

**CLOSING 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**

MAY 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 4th June 2023¹, 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'; 'the Appeal Scheme') (Ref: 2022/06737/PA).
2. Having heard the evidence presented at this inquiry, the Appellant sees no cause to divert from what it impressed upon the Inspector at the very outset. If anything, the Appellant is even more certain that its position is the right one, and that the Council has acted unreasonably in adopting an irrational approach to its planning balance. That is not said without careful consideration and thought. The Appellant purposefully waited and reflected on its position in respect of costs until hearing the fullness of the Council's case on the remaining reasons for refusal.
3. During this inquiry nothing has changed in respect of the undeniable national housing crisis². Millions of people are still unable to access suitable accommodation to meet their housing needs. The Council still only has a 4.45-year housing land supply³ ('5YHLS'), which Mr. Fulford accepted in XX is a serious shortfall⁴. The tilted balance is rightly agreed to be engaged. It is not just market homes that the Council desperately needs. The Council recognises that affordable housing is a pressing issue for the City⁵. Homes are needed now.
4. The Development will deliver 83 homes (77 net), with a financial contribution secured by way of s106 agreement to provide off-site affordable housing. The Appeal Site appears derelict and is an unattractive previously developed site within a settlement, in a highly sustainable location⁶. It is exactly the type of site the Government directs to give substantial weight to the value of using for housing⁷ and where sustainable development can plainly be achieved furthering all three of the Government's objectives⁸.
5. Not only that but, as was crystalised through the evidence provided by Mr. Saunders for the Appellant, this is a Development with a very local connection. The Appellant plans to build it out themselves for retention as build to rent homes, its Director living and working in Harborne. As the scheme Architect, Mr. Saunders brings a wealth of experience designing schemes in Birmingham but is also a Harborne resident, with a deep knowledge of the area and a genuine vested interest in delivering a quality scheme.

¹ Summarised at paragraph 4.1 of the Proof of Evidence ('PoE') of Stuart Wells, CD 9.4.

² See paragraph 9.51 of the PoE of Stuart Wells, CD 9.4.

³ 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.

⁴ Paragraph 9.53 of the PoE of Stuart Wells, CD 9.4.

⁵ Paragraph 4.1 of the March 2024 Committee Report, CD 3.3.

⁶ Paragraph 9.56 of the PoE of Stuart Wells, CD 9.4.

⁷ Paragraph 124 c) of the NPPF.

⁸ Paragraph 8 of the NPPF.

6. When viewed realistically, there will be no harm to the character and appearance of the street scene, no severe (or unacceptable) impact on the highway network and no harm flowing from any purported unacceptable living environment for the proposed occupants. 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. Had the Council taken a reasonable stance, this inquiry may not have been required at all.

The Main Issues

7. There were 6 reasons for refusal (RfR)⁹ thus several main issues were outlined by the Inspector in her post-CMC note. As was detailed in opening, there was a significant reduction in dispute between the parties¹⁰ such that the only outstanding matters relate to 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.

The Development Plan

8. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act') and Section 70 of the Town and Country Planning Act 1990 ('the 1990 Act') require that the determination of planning applications must be made in accordance with the Development Plan unless material considerations indicate otherwise. The current adopted Development Plan comprises the following:
 - 8.1 Birmingham Development Plan (BDP) which was adopted on 10th January 2017; and
 - 8.2 Development Management in Birmingham Development Plan Document (DPD) which was adopted on 7th December 2021.
9. The BDP is over five years old, and the Council are currently in the early stages of preparing a new Local Plan; though it is agreed that only very limited weight may be given to it¹¹.
10. Both the National Planning Policy Framework ('NPPF') and the National Planning Policy Guidance ('PPG') are important material considerations.

⁹ Decision Notice at CD 3.2.

¹⁰ **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 5: 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.

¹¹ Paragraph 3.3, main SoCG, CD 11.1.

11. Paragraph 11 of the NPPF is clear that decisions should apply a presumption in favour of sustainable development. For decision-taking this means: c) approving development proposals that accord with an up-to-date development plan without delay and d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
12. It is agreed that the Council does not have a 5YHLS¹². Accordingly, per footnote 8 to paragraph 11 of the NPPF¹³, the policies which are most important for determining the application are out of date and the tilted balance is engaged. Mr. Fulford accepted in XX that there is no clear reason, pursuant to footnote 7, for refusing the development.
13. Paragraph 11 of the NPPF does not displace the primacy of the development plan and its statutory status as the starting point for decision making. In Suffolk Coastal v Hopkins Homes: Richborough Estates v Cheshire East [2017] UKSC 37 the Supreme Court made clear that where local planning authorities cannot maintain a 5YHLS, development plan policies may need to be applied flexibly. Clearly, given the clear importance of boosting significantly the supply of market and affordable housing, reduced weight should be given at least where policies are based on out-of-date housing requirements, which Mr. Fulford agreed in XX.

ALLEGED HARM

RfR 1: Character and Appearance (Design)

14. RfR 1 alleges that the proposed development is of a poor design that would materially harm the character and appearance of the streetscene, and this was made up of concerns about scale, massing and appearance¹⁴.
15. The inquiry heard evidence from the Architect of the scheme, Mr. Ian Saunders; an expert witness with decades of experience and a deep knowledge of Harborne, being a Harborne resident himself with a vested interest in bringing forth a good quality, well-designed development that will be a positive contribution to the area. The Inspector is referred to his PoE, rebuttal and PowerPoint presentation as a reminder of his careful and considered expert view as to the appropriateness of the Appeal Scheme before this Inquiry and how, in his

¹² Paragraph 5.5, CD 11.1.

¹³ Which states: “8 This includes, for applications involving the provision of housing, situations where: (a) the local planning authority cannot demonstrate a five year supply (or a four year supply, if applicable, as set out in paragraph 226) of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 77) and does not benefit from the provisions of paragraph 76; or (b) where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years”.

¹⁴ Confirmed with Mr. Fulford in XX to be the way in which RfR1 is interpreted.

opinion, no harm would be caused by it in design terms. That evidence is not repeated here; these submissions focus on the very narrow extent of the Council's case after cross examination.

The Baseline

16. It is agreed that to be able to assess harm, we first need to consider the baseline to compare it with what is proposed¹⁵.
17. Mr. Fulford explained in XX that he had visited the site “*around the time of the application*” which he clarified to have taken place “*within a few weeks*” of it having been made. As to what he did on that visit, Mr. Fulford described¹⁶ having walked down the High Street “*probably from the junction with Harborne Park Road, past the application site, past the next couple of buildings*” and then he had “*come back*”. He also described having walked “*past the end opposite to the Southlink Charter Centre*” in Harborne Park Road. Other than that site visit, he did not visit the Appeal Site again, at all, until the site visit conducted as part of this inquiry.
18. It is clear that Mr. Fulford did not carry out any detailed assessment of the baseline. He certainly did not visit and assess the extent of the High Street as set out by Mr. Saunders in his PoE¹⁷ before reaching his conclusions. There was nothing in his PoE to evidence any detailed consideration of the particular characteristics and features of the High Street and its three zones, or Harborne Park Road.
19. Nonetheless, Mr. Fulford agreed in XX that:
 - The High Street is a focal point for a large suburban residential neighbourhood and thriving local centre¹⁸;
 - There is a clear hierarchy in building forms, relationships and levels of activity;
 - The High Street is a linear ribbon of development¹⁹;
 - The side streets coming off of High Street contain conventional housing;
 - There are three distinct zones²⁰, the description of which was not contested;
 - The Appeal Site is in the west zone at the Ravenhurst Road Junction where enclosure is immediately restored by the Harborne West and Pinner Court developments²¹;
 - A consideration of character and appearance is about looking at the wider area but also the immediacy/close proximity area within which the Appeal Site sits; and
 - It is important to consider the zones and the way in which the character changes.

¹⁵ Agreed by Mr. Fulford in XX.

¹⁶ Mr. Fulford in XX.

¹⁷ Figure 26, PoE of Ian Saunders.

¹⁸ Per paragraph 5.02.2 of the PoE of Ian Saunders, page 19. It should be noted that Harborne is a designated District Centre in planning policy terms.

¹⁹ Per paragraph 5.02.4 of the PoE of Ian Saunders, page 15.

²⁰ Per paragraph 5.02.5 and Figure 26 of the PoE of Ian Saunders, page 19.

²¹ Per paragraph 5.02.7 of the PoE of Ian Saunders, page 19.

20. Mr. Fulford confirmed²², by reference to figure 23 on page 19 of Mr. Saunders' PoE that Harborne West (326 High Street) is opposite Pinner Court which wraps around the corners of the street on which it sits. It is the Council's case²³ that Harborne West is an older office building of no particular architectural merit which has an original commercial use which is incomparable to the Appeal Site and is the only taller building in close proximity to it. They say that Harborne West is a "*complete anomaly*" which is "*not reflective of its surroundings*"²⁴.
21. However, Mr. Fulford accepted in XX that the building now includes residential use on its upper floors and that, despite the Council's position as to the height of this building, and their reliance on the residential element having been consented over 20 years ago, it remains the case that the Council consented to grant planning permission to extend the building upwards from 6 to 7 storeys to allow for additional residential dwellings.
22. He rightly agreed²⁵ that, in his words, one "*can't pretend*" that Harborne West is not part of what is now the character of the area and that it would be a nonsense to pretend that it is not there. Mr. Fulford further agreed that there are a number of office buildings which have been similarly converted along the High Street, such as the Copper Box – though he said that this was a "*small number*".
23. When questioned as to whether he had included Harborne West in his assessment, Mr. Fulford stated on one hand that he had "*made it very clear that it shouldn't be used as a design cue*" whilst also stating that he had "*assessed the whole area*"²⁶. So, it seems that he accepts that Harborne West is part of the baseline and should be considered part of its character and appearance.
24. As to the baseline features of other development in the relevant area, Mr. Fulford did not take issue with what Mr. Saunders set out in his PoE at sections 5.0 and 6.0²⁷. In particular, it was agreed²⁸ that High Street includes:
- Stepping forms²⁹ with extremely articulated rooflines with numerous steps and set backs creating distinction and variety³⁰;
 - Strong horizontal ground storey expressions³¹ where the ground floor of commercial units have evolved differently to the rest of the building above and retail below has expanded forwards, sideways and/or units have split;

²² Mr. Fulford in XX.

²³ See paragraph 3.4 of the PoE of Mr. Fulford.

²⁴ PoE of Mr. Fulford, repeated in his oral evidence.

²⁵ Mr. Fulford in XX.

²⁶ Mr. Fulford in XX.

²⁷ To the extent that Mr. Saunders sets out his position as to the baseline in these sections; clearly the appropriateness of his design response is in issue between the parties.

²⁸ Mr. Fulford in XX.

²⁹ Figure 23, PoE of Ian Saunders on page 23 as an example.

³⁰ Paragraph 6.01.1 PoE of Ian Saunders, page 23.

³¹ Figure 34 and paragraph 6.01.2, PoE of Ian Saunders, page 24.

- Diminishing proportions with reduced heights on top floors, and smaller windows³²;
- Punched window openings³³;
- A rich variety of building types; and
- Expressed dormers and inhabited roof spaces³⁴;

25. The section of Mr. Saunders' PoE where he details the baseline to Harborne Park Road was also agreed³⁵. It is the primary route through Harborne to Selly Oak, residential in character, not as intense a sense of enclosure as High Street, domestic houses increasing in scale toward the junction, and properties set back off the rear of the pavement line³⁶. Mr. Fulford confirmed that Mr. Saunders' description³⁷ of the Appeal Site here as an "*open aspect*" which "*dilutes the sense of place upon approach to the junction*" was "*very fair*"³⁸.
26. The inquiry heard the views of local residents on day one of the inquiry who acknowledged that development is required on the Appeal Site. It was clear that none of them consider that it currently contributes positively to the character and appearance of the area; and Mr. Fulford agreed in XX that this was the case. Surprisingly, however, in the context of XX on matters related to planning balance, Mr. Fulford said that he disagreed with residents as to the current impact of the Appeal Site on the area. The Inspector will have seen the site.
27. It is interesting that the Council described Harborne West as an anomaly but also described the Copper Box as an anomaly in the context of density. How many 'anomalies' do this Council expect to be ignored before it accepts that in actuality, properties such as these are part of the baseline character and appearance of this area.

Scale

28. In his PoE, Mr. Fulford complained that Block A of the proposed development fronting High Street was excessively tall peaking at 17.9m compared with 350-352 High Street which peaks at 9.3m, a difference of over 8m. He also complained that Block B's 4-storey scale across the frontage on Harborne Park Road was a stark contrast with the traditional terraces opposite and the single storey Southlink Charter Centre and Baptist Church. He noted that Block B is now 12.7m high but the previously consented scheme was 11.58m maximum height.
29. As a matter of sense, it is most helpful to think of scale in terms of actual height and not storeys. There are buildings in the locality such as the Royalty (the old Bingo Hall) which are 2-storeys high yet have a frontage of some 9-10m³⁹ and cannot sensibly be considered to be of the same scale as a 2-storey terraced property such as is situate on Harborne Park Road. Mr. Fulford accepted in XX that the Royalty is "*certainly quite a large 2-storey*

³² Paragraph 6.01.2 PoE of Ian Saunders, page 24 – Mr. Fulford acknowledged that this is one example of smaller windows.

³³ Figure 35 PoE of Ian Saunders, page 24.

³⁴ Figures 36 and 37 PoE of Ian Saunders, page 24.

³⁵ Mr. Fulford in XX.

³⁶ Paragraph 5.02.9, Figure 24 and Figure 25 PoE of Ian Saunders, page 19.

³⁷ Bottom of page 19 of his PoE.

³⁸ Mr. Fulford in XX.

³⁹ Mr. Saunder's guesstimate

statement building” but persisted in insisting that the number of storeys of a building is also relevant⁴⁰.

Block A

30. Block A is 5 storeys with a pitched roof comprising further apartments as the 6th storey. When XX, at one point Mr Fulford said that the issue focuses too much on height and that he felt that there had been attempts “*to squeeze*” in storeys which resulted in a “*slightly contrived*” building; albeit when he was pulled up on this phraseology, Mr. Fulford changed his evidence to “*contrived*” insisting that it was “*still too tall*”.
31. Mr. Fulford didn’t dispute that the Appeal Scheme is proposed to be 17.8m at its highest with Harborne West to the left 24.9m at its highest and 350-352 High Street 9.4m at its highest⁴¹. He suggests⁴² that one needs to consider the building “*as a whole*”; but in doing so he plainly ignores that what is most relevant is not the highest point of each building but how they interrelate. What is significant is that the difference between the Appeal Scheme and 350-352 High Street is only 3.7m where the two meet.
32. It was put to Mr. Fulford that the step up between 350-352 High Street and Harborne West is greater than that between 350-352 High Street and the Appeal Scheme. It is agreed that stepping forms and varying heights are a common feature on High Street. Mr. Fulford accepted⁴³ that there “*needs to be a step down to 352 High Street*”; however, he thinks that it should be “*much lower*”.
33. When it was suggested to Mr. Fulford that the Appeal Scheme would fit with that, the best he could offer in response was that it “*could’ve been done better*” with a “*more appropriate step*”⁴⁴. When challenged on this, and when it was suggested that if Harborne West is an anomaly as he says, any development such as the Appeal Scheme which makes it less so by assisting in a gentler step down would be positive, Mr. Fulford said “*I can understand that argument, yes*”⁴⁵. He also agreed that this did not mean that the building was out of character⁴⁶.
34. Ultimately, the highest point of his evidence was that “*I would say it could’ve been done better*”; confirming that this was as far as he takes it. That is unsurprising given that the City Design Manager concluded that “*height has been addressed*” when considering the revised appeal scheme the subject of this decision⁴⁷.

⁴⁰ He responded that “*both are relevant*” when it was suggested that it is more helpful to think in terms of the measurement of height than the number of storeys.

⁴¹ See the figure under paragraph 2.03 to Ian Saunders’ PoE on page 2.

⁴² Said in XX

⁴³ Mr. Fulford in XX.

⁴⁴ Mr. Fulford in XX.

⁴⁵ Mr. Fulford in XX.

⁴⁶ When put to him, he responded “guess so, yes”.

⁴⁷ See appendix B to Mr Saunders’ PoE. This conclusion was reached in respect of both block A and block B.

Block B

35. Block B fronts Harborne Park Road where it is accepted that the existing properties opposite are 2-2.5 storeys. Mr. Fulford's view is that the Appeal Scheme should be a maximum of 3 storeys on Harborne Park Road, not 4 storeys, because of that.
36. Following comments from the City Design Manager in relation to the originally submitted proposals, the proposed scheme was modified to reduce the overall height of Block B which resulted in a proposed ridge line 675mm higher than the existing houses opposite, less than the height of a table⁴⁸.
37. That was still considered by Mr. Fulford to be problematic despite these ridge lines being 20m apart across the width of the road; and so Mr. Saunders described in evidence how further revisions were done⁴⁹ resulting in a 400mm difference, which he described as going from a table to a chair. That difference is inconsequential in design terms.
38. It is agreed that overall, the building heights of the Appeal Scheme and the existing buildings across the street opposite almost exactly align. It was therefore put to Mr. Fulford that he could not sensibly be saying that there is an issue with the height of Block B.
39. The City Design Manager confirmed that height had been addressed in respect of Block B, as well as Block A. Mr. Fulford's response when challenged on this was "*all I can really say is that I feel that the building should've been stepped down to reflect that street*"; but it has been.
40. Ultimately, Mr. Fulford accepted that logically his concerns *are* confined to appearance in respect of Block B. When it was suggested that his concerns be repackaged as appearance and not height issues he responded "*I guess so yes*"⁵⁰. He also accepted under XX that the 4-storey building on the corner, still marks the corner⁵¹; in his words it is "*still very prominent*"⁵².
41. That Mr. Fulford references the Sandown Racecourse appeal decision⁵³ to justify his position on character and appearance gives insight into the manner of his judgement. It is a case which concerns an entirely different development; and it was surprising that when this point was first put to Mr. Fulford in XX he would only accept that it "*is different*" and needed to have the point put again before he would agree that it is "*entirely different*". That case concerned a racecourse which would've gone from managed open space bounded largely by trees to a space more tightly bounded by urban development. That is just not the

⁴⁸ Figure 11, PoE of Mr. Saunders.

⁴⁹ See figure 14 and page 12 of his PoE.

⁵⁰ Mr. Fulford in XX.

⁵¹ He responded "*that's true*" when this was put.

⁵² Mr. Fulford in XX.

⁵³ CD 6.1.

situation here; an area which is already urban and surrounded by residential development including flatted development.

Massing

42. The Council's concerns insofar as massing are really concerns about density. In short, that the 350dph density of the Appeal Scheme is excessive compared with the locality and that it is the density of the internal accommodation which has driven the same. Mr. Fulford confirmed that it is "*density arising from so much physical development on the site*" that is his issue and nothing additional⁵⁴.
43. However, the Council makes no case that the apartments would not meet space standards; there is no suggestion of the same in the RfR and paragraph 5.71 of the SoCG⁵⁵ is clear.
44. It was agreed⁵⁶ that policy TP30 sets out a target density; a minimum not a maximum, with full consideration to be given to the site and its context. Mr. Fulford accepted that he did not refer to policy TP30 in RfR1, describing this as an "*oversight*". And that was not the only oversight. He also described his failure to include or consider a breach of TP30 in his officer's report⁵⁷, the Council's Statement of Case⁵⁸ and the SoCG⁵⁹ as oversights, confirming that the first time the Appellant would've seen any suggestion that policy TP30 was said to be breached was in his PoE⁶⁰.
45. It is unsurprising that the City Design Manager did not raise density as an issue. Mr. Saunders' figure at page 22 of his PoE compares densities in the locality. That illustrates that the average density of the 6 properties listed is 324dph which only rises to 327dph if the Appeal Scheme were included⁶¹. Mr. Fulford accepted in XX that this would be a minute difference; though he noted that it is heavily skewed by the Copper Box which has a density of 780 dph.
46. In EIC Mr. Fulford suggested that Copper Box was permitted to change its use to residential through the prior approval process implying that the Council had no choice about this. However, he had to accept in XX that the Council subsequently consented a rooftop extension for more residential development taking it from 5 to 6 storeys. Plainly the Council did not consider the increased density to be an issue, to which, when put, Mr. Fulford responded "*I can't argue with that*" qualifying that with "*at least for that site*". Mr. Fulford acknowledged the Copper Box "*is certainly there*" and he "*can't pretend*" it is not. The Council has to be consistent. It cannot be logically suggest that there is an issue with the

⁵⁴ Mr. Fulford in XX.

⁵⁵ CD 11.1.

⁵⁶ Mr. Fulford in XX.

⁵⁷ CD 3.1.

⁵⁸ CD 10.1.

⁵⁹ CD 11.1.

⁶⁰ see paragraph 3.19, PoE of Mr. Fulford.

⁶¹ This was a calculation explained by Mr. Saunders in his EIC carried out by reference to the dph figures on that plan.

density of the Appeal Scheme when such a density was considered acceptable elsewhere in 2017, within the life of policy TP30, on High Street.

Appearance

47. Mr. Fulford's complaints surrounding appearance, at least in his PoE⁶², centred on Block A; the alleged unusually large and dominant dormer windows, pitched roof on top of 5 storeys and projecting 5 storey oriel. Mr. Fulford further complained of cramped floor plates in Block A and small windows which sit unusually low. He did not have concerns as to materials, the inclusion of brick and metal cladding being flagged by the City Design Manager, as he agreed that this would be dealt with by condition⁶³.
48. Though his proof referred to traditional terraces in the immediate context, when challenged in XX on the basis that the terraced houses are in Harborne Park Road where Block B would be, Mr. Fulford clarified that he thought he was referring to terraces further down High Street, that he had not said that these were houses; but also, that he didn't know exactly where the terraced buildings he was referencing were.
49. Save for what has already been said about Block B, it was not an issue for Mr. Fulford in terms of its appearance.
50. The issue Mr. Fulford had with the pitched roof on Block A was clarified to be that it is "*unusual to have a pitched roof on top of 5 storeys*", the issue being with its size⁶⁴. The concept of a pitched roof in and of itself he did not appear to have an issue with; the City Design Manager included a pitched roof in the email correspondence that was disclosed. He appeared to be content with the height of the eaves. Mr. Fulford agreed that there are different types and varieties of buildings making up the surrounding character and appearance of the area and agreed that this would "*add to*" that⁶⁵.
51. Ian Saunders was clear that the pitched rooves on the street scene are a receding form so when up close they do not really have any visual impact. Figure 21 in his PoE demonstrates the limited visual profile for both the Appeal Site and the existing Pinner Court. The danger of relying on elevation drawings is that whilst they describe the building, they do not relate to the real world 3D experience, as was explained by Mr. Saunders in EIC. The ultimate ridge line is not really visible on the street and does not dictate your overall perception of the building. Pinner Court is a great example of how this works. This is why the frontage is the key.
52. Mr. Fulford agreed that dormers are part of the character and appearance of the area. However, he suggested that most in the area are "*quite modest*"⁶⁶. When challenged, he

⁶² Paragraph 3.12, PoE of Mr. Fulford.

⁶³ As explained by paragraph 4.03.6, page 17 of the PoE of Ian Saunders.

⁶⁴ Mr. Fulford in XX.

⁶⁵ Mr. Fulford in XX.

⁶⁶ Mr. Fulford in XX.

accepted that the dormers proposed in this scheme “*did not need to be an exact replica*”⁶⁷. In reality, the dormers are in proportion to the building. They are more in keeping with the apartment layouts than smaller dormers would be.

53. As to the windows, Mr. Fulford agreed in XX, after having said that they were “*very small and contrived*”, that there were some examples of smaller windows to upper floors in the locality and he agreed that the windows proposed were “*not out of keeping*”. Mr. Saunders’ evidence demonstrates that the windows aren’t proportionately small; they offer a good level of lighting and visibility out⁶⁸.
54. He maintained his complaints about the oriel window; however, in XX said that he could understand why it was on the elevation that it is, as it replicates the bays on the other side of the road. He said that the Appeal Scheme “*could’ve had a feature that was more understated*”. But that was the highest at which the complaint was eventually put.

Policy

55. Mr. Saunders’ written evidence, explained orally, sets out clearly how the relevant policies of the Development Plan are complied with. Nonetheless, Mr. Fulford insisted that there remained a breach.
56. He relies upon the first bullet point of Policy PG3⁶⁹, accepting that it is a “*generic*” policy⁷⁰. What is key about that first bullet point are the words “*reinforce or create*”. Mr. Fulford agreed that it is not necessary for there to be nothing different in the proposals. He agreed that the Inspector could take the view that the Appeal Scheme “*creates*” a positive sense of place even if she were to conclude that it does not accord with the character and appearance of the area as it currently stands (though the Appellant says that it does), allied to the point the Appellant makes that the Appeal Scheme creates a more sensitive stepped change between Harborne West and the other existing development in the area.
57. Insofar as design principles set out in the Design Guide SPD⁷¹, though not specified in the decision notice, Mr. Fulford clarified in his PoE that he relies upon principles 1, 2, 11 and 14. Key points to make include the following:
- 57.1 In XX Mr. Fulford acknowledged that principle 1⁷² includes the word “*enhances*”.
- 57.2 Principle 2⁷³ requires that direct synergy between that proposed and existing should be evidence and explained. That has plainly been done through Mr. Saunders’ evidence.

⁶⁷ Mr. Fulford in XX.

⁶⁸ Figure 22 of Mr. Saunders’ PoE demonstrates the relative window sizes.

⁶⁹ CD 4.1 internal page 31.

⁷⁰ Mr. Fulford in XX.

⁷¹ CD 8.4

⁷² CD 8.4, internal page 13.

⁷³ CD 8.4, internal page 14.

57.3 Principle 11⁷⁴ does not prevent increasing density – that can happen if the proposal “*will not result in a negative impact on the surrounding character area*”. Mr. Fulford agreed that this is about whether the density goes beyond what is considered by the Inspector to be an appropriate threshold.

57.4 The explanatory text at paragraph 2.91 of this principle notes that “in the right location” increased density “can make a significant contribution to place” to be considered on a “site by site basis”.

57.5 Principle 14⁷⁵ talks about “*coherent architecture*” which “*positively responds to the site and enhances its surroundings*”, with “*form, scale and mass complementary of its surroundings*”. Mr. Fulford agreed in XX that this does not mean that the Appeal Scheme needs to be the same as that around it.

58. The City Notes in the Healthy Living and Working Places City Manual to the Design Guide were also not in the decision notice but Mr. Fulford clarified in his PoE that he took issue with LW6, LW7 and LW8. Key points to make include:

58.1 Mr. Fulford suggests that there is a breach of LW6⁷⁶ which he suggests requires the design concept to be drawn from appropriate elements of the surrounding character area. But it is important to consider the full wording of the note. In its fullness, it talks about the design being “*drawn from the creativity of the architect*”, here Mr. Saunders, “*whilst pulling and utilising appropriate elements of the surrounding character area to help the building knit into and positively add to its surroundings*”. Mr. Saunders provides a detailed response to this in his rebuttal PoE⁷⁷. Mr. Fulford agreed in XX that he could see how the Inspector could come to a view that the Appeal Scheme knits in.

58.2 LW7⁷⁸ states that the design “*should generally have been informed by the character of the surrounding area and appropriately adjacent buildings*”. Mr. Fulford rightly agreed that the development did not need to be a pastiche; the word generally is key here and he agreed that the Inspector should look to the wording. Mr. Saunders responds to this too in his rebuttal⁷⁹.

58.3 As to LW8⁸⁰, Mr. Fulford confirmed that it is 2.16 to which he directs his concerns. That talks about coherent architecture with well-proportioned, well-balanced facades which is what he takes issue with. But the evidence of Mr. Saunders makes plain that this concern goes nowhere, and the Appeal Scheme is in line with LW8⁸¹.

59. In summary, the Appeal Scheme is clearly compliant with the development plan policies referenced in RfR 1 (BDP policies PG3, TP27, and DM DPD policy DM2) and, in any event, with the development plan as a whole. No harm would result from the proposals.

⁷⁴ CD 8.4, internal page 39.

⁷⁵ CD 8.4, internal page 43.

⁷⁶ CD 8.4, internal page 15.

⁷⁷ See paragraph 4.03 of his Rebuttal.

⁷⁸ CD 8.4.

⁷⁹ See paragraph 4.03.

⁸⁰ CD 8.4, internal page 16.

⁸¹ See in particular paragraph 4.04 of his rebuttal PoE.

60. It is abundantly clear that 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 it⁸².

RfR 6: Amenity

61. The Council's RfR 6 raises concerns regarding Amenity; a concern which was not raised with the Appellant at all during the application stage nor one that was raised by the City Design Manager in consultation on the proposed scheme. He noted that the green space could be acceptable subject to the discharge of a detailed design condition.

62. In summary, RfR 6 alleges that the amenity space is of a poor quality that creates an unacceptable living environment for the proposed occupiers. Mr. Fulford made clear for the first time in his planning evidence in EIC, and in XX, that this is not a considered by him to be a standalone RfR; in other words, it requires other RfR to be made good for the result to be refusal of planning permission.

63. The basis for the Council's conclusions as to the quality of the Appeal Scheme was the siting, layout, and levels of sunlight which the Appeal Scheme would bring. There is no issue raised in respect of neighbourhood amenity; the Council does not agree with concerns raised by local residents in that regard. The RfR also does not make any reference at all to concerns about noise.

64. It was agreed in the SoCG⁸³ that the "*quantity of outdoor amenity space is in accordance with the Birmingham Design Guide and is acceptable*". No distinction is made between communal and private spaces. The RfR makes no complaint about the quantity of the amenity space.

65. Mr. Fulford also confirmed in his PoE that the quantity of the amenity space was acceptable⁸⁴. However, Mr. Fulford introduced a complaint through his PoE as to a suggested shortfall of 37sqm in the communal outdoor space⁸⁵. He accepted that this was not in the RfR which he said nor in the SoCG as a contested issue, and it "*should've been*". In any event, by the time of his XX in respect of planning, Mr. Fulford confirmed that he was "*not really*" advancing this argument further because he considered that the draft conditions address the same.

66. Focusing then on quality, there are two main areas of focus for the Council: 1) the attractiveness and useability of the communal space in the rear courtyard with particular reference to the level of sunlight, odour from the bin store, and vehicle noise⁸⁶; and 2) the

⁸² Paragraph 7.05, PoE of Ian Saunders, CD 9.2.

⁸³ CD 11.1, paragraph 5.75.

⁸⁴ Paragraph 3.40, PoE of Mr. Fulford.

⁸⁵ Paragraph 3.43, PoE of Mr. Fulford.

⁸⁶ Paragraph 3.41, PoE of Mr. Fulford.

attractiveness of the roof terrace with particular reference to noise likely reducing the attractiveness of the roof terrace⁸⁷.

67. Mr. Saunders gave evidence⁸⁸ explaining how the courtyard is orientated in a southeastern direction and produced a solar analysis which demonstrates that sunlight into the courtyard is not compromised by the surrounding buildings. If anything, it will be a sun trap⁸⁹; and the Inspector will note how the site presented as such even during her afternoon site visit. It will be a predominantly greenspace overlooked by as many apartments as possible; and the landscape conditions will allow for the evolution of the design to the satisfaction of the Council to the extent that it is considered that the scheme would benefit from the same⁹⁰. It should be noted that the conditions agreed between the parties include a condition which states that the final boundaries of for the private amenity spaces are not approved with final details to be agreed.
68. Though it is right that the bin store will be near to this space, there will be weekly bin collections and cleans; it should be remembered that this is a build to rent scheme where the Property will continue to be managed by the landlord. Mr. Fulford accepted in this context that there would be a “*vested interest*” in ensuring that this was managed. The draft conditions agreed between the parties now include a condition in respect of refuse management to add assurance in respect of the same. The only regular vehicular traffic will be in respect of those collections and related to the two disabled parking bays on site. However, this is in the context of residents being very aware that they are in a thriving urban location. Mr. Fulford accepted⁹¹ that it is a relevant consideration that the development would sit in a very built-up urban area.
69. The Council’s concerns in relation to the roof terrace are unfounded. Not only did they not mention any such concerns prior to refusing the decision, nor include reference to them in the RfR itself, but the Council has not produced any evidence of its own at all to substantiate its claims. The Appellant provided a noise impact assessment with the application⁹² and Mr. Saunders explained how, upon realising that the Council were raising a new point on noise in respect of the roof terrace, he consulted the acoustic engineer who had carried out that assessment⁹³. The acoustic engineer produced an email⁹⁴ which made clear how the 16 hour log average noise level in this location when stood 1.5m back from the roof edge during the daytime (7:00 to 23:00) is 55dB(A) which is acceptable for amenity space in accordance with BS 8233:2014⁹⁵. It is notable that the Council chose not to produce their own counter evidence to this by way of rebuttal and that should have been the end of it.

⁸⁷ Paragraph 3.42, PoE of Mr. Fulford.

⁸⁸ See section 6.02 of his PoE which addresses RfR 6, and also note his oral evidence.

⁸⁹ See paragraph 6.02.4 and figure 43, PoE of Ian Saunders.

⁹⁰ Paragraph 6.02.5, PoE of Ian Saunders.

⁹¹ Mr. Fulford in XX.

⁹² CD 1.25.

⁹³ Paragraph 6.02.6, PoE of Ian Saunders.

⁹⁴ Appendix D, PoE of Ian Saunders.

⁹⁵ Paragraph 6.02.6, PoE of Ian Saunders.

70. Mr. Saunders has helpfully provided at section 6.0 of his PoE a photograph of another scheme he has worked on where a roof terrace was provided in the city, which Mr. Fulford agreed looks attractive. It isn't being suggested that this is the same size as that proposed; but it indicates to the Inspector the type of space in optically that Mr. Saunders intends to bring forward.
71. Nonetheless, in XX of Mr. Saunders, Mr. Richards sought to emphasise that 55dB is the threshold at which receptors are likely to become seriously annoyed in accordance with WHO:1999⁹⁶, a valiant effort to suggest that despite the Appellant's expert evidence, set against the Council's lack thereof, the noise concern was made good. However, the paragraph to which Mr. Richards referred needs to be read in its context. It would appear that the 'threshold' is 55dB; i.e. it is anything over that at which concerns would result. That point is made good when one considers paragraph 5.3.3 of the original assessment which describes levels of 54.5dB as acceptable because they do not "exceed" 55 dB, and that paragraph 5.3.4 notes how "*BS 8233:2014 makes reference to how amenity space noise levels may not always be achievable in areas where development is desirable, and occupants of new dwellings may compromise the higher noise levels in the amenity space for the convenience of living in an urban area with transport links to the main city centre*". That is exactly the position here. Mr. Fulford accepted in XX that this is not a quiet location. And plainly no concerns are had by the only expert before this inquiry, as the acoustic engineer's position is clear.
72. There is plainly no harm to be derived from the amenity space provided by the Appeal Scheme. Moreover, there is no breach of policy in the development plan. Though Mr. Fulford points to city note LW 13 which refers to how private landscaped gardens should be provided that allow multiple uses, it is not policy. And in any event, what would be provided by the proposals would include private, landscaped space which can be used and enjoyed. Mr. Fulford accepted that it "*could be argued*" that these were not left over areas, as had been argued in his PoE, and that what is being provided is "*not necessarily out of context*" of that suggested by LW 13.

RfR 4: Highways (Parking)

73. Paragraph 115 of the NPPF is clear that "*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*". This does not mean that there cannot be any impacts flowing from a proposed development. It does not mean that there can be no impact on highway safety. It does not mean that there cannot be residual cumulative impacts on the road network which are moderate or even, arguably, greater. However, the Appellant's case is that there would plainly be no harm should the Appeal Scheme be permitted.

⁹⁶CD 1.25, Paragraph 5.3.5.

74. The Council's RfR in respect of highways is very specific. As Mr. Fulford agreed in XX, the concern relates to "*pedestrian and highway safety*". The alleged cause of that concern is the Council's view that "*the development would lead to additional parking in nearby roads*", and their basis that there would be inadequate parking for the Appeal Scheme based on 1) the Appellant having failed to demonstrate that there would be sufficient off-street parking and 2) there already being a high demand for parking.
75. The RfR does not allege that the residual cumulative impacts of the development on the road network would be severe – in fact it does not raise any concerns, severe or otherwise, about residual impacts distinct from the Council's safety concerns. Mr. Fulford confirmed in XX that he was not making a case in the RfR that there were such cumulative impacts arising; though he did start to weave in congestion concerns he rightly abandoned this confirming that he was not making a case in respect of congestion.
76. For that reason, Mr. Fulford had to eventually accept that though policy TP44 is referenced in the RfR it is not relevant. His case focused instead upon point 1 of policy DM14 and points 1-3 of DM15. Point 1 of policy DM14 in effect recounts paragraph 115 of the NPPF in respect of highway safety. In XX Mr. Fulford had to agree that there could be compliance with point 1 of policy DM15 and it was in fact points 2 and 3 his case relied upon.
77. The Appellant's case is very clear. Mr. Simms, who provides the only expert evidence before this inquiry on highways matters, is confident, based on the evidence presented, that there is sufficient parking capacity to allow for any additional parking needs which might flow from the Appeal Scheme, even when taking a very robust approach to the evidence. However, even if the Appellant were wrong about that – and it is difficult to see how – it doesn't go anywhere because unless there would be an unacceptable impact on highway safety, or even if the Inspector were to entertain the idea that there might be residual cumulative impacts on the road network, such impacts would be severe, there is simply no basis to refuse planning permission on highways grounds.
78. The Council is not only the local planning authority but also the local highway authority. Accordingly, the Council's Transportation Officer was a consultee to the application. It is telling that they did not object to the Appeal Scheme⁹⁷, instead recommending that "*a financial contribution is secured in order to monitor the impact of the development on the immediate highway network and implement parking control measures if deemed to be necessary*". Though concerns were also raised as to the absence of disabled parking on-site, two bays are now being provided and the concern has been resolved.
79. Mr. Richards, in cross examining Mr. Simms, asserted that "*the highways department do not have a monopoly on wisdom*". Mr. Fulford sought to assert that his view, when compared with the Transportation Officer, was simply a matter of a difference in planning Judgement. With respect, that is not a correct characterisation. They are the Council's only technical experts on this matter and there is a threshold at which a difference of opinion

⁹⁷ CD 8.16

moves past a simple difference in exercise of judgement and into irrationality. The Council has firmly, and clearly, crossed that line.

80. The Appellant does not say that flippantly. The reality is that the Council has absolutely no evidence, at all – expert or otherwise – to demonstrate that there would be any safety impact on either pedestrians or the highway as a result of the Appeal Scheme.
81. The Council has produced no expert evidence on highways matters in support of their position. Issues of highway safety and impacts on the highway network are technical matters which require expertise. But even being fair to the Council, and acknowledging that amateur evidence can assist, Mr. Fulford does not even sensibly produce that. He only went out on site once before refusing the application in his role as case officer. One might think that a rational approach would be to carry out some semblance of a parking survey, at the very least walking the extent of the roads in which it is suggested that parking demand is high and remarking on one's observations. Mr. Fulford did not do that. He produces no photographs or illustration of why he says what he does beyond three screenshots taken from Google Maps at his Appendix B. There are a number of issues with those images:
 - 81.1 They do not show the extent of the roads such that it is impossible to tell the full extent of parking capacity within them;
 - 81.2 They are not recent images;
 - 81.3 They are all taken on different dates so are not even comparable with one another;
 - 81.4 In the case of Ravenshurst Road, the image is taken in the height of the pandemic when it is much more likely that people would have been home; and
 - 81.5 The roads which have been referenced do not wholly marry up with the parking beat survey conducted by Mr. Simms.
82. One might've thought that a rational approach when considering whether or not there would be safety impacts arising from a development would be to consider the baseline position. But Mr. Fulford made no effort to access accident records or indeed any other records which might have assisted him in understanding whether or not there is any current safety issue in the vicinity of the Appeal Site nor indeed whether or not any accidents that do occur have anything at all to do with issues related to parking.
83. The Council will no doubt suggest that the burden is on the Appellant to satisfy it that there is evidence to indicate that there would not be any acceptable safety impact arising from the Appeal Scheme. However, at the application stage the Appellant produced a Transport Assessment, the findings of which the Council has not sought to challenge, and which Mr. Fulford agreed in XX would've been more robust due to an increased trip rate as the scheme had since been revised to reduce the number of units. It is the Council that decided that it had concerns about safety; and rationally, one would have thought that there would have been some evidential basis for that conclusion.
84. After the application was refused, and the fulness of the RfR was made clear to the Appellant, the Appellant produced an addendum to the Transport Assessment which

included a Parking Beat survey to address the Council’s concerns. The Council did not seek to challenge any of that evidence with its own. Mr. Fulford did not, mindful of the need to keep his case under review, visit the site again until the routine site visit conducted as part of this inquiry. The Council did not, even after the receipt of Mr. Simms’ PoE, seek to do its own research in respect of highways safety.

85. Mr. Simms is the only one who has analysed Highway Safety Records. Mr. Fulford agreed in XX that consideration of the same is the starting point for assessing safety and accepting that he had not even got to that starting point.
86. Mr. Simms explained how he had obtained Personal Injury Accident (PIA) data from Transport for West Midlands (TfWM) for the most recent five-year period⁹⁸ within the vicinity of the appeal site⁹⁹. There were 12 recorded PIAs in that period all of which resulted in ‘slight’ injury with no accidents clustering or ‘hot spots’ identified¹⁰⁰. Mr. Simms reviewed the TfWM Collision Report¹⁰¹ to consider whether any of the contributory factors related to erroneous on-street parking. Only one listed ‘stationary or parked vehicle(s)’ as a contributory factor on St. Peter’s Road some 4+ years ago; however, it was clear that the PIA was not the result of erroneous or illegal parking¹⁰². In an effort to add robustness to his analysis, Mr. Simms contacted TfWM to ascertain if there were further contributory factors related to stationary or parked vehicles which he could consider¹⁰³. He then searched the additional factor ‘vision affected by stationary or parked vehicle(s)’ however no PIAs related to the same¹⁰⁴. There are no trends, themes or patterns to support the Council’s claims that inadequate parking provision will lead to the detriment of pedestrian and highway safety.
87. Mr. Fulford did not disagree with any of that evidence and confirmed in XX that “*I certainly don’t contradict the facts about historic accidents*”. But he doesn’t produce any non-historic evidence either. In reality, the Council produces nothing but supposition and assertions as to what Mr. Fulford considers “could” happen or what might be “likely”. That much is clear from what he says in his PoE: that erroneous double parking is “likely” to increase; that this would raise the “likelihood” of accidents; that it would be “trickier” for 2-way passing; that cars are more “likely” to clip one another; and that drivers are “likely” to become frustrated and distracted.
88. When all of this was pointed out to Mr. Fulford during the throes of XX, he desperately sought to change his evidence on a number of occasions, changing ‘coulds’ to ‘woulds’. But either way, there is no evidence to back up what he says. There is no evidence to support his suggestion that any of the things he says could happen would.

⁹⁸ 1st January 2019 – 31st December 2023

⁹⁹ See paragraph 6.3.1, PoE of Mr. Simms. The search cordon is illustrated in Appendix T.

¹⁰⁰ See paragraph 6.3.2, PoE of Mr. Simms – note that ‘slight’ injury is defined as injuries generally not requiring hospital treatment, such as sprains, cuts, bruises or shock requiring roadside treatment.

¹⁰¹ Appendix T.

¹⁰² See paragraph 6.3.4, PoE of Mr. Simms

¹⁰³ Correspondence is set out at Appendix U to the PoE of Mr. Simms.

¹⁰⁴ See paragraph 6.3.6, PoE of Mr. Simms

89. None of this is sufficient evidence upon which to hang a RfR. It certainly comes nowhere close to sufficient evidence upon which to hang a RfR that even now Mr. Fulford claims is so significant a harm even of itself that it would significantly and demonstrably outweigh the benefits of the scheme. Such a position is simply unrealistic, unreasonable, and irrational.
90. Ultimately, the Inspector could stop there in her assessment of the scheme in highways terms. Irrespective of whether there might be increased difficulties with parking should the Appeal Scheme be forthcoming, the evidence does not suggest that there would be unacceptable safety impacts or, though it is not the Council's case, severe cumulative impacts.
91. Nonetheless, it is helpful to consider whether there is even evidence to suggest that there would be insufficient on-street parking as a result of the Appeal Scheme. Mr. Simms is clear that this would not be so.
92. The first point is that it is proposed that the development be car-free. Mr. Fulford did not challenge this as the Appellant's intention. Indeed, when it was put to him in XX that he did not dispute that the development would be a car-free development, he responded "*the fact that there is no parking promotes zero parking*". That is exactly the point.
93. The rationale behind the Council's Transportation Officer's proposed contribution to monitor the impact of the development in case a TRO is required in the future was that: "*Target 2 of the Travel Plan states 'the Travel Plan Coordinator will promote the opportunities and benefits of sustainable modes of travel, with the aim to achieve a 10% reduction in the single occupancy vehicle car driver modal share by the end of the monitoring period'*" and "*whilst the development may promote zero parking within the development, their Travel Plan expects the occupants will need to be encouraged to reduce their reliance on the car*"¹⁰⁵. However, as was confirmed by Mr. Simms in EIC, the Travel Plan was produced in an effort to robustly address point 4 of policy DM14. Though it is not accepted that the development would generate significant traffic – as the Transport Assessment makes clear – where that is the case, a Transport Assessment and Travel Plan are required. The Appellant has provided both. Policy DM14 makes clear the purpose of a Travel Plan, which is to "*set out the means by which the developer will encourage users to adopt more sustainable modes of travel*". Accordingly, that is what the Travel Plan focuses on demonstrating. Mr. Fulford accepted in XX that this is what DM14 requires.
94. There was some discussion during the inquiry about what makes a development car-free. In short, it does not mean that no resident at all will have a car; an accurate interpretation is that such developments offer no parking for residents to discourage the use of the private car. This is a concept which is encouraged by this Council; and indeed, other authorities

¹⁰⁵ CD 8.16.

across the UK as we move towards trying to achieve net zero and increased reliance on sustainable transport modes¹⁰⁶.

95. The Council's Parking SPD¹⁰⁷ details maximum parking standards in zones A and B¹⁰⁸. The Appeal Site, an urban growth centre¹⁰⁹, is in zone B¹¹⁰. There is therefore no minimum policy requirement for parking in respect of the development proposed. The SPD is clear that this is because zones A and B "*benefit from greater public transport accessibility*". That is plainly so in respect of the Appeal Site. Mr. Fulford was clear in EIC that it is "*very sustainable*" and in XX confirmed that he did not disagree with anything Mr. Simms set out in the section of his PoE which deals with sustainability.
96. The SPD explains the Council's 'maximum' approach as being to "*ensure that developments continue to come forward with levels of parking provision that remain commensurate with the vision to reduce car dependency and promote alternative sustainable transport options*"¹¹¹. Mr. Fulford agreed¹¹² that this was the Council's vision. The Appeal Scheme is such a development.
97. The SPD further notes that "*zero or low car parking developments will be supported as long as it can be demonstrated that this would not result in detrimental problems on the local highway*"¹¹³. Mr. Fulford acknowledged that the use of the term 'detrimental problems' was different language to that used by the NPPF. It is significantly lower than 'severe'.
98. The Council's approach to ensuring that car-free developments, which it plainly wants to attract, is clearly to look to methods of enforcement and control. That is clear in a number of places. For example, the SPD notes that reduced parking could lead to the transfer of parking in other locations in which case appropriate financial contributions may (not should or would) also be required for the introduction or expansion of residential parking zones and parking control measures¹¹⁴. This entirely echoes the Transportation Officer's approach.
99. Mr. Fulford was clear in XX that he was not saying that the Appeal Scheme would result in a need for 91 spaces following the maximum parking standards. He did not disagree with Mr. Simms' suggestion, having analysed the most applicable Census dataset for car ownership, that the Appeal Site's future occupiers could generate parking demand for 44 vehicles¹¹⁵. And he was right to take that approach, as the assessment is very robust. Mr. Simms is clear that it is his professional view (supported by other applications within

¹⁰⁶ As Mr. Simms noted orally.

¹⁰⁷ CD 8.5

¹⁰⁸ See page 15, CD 8.5.

¹⁰⁹ See page 12, CD 8.5 with regard urban growth centres.

¹¹⁰ See figure 5 on page 24, CD 8.5. Note that though the word 'Harborne' is not in zone B, the Appeal Site is – that is agreed between the parties.

¹¹¹ Page 33, CD 8.5.

¹¹² Mr. Fulford in XX.

¹¹³ Page 25 of the SPD, CD 8.5.

¹¹⁴ Page 25 of the SPD, CD 8.5.

¹¹⁵ See section 4.7 and in particular table 4.4, PoE of Mr. Simms.

Birmingham¹¹⁶) that the approach of the development as car-free will reduce the reliability of car ownership at the appeal site and, in turn, increase the likelihood of future residents deciding that car ownership is not a priority or necessary¹¹⁷. As he explained in oral evidence, the 44 vehicles are a worst-case scenario.

100. The Appellant has assessed whether there is capacity to cope with that worst-case scenario in the form of Mr. Simms' parking beat survey¹¹⁸. The Council does not challenge the method or results save for two areas of disagreement:

100.1 That Mr. Simms adopted a 5m measurement per space to calculate existing capacity; and

100.2 That he has included in his calculations a number of spaces which are subject to restrictions.

101. The 5m measurement is one which is advocated for in the Lambeth Methodology¹¹⁹. Mr. Fulford did not dispute the accuracy of Mr. Simms' summary of what that guidance sets out¹²⁰ nor that it is the de facto industry guidance to use for parking beat surveys where a local planning authority does not have its own. The Council is one such authority¹²¹. He also did not seek to dispute that the Council has recently approved a scheme whereby such methodology was used¹²².

102. The detail of Mr. Simms' survey is not regurgitated in full here. Its extent is illustrated within Figure 5.1¹²³ and a summary of the outcomes at Table 5.1¹²⁴. which, for ease, it is excerpted below:

¹¹⁶ Section 5.5, PoE of Mr. Simms.

¹¹⁷ Paragraph 4.7.13, PoE of Mr. Simms.

¹¹⁸ Summarised at section 5.3 of his PoE on pages 25-27.

¹¹⁹ A reference to the Lambeth London Borough Council, Lambeth Council Parking Survey Guidance Note, 2012.

¹²⁰ See paragraphs 2.3.11-2.3.13, section 5.4 and Appendix Q of the PoE of Mr. Simms. See in particular paragraph 2.3.12 which sets out the relevant requirements of the methodology for residential development: Survey to cover an area of 200m (or a 2-minute walk) around a site; Survey to be undertaken when high number of residents are at home (snapshot surveys to be undertaken between 00:30-05:30); Surveys to be undertaken on two separate weekday nights; Surveys should not be undertaken in weeks that include Public Holidays and school holidays; and Surveys calculate parking capacity by dividing parking length by 5 (each vehicle assumed to measure 5m) and rounding down to the nearest whole number

¹²¹ See discussion at paragraphs 2.3.11-2.3.13, PoE of Mr. Simms. See also section 5.5 where Mr. Simms notes where the Council has recently considered the same methodology.

¹²² See section 5.5, PoE of Mr. Simms.

¹²³ See Appendix O of the PoE of Mr. Simms.

¹²⁴ The raw data is presented in Appendix P of the PoE of Mr. Simms.

Road	Total No. Spaces	Tuesday 19 th September 2023			Wednesday 20 th September 2023		
		No. Vehicles Observed	No. Spaces Available	% stress	No. Vehicles Observed	No. Spaces Available	% stress
Albert Road (east)	14	4	10	29%	5*	10	36%
Lonsdale Road (west)	5	4	1	80%	5	0	100%
Lonsdale Road (east)	3	2	1	67%	0	3	0%
Serpentine Road (south)	7	4	3	57%	3	4	43%
Serpentine Road (east)	12	7	4	58%	6	6	50%
Ravenhurst Road (west)	12	13*	1**	100%	12*	2**	100%
Ravenhurst Road (east)	15	12	4	80%	13	3	87%
High Street (north)	5	0	5	0%	0	5	0%
High Street (south)	2	0	2	0%	1	1	50%
Greenfield Road	2	0	2	0%	0	2	0%
Station Road (north-west)	4	1	3	25%	2	2	50%
Station Road (south-east)	9	1	8	11%	2	7	22%
St Peters Road (south)	6	0	6	0%	0	6	0%
St Peters Road (north)	3	0	3	0%	0	3	0%
Total	99	48	53	48%	49	54	49%

103. This shows 99 vehicle spaces within a 200m walk catchment of the proposed development of which there were 53 available on the first survey date and 54 on the second survey date. This equates to 54% occupancy.

104. Mr. Fulford's position is that these figures should be adjusted as a 6m theoretical parking space measurement is more appropriate, modern cars being bigger. But Mr. Simms was clear that there is no statistical basis for that assertion. Even were the 6m measurement to be applied, Mr. Simms' evidence shows that the area surveyed would allow for 82 on-street parking spaces with 44 available spaces¹²⁵. But the Inspector doesn't need to trouble herself with that, particularly given that Mr. Fulford could not point to any formal or informal guidance or policy to substantiate his approach. He only anecdotally referred to it being something his highways colleagues had raised; but, of course, the highways department at the Council did not object to the scheme nor did they request a parking beat survey at any

¹²⁵ Paragraph 5.4.11, PoE of Mr. Simms.

time during the application or at all. They are not saying that one is required in order to make a decision.

105. If using the de facto guidance were not enough, it is obvious when one even gently tests the figures at Table 5.1 that the 5m measurement is very robust. The figure of 99 total spaces and the 53-54 available spaces are derived from that measurement. If 5m is needed per space, one could expect the number of available spaces and the number of occupied spaces to total 99. If more than 5m is needed, one could expect it to total less than 99. In reality, there is an obvious surplus. Put simply, on day one of the survey, 48 vehicles managed to occupy what should in theory have been only 46 spaces and on day two, 49 vehicles managed to occupy what in theory should have only been 45.

106. Mr. Simms has also validated the 5m measurement by applying a measurement tool to Google Maps¹²⁶ which demonstrates how many vehicles have managed to fit in the theoretical space. The Inspector will come to her own view from this and her site visit; but it is not as though the sample vehicles are all matchbox sized skewing the results with clear road space evidenced between parked vehicles.

107. In any event, Mr. Simms rightly points out that where ‘shared’ unallocated space is at premium, road users will park responsibly to make the best use of it¹²⁷. As he noted in his oral evidence, people also choose vehicles which meet their circumstances. Hence many city dwellers opting for smaller city vehicles. The Lambeth Methodology guidance is clear that stress levels of over 100% are possible¹²⁸ due to vehicle size. Here the stress levels are only at 48-49%. There is ample room. Mr. Simms was clear in answering questions from the Inspector that he would not consider the area to be at capacity to the point of concern until the stress levels were over 100%.

108. As to Mr. Fulford’s contention that available parking spaces counted include those which are the subject of restrictions, Mr. Simms explained why the Lambeth Methodology requires assessments to take place in the early hours of the evening/morning when the majority if not all of residents are likely to be home. Though some of the spaces will be subject to restrictions during the day, fewer people are to be expected to be at home during the day. Though Mr. Richards hypothesised in questions about a possible resident who might park overnight in a restricted space while those restrictions are not in operation only to leave on the bus to work the following day and find themselves the subject of enforcement, this example forgets that not all people who at the same time were parked in unrestricted spaces will stay there in perpetuity. It also ignores that people who opt to live in a car-free development, and travel by bus for work, are a lot less likely to own a car; which is exactly what the Council’s vision in its SPD is driving at.

109. Though Mr. Simms did not seek to row back from his assessment – he didn’t need to – he is absolutely right to note in emphasising the robustness of his evidence that his survey was

¹²⁶ Paragraphs 5.4.5 – 5.4.7, Figure 5.2 and Appendix R, PoE of Mr. Simms.

¹²⁷ Paragraph 5.4.8, PoE of Mr. Simms.

¹²⁸ Paragraph 5.4.9, PoE of Mr. Simms. See also Section 3 – Page 5, Appendix Q.

restricted to a very tight 200m area around the site. He did not choose to expand this, as the methodology would have allowed him to, to the natural extent of a driver's journey and therefore there may well be greater capacity available than the study counted. Moreover, the 200m distance is around a 2-minute walk; Mr. Fulford rightly agreed that people would walk over 2 minutes from a car parking space. The Inspector will have noted the extent of further parking opportunities in the not-so-distant area should she be looking for further comfort.

110. For the avoidance of doubt, it has been no part of the Council's case that the Appellant's survey should have covered a greater expanse of the locality, should have been carried out over a different or additional time period, or that further surveys should have been completed. It was accepted by Mr. Fulford in the context of the design evidence that the Appeal Site sits in the west zone of the three zones making up the High Street detailed by Mr. Saunders in his evidence, and therefore is not within the main commercial area to the east where visitors to the area for retail purposes would be concentrated. This is emphasised, because the Inspector in her questions queried whether Mr. Simms considered his assessment to be sufficiently robust insofar as addressing parking provision in respect of users of the retail area, and whether further surveys should have been carried out. He was right in his response to emphasise that the Inspector should not be concerned as to the extent of the surveys conducted given that the concentration of retail and commercial uses, and therefore parking, is at the eastern end of the High Street the other end from the Appeal Site and far from the 200m survey area recommended by the Lambeth Methodology. In the daytime it is very unlikely that residents would all be home and the restrictions in operation in the area at those times would allow for any recreational users to park. That is no doubt why the restrictions are as they are in terms of the operational times. There is no gap in the Appellant's assessment. And in any event, Mr. Simms is right that when considering the current 54% capacity level, it is highly unlikely that this would exceed 100% with the development in situ.

111. The Appellant's view is that there is no need for further survey work and no harm results from the Appeal Scheme given the clear evidence as to capacity. However, the Transportation Officer's request is not objected to. The Inspector will recall that the s106 agreement includes a £25,000 contribution for any future TRO and sets out provision for further survey work. That would in any event mitigate even the *potential* for future impacts. It allows for the exact response the Council suggests through its SPD. It is particularly interesting that Mr. Fulford accepts the inclusion of such a contribution in the s106 agreement as being CIL compliant, yet on the other hand maintains that the highways concerns are not overcome. Even he could not help but acknowledge in XX the potential inconsistency in that approach.

112. The Inspector did query whether there was an available mechanism to add a blue line clause in the s106 agreement excluding future residents from applying for any future permit scheme. The Council's solicitor drew attention to R (Khodari) v Kensington and Chelsea RLBC [2015] EWHC 4084 wherein the Court held that a covenant in a section 106 agreement that purported to prohibit tenants of a residential development from applying for

permits was outside of the scope of that section. However, that does not mean that harm now arises from the Appeal Scheme nor that the Inspector should be troubled. The local highways authority may never require a TRO; and even if they were to put controls in place it may be any number of things other than a residents permit scheme, as listed in the SPD.

113. The local highways authority is plainly satisfied with the suggested approach. It will be for them, in due course, to decide if any further measures are required. It is the role of a highways authority to keep highways under review anyway, irrespective of new development in an area. There may be no further measures or controls. If there are, it may not be a TRO. The point is that at the moment there is no indication of any harm resulting from the scheme.

114. Even were a residents permit scheme to be introduced, the Court in R (AS Property Investments Ltd) v Hounslow LBC [2008] EWHC 1631 (Admin) upheld the Council's approach of excluding flats from the schedule of streets in the statutory instrument that created the controlled parking zone such that the residents could not apply for permits. It is not being suggested that this approach should be taken here – we are very much in the world of hypotheticals – but there are mechanisms available to the highways authority.

115. There is no reasonable basis for a sustained RfR on highways grounds – be that as drafted in RfR 4 or in respect of alleged severe cumulative impacts. The proposed development is compliant with the policies set out in the RfR and with the development plan as a whole.

RfR 5: Housing Mix

116. The Appellant's costs application addresses how it came as a surprise to them that there was even a RfR in respect of Housing Mix to address, given the advice given by Mr. Fulford at application stage insofar as reversing the balance of 1-bed and 2-bed homes, which was addressed¹²⁹. It is unsurprising that Mr. Wells was, upon appreciating the change in the Council's stance, able to demonstrate that the proposed mix is appropriate resulting in there is no longer being any dispute between the parties as to housing mix and RfR 5.

117. Nonetheless, Stuart Wells¹³⁰ gave evidence explaining how that reason is overcome to the extent that any interested parties have remaining concerns. The proposed housing mix is justified having regard to the requirements of adopted Policy TP30 of the BDP¹³¹, detailing the requirements of the policy taken as a whole¹³².

118. It is not proposed to recount that evidence in any significant detail in these closing submissions. What follows is a brief summary signposting the key features of the assessment.

¹²⁹ See Appendix A, PoE of Stuart Wells, CD 9.4 for the relevant correspondence and also paragraphs 5.3 to 5.6 of the PoE explaining the same.

¹³⁰ PoE of Stuart Wells, CD 9.4.

¹³¹ Paragraph 10.5, PoE of Stuart Wells, CD 9.4.

¹³² Paragraph 5.141, PoE of Stuart Wells, CD 9.4.

119. 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 and 2-bed dwellings across the City, including in Harborne¹³³. Mr. Wells dealt in his written and oral evidence with the status of the document¹³⁴, its limitations¹³⁵, and how it is to be applied¹³⁶. In short, the findings of the HEDNA support the proposed mix in the following ways:

119.1 There is still a requirement for 1-beds¹³⁷;

119.2 Recent delivery has had an emphasis on 1 and 2 beds towards the City Centre¹³⁸;

119.3 There is a growth in younger households¹³⁹;

119.4 There is also a growing demand for properties in the private rented sector ('PRS'), specifically 1 and 2 beds, in the Edgbaston sub-area and around the university, and in respect of younger-aged people¹⁴⁰.

120. Mr. Wells' own analysis¹⁴¹ demonstrates 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 site¹⁴². He has provided a detailed assessment of current demographic profiles¹⁴³, the future demographic profile¹⁴⁴, the locality, role and function of the site¹⁴⁵ and its ability to accommodate the proposed mix¹⁴⁶ and has considered market signals and local housing market trends¹⁴⁷.

121. Ultimately, though there is a need for family housing across the City as a whole, there is a greater need for additional 1 and 2-bed apartments in Harborne with the appeal site very well suited to meet the need for this accommodation¹⁴⁸. Harborne is a desirable location for younger working age people to live, with a high proportion of smaller and younger households, which is only expected to grow. There are strong links to the City Centre as well as to nearby employment centres, such as the University of Birmingham and Queen

¹³³ Paragraph 10.6, PoE of Stuart Wells, CD 9.4.

¹³⁴ Paragraphs 5.13 and 5.18, PoE of Stuart Wells, CD 9.4..

¹³⁵ See discussion from paragraph 5.22 but in particular at paragraphs 5.22-5.24 and 5.83, PoE of Stuart Wells, CD 9.4..

¹³⁶ Paragraphs 5.25 and 5.60, PoE of Stuart Wells, CD 9.4..

¹³⁷ Paragraph 5.31, PoE of Stuart Wells, CD 9.4..

¹³⁸ Paragraphs 5.36- 5.37, PoE of Stuart Wells, CD 9.4..

¹³⁹ Paragraphs 5.39 and 5.40, PoE of Stuart Wells, CD 9.4..

¹⁴⁰ Paragraph 5.54, PoE of Stuart Wells, CD 9.4. See also paragraph 5.61.

¹⁴¹ See Appendix C, PoE of Stuart Wells, CD 9.4..

¹⁴² Paragraph 5.142, PoE of Stuart Wells, CD 9.4.

¹⁴³ Paragraph 5.62 onwards and Appendix C, PoE of Stuart Wells, CD 9.4. See in particular paragraph 5.66 (younger people of working age); paragraph 5.69 (smaller households); paragraph 5.70 (households with 1-bed); paragraph 5.71 (occupancy data); paragraphs 5.72-5.73 (household composition, families, children etc.); paragraph 5.75 (accommodation type); paragraph 5.76 (PRS); paragraphs 5.77-5.78 (qualifications and occupations); and paragraph 5.80 as to the conclusions borne out of this analysis.

¹⁴⁴ Paragraphs 5.85-5.87, PoE of Stuart Wells, CD 9.4, with reference to page 106 of the HEDNA.

¹⁴⁵ See from paragraph 5.90, PoE of Stuart Wells, CD 9.4. In particular, paragraph 5.91 with regard the desirability of Harborne; paragraph 5.132 affordability; paragraphs 5.92-5.94 and Appendix D as to proximity to the city centre, universities and hospitals; paragraphs 5.99-5.100 as to the economic zone; and paragraphs 5.103, 5.105 and 5.108.

¹⁴⁶ See in particular paragraph 5.110 (district centre, sustainable high street location); paragraphs 5.115 and 5.130 (nature of high streets); paragraphs 5.116-5.119 (making efficient use of brownfield land and higher densities); paragraph 5.128 (character) and paragraph 5.133, PoE of Stuart Wells, CD 9.4.

¹⁴⁷ Paragraph 5.134 onwards with the headlines noted at paragraph 5.137, PoE of Stuart Wells, CD 9.4.

¹⁴⁸ Paragraph 5.143, PoE of Stuart Wells, CD 9.4.

Elizabeth Hospital. The evidence of Mr Wells and that from local estate agents is clear that there is a strong demand for 1 and 2 bed private rented accommodation in Harborne, being popular with young professionals, hospital and medical staff and academics and students. There is also a substantial lack of good quality homes for young professionals, young couples and the older generation who are downsizing. The site's location on the High Street with prevailing higher density development also lends itself very well to the housing mix that is being offered. The HEDNA and Policy TP30 are both clear that a different mix can be supported where specific local characteristics suggest¹⁴⁹; which Mr. Wells' own Housing Mix analysis supports.

THIRD PARTY OBJECTIONS

122. Mr. Wells responded to Third Party objections in his PoE at Section 7.0 and paragraphs 10.16 – 10.19, to which the Inspector is directed. The main focus of objections at the inquiry appeared to relate to concerns about parking, which the highways discussion above addresses. Nothing in what was presented to this inquiry either orally or in writing changes the Appellant's position. Neighbourhood amenity issues were raised, in particular concerns about loss of light from secondary side windows in the Kings Oak development at 356 High Street. The referenced windows are on the boundary to the Appeal Site. The previously consented scheme had a similar relationship between gable ends. For the reasons set out in the SoCG and in Mr. Wells' evidence, it is not considered that there is any sustainable neighbourhood amenity issue. Though a local resident expressed concerns about disruption during the construction phase, the agreed planning conditions include the provision of a construction management plan which would address the same.

PLANNING BALANCE

123. There is plainly compliance with the Development Plan as a whole, and with the specific policies referenced in the RfR¹⁵⁰. 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 date¹⁵¹.

124. Mr Wells is clear that no harm results from any of the remaining RfR¹⁵², supported by the evidence of Mr Saunders in respect of character and appearance (Design) and Amenity, and Mr Simms in respect of Highways (Parking). Given the Council's evidence at this inquiry, that position has only strengthened.

125. Despite the Council's lack of expert evidence, numerous concessions, and changes in approach set against the Appellant's consistent and robust analysis, Mr. Fulford maintained that the Appeal Scheme would result in harm. Not only that but, surprisingly, that either of

¹⁴⁹ Paragraph 5.144, PoE of Stuart Wells, CD 9.4.

¹⁵⁰ Paragraph 9.60, PoE of Stuart Wells, CD 9.4. See also Mr Wells' summary and conclusions at section 10 to his PoE.

¹⁵¹ Paragraph 9.3, PoE of Stuart Wells, CD 9.4.

¹⁵² Paragraphs 9.50-9.52 and Paragraph 9.59 Harm Table, PoE of Stuart Wells, CD 9.4.

the highways or design matters are so harmful in and of themselves that they are sufficient to warrant a refusal.

126. A table summarising the parties' respective conclusions as to harm has been agreed and is excerpted below for ease:

Alleged Harm	Appellant Position	Council Position
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)

127. It is rare that a case presents itself whereby the answer is so clearly against the Council even on its own case. But that is the position here. The Appellant can confidently state that the Council's position is overstated, lacks rationality and thus their stance in pursuing this appeal to the conclusion of an inquiry is unreasonable. This was made evident in that Mr. Fulford never separated out his balance when conducting his assessment of the application, nor in his proof of evidence; rather he only did so in oral evidence following interrogation of the Council's case.

128. As Mr. Wells explained, though the Council attributes the labels it does to the harms it finds, realistically their own evidence could only amount to a limited harm in terms of design and no harm as to highways and amenity for the reasons already stated above. On the other hand, even if the Inspector were to accept the levels of harm and weight asserted by the Council, irrespective of where their best evidence takes them, there are such a wealth of benefits across the economic, social and environmental dimensions to sustainable development at paragraph 8 of the NPPF that on the tilted balance the Council's position cannot be substantiated.

129. Mr. Wells and Mr. Fulford agreed a table which sets out their respective positions in respect of benefits which is excerpted below:

Benefit	Appellant position	Council position
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)

130. Though it is accepted that planning balance is not a mathematical or scientific exercise – one does not add up the number of harms and add up the number of benefits to come to an overall conclusion – the alleged harms do not come anywhere close to significantly and demonstrably outweighing the benefits.

CONCLUSION

131. The Council should not have pursued this appeal. That is why the Appellant is taking the considered step of making a costs application after very careful thought. The Council needs housing. It needs affordable housing. The appeal site is in a sustainable location. It is previously developed land which the Government plainly directs one to make effective use of. The principle of residential development on site is agreed. The residents agree that development of the site is needed and speak to its current, unsatisfactory and unattractive state. The Appellant is local; he has been in Harborne for 35 years and has a vested interest in bringing forward the scheme and investing in the community. The architect is local with a genuine belief that the scheme would contribute positively to the character and appearance of the area. The Council has a vision for car-free developments such as this. There are no objections from the Council's Transportation Department consultee and a mechanism in place to assist the car-free aspiration. The Council has withdrawn half of the reasons for refusal and those that remain have narrowed significantly on the evidence and even then, boil down to very little indeed even on their own case.
132. That the Council desperately tried to put weight on the potential for another, hypothetical revised scheme coming forward within the next 12 months on this site were this appeal refused speaks volumes. They are not thinking about the true application of the tilted balance but are focusing on desires and wants. If the tilted balance directs approval in respect of the scheme that is before this Inspector, that is what should be done. It cannot be sensibly nor rationally suggested that the balance should be infected by the hope of what the Council might consider to be a better scheme when the one before this inquiry meets all the relevant tests.
133. This Council is in financial difficulty and is looking a gift horse in the mouth. In light of everything outlined above, the Inspector is invited to allow this appeal.

10th MAY 2024

LEANNE BUCKLEY-THOMSON

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Annex 1: List of Attendances

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IN THE MATTER OF

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

CLOSING SUBMISSIONS

**ON BEHALF OF
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