

APPEAL REF: APP/P4605/W/23/3336011

Appellant: Midland Properties and Finance (Birmingham) Ltd

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.

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

CLOSING SUBMISSIONS ON BEHALF OF THE LOCAL PLANNING AUTHORITY

Introduction

1. These closing submissions should please be read following on from those made in opening (ID7). Repetition is avoided in the interests of brevity.

2. There is a good deal of common ground in this case. As well as the usual site and development descriptions, planning history and policy framework set out in the main SoCG (CD11.1), the following matters are also agreed which go to the planning merits:
 - a. The demolition and loss of the existing retail unit is acceptable.
 - b. The principle of residential development is acceptable.
 - c. The vitality and viability of Harborne High Street (a district centre) will be enhanced.
 - d. The Council can demonstrate a housing land supply (“HLS”) of 4.45 years. There will be a net gain of 77 dwellings. The build-to-rent model is appropriate in this location.
 - e. The ‘tilted balance’ in NPPF paragraph (“¶”) 11d)ii is engaged. The list of benefits to weigh in the planning balance is agreed (CD11.1, ¶5.91 as updated by ID...).
 - f. There is good accessibility to services and facilities by active travel non-car modes. There is similarly good access to public transport.
 - g. The Council’s internal space standards for dwellings are met.
 - h. A biodiversity net gain (“BNG”) is achievable.
 - i. The development will meets requirement for low carbon energy through the inclusion of roof-mounted photovoltaic cells.

- j. There is no issue on neighbouring residential amenity.
3. The application was refused for 6 reasons which gave rise to 5 ‘main issues’ identified by the Inspector. Each will be discussed in turn before conclusions are drawn on the planning balance.

Main Issue 1 (RfR1): the effect of the proposed design on the character and appearance of the street scene, with particular regard to its appearance, massing and scale in terms of density and height

4. Mr Ian Saunders (“IS”) in his evidence has explained how the design of the proposal presented to this inquiry has evolved. He seems to claim ‘credit’ for making reductions in scale from the ‘original’ proposal during that evolution. That is not a matter which weighs in the planning balance. The issue is whether the current proposal is acceptable, not whether it is more acceptable than something previously proposed.
5. Mr Saunders has also been at pains to point out that the planning officer’s judgment on the merits and demerits of the final design is, in places, at variance with that of the City Design Manager (“CDM”)
- a. All pre-application advice is always ‘without prejudice’ (IS in XX).
 - b. Even the CDM acknowledges that planners may have a different approach and judgments (see IS ¶4.03.02).
 - c. Eventually the CDM accepted (IS ¶2.06) accepted 5 storeys fronting High Street and 3 storeys on Harborne Park Road. Nevertheless (¶3.03) 5 storeys were then proposed with pitch roof including further accommodation.
 - d. Although after the August 2022 planning application further changes were made in response to the CDM’s concerns, not all changes were welcomed by the CDM ; for example:
 - (1) At IS ¶4.04.02 “architectural (sic) has deteriorated.”
 - (2) At Is ¶4.04.03 - instead of removing a storey, the floors were compressed.
 - (3) At IS ¶4.04.04 “*The High Street elevation is unremarkable, and following recent amendments has deteriorated further. The architect is trying too hard to solve a simple problem. At no point has there been a request for a statement building on this site. What is warranted is a simple, high quality and well delivered building.*”

6. Mr Fulford was unfairly criticised in XX for not having assessed the baseline in his proof of evidence. The baseline position was set out in the D&AS (CD1.26) to which he had had regard (ReX). Further, (proof ¶3.3) he finds that the vast majority of buildings along Harborne High Street are either 2 or 3 storey. Of the 6 exceptions (see Saunders p22, Fig 30 and AF appx A) 4 are 4 storey modern apartments.
7. One element of the baseline is the adjacent 7-storey building (326 High Street¹). Mr Saunders has used the height of it as a justification or design cue for the height of the proposed replacement. The Council is quite clear that it is not appropriate to do so. It is, as Mr Saunders agrees, an “anomaly”². But he rejects the Council’s position that its presence is regrettable³. That flies in the face of the Council’s guidance in City Note LW-7 quoted by Mr Saunders at his ¶6.01.1 (p23): “The form, mass and scale of a building should generally have been informed by the character of the surrounding area and appropriate adjacent buildings.” The important word is “appropriate”. Mr Saunders has been distracted by an inappropriate adjacent building.
8. Alternatively Mr Saunders’ case is that it cannot simply be ignored, and the appeal scheme improves the street scene by ‘stepping down’ from the Harborne West building to the 3 storey building at 350 High Street (The Cardamom Restaurant). But that ignores the following:
 - a. There is already a ‘step down’ through the existing building as can be seen on the elevation height comparisons at Mr Saunders’ Fig 12 and 31.
 - b. The proposed ‘step down’ actually raises the height of the intervening building in the street scene and adds greatly to its bulk. This reinforces the anomaly of the 7 storey Harborne West not mitigates it. Mr Saunders has actually achieved precisely the opposite of his professed intention.
9. So, on either basis, Mr Saunders is simply taking the wrong approach when it comes to the presence of Harborne West in the street scene and character of the area and the use he has made of it to justify the height of the adjacent bay of Block A.

¹ Also known as Harborne West.

² Saunders proof p6 column 1.

³ Saunders proof ¶4.03.7.

10. As well as the height and bulk of Block A, Mr Fulford is concerned⁴ as to its appearance and articulation as it presents to the High Street. Here some of his concerns are supported by the City Design Manager. The following elements are objected to:
 - a. The substantial hipped roof with large and dominant dormers.
 - b. The pitched roof on top of 5 storeys of development.
 - c. The projecting 5 storey oriel over the entrance.
 - d. The cramped appearance of the floor plates and small windows on the 5th storey.
11. These are particularly alien and discordant features not reflective of the surroundings and wholly out of character with it as will have no doubt been observed on the site visit. The approach is contrary to City Notes LW-6 and 8 as a result.
12. The differences between Mr Fulford and Mr Saunders in respect of Block B are narrower. Mr Fulford no longer objects to the height of it per se. But Harborne Park Road is a traditional residential street. It contains 2 and 2.5 storey dwellings of design merit. What there are not, except on the corner plot with the High Street at the Kings Oak Flats, are 4 storey buildings. What this gives rise to is a discordant 4 storey appearance, albeit one that is not significantly higher than the existing terraced houses.
13. The inquiry has considered 'density'. A consideration of density does not result in a binary pass-fail judgment. It is a useful indicator for a number of purposes. Is land being used efficiently? Is what is proposed in character for an area? What the density of the proposed development (350 dp/h) shows is that it is out-of-step with even other higher storey apartment buildings in the area. It acts as a sense-check when discerning whether the proposal is out of character in terms of scale and massing both with average densities in the area and with local pockets of higher density development.
14. The policy approach on this main issue is straightforward. NPPF Chapter 12 sets out increased recent emphasis on the need for high quality design so as to be acceptable to communities (¶31) and reflect local aspirations (¶132, 137). Here

⁴ Proof ¶3.12

local residents have complained that although they attended consultation events they were not listened to. The importance of design codes is stressed (¶133, 138). The end result should be “sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities)” (¶135.c)).

15. The Statement of Community Engagement (CD1.30) at ¶4.5 suggests a low response / attendance at organised events should be taken as indicating a local population that was generally supportive. That is not born out by the response to the planning application. The advertising poster at appx 1 shows a Harborne Park Road scheme rather than the larger Block A which has proved to be so controversial.
16. So far as Local Plan policy PG3 (CD4.1) is concerned, what is presented is not a high quality design that contributes to a strong sense of place. It fails to integrate with its immediate surroundings and detracts from the local distinctiveness of the area. These failures also give rise to conflict with the Council’s Design Guide SPD (CD8.4|) principles 1, 2, 11, 14.
17. Chapter 12 of the NPPF places increased importance on good design. It begins with ¶131 which emphasises high quality and beautiful buildings and places. It concludes⁵ with ¶139 which requires that “development which is not well designed should be refused”. If it is in this case, that is not the end of the road for the prospect of well-designed residential development on the appeal site. The Council and local people want to see the site redeveloped for housing. So a refusal leads only to delay while a new proposal is drawn up and submitted. It probably adds 12 months or so to a start-on-site date.

Main Issue 2 (RfR5): whether or not the proposed type and mix of residential units would be appropriate for meeting local housing needs, with particular regard to their size and type

18. The appeal scheme proposes a mix of 48% 1-bed and 52% 2-bed apartments.
19. The evidence in the HEDNA has now been added to by the analysis of the 2021 Census by Mr Wells in his proof of evidence and the evidence gathered from local lettings agents.

⁵ Apart from two paragraphs dealing with making clear references to plans in conditions and advertisements.

20. As a result the Council withdrew RfR5, and no longer regards this as a main issue.

Main Issue 3 (RfR4): the effect on the local highway network and its users, with particular regard to the parking requirements of the appeal proposal

21. The appeal site lies in 'Zone B' for parking standards purposes. In Zone B there are only maximum standards; no minimum provision applies.

22. The appellant has confirmed that it's approach is unashamedly "zero⁶" on-site parking. The Council's SPD (CD8.5) sets out its approach under the Parking Standards Rules on page 25⁷ : "Zero or low car parking development will be supported as long as it can be demonstrated that this would not result in detrimental problems on the local highway."

23. In XX Mr Simms accepted that the onus is on the appellant to 'demonstrate'. He sought to do so by assessing the numbers of cars likely to be 'generated' by the development and whether there was likely to be spare capacity for parking in the local streets.

24. When considering the likely level of car ownership at the appeal scheme, at the very top end would be the number reflecting the Council's maximum car parking standards - 91 cars. However, neither Mr Fulford nor Mr Simms seriously considered that⁸. Mr Fulford (proof ¶3.23) examined the ward census data which suggests that 67% of households would own at least one car. On that basis there would be at least 56 cars. This approach was criticised by Mr Simms in his rebuttal proof (ID4) at §2.2 as not being appropriate. Mr Simms in XX maintained the position set out in his proof.

25. At §4.7 of his proof, Mr Simms considers "Car Ownership". In XX Mr Fulford accepted it.

26. Rather than consider ward-level data, Mr Simms interrogates the 2021 Census data at the lowest⁹ geographical level - the Output Area E00045991 ("the OA"). Then

⁶ The provision of 2 disabled on-site spaces do not mean that the development is not zero-parking.

⁷ See also Mr Simms at ¶2.2.13

⁸ Although it is fair to record that this is what some local residents contended for.

⁹ AS ¶4.74.

within the OA he focused on the accommodation type “Flat; maisonette; apartment; caravan or other mobile or temporary structure.” This OA contains 100 such dwellings and includes some multi-apartment schemes. At ¶4.7.4 he confirms that the OA “reflects the most accurate representation of the proposed development at the appeal site”. From Table 4.3 it is apparent that 55% of households have no car or van; 37% have 1; 8% have 2 or more. At ¶4.7.11 he explains that his Table 4.5 applies the Table 4.3 data and the resultant forecast is that 44 cars / vans will be generated by the appeal scheme. In XX Mr Fulford accepted this.

27. But no sooner has Mr Simms given us this “most accurate” figure, at ¶4.7.13 he seeks to resile from it. He suggests there will be a further reduction as a result of the sustainable location, the provision of public transport and the control of on-street parking in surrounding streets which will “increase the likelihood of future residents making a decision that car ownership is not a priority or necessary”. But, as was put to him in XX and which he was strangely reluctant to accept, that is already taken into account - the 44 vehicle figure is generated from census data in an output area that is in a sustainable location, where public transport is good and where on-street parking is controlled as it is now. All of these factors have persuaded the notional occupants of the 83 dwelling appeal scheme that they will keep 44 cars between them. That is his evidence. There is therefore no further reduction that can sensibly be made to this figure.
28. The next issue is whether parking this number of cars can be accommodated without leading to highways / pedestrian safety issues? There are no spaces on-site. We need to know what the space available is likely to be off-site.
29. Mr Simms relies on the parking beat survey which he assures us has been undertaken by an independent traffic company. The Council has no reason to think otherwise. There are double yellow lines on local sections of High Street and Harborne Park Road¹⁰. Any parking from vehicles based at the appeal site will be on other residential streets which are already popular for on-street car parking.
30. At ¶2.3.11 of his proof Mr Simms introduces the *Lambeth Methodology* which in the absence of any other local methodology is the industry standard for use in this sort

¹⁰ AF ¶3.22 and as will have been observed on the site visit.

of case. Mr Fulford confirmed that the Council does not use any local methodology or has not adopted any local variations to the *Lambeth* approach. *Lambeth* includes allowing 5m of kerb-side as the parking length for a vehicle. Mr Fulford told the inquiry (in XX) that when he was writing his proof it was suggested to him by highways colleagues that with cars getting bigger a 6m distance could be justified. However, Mr Fulford accepted that he could not point to any instances of the Council actually adopting or using a revised figure. So the inquiry has proceeded on the basis of the 5m figure. Otherwise, it is common ground that the survey conducted for the appellants accords with the *Lambeth* methodology¹¹.

31. The results of survey are reported by Mr Simms and the accuracy was not disputed by Mr Fulford. From Mr Simms's evidence we can discern the following:
- a. At ¶5.4.2 and Table 5.1 it is confirmed that there are 99 spaces in total available in the catchment of which 59 are for unrestricted parking.
 - b. During the two nights of the survey, ¶5.4.3 confirms that there were 53-54 vehicle spaces available, of which (¶5.4.4) 21-23 were unrestricted spaces. That means that 32-33 of the spaces available were subject to some form of restriction¹².
 - c. On the basis that 53-54 spaces are available (or more if a preponderance of smaller cars are kept locally¹³) Mr Simms opines that will be spare capacity for the 44 vehicles generated by the appeal scheme. Indeed he says (¶5.4.11) that even if 6m is used, then the "forecast level of cars/vans resulting from the appeal site (Table 4.5) can be accommodated within the local area".
32. What Mr Simms has demonstrated is that during the survey hours there will be space. But of the 44 vehicles, only 21-23 of them will be parked in unrestricted spaces. What happens in practice to the 23-21 of them that are in the restricted spaces? Other than on a Sunday, they will have to be moved by 8.45am. Where do these vehicles go during restricted times? Mr Simms's response in XX was to suggest extending the 200m zone. But there was no survey data for any extended zone. The answer is that we don't know! Mr Simms has not 'demonstrated' that there

¹¹ Some Interested Persons did raise the issue as to whether surveys should have been carried out in the daytime on the basis of the non-residential use in the area. The *Lambeth* methodology does not advise this should be done in the circumstances of this appeal.

¹² See ¶5.4.4 for the actual restrictions.

¹³ Bur Sims is at pains to present his Fig 5.2 to show 5m *in action*.

will not be problems on the local highway as the SPD requires. The parking beat survey does not demonstrate that; quite the reverse.

33. Policy DM15 requires that “New development will need to ensure that the operational needs of the development are met in terms of parking provision”. In this case the “operational needs” of this development is for sufficient on-street parking. For the reasons set out above the need is not met.
34. DM15, 3rd paragraph, also references as quite separate requirements that “Proposals for parking shall avoid highway safety problems and protect the local amenity and character of the area. Parking should be designed to be accessible to its users and adhere to the principles of relevant Supplementary Planning Documents.” The proposals for parking in this case cause concern on a number of counts:
 - a. For the reasons given by Mr Fulford, there are concerns that with too few places to park, residents will adopt unsafe habits or cause other to do so by displacement. Mr Simms denies this and says he has interrogated agencies and databases and found no evidence of this. He says there is simply no relationship between a shortage of car parking spaces and highway or pedestrian safety.
 - b. But even if Mr Simms is right, and poor parking by frustrative motorists does not give rise to identifiable harm to local amenity or character either, there is still the requirement in the policy that parking should be “accessible”. That is simply not the case on the basis of the results of the predicted level of car ownership and available on-street spaces.
35. So the Appellant promotes a 3-year post occupation survey period when the actual impact of the actual number of cars can be assessed in the context of the actual number of on-street parking spaces. The Council agrees that if permission is granted this should be the approach. If the result of the surveys indicates a problem that needs a solution - i.e. that the number of cars generated by the appeal scheme cannot be accommodated on-street locally - then the suggested solution is a financial contribution to enable the council to identify and implement minor highway works or improvement measures or other schemes through a TRO. The obvious TRO measure would be the introduction of a resident’s parking permit scheme in the local area.

36. This may solve the problem of ‘appeal-site-based’ cars having space to park. Parking now available to other users would be reserved for residents. But the Council’s planning officers do not accept this will solve this problem without causing others. There will be no reduction in cars wanting to park in the local area; quite the reverse. It will inevitably lead to pressure to re-purpose short-term restricted parking which will cause any proposed TRO to be objected to as it will adversely effect those benefiting from it at present.
37. As the inspector intuitively surmised, the obvious solution would be to prevent appeal site residents from benefitting from a residents parking scheme. But that cannot be done legally through a planning obligation. Nor could it be done by condition as it would be impossible to enforce¹⁴ and so be unreasonable and unlawful. If the appeal site was excluded from the area of qualifying residents in any future TRO they would no doubt object. This is not a case where an existing residents’ parking scheme is in place and a new development can be consented on the basis that the new residents will not be able to join the scheme.
38. The bottom line is that this scheme will not be ‘zero car’. Some might think that 44 cars from 83 apartments is an achievement to be applauded. But there is not sufficient on-street parking to accommodate them. There are just too many cars - because there are too many apartments.

Main Issue 4: (RfR6) whether or not satisfactory living conditions would be achieved for occupants of the appeal scheme, with particular regard to the quality of the proposed outdoor space

39. The Main SoCG (CD11.1) at ¶5.74 sets out the agreed provision of 635m² of amenity space in the appeal scheme. It comprises:
- a. 200m² in the rear yard (CD1.14).
 - b. Communal roof terraces - 185m² - made up of:
 - (1) Block A (CD1.19) 114.1m².
 - (2) Block B (CD1.17) 70m²
 - c. Private roof terraces in Blocks A & B of 61m² (CD1.10 - 24.2m²; CD1.17 - 36m²)

¹⁴ Unlike schemes at student halls of residence.

- d. Private gardens (the rest) (189m²)
 - (1) Block A, plots 1 to 7 (CD1.5)
 - (2) Block B plots 1 to 3 and 10 (CD1.14).
- 40. Front ‘private gardens’ on plots B-06 to B-010 (CD1.14) are not ‘private’ and have not been counted. Same for Block A “buffer zones” (Saunders ¶6.02.4).
- 41. Mr Fulford identified a shortfall in the quantum of space for apartments that do not have private gardens (proof ¶3.43). But this is to be solved by re-allocating rear yard space from private to communal using the amended proposed boundary condition.
- 42. That leaves the quality of the communal space. In respect of the rear courtyard the issues are the effect of the bin store and car parking spaces adjacent to the area set aside for recreation. Following examination at the inquiry, there does not appear to be an issue with ‘shading’.
- 43. So far as the quality of the experience to be enjoyed on the roof terrace on Block A is concerned, the Council’s Statement of Case particularised its objection on the grounds of the “noisy environment on a main route into the City Centre.”
- 44. Mr Saunders’ response (see his proof at ¶6.02.6) was that the noise climate will be 55dB(A) in accordance with BS 8233:2014 which adopts that World health Organisation figure as the upper limit for outdoor residential space. He relied on the email report at his appx D from Mr Phil Lodge. Mr Lodge is the expert who wrote the Noise Report that accompanied the planning application (CD1.25). The Council is content that the opinion that the noise climate on the terrace will be 55dB(A) is consistent with the measurements and forecasts in the original noise report.
- 45. But what does an acoustician’s 55dB(A) mean to an ordinary resident using the terrace? CD1.25 ¶5.3.2 explains that 50dB(A) is the threshold at which people become moderately annoyed. ¶5.3.5 reports that at 55dB(A) the effect is “seriously annoyed”. So while 55dB(A) is the upper limit, the limit-point is not without adverse effects.
- 46. Mr Fulford says the overall effect on amenity to weigh in the planning balance will be adverse and moderate. We submit he is right.

Main Issue 5 (RfR 2 & 3): whether or not the appeal proposal would provide adequate contributions to meet public open space and affordable needs, with particular regard to viability

47. As a result of the viability report submitted with the appeal, and for the reasons set out in the Viability Statement of Common Ground (CD 11.2) the Council has withdrawn RfR5, and no longer regards this as a main issue.

The Planning Balance

48. The inspector’s conclusions on each of the main issues above will determine whether the appeal proposal is contrary to the development plan or not.

49. But as noted in Opening and above, the ‘tilted balance’ in NPPF ¶11.d)ii is engaged in this case. In balancing adverse impacts and benefits it should be remembered that allowing this appeal will leave a legacy of poor design for generations. Dismissing the appeal will postpone the benefits for but a very short time in comparison.

50. The position of Messrs Wells and Fulford at the close of the inquiry has been recorded in the following tables:

<u>Alleged Harm</u>	<u>Appellant Position</u>	<u>Council Position</u>
Harm to the character and appearance of the street scene.	No harm (neutral weight)	Significant harm & weight
Severe impact on the local highway network.	No harm (neutral weight)	Significant harm & weight
Unacceptable living environment for proposed occupiers.	No harm (neutral weight)	Moderate harm & weight
Poor mix of accommodation types.	No harm (neutral weight)	No harm (neutral weight)

By “harm” the experts obviously mean “adverse impacts” in the terms of NPPF ¶11.

<u>Benefit</u>	<u>Appellant position</u>	<u>Council position</u>
Provision of open market housing of the type and size proposed (gross 83, net 77).	Significant weight (positive)	Significant weight (positive)
Additional economically active residents and expenditure of new residents into local economy, Council Tax and potential New Homes Bonus, in the context of the Council's current financial situation.	Significant weight (positive)	Significant weight operational economic benefits (positive) Moderate weight New Homes Bonus (positive) Moderate weight vitality and viability of high street (positive)
Making effective use of brownfield land on an underutilised site	Significant weight (positive)	Significant weight (positive)
Contribution towards GVA, construction employment and supply chain benefits. Investment by a local business.	Significant weight (positive)	Significant weight (positive)
Provision of off-site affordable housing in South Birmingham.	Moderate weight (positive)	Moderate weight (positive)
Improved visual amenity of the site.	Limited weight (positive)	Neutral weight
Enhancements to on-site biodiversity.	Limited weight (positive)	Low/Limited weight (positive)
Energy efficiency measures that exceed Building Regs requirements incl. PV systems	N/A	Low/Limited weight (positive)
Sustainable location	Moderate weight (positive)	Moderate weight (positive)
Traffic Regulation Order (£25,000)	N/A	Low/Limited weight (positive)

51. The Council's case is that the adverse impacts do significantly and demonstrably outweigh the benefits. As a result, the appeal should be dismissed.

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