



## **BROMSGROVE DISTRICT COUNCIL**

### **VIRTUAL MEETING OF THE PLANNING COMMITTEE**

**MONDAY 24TH AUGUST 2020**  
**AT 6.00 P.M.**

**MEMBERS:** Councillors R. J. Deeming (Chairman), P. J. Whittaker (Vice-Chairman), S. J. Baxter, A. J. B. Beaumont, S. P. Douglas, A. B. L. English, M. Glass, S. G. Hession, J. E. King, P. M. McDonald and P.L. Thomas

### **AGENDA**

1. To receive apologies for absence and notification of substitutes
2. Declarations of Interest  
  
To invite Councillors to declare any Disclosable Pecuniary Interests or Other Disclosable Interests they may have in items on the agenda, and to confirm the nature of those interests.
3. To confirm the accuracy of the minutes of the meeting of the Planning Committee held on 3rd August 2020 (Pages 1 - 4)
4. Updates to planning applications reported at the meeting (to be circulated prior to the start of the meeting)
5. 20/00479/FUL - Proposed Change of Use from B1 to B8 with detached cold storage building to rear and erection of three metre high timber fence panels to outer perimeter of private service road to, and enclosing rear yard/parking area - 30 The Avenue, Rubery, Birmingham, Worcestershire, B45 9AL - Adam Food Services Limited (Pages 5 - 32)

6. To consider any other business, details of which have been notified to the Head of Legal, Equalities and Democratic Services prior to the commencement of the meeting and which the Chairman considers to be of so urgent a nature that it cannot wait until the next meeting

K. DICKS  
Chief Executive

Parkside  
Market Street  
BROMSGROVE  
Worcestershire  
B61 8DA

13th August 2020

**If you have any queries on this Agenda please contact**

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## **BROMSGROVE DISTRICT COUNCIL**

### **PLANNING COMMITTEE**

# **GUIDANCE ON VIRTUAL MEETINGS** **AND PUBLIC SPEAKING**

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Due to the current Covid-19 pandemic Bromsgrove District Council will be holding this meeting in accordance with the relevant legislative arrangements for remote meetings of a local authority. For more information please refer to the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police Crime Panels meetings) (England and Wales) Regulations 2020.

The meeting is open to the public except for any exempt/confidential items. Where a meeting is held remotely, “open” means available for live viewing. Members of the public will be able to see and hear the meetings via a live stream on the Council’s YouTube channel, which can be accessed using the link below:

[Live Streaming of Planning Committee](#)

Members of the Committee, officers and public speakers will participate in the meeting using Skype, and details of any access codes/passwords will be made available separately.

If you have any questions regarding the agenda or attached papers please do not hesitate to contact the officer named below.

#### **PUBLIC SPEAKING**

The usual process for public speaking at meetings of the Planning Committee will continue to be followed subject to some adjustments for the smooth running of virtual meetings. For further details a copy of the amended Planning Committee Procedure Rules can be found on the Council’s website at [Planning Committee Procedure Rules](#).

The process approved by the Council for public speaking at meetings of the Planning Committee is (subject to the discretion and control of the Chair), as summarised below:

- 1) Introduction of application by Chair
- 2) Officer presentation of the report
- 3) Public Speaking - in the following order:-
  - a. objector (or agent/ spokesperson on behalf of objectors);
  - b. applicant, or their agent (or supporter);

- c. Parish Council representative (if applicable);
- d. Ward Councillor

Each party will have up to a maximum of 3 minutes to speak, subject to the discretion of the Chair.

Speakers will be called in the order they have notified their interest in speaking to the Democratic Services Team and invited to unmute their microphone and address the committee via Skype.

- 4) Members' questions to the Officers and formal debate / determination.

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**Notes:**

- 1) Anyone wishing to address the Planning Committee on applications on this agenda must notify the Democratic Services Team on 01527 881406 or by email at [p.ross@bromsgroveandredditch.gov.uk](mailto:p.ross@bromsgroveandredditch.gov.uk) before 12 noon on Thursday 20<sup>th</sup> August 2020.
- 2) Advice and assistance will be provided to public speakers as to how to access the meeting and those registered to speak will be invited to participate via a Skype invitation. Provision has been made in the amended Planning Committee procedure rules for public speakers who cannot access the meeting by Skype, and those speakers will be given the opportunity to submit their speech in writing to be read out by an officer at the meeting. Please take care when preparing written comments to ensure that the reading time will not exceed three minutes. Any speakers wishing to submit written comments must do so by 12 noon on Thursday 20<sup>th</sup> August 2020.
- 3) Reports on all applications will include a summary of the responses received from consultees and third parties, an appraisal of the main planning issues, the case officer's presentation and a recommendation. All submitted plans and documentation for each application, including consultee responses and third party representations, are available to view in full via the Public Access facility on the Council's website [www.bromsgrove.gov.uk](http://www.bromsgrove.gov.uk)
- 4) It should be noted that, in coming to its decision, the Committee can only take into account planning issues, namely policies contained in the Bromsgrove District Plan (the Development Plan) and other material considerations, which include Government Guidance and other relevant policies published since the adoption of the Development Plan and the "environmental factors" (in the broad sense) which affect the site.

- 5) **Although this is a public meeting, there are circumstances when the committee might have to move into closed session to consider exempt or confidential information. For agenda items that are exempt, the public are excluded and for any such items the live stream will be suspended and that part of the meeting will not be recorded.**

# Agenda Item 3

Planning Committee  
3rd August 2020

## **BROMSGROVE DISTRICT COUNCIL**

### **VIRTUAL MEETING OF THE PLANNING COMMITTEE**

**MONDAY, 3RD AUGUST 2020, AT 6.04 P.M.**

PRESENT: Councillors R. J. Deeming (Chairman), P. J. Whittaker (Vice-Chairman), S. J. Baxter, A. J. B. Beaumont, S. P. Douglas, A. B. L. English, M. Glass, S. G. Hession, J. E. King, P. M. McDonald and P.L. Thomas

Officers: Ms. C. Flanagan, Mr. D. M. Birch, Mr A. Young, Mr. P. Lester, Ms. K. Hanchett, Worcestershire Highways Authority, Mrs. P. Ross and Mrs S. Sellers

14/20 **APOLOGIES**

No apologies for absence were received.

15/20 **DECLARATIONS OF INTEREST**

Councillor A. B. L. English declared in relation to Agenda Item 5, (Minute No 18/20), that she had a predetermined view on the matter and would be speaking on this item as Ward Councillor under the Council's public speaking rules.

Following the conclusion of public speaking, Councillor English took no part during the Committee's debate or in the Committee's consideration nor voting on this matter.

16/20 **MINUTES**

The Minutes of the Planning Committee meeting held on 29<sup>th</sup> June 2020 were received.

**RESOLVED** that the minutes of the Planning Committee meeting held on 29<sup>th</sup> June 2020, be approved as a correct record.

17/20 **UPDATES TO PLANNING APPLICATIONS REPORTED AT THE MEETING (TO BE CIRCULATED PRIOR TO THE START OF THE MEETING)**

The Chairman confirmed with Members that they had received and read Committee Update 1 and 2, which had been published and circulated to Planning Committee Members prior to the commencement of the meeting.

18/20

**19/01544/FUL - CONTINUED USE OF LAND AND FARM BUILDINGS AS A FARM BASED RURAL EDUCATIONAL AND INTERPRETATION VISITOR CENTRE WITH ASSOCIATED FACILITIES INCLUDING VISITOR PARKING. DEVELOPMENT TO INCLUDE THE RETENTION OF OUTDOOR PLAY EQUIPMENT, TOILET BLOCKS, ANIMAL ENCLOSURES, SHELTERS AND FENCING, THE WALL FILLING THE FORMERLY OPEN SIDED ELEVATION OF THE SOUTHERNMOST BUILDING, PEDESTRIAN LINK BETWEEN THE CAFÉ/PLAY BARN AND WINTER BARN AND STEEL WALLING ADJACENT TO THE VISITOR PARKING AREA. RETENTION OF A MOBILE OFFICE BUILDING FOR A TWELVE MONTH PERIOD - SEAFIELD FARM, SEAFIELD LANE, BEOLEY, B98 9DB - MR M. ATTWELL**

Officers reported that further representations had been received, as detailed in the published Update Reports 1 and 2, copies of which were provided to Members and published on the Council's website prior to the commencement of the meeting.

Officers further reported that in the event of the application being approved, the Highway Authority had recommended that, an additional planning condition be included requiring the overspill car park to be properly surfaced in a bound material and properly drained; as detailed in Committee Update 1, page 1.

Committee Update 2 highlighted that the applicant and Local Residents Group had submitted Counsel Opinions in relation to the development. In response to these, officers had sought independent legal advice on behalf of the District Council. All three documents were circulated to Members in advance of the meeting and placed on the Council's website. The two Counsel opinions were considered along with the independent legal advice sought and officers concluded that the committee report was sound and required no changes. A petition from Local Residents Group was received on 31 July 2020, as detailed in Committee Update 2.

Officers provided a detailed presentation of the application and in doing so informed the Committee that the Application was for continued use of land and farm buildings as a farm based rural Educational and Interpretation Visitor Centre with associated facilities as detailed on page 5 of the main agenda report.

The proposal, on Green Belt designated land, was inappropriate development and that by definition should not be approved except in very special circumstances. The Council found that the proposal would not represent sustainable development, and other material considerations did not outweigh the conflict with the Bromsgrove District Plan.

The proposal would be contrary to Bromsgrove District Plan Policies BDP1.4 a), BDP13.1 e), BDP15.1 a) and c), BDP 16.6, BDP22.1 c) and Paragraph 84 of the National Planning Policy Framework. No very



# Agenda Item 3

Planning Committee  
3rd August 2020

special circumstances existed or had been put forward that would outweigh the identified harm to the Green Belt.

At the invitation of the Chairman, Ms. S. Griffiths, on behalf of residents, addressed the Committee in objection to the Application. Mr. B. Davies, the Applicant's Agent, on behalf of the Applicant; and Councillor A. B. L. English, in whose Ward the Site was located also addressed the Committee.

During the debate Members commented on the points made by Councillor A. B. L. English, Ward Member, during her address to the Committee. Members raised several questions with regard to the four reasons for refusal, as detailed on page 21 of the main agenda report.

Members further commented that a farm based rural Educational and Interpretation Visitor Centre would not be possible in a sustainable urban area, furthermore the proposed site was in close proximity to Birmingham. Members also noted that the proposal highlighted that the existing buildings would be used.

Members noted the suggested additional planning condition from the Highways Authority in respect of the overspill car park; and sought advice from officers, with regard to a hybrid hard/soft surfacing landscaping condition.

Following further debate Members were in agreement that the proposal would not cause harm to Green Belt and were therefore of the opinion that the proposal was not inappropriate development in the Green Belt and would not have an impact on the openness of the Green Belt. Councillor P.J. Whittaker highlighted that the development was appropriate because it involved the reuse of buildings and that the small amount of play equipment and hutches and fencing would mean that openness was retained. Members also considered the development to be appropriate development because any Green Belt harm arising from the overspill car park could be sufficiently mitigated by landscaping.

Members went on to further discuss suitable conditions in the event of planning permission being granted. This included a scheme of hard and soft landscaping for the overspill car park, to include the provision of sympathetically constructed and drained hard surfacing for visitors to park, akin to sympathetic visitor parking schemes found at National Trust properties, and provision of acoustic boundary fencing to mute the noise of the carpark for the benefit of residents living at Seafeld Lodge.

Following on from this discussion, an alternative recommendation to grant the application, with delegated powers to allow officers power to impose other appropriate general planning conditions, was agreed.

**RESOLVED** that Planning Permission be granted as follows:

# Agenda Item 3

Planning Committee  
3rd August 2020

- a) Provision of a scheme of hard and soft landscaping for the overspill car park, to include the provision of sympathetically constructed and drained hard surfacing for visitors to access and park, and provision of acoustic fencing (including design specification) along the boundary of Seafield Lodge; and
- b) Appropriate general planning conditions.

In response to Members, officers clarified that whilst Councillor A. B. L. English, Ward Member had requested for the application to be brought to committee for determination, this would have happened automatically, as required under the Council's Scheme of Delegation, because the development consists of the provision of 1000 square metres or more of floor space.

Members were also advised that the status of the application was that of a Major application.

Members noted the Planning Officer's further comment that he would have to seek clarification on the provisions of The Town and Country Planning (Consultation) (England) Direction 2009 with regard to this application.

19/20

**20/00521/FUL - EXTENSION TO EXISTING DATA HALL SET UP. NEW SELF CONTAINED DATA HALL - LAND AT, THE COFTON CENTRE, GROVELEY LANE, COFTON HACKETT, BIRMINGHAM, WORCESTERSHIRE - MR. I. BERRY**

Officers provided a detailed presentation and in doing so, informed the Committee that the planning application sought permission for the erection of a single storey data centre which will be operated by ATOS. The application site was located within Cofton Centre which had been allocated as Designated Employment Land within the Bromsgrove District Plan 2011-2030 as well as the Longbridge Area Action Plan. The existing site was an undeveloped plot within the business park. The application will assist in the retention of the existing 15 employees.

Officers drew Members' attention to page 42 of the main agenda report with regard to residential amenity, and that the proposal was set a significant distance away from the nearest residential properties to be considered to have no significant impacts regarding noise levels.

**RESOLVED** that Planning Permission be granted subject to the Conditions as set out on pages 43 to 44 of the main agenda report.

The meeting closed at 7.30 p.m.

Chairman

Name of Applicant	Proposal	Expiry Date	Plan Ref.
Adam Food Services Limited	Proposed Change of Use from B1 to B8 with detached cold storage building to rear and erection of three metre high timber fence panels to outer perimeter of private service road to, and enclosing rear yard/parking area  30 The Avenue, Rubery, Birmingham, Worcestershire, B45 9AL	26.08.2020	20/00479/FUL

**RECOMMENDATION:** That planning permission be Refused

## 1.0 Consultations

### **WRS Air Quality – NO Objection**

Further to your consultation request dated 22nd June 2020 we have reviewed the submitted proposals and our records.

We have no comments to make in relation to the proposal and local air quality management

### **WRS Noise - NO Objection**

Noise: The submitted noise assessment appears satisfactory and predicts, with the implementation of the recommended noise mitigation measures, that noise from the premises should not adversely impact the nearest noise sensitive receptor(s).

The recommended noise mitigation measures relating to the acoustic fence, the repositioning and acoustic enclosure of the rear external condenser unit and the acoustic enclosing of the other condensing unit(s) and the use of white noise reversing beepers for the forklift truck and any HGV delivering to the site should be conditioned. Additionally, you may wish to restrict HGV deliveries to a maximum of one per hour, as proposed in the noise assessment, and condition that no HGV deliveries shall be made before 08:30 / 09:00hrs.

### **WCC Highways - NO Objection**

Worcestershire County Council acting in its role as the Highway Authority has undertaken a full assessment of this planning application. Based on the appraisal of the development proposals the Transport Planning and Development Management Team Leader on behalf of the County Council, under Article 18 of the Town and Country Planning (Development Management Procedure) (England) Order, 2015 has no objection subject to conditions.

The justification for this decision is provided below.

I have no highway objections to the proposed change of use from B1 to B8 with detached cold storage building to rear and erection of three-metre-high timber

fence panels to outer perimeter of private service road to, and enclosing rear yard/parking area.

The existing site is in a commercial location off an unclassified road, the site benefits from an existing vehicular access with good visibility which is located at the end of the Avenue.

The proposal includes a 3m high timber fence, this does not affect the vehicular visibility - no highway implications.

The Highway Authority has undertaken a robust assessment of the planning application. Based on the analysis of the information submitted the Highway Authority concludes that there would not be an unacceptable impact and therefore there are no justifiable grounds on which an objection could be maintained.

Conditions:

Conformity with Submitted Details

The Development hereby approved shall not be brought into use; parking to be provided as shown on drawing 1 Planning.

Reason: To ensure conformity with submitted details.

**Cadent Gas Ltd – NO Objection**

All developers are required to contact Cadent's Plant Protection Team for approval before carrying out any works on site and ensuring requirements are adhered to.

**Neighbour Representations**

At the time of preparing this report 31 representations raising objection have been received from the local community. These raise the following issues:

**EFFECTIVENESS OF PROPOSED MITIGATION**

- The fencing will not form an effective barrier to noise
- The application does not detail the acoustic specification of the fence proposed
- The fencing will be visually intrusive
- It is unclear whether screening from the existing established trees/shrubbery would be retained or need to be removed to facilitate erection of the fence
- There is a difference in levels between the application site and neighbouring gardens which would mean the relative height of any acoustic fence would be little higher in places than the existing fencing, such that it would be ineffective.

**REPEAT APPLICATION**

- A second application should not have been entertained

**INTRUSION**

- The relative height of lorry cabs and tailgates of HGVs afford overlooking into private gardens when deliveries are taking place resulting in intrusion and loss of privacy

## **NOISE**

- A noise survey was carried out over a couple of days when the company were obviously on best behaviour. This was in winter when the air cooling/refrigeration was handling 3c-7c. Not a summers day at 28c as we have just had.
- Constant droning noise from refrigeration unit fans cooling the unauthorised cold store causing nuisance and disturbance to sleep of local residents which is particularly detrimental in the summer when windows need to be open for ventilation.
- Being woken up at the crack of dawn by loud talking, shouting, laughing and music from the premises
- Noise from the refrigeration units on the lorries when stationary in the service yard.
- The yard acts as an amplification chamber for noise
- The use of forklift trucks emitting a continuous bleeping noise when in reverse.
- Noise from diesel truck engines running adjacent to residential properties with resultant loss of residential amenity and impeding use of gardens in summer
- Employees and delivery/distribution drivers shouting to one another in yard.
- Lorries park in The Avenue in the hammerhead adjacent to residential gardens and usually have their diesel engines running while delivering adding to noise and air pollution
- The sentiment that neighbouring residents should have the right to enjoy their gardens any time during the week, not just on a Sunday - and not be constantly subjected to the level of noise that is currently coming from the site is a frequent theme of responses.
- Sanctuary Acoustics report state that some the higher noise levels are at location 1 on their plan and was noted as highly perceptible just inside the front side entrance. The noise occurs in the turning point at the top of The Avenue where the trucks unload adjacent to the rear gardens of 44,46,48,50 and 52 Richmond Road. There are no proposals in this report to mitigate this.
- The times are clearly not business hours as these lorries can start from 6.00am onwards and not stopping on evening as they can still be arriving after 7pm and not limited to the 8.00am to 11.00am time slot as suggested in the applicant's supporting statement.

## **AIR Pollution**

- A chimney on the premises has been emitting smoke.
- Rubbish is often burnt on the premises causing nuisance
- The HGV's have diesel powered refrigerated units pumping out noise and fumes. This would not be permitted in the vicinity of a school yet it is happening within 20 meters of a number of senior citizens and other people with serious underlying health issues.

## **WORKING HOURS**

- At the moment Adams food are working longer hours and days than they state in their application.
- Deliveries as early as 05:00am in the morning and as late 07:00 pm on Saturday nights. On a number of occasions there has been late evening activity between the hours of 10:30pm and midnight. This is contrary to the stated hours of working for which permission is sought.

- Working at unsociable hours gives no confidence to local residents that any conditions limiting hours of working/deliveries would be adhered to.
- The proposed hours of working from 07:00am to 06:00pm Mon to Friday and 07:00am to 01.00pm Sat are not informed by the proximity to neighbouring residential properties but only predicated on the needs of the business.
- Staff are present on site to take the deliveries that arrive before 07:00am and after 07:00pm suggesting they are residing on the premises over night.
- The supporting statement claims one frozen food delivery per day occurs. This is misleading. For example on Thursday 18th June there were 7 deliveries recorded, the first arriving at 10.00am and the last leaving at 4.34pm deliveries last between 15 mins and 2, and a half hours. Also on Monday 29th June, 5 deliveries started at 7.15am - 8.am 7.38am - 8.am and 8.10am 8.45am this meant 3 HGV's were in the Avenue at the same time.

### **LIGHT Pollution**

- The lights are left on in the building all night.

### **OPEN STORAGE**

- The storage of pallets above the heights of adjacent boundaries is not only unsightly but also dangerous, an increased fire hazard and compromises security as it provides a means to scale fences of otherwise secure gardens.
- The service yard is poorly organised and maintained, with rubbish and unorganised pallet storage

### **UNSUITABLE ROAD INFRASTRUCTURE**

- The Avenue, Callowbrook Lane and surrounding streets are not designed for large articulated lorries which have great difficulty (trying to) turn left out of The Avenue onto Callowbrook Lane. The safety barrier of the A38 dual carriageway has been damaged on numerous occasions.

### **INTENSIFICATION**

- The proposal represents an inappropriate intensification of a premises on an estate intended for light industry rather than storage and distribution.
- Former business uses did not generate the level of activity and associated noise which characterises this business type.

### **WILDLIFE**

- Local wildlife will be affected. There are badgers, foxes and newts in the area.

### **LOSS OF LIGHT**

- The 3 metre fence will block light to gardens

### **OTHER ISSUES**

- Negative impact upon property values
- Loss of View
- Unsafe and unsecured Gas bottle storage

## 2.0 Relevant Policies

### **Bromsgrove District Plan (BDP)**

BDP1 Sustainable Development Principles  
 BDP14 Designated Employment  
 BDP16 Sustainable Transport  
 BDP19 High Quality Design

### **Bromsgrove District Council High Quality Design SPD Adopted June 2019 (BDC HQD SPD)**

The Supplementary Planning Document (SPD) supplements the Districts' adopted Development Plan and therefore reflects the Council's policies. As such it is a material consideration in the determination of planning applications and will be given substantial weight in the decision making process.

### **Others**

NPPF National Planning Policy Framework (2019)

## 3.0 Relevant Planning History

B/486/61	Proposed Warehouse and Offices	Granted	12.10.1964
BU/317/65/O*	Extension to factory and site for car parking / and or recreational purposes	Granted	15.07.1965
B12245	Change of Use from Warehousing to Light Industrial Use	Granted	13.08.1984
B19006	Parking Area to frontage	Granted	12.03.1990
18/01538/FUL	Retrospective application for erection of cold storage facility to rear of premises	Withdrawn	11.03.2019
19/00328/FUL	Retrospective application for change of use from B1 (light industrial) use to B8 (storage and distribution) use, and erection of associated cold storage facilities to the rear of the premises	Refused	08.11.2019

Note: \* Part of the land relating to No.28 The Avenue was acquired and incorporated into the ownership of No.30 in 2018 , hence the relevancy of BU/317/65/O.

## 4.0 Assessment of Proposal

### 4.1 **Site Location**

The application site is situated in Rubery to the north of the A38 Birmingham Road. The application relates to No.30 The Avenue, a business premises situated at the far end of a small industrial estate accessed via residential streets. The industrial estate is flanked on 3 sides by established residential development.

No.30 The Avenue is a single storey industrial unit with offices to the front, a service road to the south, which abuts the rear gardens of properties fronting Richmond Road and a service yard which abuts the rear gardens of properties on Richmond Road and Barrington Road. The application site also comprises land to the rear of the premises, formerly part of No.28, an adjacent industrial unit, which was acquired by the applicant in 2018.

## 4.2 Background

- 4.2.1 The application before members followed an investigation by the Council's Planning Enforcement Officers concerning the erection of a cold store to the rear of the premises.
- 4.2.2 A retrospective application was submitted for the cold store having determined that it fell outside the permitted development parameters for outbuildings within the curtilage of business premises in terms of both its floor area and height.
- 4.2.3 Following receipt of that application, it became apparent that the change of use from B1 (light industrial) use to B8 (storage and distribution) use also required planning permission because the resultant floor area of the whole building exceeded the 500sqm floor area threshold for 'permitted' changes of use from B1 use to B8 use without requiring permission. Accordingly, a fresh application was submitted which sought retrospective permission for both the use and associated cold store development.
- 4.2.4 That application was refused by Planning Committee on 08.11.2019 for the following 2 reasons:
- 1. The application fails to assess and propose any measures which seek to mitigate adverse impacts in terms of noise, fume and light pollution arising as a consequence of the B8 use, and demonstrate that such mitigation measures would not themselves have an adverse impact upon the residential amenity enjoyed by the occupiers of neighbouring properties The proposal is therefore contrary to Policies BDP1, BDP14 and BDP19 of the Bromsgrove District Plan.*
  - 2. Notwithstanding Reason 1, the proposed B8 use would; by reason of its operational parameters, the proximity of its service yard, cold store, and associated access, to neighbouring dwellings and their associated private gardens in Richmond Road and Barrington Road; constitute an incompatible use and have a demonstrably adverse impact upon the residential amenity enjoyed by the occupiers of those properties in terms of external noise and fumes arising from vehicles and refrigeration units, and associated disturbance from loading and unloading contrary to Policies BDP1, BDP14 and BDP19 of the Bromsgrove District Plan.*



## 4.3 Proposal

- 4.3.1 Following the refusal of the previous application, the applicant commissioned an independent noise consultant to undertake a survey and report, which makes a series of recommendations seeking to address the previous concerns regarding noise. This report has been subsequently reviewed by Worcestershire Regulatory Services. They have raised no objection subject to implementation of the recommendations.
- 4.3.2 On their application form, the applicant proposes hours of working from 08:00am - 05:00pm Monday to Friday (a 1hr later start and 1hr earlier finish than previously proposed) and 08:00am – 01:00pm on Saturdays, (previously 07:00 until 18:00) and 08.00am until 01:00pm on Sundays and Bank holidays (no Sunday/Bank holiday working was previously proposed).In their supporting statement they state that in practice deliveries and distribution would be between 08:00 and 11.00.
- 4.3.3 The business is a distribution centre catering for restaurant and food outlets. Part of the business involves distribution of frozen foods and therefore required cold storage facilities. The cold store, for which retrospective permission is also sought measures 25m long, by 9.5m wide by approximately 6 metres tall and has a flat roof and is composed of white panels with a smooth finish.
- 4.3.4 Subject to obtaining planning permission, the applicant proposes to implement the recommendations of their consultant's Noise Assessment report which includes -
- (i) The lowering of the rear air handling unit and the use of an acoustic shroud to enclose the air handling unit
  - (ii) The erection of three metres high fencing to the perimeter boundary, the new three-metre-high fencing is to replace the existing chain wired linked fencing which is erected solely on Adam Food Store site and not on the adjoining owners land. To the west side where the access drive is located there is a difference of ground level ranging from 800mm to 1200mm with the lower ground level on Adam Food Store side.
  - (iii) The reversing beepers and sirens with current impulsive noise sources is to be replaced with white noise sources which are less intrusive.
- 4.3.5 The submitted plan details the fence extending from a point adjacent to the loading/unloading bay in front of the gates to the yard, along the south-west boundary with properties on Richmond Road and north-west boundary with properties on Barrington Road and the north-east boundary between the neighbouring industrial unit, serving to enclose the service yard.

## 4.4 Main Issues

- 4.4.1 The main issues to consider in this case are:
- Principle of Development
  - Residential Amenity
  - Highway Safety
  - Impact upon Character and Appearance

## 4.5 Principle of Development

- 4.5.1 The site lies within an established industrial estate, and designated employment area, having a range of business uses. The industrial estate was first developed in the early 1960's for B1 light industrial uses.
- 4.5.2 B1 uses are defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) as *“being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.”* Uses within this category can generally co-exist with residential uses without harm to residential amenity.
- 4.5.3 In terms of the adopted development plan, BDP14.2 states that *“Proposals for the expansion, consolidation or extension to existing commercial and industrial uses in non Green Belt will need to **ensure the scale and nature of the activity is appropriate for the area in which it is located.**”* (my emphasis)  
Whilst situated within a designated employment area, the acceptability of any proposal in planning terms must assess the impact of the proposed use in relation to its particular context and relationship to adjacent land uses.

## 4.6 Residential Amenity

- 4.6.1 *Policy BDP1 part 1.4 criterion ‘e’ states that in considering all proposals for development in Bromsgrove District regard will be had to the “Compatibility with adjoining uses and the impact on residential amenity;”*
- 4.6.2 The assessment of the proposal must relate to the use rather than the specific operational characteristics of the business, because permission is being sought for a B8 use, which would run with the land, irrespective of who is applying.
- Air Pollution*
- 4.6.3 Policy BDP1 part 1.4 criterion ‘b’ states that in considering all proposals for development in Bromsgrove District regard will be had to -  
*“Any implications for air quality in the District and proposed mitigation measures;”*
- 4.6.4 Similarly Policy BDP19 criterion ‘s’ states that -  
*“In relation to air quality all new developments with a floor space greater than 1000sqm or 0.5 hectare or residential developments of 10 or more units should not increase nitrogen dioxide (NO2), particulate matter (PM10) and carbon dioxide (CO2) emissions from transport and should be accompanied by an assessment of their likely impact of the development on local air quality and comply with current best practice guidance”*
- 4.6.5 The application is not accompanied by any assessment of the impact upon air quality despite the fact that the resultant floor area of the premises is 2100 sqm.

### *Privacy*

- 4.6.6 The cold store contains no windows and the external arrangement of the principal building has not changed. Some respondents have suggested that the relative height of lorries has afforded overlooking from cabs and tailgates over the height

of rear boundary fences. That could be mitigated to some degree by the proposed 3m high acoustic fence.

Impact of Operational development on outlook, sunlight and daylight

- 4.6.7 Permitted Development Rights allow extensions to industrial buildings or warehouses up to 200sqm in floor area and 5 metres high where within 10 metres of any boundary (without the need for planning permission) These limits are not hard limits, so it does not follow that any building which exceeds those limits is automatically unacceptable. The limits apply only to what can be undertaken without planning permission, but demonstrate that a building of similar, albeit smaller scale could be erected in the same position without requiring planning permission.
- 4.6.8 Whilst the building can be seen from the rear of residential properties on Richmond Road and Barrington Road, it sits more than 15 metres away from the common boundary and some further 20 metres away from the principal windows of those properties and is seen against the backdrop of the host building which is higher. It is considered that the cold store has no unacceptably adverse impact upon amenity in terms of its height, impact upon sunlight or its visual appearance to the extent that would warrant refusal on those grounds.
- 4.6.9 The ground levels of the application site are lower than the adjacent gardens, and consequently the height of the fence when viewed from the perspective of properties on Richmond Road would not appear 3 metres tall. Furthermore, the gardens of residential properties on Richmond Road and Barrington Road, adjoining the site are 20 metres and 15 metres respectively. Accordingly, a fence constructed at 3 metres based on ground levels within the application site is unlikely to have an adverse impact upon sunlight, daylight or outlook, given its height relative to pre-existing boundary treatments set at the higher ground level of neighbouring gardens.

Noise Sources and Mitigation

- 4.6.10 Policy BDP19 criterion 't' states that  
*"Development proposals should maximise the distance between noise sources (for example motorways) and noise sensitive uses (such as residential), whilst also taking into account the implications of the existing night-time use of the locality;"*
- 4.6.11 Paragraph 6.2.14 of the BDC HQD SPD states that  
*"The scale, nature and frequency of vehicles that service industrial businesses can be a major source of conflict with neighbouring activities, including other industrial uses. The design objective is to manage noise, disturbance and potential danger from deliveries, servicing and storage in order to reduce the impact on neighbours, the natural environment and the general appearance of the area. The best place for this to occur is behind frontage buildings, or to the rear of the main building."*
- 4.6.12 Paragraph 6.2.16 goes onto qualify that *"The location of the servicing areas, routes in and out of the site and location of mitigation measures combined should reduce the impact of noise or any detrimental effect on air quality."*

- 4.6.13 The previous application made no attempt to mitigate the impact of noise arising from the use which included - activity in the yard, the air handling unit and fork lift truck reversing alarms and not least delivery vehicles with engines and refrigeration units running. In the latest application, the applicant proposes to adopt the mitigation measures recommended by their noise consultant in order to address these matters.
- 4.6.14 The applicant proposes the use of white noise alarms on the forklift trucks. These cause less disturbance than conventional beeping alarms, but the reversing alarms on vans and HGVs from those delivering and collecting product cannot be controlled by a planning condition as that is outside the scope of control of the applicant and the Local Planning Authority.
- 4.6.15 The proposed lowering of the rear air handling unit and the use of an acoustic shroud to enclose it could mitigate noise from that source and the completion of that work could be secured by a condition.
- 4.6.16 The configuration of the building, which occupies almost all of the plot width, has a rear yard accessed via a narrow 3 metre wide access abutting the rear gardens of residential properties (no.s 54-68 evens) fronting Richmond Road. There is no alternative access option, so any delivery or collection traffic unloads or loads adjacent to the rear garden boundaries adjacent to which the main loading / unloading bay door is located.
- 4.6.17 The applicant observes that *“The loading of the vans is undertaken at the front of the premises and not at the rear where the cold storeroom is located.”* In that respect, it is considered that the benefit of the acoustic fence in mitigating the impact of delivery and collection vehicle noise would be limited, as that activity takes place at the front of the premises and not from the rear service yard.
- 4.6.18 Whilst a condition limiting proposed hours of working could be imposed and enforced, the number of deliveries and collections cannot be realistically monitored or controlled. Timings of deliveries by suppliers and collections by customers are not wholly within the control of the applicant as they involve third parties.

## 4.7 Highway Safety

- 4.7.1 Policy BDP16 part 1 states *“Development should comply with the Worcestershire County Council’s Transport policies, design guide and car parking standards, incorporate safe and convenient access and be well related to the wider transport network.”*
- 4.7.2 There is no objection from the Highway Authority in relation to highway safety. Some respondents have made comments about damage to property and vehicles being allegedly attributed to vehicles associated with the site. This is however anecdotal.

## 4.8 Impact upon Character and Appearance

4.8.1 *Policy BDP1 part 1.4 criterion 'f' states that "In considering all proposals for development in Bromsgrove District regard will be had to the following: The impact on visual amenity;*

*Policy BDP19 criterion 'e' states that -"The Council will deliver high quality people focused space through: Ensuring development enhances the character and distinctiveness of the local area;"*

4.8.2 The cold store is approximately 6 metres high but is situated over 15 metres from the respective rear boundaries of properties on both Richmond Road and Barrington Road. Albeit the building might be glimpsed briefly between residential properties on Richmond Road and Barrington Road, it is not generally apparent from those public vantage point to the degree it results in visual intrusion or impacts upon the character and distinctiveness of the local area. Similarly, only a short section of fence would be visible from the public highway, (The Avenue) with the remainder only visible from the rear of surrounding residential properties.

## 4.9 Other issues

4.9.1 A number of the respondents have made reference to vehicles breaching the no waiting restriction for vehicles exceeding 7.5 tonnes between the hours of Midnight and 7am and 8pm to midnight and no waiting on Saturday or Sunday at any time. A no waiting sign generally allows a driver to briefly stop to allow a passenger to exit or enter the vehicle, but any longer periods may be deemed as waiting. The effect of the sign is limited to vehicles waiting / parking on the 'public highway' (including the carriageway, pavement, highway verge) rather than serving as an access restriction, so does not preclude access via that road to the premises during those hours, where a vehicle can pull off the highway and enter private land. Responsibility for enforcement of those restrictions does not rest with the Local Planning Authority but rather the Parking Services Unit as a civil-enforcement matter through fixed penalty notices.

4.9.2 The application is not accompanied by a tree survey. The cold store is set off the boundary and outside the root protection area of trees situated within the private gardens of surrounding properties. The erection of an acoustic fence (even at 3 metres) need not have significant implications for trees in neighbouring gardens, situated close to the common boundary with the site, mindful of the rights of the landowner to cut back overhanging branches and would not involve excavation save for post holes. It should be noted that similar works could be undertaken to erect a fence or wall, at a height of 2 metres under the permitted development rights which apply to the lawful B1 use, were an alternate user in-situ. Similarly, other occupiers of the unit for B1 use could erect a wall up to 2 metres in height without requiring planning permission.

4.9.3 The use and development for which permission is sought need not have any detrimental impact upon trees in neighbouring gardens to the extent that the preparation of a tree survey would be reasonable or of utility when considering the impacts of erecting an acoustic fence.

- 4.9.4 One respondent suggested that the proposed use represents a threat to local wildlife/habitat. The site is situated on an established industrial estate flanked by the gardens of residential properties. The only potential impact in terms of the physical development proposed would be from an acoustic fence which might act as a barrier to the movement of wildlife. It is considered that the domestic gardens of properties abutting the site are more likely to serve as such a corridor.
- 4.9.5 A number of respondents have questioned the right of the applicant to make a further application. The refusal of planning permission does not remove the applicant's right to make a further application which seeks to address those grounds of refusal. There are only two instances in which an application can be turned away by the authority. One is in the case of an application for the same development which has been recently dismissed at appeal and the second is in respect of a retrospective proposal which is subject to an enforcement notice at the time the application is made. Neither scenario applied in this case.

## 5.0 Conclusion

- 5.1 The application proposes a business use on an industrial estate, but one which was not designed or intended for intensive storage and distribution purposes serviced by large HGVs. The fact that this site and its service yard is flanked on two sides by residential development and the principal access to the loading bay is adjacent to the gardens of residential properties compounds the harm to amenity.
- 5.2 Notwithstanding the proposals recommended in the report commissioned by the applicant, your officer's remain unconvinced that the measures recommended by the noise consultant would satisfactorily mitigate the harm to residential amenity and remain of the view that the proposal is not compatible with adjacent residential uses and that planning conditions would not provide adequate mitigation to the negative impacts of the use.

## 6.0 RECOMMENDATION: That planning permission be Refused

### Reasons for Refusal

1. Notwithstanding the proposed mitigation measures, including revised start times the proposed B8 use would; by reason of its operational parameters, the proximity of its service yard, cold store, and associated access, to neighbouring dwellings and their associated private gardens in Richmond Road and Barrington Road; constitute an incompatible use and have a demonstrably adverse impact upon the residential amenity enjoyed by the occupiers of those properties in terms of external noise and fumes arising from vehicles and refrigeration units and associated disturbance from loading and unloading. That harm would be compounded by proposed working on Sundays and Bank Holidays. Accordingly, the proposal is contrary to Policies BDP1, BDP14 and BDP19 of the Bromsgrove District Plan.

**Case Officer:** Simon Jones Tel: 01527 548211

Email: [simon.jones@bromsgroveandredditch.gov.uk](mailto:simon.jones@bromsgroveandredditch.gov.uk)

# 20/00479/FUL

Proposed Change of Use from B1 to B8 with detached cold storage building to rear and erection of three metre high timber fence panels to outer perimeter of private service road to, and enclosing rear yard/parking area

30 The Avenue Rubery B45 9AL

Recommendation: Refuse
















# Site Location

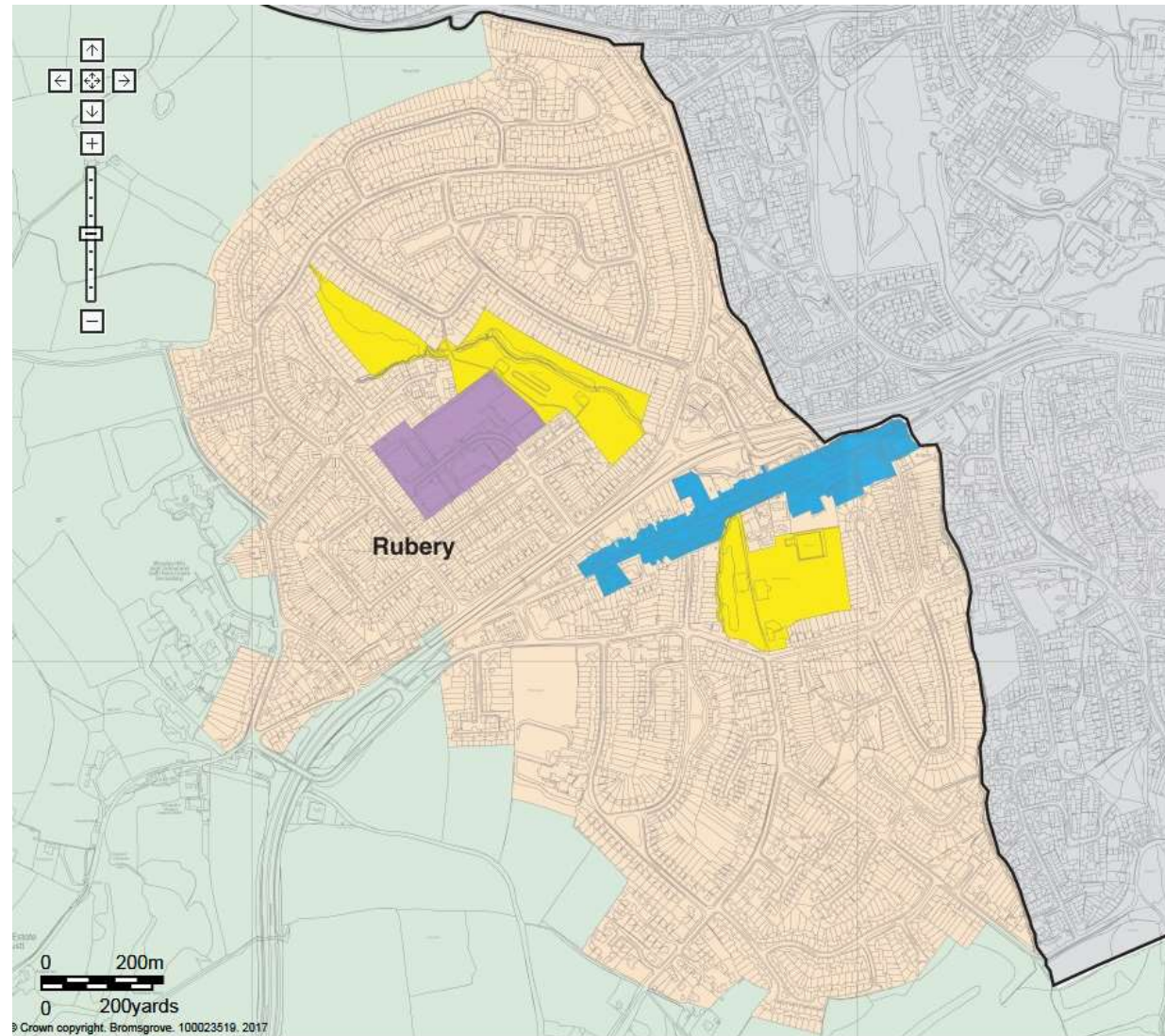




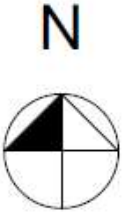
# Extract from Bromsgrove District Plan Map

## Legend

-  Residential Development Sites **BDP5A , BDP5B , RCBD1**
-  Employment Development Sites **BDP5B**
-  Longbridge AAP **BDP13**
-  District Boundary
-  Employment **BDP13 , BDP14**
-  Green Belt **BDP4**
-  Conservation Area **BBDP20**
-  Open Space **BDP25**
-  Residential Area **BDP19 , BDP7**
-  Shopping **BDP18**
-  Village Envelopes **BDP4**
-  Town Centre Zone **BDP17**
-  Primary Shopping Streets **BDP17**
-  Secondary Shopping Streets **BDP17**
-  Development Opportunities **BDP17 , BDP19**

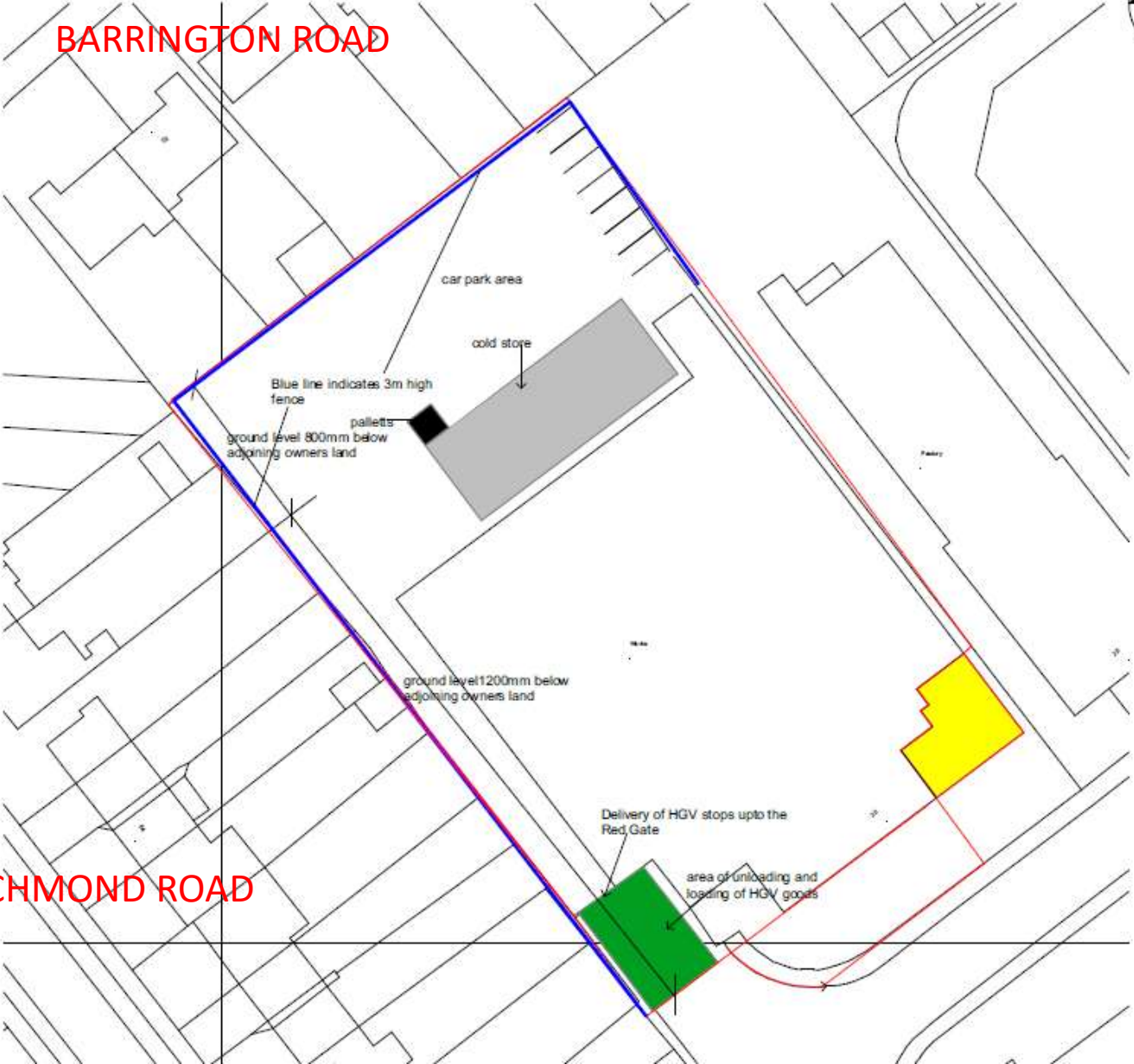


# Site Plan

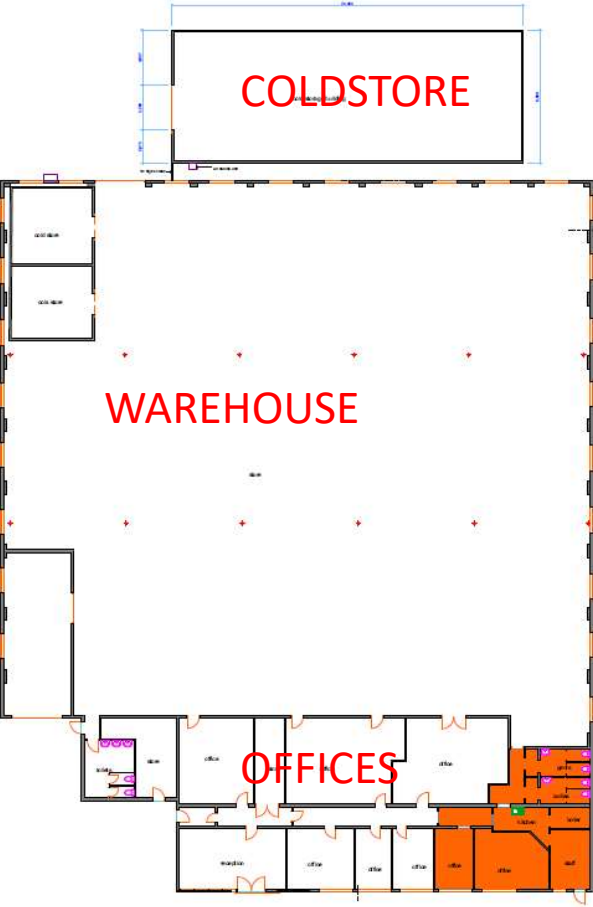


BARRINGTON ROAD

RICHMOND ROAD



# Floor Plan



# Elevations



Existing Side Elevation

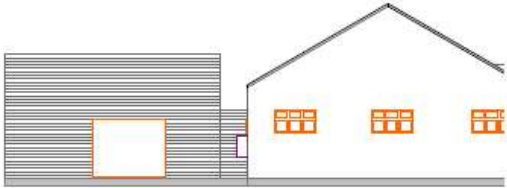


Existing Front Elevation

Before Development



Proposed Side Elevation



Proposed Front Elevation

PROPOSED (Current situation on site)

# View from junction of Callowbrook Road looking north up The Avenue



# View of premises from The Avenue



# View looking north from The Avenue towards loading/unloading bay



# View looking north west along access to rear service yard





# View looking towards west corner of yard



# View of Cold Store to rear of premises



# View of yard and pallet storage



# View looking east towards entrance to cold store



# Interior view of cold store



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