

**OPENING SUBMISSIONS  
ON BEHALF OF THE APPELLANT  
MIDLAND PROPERTIES AND FINANCE (BIRMINGHAM) LTD**

**IN THE MATTER OF AN APPEAL BROUGHT PURSUANT TO  
SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990  
(‘THE 1990 ACT’)**

**IN RESPECT OF THE REFUSAL BY BIRMINGHAM CITY COUNCIL  
(‘THE COUNCIL’) TO GRANT PLANNING PERMISSION FOR  
“*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 LAND AT 334-340 HIGH STREET & 8-22 HARBORNE PARK  
ROAD, HARBORNE, BIRMINGHAM**

**PINS REF: APP/P4605/W/23/3336011**

**LPA REF: 2022/06737/PA**

**APRIL 2024**

## Introduction

1. This is an appeal by Midlands Properties and Finance (Birmingham) Ltd (**‘the Appellant’**) against the refusal of Birmingham City Council (**‘the Council’**) on 4<sup>th</sup> June 2023<sup>1</sup>, under delegated powers, to grant planning permission 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”* (**‘the Development’**) (LPA Ref: 2022/06737/PA).
2. There were 6 reasons for refusal (RfR)<sup>2</sup> and thus a number of main issues were outlined by the Inspector in her post-CMC note. There has since been a significant reduction in dispute between the parties<sup>3</sup>. The only outstanding matters for this inquiry are RfR 1, 4 and 6 which, in broad terms, relate to matters concerning character and appearance (design), amenity and highway safety specifically linked to parking.
3. It is undeniable that the country is amid a national housing crisis<sup>4</sup>. It affects millions of people unable to access suitable accommodation to meet their housing needs. Even on the Council’s case, they have a 4.45-year housing land supply<sup>5</sup>. That is a serious housing shortfall<sup>6</sup>. The tilted balance is rightly agreed to be engaged. It is not just market homes that the Council desperately needs, the Council recognising that the need for affordable housing is a pressing issue for the City<sup>7</sup>. Homes are needed now.
4. The Development will deliver 83 homes, with a financial contribution secured by way of s106 agreement to provide off-site affordable housing. The Appeal Site is a derelict unattractive previously developed site within a settlement, in a highly sustainable location<sup>8</sup>. It is exactly the type of site the Government directs to give substantial weight to the value of using for housing<sup>9</sup> and where sustainable development can plainly be achieved furthering all three of the Government’s objectives<sup>10</sup>.

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<sup>1</sup> Summarised at paragraph 4.1 of the Proof of Evidence (‘PoE’) of Stuart Wells, CD 9.4.

<sup>2</sup> Decision Notice at CD 3.2.

<sup>3</sup> **As to RfR 2 and 3:** Paragraph 1.3 of the PoE of Stuart Wells, CD 9.4 noted that RfR 2 and 3 relate to the absence of a signed Section 106 Agreement to address the provision of mitigating infrastructure, notably off-site open space contributions and affordable housing contributions. A draft S106 was submitted and it was agreed between the parties that subject to this provision, the second and third RfR fall away. Since then, the parties reached an agreement as to viability which is set out in the Viability SoCG at CD 11.2. The parties entered into a Supplementary SoCG which at paragraph 1.4 confirmed that *“In light of the above position the Council confirm that reasons for refusal 2 and 3 relating to affordable housing contributions and open space contributions have now been formally withdrawn”*. See CD 11.4.

**As to RfR 4:** After the submission of PoE, the Council further confirmed that it was withdrawing its RfR with regard to Housing Mix; namely RfR 4. As such, they do not dispute that there is a need for 1 and 2 bed apartments in this location, being a mix suitable for this site.

<sup>4</sup> See paragraph 9.51 of the PoE of Stuart Wells, CD 9.4.

<sup>5</sup> Paragraph 3.3 of the PoE of Stuart Wells, CD 9.4. See also paragraph 5.7 of the Main SoCG, CD 11.1. There was no 5YS at the date of determination either; 3.99 years – see paragraph 3.4 of the PoE of Stuart Wells, CD 9.4.

<sup>6</sup> Paragraph 9.53 of the PoE of Stuart Wells, CD 9.4.

<sup>7</sup> Paragraph 4.1 of the March 2024 Committee Report, CD 3.3.

<sup>8</sup> Paragraph 9.56 of the PoE of Stuart Wells, CD 9.4.

<sup>9</sup> Paragraph 124 c) of the NPPF.

<sup>10</sup> Paragraph 8 of the NPPF.

5. Not only that, but this is not a Development proposed by an Appellant who intends to achieve permission and then hand the site over. Rather, they intend to build it out themselves for retention as build to let homes, the Director himself living and working in Harborne. The Architect of the scheme brings not only a wealth of experience designing schemes in Birmingham but also resides in Harborne, with a deep knowledge of the area and a real vested interest in delivering a scheme of quality.
6. When viewed realistically, there will be no harm to the character and appearance of the street scene, no severe impact on the highway network and no harm flowing from any purported unacceptable living environment for the proposed occupants.
7. But even if there were, the Development would bring with it a suite of benefits such that even on the Council's case the alleged harm would not significantly and demonstrably outweigh the same.

### **Character and Appearance (Design)**

8. Ian Saunders<sup>11</sup> will give evidence on matters comprising RfR1 and RfR 6.
9. The Council allege<sup>12</sup> that the proposal constitutes a poor design, by virtue of its scale, massing and appearance, that would materially harm the character and appearance of the street scene. RfR 6 alleges that the private amenity space proposed is of a poor quality by virtue of its siting, layout and levels of sunlight such that it creates an unacceptable living environment for the proposed occupiers. Both allege conflict with Policy PG3 of the Birmingham Development Plan 2017 ('the BDP'), guidance in the Birmingham Design Guide SPD 2022, Policy DM2 of the Development Management in Birmingham DPD 2021 ('the DM DPD') and the National Planning Policy Framework ('the NPPF'). RfR 6 also alleges conflict with Policy TP27 of the BDP.
10. Mr Saunders will give evidence as to how in his view the Appellant has done its best to follow the Council's advice throughout. He will explain the evolution of his design to address the Council's pre-application advice and further comments during the application process to achieve the overall scale, mass and form proposed by the case officer and City Design Manager<sup>13</sup>.
11. His evidence will detail the baseline character and appearance of the area<sup>14</sup> and how this includes stepping forms, a strong ground floor base to the street frontage along the High

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<sup>11</sup> PoE of Ian Saunders, CD 9.2 and Rebuttal PoE at ID 3.

<sup>12</sup> See the text of RfRs 1 and 6 at CD 3.2.

<sup>13</sup> Paragraph 7.02 a-e, PoE of Ian Saunders, CD 9.2. See also section 2.0 with regard pre-application design advice and section 3.0 with regard in-application design advice.

<sup>14</sup> Section 5.0 for the relevant design policy review and section 6.01 for discussion as to RfR 1 which includes evidence as to the baseline, PoE of Ian Saunders, CD 9.2.

Street, varying storey heights, expressed dormers and inhabited roof spaces, and the 7-storey structure at 326 High Street which cannot be ignored<sup>15</sup>. He will demonstrate the sound design philosophy for the Development rooted in the character of the site location and in-keeping with the characteristics of the wider High Street area<sup>16</sup>.

12. As to private amenity space, Mr Saunders will note how matters complained of in the Statement of Case were not communicated during the application<sup>17</sup> and explain how the Development will provide good quality amenity space with high sun exposure offering variety in terms of location, scale and landscape included in the scheme<sup>18</sup>. The site density is comparable to other apartment developments along the High Street<sup>19</sup> and the proposed design complies with Council guidance included in City Note LW-3 on the separation of buildings and habitable rooms<sup>20</sup>. The proposed forms harmonise with neighbouring existing structures creating appropriate enclosure to the street frontages on High Street and Harborne Park Road. The Development provides high quality residential accommodation meeting or exceeding the Council's requirements regarding internal space, daylight, and amenity in a sustainable location.
13. There is clear compliance with BDP policies PG3, TP27, and DM DPD policy DM2. The Development, if consented, would make a positive contribution to the street scene on both High Street and Harborne Park Road complimenting and strengthening the local character, not harming it<sup>21</sup>.

### **Highways (Parking)**

14. Highways evidence will be given by Adrian Simms<sup>22</sup> who will address RfR 4.
15. The Council allege<sup>23</sup> that the Development would lead to additional parking in nearby roads "*to the detriment of pedestrian and highway safety*" in conflict with policies PG3 and TP44 of the BDP, policies DM14 and DM15 of the DM DPD, and the NPPF. The rationale behind the Council's conclusion that additional parking would result is explained in the RfR by way of the suggestion that "*the applicant has failed to demonstrate that there is sufficient off-street parking in an area already experiencing high levels of parking demand*" and that there is "*inadequate parking proposed*".
16. The Council's Transportation Department as Local Highway Authority did not object to the planning application subject to a legal agreement requiring the Appellant to

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<sup>15</sup> Paragraph 6.01.1-6.01.2, PoE of Ian Saunders, CD 9.2.

<sup>16</sup> Paragraph 7.02 f, PoE of Ian Saunders, CD 9.2. See also section 6.0 which discusses RfR 1.

<sup>17</sup> Paragraph 6.02.2, PoE of Ian Saunders, CD 9.2.

<sup>18</sup> Section 6.02 of the PoE of Ian Saunders, CD 9.2, discusses RfR 6.

<sup>19</sup> Fig 30, PoE of Ian Saunders, CD 9.2.

<sup>20</sup> Paragraph 5.05-2, PoE of Ian Saunders, CD 9.2.

<sup>21</sup> Paragraph 7.05, PoE of Ian Saunders, CD 9.2.

<sup>22</sup> PoE of Adrian Simms, CD 9.3 and Rebuttal PoE at ID 4.

<sup>23</sup> See the text of RfR 4 at CD 3.2.

undertake bi-annual parking surveys in local streets for a period of 3 years post the completion of the development with a financial contribution of £25,000 secured to undertake a Traffic Regulation Order ('TRO') to address any issues that have arisen<sup>24</sup>. The Appellant does not resist any of those things. No concerns were raised in respect of pedestrian or highway safety. The use of TROs and monitoring is acknowledged within the Birmingham Parking SPD.

17. Mr Simms will explain how the Development is proposed to be car-free however, to be robust, efforts have been made to consider the prospect of car ownership and encouraging a reduction in the same<sup>25</sup>. Car parking standards in the Council's Parking SPD<sup>26</sup>, which the RfR does not allege is infringed, are maximum for all uses in Zone B, with the SPD confirming that zero or low car parking development will be supported if it can be demonstrated that this would not result in detrimental problems on the local highway.
18. It is agreed<sup>27</sup> that the appeal site is in a sustainable – the Appellant will say highly sustainable - location in close proximity to a wide variety of services, facilities (including education, leisure, retail and community) and public transport options<sup>28</sup>. It is well placed to maximise short active travel journeys to these facilities on Harborne High Street which reduces the reliance on private car journeys<sup>29</sup>. Mr Simms will explain how this<sup>30</sup>, the low levels of car ownership within the immediate area demonstrated by his robust analysis of the 2021 Census<sup>31</sup>, and on-street parking controls on the surrounding roads, indicate that there will be a reduced reliability on car ownership at the appeal site<sup>32</sup>.
19. Mr Simms will detail the results of an independent parking beat survey<sup>33</sup> which identifies spare capacity for the extrapolated and forecast number of cars from the Appeal Site to park on neighbouring streets within a 200m walking distance. He will explain how and why the Lambeth Methodology used in that survey is appropriate<sup>34</sup> and comprehensive, not only being considered the de facto guidance but having been accepted by the Council elsewhere<sup>35</sup>. Should the Development result in occupiers using the private car, despite it being promoted as car-free, parking is therefore sufficient.

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<sup>24</sup> Paragraph 7.29 of the Council's Officer Report, CD 3.1. See also CD 8.16.

<sup>25</sup> Noting the Travel Plan.

<sup>26</sup> CD 8.5.

<sup>27</sup> See main SoCG at CD 11.1.

<sup>28</sup> See in particular paragraph 5.49 - 5.59 of CD 11.1.

<sup>29</sup> Paragraph 5.50 of CD 11.1.

<sup>30</sup> See Section 4.6, PoE of Adrian Simms, CD 9.3 for discussion as to sustainable transport.

<sup>31</sup> See Section 4.7, PoE of Adrian Simms, CD 9.3.

<sup>32</sup> Paragraph 3.2.1, PoE of Adrian Simms, CD 9.3.

<sup>33</sup> See Section 5.3, PoE of Adrian Simms, CD 9.3.

<sup>34</sup> See Section 5.2, PoE of Adrian Simms, CD 9.3.

<sup>35</sup> See in particular Section 5.5, PoE of Adrian Simms, CD 9.3.

20. In any event, Mr Simms will explain how there is no evidence of Personal Injury Accidents resulting directly from illegal on-street parking and any residual impact on the highway network arising is nil<sup>36</sup>. Moreover, it cannot be expected that road users will park illegally or erroneously; and were they to do so, there are civil enforcement powers available which clearly the LHA understands<sup>37</sup>.
21. The NPPF is clear that applications should only be refused if the residual cumulative impacts on the road network would be ‘severe’. It will be demonstrated that even if there were a demand for parking, it would not result in impacts which reach that threshold. The Development would comply with policies PGE and TP44 of the BDP, policies DM14 and DM15 of the DM DPD, and the NPPF.

### **Housing Mix**

22. There is no longer any dispute between the parties as to housing mix and RfR 5. Nonetheless, Stuart Wells<sup>38</sup> will give evidence explaining how that reason is overcome to the extent that any interested parties have remaining concerns.
23. He will explain how the proposed housing mix is justified having regard to the requirements of adopted Policy TP30 of the BDP<sup>39</sup>, detailing the requirements of the policy taken as a whole<sup>40</sup>. Mr Wells will detail how the Housing and Economic Development Needs Assessment 2022 (‘HEDNA’) represents a starting point in the determination of housing mix and supports the delivery of 1-bed dwellings across the City, including in Harborne<sup>41</sup>. He will explain his own analysis and how, when wider material considerations are considered together (as per the intention of Policy TP30), there is clear evidence to support the need for additional 1-bed apartments at the level proposed on the appeal site<sup>42</sup>. Though there is a need for family housing across the City, there is a greater need for additional 1-bed apartments in Harborne with the appeal site very well suited to meet the need for this accommodation<sup>43</sup>. The HEDNA and Policy TP30 are both clear that a different mix can be supported where specific local characteristics suggest<sup>44</sup>; which Mr. Wells’ own Housing Mix analysis supports.

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<sup>36</sup> Paragraph 3.2.1 and Section 6.3, PoE of Adrian Simms, CD 9.3.

<sup>37</sup> See Section 6.4, PoE of Adrian Simms, CD 9.3.

<sup>38</sup> PoE of Stuart Wells, CD 9.4.

<sup>39</sup> Paragraph 10.5, PoE of Stuart Wells, CD 9.4.

<sup>40</sup> Paragraph 5.141, PoE of Stuart Wells, CD 9.4.

<sup>41</sup> Paragraph 10.6, PoE of Stuart Wells, CD 9.4.

<sup>42</sup> Paragraph 5.142, PoE of Stuart Wells, CD 9.4.

<sup>43</sup> Paragraph 5.143, PoE of Stuart Wells, CD 9.4.

<sup>44</sup> Paragraph 5.144, PoE of Stuart Wells, CD 9.4.

## **Planning Balance**

24. There is plainly compliance with the Development Plan as a whole, and with the specific policies referenced in the RfR<sup>45</sup>. Even if the Inspector were to take a contrary view, given the clear lack of 5YHLS, the tilted balance is triggered, and the most important policies are out of date<sup>46</sup>.
25. Mr Wells is clear that no harm results from any of the remaining RfR<sup>47</sup>, supported by the evidence of Mr Saunders in respect of character and appearance (Design) and Mr Simms in respect of Highways (Parking).
26. Even if the Inspector were to disagree, any harm would be set against a wealth of benefits across the economic, social and environmental dimensions to sustainable development at paragraph 8 of the NPPF. They include the provision of open market housing (**significant weight**)<sup>48</sup>; provision of off-site affordable housing in South Birmingham (**moderate weight**)<sup>49</sup>; additional economically active residents (**significant weight**)<sup>50</sup>; making effective use of brownfield land (**significant weight**)<sup>51</sup>; contribution towards GVA, construction employment and supply chain benefits as well as investment by a local business (**significant weight**)<sup>52</sup>; improved visual amenity of the site (**limited weight**)<sup>53</sup>; and enhancements to on-site biodiversity (**limited weight**)<sup>54</sup>.
27. Mr Wells will suggest that even on a flat balance, the benefits of the Development outweigh any harms. Even on the Council's case, the alleged harms do not come anywhere close to significantly and demonstrably outweighing the benefits. The Inspector will be invited in due course to allow this appeal.

**30<sup>th</sup> APRIL 2024**

**LEANNE BUCKLEY-THOMSON**

**No5 Chambers**

**Birmingham – Bristol – London**

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<sup>45</sup> Paragraph 9.60, PoE of Stuart Wells, CD 9.4. See also Mr Wells' summary and conclusions at section 10 to his PoE.

<sup>46</sup> Paragraph 9.3, PoE of Stuart Wells, CD 9.4.

<sup>47</sup> Paragraphs 9.50-9.52 and Paragraph 9.59 Harm Table, PoE of Stuart Wells, CD 9.4.

<sup>48</sup> Paragraphs 9.31-9.36 and Paragraph 9.59 Benefits Table, PoE of Stuart Wells, CD 9.4.

<sup>49</sup> Paragraphs 9.37-9.40 and Paragraph 9.59 Benefits Table, PoE of Stuart Wells, CD 9.4.

<sup>50</sup> Paragraphs 9.11-9.30 and Paragraph 9.59 Benefits Table, PoE of Stuart Wells, CD 9.4.

<sup>51</sup> Paragraphs 9.41-9.46 and Paragraph 9.59 Benefits Table, PoE of Stuart Wells, CD 9.4.

<sup>52</sup> Paragraphs 9.11- 9.30 and Paragraph 9.59 Benefits Table, PoE of Stuart Wells, CD 9.4.

<sup>53</sup> Paragraph 9.48 and Paragraph 9.59 Benefits Table, PoE of Stuart Wells, CD 9.4.

<sup>54</sup> Paragraph 9.48 and Paragraph 9.59 Benefits Table, PoE of Stuart Wells, CD 9.4.

**Annex 1: List of Attendances**

**Counsel:**

Leanne Buckley-Thomson, No5 Chambers, London

**Instructed by:**

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**Will call:**

Ian Saunders BA (Hons), DipArch(Birm), PG Dip, ARB, RIBA

Character and Appearance (Design)

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Adrian Simms BSc (Hons), MSc, MRTPI, MCIHT

Highways (Parking)

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Stuart Wells BSc (Hons), MSc, MRTPI

Housing Mix and Planning

Evolve Planning and Design Ltd, Unit 1, Tollgate House Business Centre, Blithbury Road, Hamstall Ridware, Rugeley, WS15 3RT



**IN THE MATTER OF**

**LAND AT 334-340 HIGH STREET &  
8-22 HARBORNE PARK ROAD,  
HARBORNE, BIRMINGHAM**

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