, long term design objectives, management responsibilities and maintenance operations for all landscape areas, shall be submitted to and approved by the Local Planning Authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be implemented in accordance with the approved details and thereafter all landscaped areas shall be maintained in accordance with that plan.

15.The covered bicycle storage spaces shown on drawing number 844-D5A-00-00-DR-A-0101 Rev C03 shall be provided before the first occupation of any part of the development hereby and shall thereafter be retained and made available at all times for that purpose.

16.Each parking space shall be provided with an electric vehicle charging point prior to first occupation and retained thereafter.

17.No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The method statement shall provide for details of the following:

- the parking of vehicles of site operatives and visitors
- location of loading and unloading of plant and materials
- hours of demolition/construction/delivery

The development shall be implemented in accordance with the approved details.

18.A pedestrian visibility splay of 3.3m by 3.3m by 600mm high shall be incorporated at the access point off Harborne Park Road before the access point is first used and thereafter this shall be maintained.

19.Any gates provided to the development access off Harborne Park Road shall be set back at a distance of 5m from the edge of the carriageway of the adjoining highway and thereafter shall be maintained in that position.

20. Prior to the first occupation of any part of the development hereby approved, a scheme of noise insulation shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and retained thereafter to ensure that all windows, any other glazed areas and external doors to habitable rooms on the Harborne Park Road and High Street elevations shall provide a weighted sound reduction index ( $R_w+C_{tr}$ ) of at least 45dB and on all other elevations a weighted sound reduction index ( $R_w+C_{tr}$ ) of 32dB. Any ventilation to the Harborne Park Road and High Street elevations is to be means of mechanical vent compliant with NR25 (Leq). Passive ventilation to all other facades is to achieve a weighted element normalised level difference ( $D_{n,e,w+C_{tr}}$ ) of at least 32dB.

21. No demolition shall take place until a demolition method statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period.

The statement shall provide for:

- assessing and dealing with hazardous materials;
- integration with the contaminated land remediation strategy;
- loading and unloading of plant and materials (including location);
- demolition hours;
- noise control methodologies;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing;
- wheel washing facilities;
- measures to control the emission of dust and dirt during demolition; and
- a scheme for the recycling/disposing of waste resulting from demolition.

The development shall be implemented in accordance with the approved details.

22. The development hereby approved shall not be occupied until a Car Park Management Plan for the two disabled parking bays has been submitted to and approved in writing by the Local Planning Authority. The Car Park Management Plan shall include measures to protect the disabled car parking bays from misuse to ensure their availability for their intended purpose. The Car Park Management Plan shall be implemented in accordance with the approved details throughout the lifetime of the development.

23. The development hereby approved shall not be occupied until a Refuse Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Refuse Management Plan shall provide details of the management of waste and recycling, including its on-site storage and collection arrangements. The Refuse Management Plan shall be implemented in accordance with the approved details throughout the lifetime of the development.

## **APPEARANCES**

### FOR THE APPELLANT:

Mrs L Buckley Thomson, Counsel

She called:

Mr I Saunders BA (Hons), DipArch (Birm), PG Dip, ARB, RIBA of D5 Architects LLP

Mr A Simms BSc (Hons), MSc, MRTPI, MCIHT of The Transportation Consultancy

Mr S Wells BSc (Hons), MSc, MRTPI of Evolve Planning and Design Ltd.

### FOR THE LOCAL PLANNING AUTHORITY:

Mr H Richards, Counsel

He called:

Mr A Fulford, BSc MA MRTPI of Birmingham City Council

### INTERESTED PARTIES:

Cllr Brooks of Birmingham City Council

Sir Robert Dowling on behalf of local residents

Mr Taylor, a local resident

Mr Brettell, a local resident

Mr Kiely, a local resident

Mr Bowns, a local resident

Mr Peet, on behalf of Harborne Watch and a local resident

Ms Wilen, a local resident

## **INQUIRY DOCUMENTS**

- ID1 Section 106 payment form and remittance advice
- ID2 CIL Compliance Statement
- ID3 Architectural rebuttal of Council's evidence
- ID4 Rebuttal evidence- highways and transport matters
- ID5 Inquiry Programme
- ID6 Midland Properties and Finance (Birmingham) Ltd opening submission
- ID7 Local Planning Authority (LPA) opening statement
- ID8 Proof of evidence - S Brettell
- ID9 Appellant design evidence
- ID10 Parking survey - Mr Taylor
- ID11 Letter from appellant regarding pre commencement conditions
- ID12 Draft conditions (v2)
- ID13 Statement - N Wilen
- ID14 Planning balance comparison
- ID15 Updated draft conditions
- ID16 Updated draft s106 agreement dated 09.04.24
- ID17 Council's closing statement
- ID18 Appellant's closing statement
- ID19 Appellant's Costs application
- ID20 Local Planning Authority's costs application rebuttal
- ID21 Sealed s106 agreement dated 17 May 2024 and proof of Title.
- ID22 Appellant's final comments on costs application