

Appeal Decision

Site visit made on 5 August 2025

by **C McDonagh BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 August 2025

Appeal Ref: APP/P4605/W/25/3358858

Land at Ridgacre Road West, Birmingham B32 1AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Stax Ltd against the decision of Birmingham City Council.
- The application Ref is 2022/09287/PA.
- The development proposed is the erection of 12 apartments with all matters reserved for future consideration (except access).

Decision

1. The appeal is allowed and outline planning permission is granted for 12 apartments with all matters reserved for future consideration (except access) at Land at Ridgacre Road West, Birmingham B32 1AX in accordance with the terms of the application, Ref 2022/09287/PA, and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Stax Ltd against Birmingham City Council. This application is the subject of a separate decision.

Preliminary Matters

3. The description of development in the banner heading and decision paragraph is taken from the decision notice rather than the planning application form as this more concisely describes the proposal, including the number of units proposed.
4. The application was made in outline form with all matters reserved for future consideration other than access. As such I have considered the submitted plans as indicative and illustrative other than the location of the site access.
5. An amended proposed indicative site plan¹ was submitted with the appeal. This was largely what was provided to the Council at the application stage but included an exclusion zone and retained access to the National Grid (NG) infrastructure on site. I have been asked to consider this plan to address those concerns.
6. The Planning Appeals: Procedural Guide (PG) sets out that the appeal process should not be used to evolve a scheme. It is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Local Planning Authority (the LPA) and by interested parties at the application stage. The PG goes on to state that in deciding whether to, exceptionally, accept the proposed amendment, as per the judgement in Holborn², which refined the

¹ Drawing Number: H105 – 51c

² Holborn Studios Ltd v The Council of the London Borough of Hackney (2018)

'Wheatcroft principles'³, consideration must be given to the following two tests which must be assessed separately: 1) substantive test; and 2) procedural test.

7. The substantive test is whether the proposed amendment involves a 'substantial difference' or a 'fundamental change' to the application that would ultimately result in a 'different application.' A 'substantial difference' or a 'fundamental change' could also be as a result of a series of small, incremental changes to a scheme. If it is concluded that the amendment would result in a 'different application', then it is unlikely that it could be considered as part of the appeal. The procedural test is whether, if accepted, the proposed amendment would cause unlawful procedural unfairness to anyone involved in the appeal and, if so, whether such unfairness could be cured, for example by re-consultation.
8. On substantive grounds, the fencing off of the pylon does not fundamentally change the scheme which is itself otherwise unaltered. Moreover, the changes would not create a different application. As such the amended plan passes the substantive test.
9. In terms of the procedural test, changes were included to address the concerns of the NG, who were the key consultee on this matter and have commented on the amended plan prior to the submission of the appeal. I therefore do not consider that accepting the amended plan would constitute procedural unfairness. I have determined the appeal including the amended site plan above for the avoidance of doubt.

Main Issues

10. The planning application was refused for 3 reasons as given in the decision notice. However, following a review of technical documents and further consultation with relevant consultees, the Council has confirmed that it no longer contests the reasons given and does not object to the granting of outline planning permission. Nevertheless, these reasons still require interrogating, and I have formed the main issues based on the refusal reasons as originally imposed. This is in the interests of fairness, in recognition that interested parties who may have raised objections to these matters.
11. Therefore, the main issues are whether the proposal would provide suitable living conditions to prospective future occupiers of the development and whether suitable access to grid infrastructure could be achieved.

Reasons

Living Conditions

12. The appeal site comprises a roughly triangular parcel of land located between the M5 motorway and Ridgacre Road West (RRW). The site was largely overgrown at the time of my visit and includes a large electricity distribution pylon to the south. The local area is predominantly residential with houses to the north, east and south.
13. On my site visit, I observed the land was unsurprisingly subject to noise from vehicles travelling along the M5. The Council was concerned that acceptable noise levels could not be achieved either internally within the apartments or in external

³ Bernard Wheatcroft v Secretary of State for the Environment (1982)

communal amenity areas in order to offer residents suitable living conditions with regards to noise.

14. I have had regard to both the Environmental Noise Assessment⁴ and the Noise Appeal Statement of Case⁵ (NASC) which both conclude that with the measures proposed to be incorporated, including non-opening windows to some elevations, the structure to be orientated away from the road and suitable glazing for acoustic protection, noise levels below the desired levels internally can be achieved. I note these findings are now accepted by the Council.
15. The non-opening of some windows would also alleviate issues relating to air quality, again due to the proximity of the M5. To mitigate against this, it is proposed to install a Mechanical Ventilation Heat Recovery Unit which would supply fresh air into the flats. I have had regard to the findings of the Air Quality Assessment⁶ which advises that the Council had misinterpreted data in an earlier report on this matter, which the Council has admitted in its subsequent appeal submissions. Based on the mitigation proposed, such as the mechanical ventilation and non-opening windows, it is concluded that air quality levels would be acceptable for future occupiers.
16. There was also concern regarding the external amenity space which would not be subject to the same mitigation. However, the Council has not pursued this through the appeal. The NASC advises that with a suitable layout of built form and screening measures, noise levels within external amenity areas can be achieved. I am cognisant of the fact that the proposal before me is in outline form, with layout a reserved matter. However, detailed design at the reserved matters could evidently achieve the required noise levels and given the location of the site in a heavily built-up area, it is likely to be subject to higher noise levels regardless.
17. Based on the foregoing, the proposal could be developed in a manner which would ensure suitable living conditions for future occupiers of the proposal subject to a suitable site layout and landscaping at the reserved matters stage. This would accord with policies DM1, DM2 and DM6 of the DPD⁷ and PG3 of the BDP⁸. These seek, among other things, to ensure that development should be designed, managed and operated to reduce exposure to noise, while proposals which would increase exposure at the development site to unacceptable levels of air pollution, will not be considered favourably. The proposal would also therefore accord with paragraph 135 of the National Planning Policy Framework (the Framework) which advises that development should provide a high standard of amenity for existing and future users.

NG Infrastructure

18. The appeal site includes a large electricity pylon. The submitted site plan indicates that the flats and parking area would be located to the north with access taken from RRW to the northeast. The NG initially objected to the scheme based on the lack of an offset buffer from the pylon and access to allow maintenance of the equipment. I understand that communication continued between the appellant and

⁴ H&H Acoustic Technologies, Ref: HHAT/Q18761/R01/IRF

⁵ Peninsular Acoustics, Ref: PA0637-R01-P03

⁶ Kalaco Group, Ref: APS_P1252A_A1-3

⁷ Development Management in Birmingham Development Plan Document (adopted December 2021)

⁸ Birmingham Development Plan (adopted January 2017)

NG on this matter, with the latter withdrawing their objection subject to amendments being made to the layout, albeit this is a reserved matter.

19. Based on the amended plan, there is no conflict with the grid infrastructure as confirmed by the Council and NG. This would accord with policies DM2 of the DPD and PG3 of the BPD which seek, among other things, to ensure the compatibility of adjacent uses. This would also accord with paragraph 135 of the Framework which seeks to ensure development is safe and accessible.

Other Matters

20. I note the high volume of objections to the proposal. The main issues have addressed some of these concerns. Other matters raised include increased parking pressure, flooding, loss of green space and impacts upon ecology. However, the Council did not refuse the scheme based on any of these issues and based on all that I have seen and read, I see no reason to disagree.

Conditions

21. The Council has suggested some conditions should the appeal be allowed. I note the appellant and Council have been in discussion regarding these, with most matters resolved. A few conditions were still in dispute at the time of the appeal being submitted, and I have taken comments on board with regards to these matters.
22. I have also considered the conditions against advice in the Framework and Planning Practice Guidance. As a result, I have made amendments to the wording of some conditions for consistency, conciseness, clarity and to avoid unnecessary repetition. Pre-commencement conditions have only been applied where necessary and the need for these to be pre-commencement have been agreed to by the appellant and where necessary to guide initial works on site.
23. In the interests of certainty, the standard time limit and submission of a subsequent reserved matters application are necessary. A condition to clarify the approved plans is also required, albeit because of the outline stage of the proposal this relates to the site boundary and position of the access only.
24. In the interests of highway safety and safeguarding the living conditions of nearby residents, conditions to secure details of a Construction and Environmental Management Plan, visibility splays, retention and safety of the M5 retaining wall, site and finished floor levels and parking layout are necessary alongside the details secure on the submitted site plan as it relates to the access. To secure the living conditions of future occupants of the proposal, conditions to secure further details on noise management mitigation and air quality is also necessary.
25. In the interests of protecting the character and appearance of the area, details and samples of intended external-facing materials, safeguarding trees during and after construction, boundary treatments and hard and soft landscaping enhancements are necessary to condition. With some crossover and for the purposes of increasing biodiversity on site, a condition to specify species enhancement and biodiversity measures on site is required.
26. In the interests of guarding against the risks posed by contamination and protecting human health, conditions securing the undertaking of remediation measures are reasonable to impose.

27. In the interests of ensuring that surface water is suitably managed and that any associated flood risk is appropriately guarded against, conditions to secure the submission of a detailed surface water drainage scheme and associated maintenance provisions are reasonable and necessary along with sustainable urban drainage system details and disposal of foul water.

Conclusion

28. The development complies with the development plan and the material considerations do not indicate that a decision should be made other than in accordance with it. Therefore, for the reasons given above, I conclude that the appeal should be allowed.

C McDonagh

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) An application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, drawing reference H105-50; Proposed Site Plan, drawing reference H105-51c in relation to the position of site access only.
- 4) No development shall take place until details of the number, design, location and post-development management and monitoring arrangements of species-specific enhancement measures to be provided as part of the development have been submitted to and approved in writing by the Local Planning Authority. The enhancement measures shall be installed in accordance with the approved details and thereafter maintained.
- 5) No development shall take place until a site-specific arboricultural method statement (AMS) and a tree protection plan (TPP), in accordance with British Standard 5837 'Trees in Relation to Design, Demolition and Construction - Recommendations' (2012 and any subsequent edition), has been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken and maintained in accordance with the approved details.
- 6) No development shall take place until full details of new drainage and its location shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in strict accordance with the approved details prior to the first occupation of the development hereby permitted and retained in accordance with the agreed specification. No surface water shall be permitted to run off from the development hereby permitted on to the Strategic Road Network or into any drainage system connected to the Strategic Road Network. No drainage connections from any part of development hereby permitted may be made to any Strategic Road Network drainage systems.
- 7) No development 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 and incorporating the following measures 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.
 - Surface water discharge is capped to a maximum of 0.6 litres /second for the entire development site utilising a vortex flow control to reduce the risk of blockages.
 - The scheme will incorporate rainwater gardens, and geocellular storage.
 - Include measures to ensure that the development is not inundated by surface water, and that finished floor levels are 150mm above

surrounding ground levels, exceedance flows and overland flow routes.

- Detailed calculations, with supporting network layout plan, to demonstrate the proposed network performance (for all events up to and including the 100yr plus 40% climate change event) are required. Evidence of this should include details of design criteria, water level, surcharged depth, flooded volume, pipe flow, flow/overflow capacity, status of network and outfall details under each event, and may take the form of software simulation results. Network performance should be evaluated for storm durations of 15, 30, 60, 120, 240, 360, 480, 960 & 1,440 minutes. Best practice guidance is to use FEH 2023 rainfall simulations.
 - Consideration should be given to exceedance flows (greater than 1 in 100 year plus climate change rainfall events). Evidence (layout/flow plans, calculations and/or simulation results) should be provided to ensure that the surface water flood risk associated with exceedance events has been mitigated on- and off-site. The 1 in 500-year storm should be assessed using software simulation and mitigation provided.
 - Cross sections of Sustainable Drainage Systems (SuDS) and drainage infrastructure should be included for review, supported by a drainage strategy demonstrating the quantum of surface water attenuation and discharge rates and point of connection to the sewer network.
- 8) No development shall take place until a scheme for foul drainage of the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and thereafter maintained.
- 9) No development shall take place until detailed geotechnical drawings and supporting reports in relation to the support and retention of the M5 retaining wall during and post construction in accordance with Design Standards DMRB CD622, have been submitted and approved in writing by the Local Planning Authority.
- 10) No development shall take place until details of finished site and building ground floor levels in relation to existing site levels, adjoining land and buildings have been submitted to and approved in writing by the Local Planning Authority. The information submitted shall include cross sections through the site showing existing and proposed levels and relationship with the adjoining landform and buildings. The development shall be implemented in accordance with the approved details.
- 11) No development (excluding demolition and site clearance) shall take place until a detailed site investigation has been undertaken in accordance with the recommendations of the Combined GIR & GDR report (Ref: STT5546-R02 Rev A, Soiltechnics Ltd, April 2022) and relevant standards. The investigation shall confirm the absence or presence of any contamination and further characterise any identified risks.

If the investigation identifies any contamination or risk requiring mitigation (including to human health, controlled waters, buildings, or services), a remediation strategy must be submitted to and approved in writing by the

Local Planning Authority. The strategy must include a timetable for implementation and verification.

Following completion of any approved remediation works, a Verification Report must be submitted to and approved by the Local Planning Authority prior to first occupation of the development. The report shall demonstrate that the remediation objectives have been achieved and that the site is suitable for its intended end use.

If, during development, previously unidentified contamination is found to be present at the site, no further development shall take place in the affected area until a remediation strategy for dealing with that contamination has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.

- 12) No development (including demolition, groundworks, or site clearance) shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include, but not be limited to, the following details:

- A construction phasing plan, including working hours and contact details for the site manager.
- Measures to control noise, vibration, dust and emissions during demolition and construction, with reference to BS 5228 and relevant air quality and noise guidance.
- Site management protocols, including wheel washing facilities, construction vehicle routing, and access arrangements to prevent mud and debris on the highway.
- The parking of vehicles of site operatives and visitors.
- Location of loading and unloading of plant and materials.
- Hours of demolition/construction/delivery.
- Protection measures for local residents, sensitive receptors, and ecological features, where relevant.
- A strategy for engaging with nearby residents and responding to complaints

The approved CEMP shall be implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority

- 13) No dwelling shall be occupied until a Sustainable Drainage Operation and Maintenance Plan (including details of agreement with an adopting body and proposed inspection and maintenance actions) has been submitted to and approved in writing by the Local Planning Authority and the sustainable drainage for the development has been completed in accordance with the approved sustainable drainage scheme.

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.

- 14) No dwelling shall be occupied until pedestrian visibility splays of 3.3m x 3.3m x 600mm high are incorporated into the access. These splays shall be kept free of obstacles and shall be retained for the life of the development.
- 15) No dwelling shall be occupied until details of the external materials and treatments of building facades and roofs have been submitted to and approved in writing by the Local Planning Authority. Details shall include:
- Facades - walls (materials and decorative features), windows (overall design and materials, headers, sills, glazing bar and frame dimensions and arrangement, materials, reveal depth.), building entrances, decorative features; external doors (overall design and materials, reveal depths, canopy /porch)
 - Roofs - including materials, edges / eaves / parapets, ridges, chimneys and details of any attached vents, flues and utility equipment.
 - Rainwater goods, external vents, flues and other structures attached to the façade or roof of the building.

These required details shall include sufficient information to demonstrate building appearance including: elevation drawings annotated to show materials; schedule and specification of materials (samples and/or product literature and images); large (1:20) scale sections and part-elevation drawings showing detailing of windows, edges of roofs and any other key features. The development shall thereafter be implemented in accordance with the approved details.

- 16) No dwelling shall be occupied until an approved parking layout has been submitted to and approved in writing by the Local Planning Authority and shall be laid out prior to the first occupation of the proposed building and shall be retained for the life of the development.
- 17) No dwelling shall be occupied until details of the proposed boundary treatment of the site have been submitted to and approved in writing by the Local Planning Authority. 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 and retained thereafter.
- 18) No dwelling shall be occupied until details of hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include proposed 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, 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.

- 19) No dwelling shall be occupied until a scheme of noise insulation shall be submitted to and agreed in writing by the Local Planning Authority.

The design and specification for the proposed noise mitigation from glazing, building components, acoustic barriers and ventilation provision based on a composite noise reduction calculation in accordance with BS8233 and BS EN 12354:3 this shall ensure that the internal noise environment to habitable rooms meets:

- The criteria provided in Section 7.7.2 of BS 8233, and
- No more than 5% of the LAFmax values between 23:00 – 07:00 exceed 45 dB.
- A mechanical ventilation system with heat recovery (MVHR) shall be installed across all plots, ensuring it does not exceed NR30 under normal operation, as per the recommendations in the acoustic report.
- External amenity areas shall be constructed in accordance with the report's proposed screening design (≥ 15 kg/m² mass barrier with enclosed sides and roof) to reduce external noise levels as far as practicable, even if levels remain above WHO guideline values.

Internal noise levels should be calculated using the methods provided in BS8233:2014 and/or BS EN 12354:3.

The design and specification for any mechanical ventilation system to any habitable room (other than kitchen or bathroom extraction) shall include an assessment of the combined impact of the noise break-through from the building structure (including glazing) and the noise generated by the mechanical ventilation within the habitable room. The scheme shall also address the adequacy of the ventilation system to avoid over-heating conditions and shall be supported by an overheating assessment carried out in accordance with CIBSE TM59. The scheme should include plans / elevations to be used during the construction phase. The scheme shall be implemented in accordance with the approved details.

- 20) No dwelling shall be occupied until a Mechanical Ventilation with Heat Recovery (MVHR) system shall be installed in all habitable rooms, incorporating:

- Fresh air intake locations positioned on façades or rooftop areas furthest from the M5 motorway, in accordance with the design recommendations of the approved air quality report.

The MVHR system shall be designed and installed in consultation with the appointed noise and overheating consultants to ensure that:

- Internal pollutant concentrations do not exceed the National Air Quality Objective for NO₂ of 40 µg/m³ annual mean,
- Internal ambient noise levels comply with the limits set out in BS8233:2014, and
- The system contributes to compliance with CIBSE TM59 overheating criteria.

The approved air quality mitigation measures shall be fully implemented prior to first occupation and retained thereafter for the lifetime of the development.