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BROMSGROVE DISTRICT COUNCIL

MEETING OF THE PLANNING COMMITTEE

TUESDAY 6TH AUGUST 2024

AT 6.00 P.M.

PARKSIDE SUITE, PARKSIDE, MARKET STREET, BROMSGROVE,
WORCESTERSHIRE, B61 8DA

MEMBERS: Councillors H. J. Jones (Chairman), M. Marshall (Vice-Chairman), A. Bailes, S. J. Baxter, D. J. A. Forsythe, E. M. S. Gray, R. E. Lambert, B. McEldowney, S. R. Peters, J. Robinson and J. D. Stanley

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 9th July 2024 (Pages 7 - 20)

4. Updates to planning applications reported at the meeting (to be circulated prior to the start of the meeting)
5. 23/00922/FUL - Demolition of Function Room and Erection of 23 Apartments with associated parking provision and landscaping. Rubery Social Club, 141 New Road, Rubery, Worcestershire, B45 9JW. Mr. D. Owen (Pages 21 - 40)
6. 24/00150/REM - Reserved Matters application (Layout, Scale, Appearance and Landscaping) to outline planning permission 16/1132 (granted on appeal APP/P1805/W/20/3245111) for the erection of a retail unit and associated infrastructure within Site A, Land at Whitford Road, Bromsgrove. Hinton Properties (Midlands) Limited (Pages 41 - 62)
7. 24/00342/FUL - Part-retrospective change of use of land for the creation of 2no. Gypsy/Traveller pitches, comprising the siting of 1 mobile home, 1 touring caravan and 1 dayroom per pitch, alongside the formation of an access road and associated landscaping. Land at Junction of Blackwell Road/Alcester Road, Burcot, Bromsgrove. Mr. Loveridge (Pages 63 - 120)
8. 24/00263/REM - ARTICLE 4(1) - Removal of Permitted Development Rights to Demolish (Part 11) CONFIRMATION. Former Severn Trent Building, Alcester Road, Burcot, Bromsgrove. (Pages 121 - 136)
9. Planning Performance Information - Quarter One (1 April 2024 - 30 June 2024) (Pages 137 - 142)
10. 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.

Sue Hanley
Chief Executive

Parkside
Market Street
BROMSGROVE
Worcestershire
B61 8DA

29th July 2024

**If you have any queries on this Agenda please contact
Pauline Ross
Democratic Services Officer**

**Parkside, Market Street, Bromsgrove, B61 8DA
Tel: 01527 881406**

Email: p.ross@bromsgroveandredditch.gov.uk

Please note that this is a public meeting and will be live streamed for general access via the Council's YouTube channel.

You are able to see and hear the livestream of the meeting from the Committee Pages of the website, alongside the agenda for the meeting.

[Planning Committee Live Streaming Link](#)

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

PUBLIC SPEAKING

The usual process for public speaking at meetings of the Planning Committee will continue to be followed subject to some adjustments. For further details a copy of the amended Planning Committee Procedure Rules can be found on the Council's website.

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 Officer and will be invited to unmute their microphone and address the Committee face-to-face or via Microsoft Teams.

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

Notes:

1. Anyone wishing to address the Planning Committee on applications on this agenda must notify the Democratic Services Officer on 01527 881406 or by email to p.ross@bromsgroveandredditch.gov.uk by 12 noon on Friday 2nd August 2024.
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 face-to-face or via a Microsoft Teams invitation.

Provision has been made in the amended Planning Committee procedure rules for public speakers who cannot access the meeting via Microsoft Teams, 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 Friday 2nd August 2024.

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

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 the Live Streaming stopped.



INFORMATION FOR THE PUBLIC

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- You have access to a list specifying those powers which the Council has delegated to its Officers indicating also the titles of the Officers concerned, as detailed in the Council's Constitution, Scheme of Delegation.

You can access the following documents:

- Meeting Agendas
- Meeting Minutes
- The Council's Constitution

at www.bromsgrove.gov.uk

BROMSGROVE DISTRICT COUNCIL

MEETING OF THE PLANNING COMMITTEE

TUESDAY 9TH JULY 2024, AT 6.00 P.M.

PRESENT: Councillors H. J. Jones (Chairman), M. Marshall (Vice-Chairman), A. Bailes, D. J. A. Forsythe, E. M. S. Gray, R. J. Hunter (substituting for Councillor S. M. Evans), R. E. Lambert, B. McEldowney, J. Robinson and J. D. Stanley

Officers: Mr. D. M. Birch, Mr. A. Hussain, Mr. S. Agimal, Worcestershire County Council Highways, Mr. T. Ball, Mr. G. Boyes, Ms. R. Paget, Mr. P. Lester and Mrs. P. Ross

18/24

TO RECEIVE APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTES

Apologies were received from Councillor S. M. Evans with Councillor R. J. Hunter substituting.

19/24

DECLARATIONS OF INTEREST

Councillor A. Bailes declared an Other Disclosable Interest, in relation to Agenda Item Number 7 (Minute No 24/24) – 23/00324/FUL – Alvechurch Sports and Social Club, Radford Road, Alvechurch.

Councillor A. Bailes left the meeting room for the duration of the relevant agenda item and took no part in the Committee's consideration nor voting on this matter.

20/24

MINUTES

The minutes of the Planning Committee meetings held on 21st May and 4th June 2024, were received.

With regards to the minutes of the meeting held on 21st May 2024, Councillor E.M.S Gray asked for the following amendments: -

Page 7, Minute No. 3/24 typographical error, respectively and not respectively.

Page 10, Minute No. 7/24, paragraph be amended to read: -

Agenda Item 3

Planning Committee
9th July 2024

Members expressed some concern with the width of the access in particular with regards to the fire services access as they were not consulted as part of the application. Officers explained that they were not a statutory consultee, to which Members disagreed in that they believed they should be consulted with ~~on~~ any application where the proposed highway was under 3.7m. It was further detailed that the current width of the access was 3.3m and was poorly lit and without a footpath, therefore, should these issues be rectified it would make the access much smaller and less than the 3.2m width required by the Worcestershire County Council Streetscape Design Guide.

Councillor M. Marshall asked for the following amendments: -

Page 7, Minute No. 4/24 typographical error, Councillor M. Marshall and not Councillor C. Marshall.

Page 8, Minute No. 7/24 typographical error, Councillor M. Marshall and not Councillor M. Marchall. Also, that the paragraph be amended as follows: -

Councillor M. Marshall withdrew to the public gallery prior to the Officer's presentation and left the meeting room after addressing the Committee, as the Ward Councillor, under the Council's public speaking rules.

Page 10, Minute No. 7/24. Councillor M. Marshall felt that the Officer's Decision Notice, available on Public Access, reflected more accurately the comments made by Members and should therefore be included within the minutes, as follows: -

The proposed development would, by reason of its consequential displacement of vehicles to the public highway, have a severe residual cumulative impact upon the surrounding road network. Accordingly, it would be contrary to Policy BDP1 and paragraph 115 of the National Planning Policy Framework.

RESOLVED that, subject to the amendments, as detailed in the preamble above that the minutes of the Planning Committee meetings held on 21st May and 4th June 2024, be approved as correct records.

21/24

UPDATES TO PLANNING APPLICATIONS REPORTED AT THE MEETING

The Chairman announced that a Committee Update was circulated to Members prior to the meeting commencing, with a paper copy also made available to Members at the meeting.

Members indicated that they had had sufficient time to read the contents of the Committee Update and were happy to proceed.

22/24

TREE PRESERVATION ORDER (TPO 2) 2024 - TREES ON LAND AT THE OASIS, HAGLEY, WORCESTERSHIRE, DY9 0AT

Agenda Item 3

Planning Committee
9th July 2024

The Committee considered a report which detailed proposals to consider the confirmation without modification Tree Preservation Order (TPO) (N0.2) 2024, relating to two trees on land at The Oasis, Hagley, Worcestershire, DY9 0AT.

The Tree Officer provided a detailed presentation, and in doing so drew Members' attention to the recommendation, as detailed on page 23 of the main agenda pack.

The officer further informed the Committee that the provisional order was raised on 8th February 2024 following on from an initial enquiry made, by a tree surgeon, regarding the status of two Cedar trees, situated within a grassed area at the southern end of The Oasis's access road as detailed at Appendix 1 to the report.

The officer drew Members' attention to the objections raised, as detailed at Appendices 2 and 3 to the report; in respect of the provisional TPO having been raised. A further neutral letter was also received, as detailed at Appendix 4 to the report.

The officers' comments in relation to the points raised in the objections were detailed on page 24 of the main agenda pack and referred to: -

- Age and size of the trees.
- Waterlogged soils and movement of the water table.
- Shading out of gardens.
- Needle drop and acidification of soils.

The officer highlighted that the trees were coming into full maturity and their growth would be expected to slow considerably as they matured. There was no evidence of any structural deficit or disease, as they were reasonably young trees. There was no evidence of waterlogged soils. The trees were very prominent to the residents of Willow Close, The Greenway, Cavendish Drive, The Oasis, and highway users and pedestrians.

Members then considered the TPO.

In response to a query from the Committee on Appendix 4 being a neutral response, it was explained that the letter did not make any negative comments or any objections to the proposed TPO.

The officer further responded to a query about there being no Tree Evaluation Method for Preservation Orders (TEMPO) included with the report, which would have provided further evidence for Members consideration. Members were informed that following the guidance tool used it was not felt necessary to include a TEMPO for this TPO. The trees had more than 40 years of life. However, this was a valid point and the officer agreed to be mindful to include a TEMPO with any future reports they presented to the Committee.

A TPO did not prevent work being carried out on the trees, an application to carry out appropriate work on the trees could be submitted to the Council for consideration and subsequent approval being agreed prior to any work being carried out on the trees.

The officer clarified that as stated in the report, that an initial enquiry was made by a tree surgeon. The tree surgeon had been asked by a management company to remove the trees. The officer then met the tree surgeon and the management company's agent on site. The agent was not bothered or concerned with a TPO being issued. It was genuinely seen as appropriate to issue a TPO on trees with no threat against them, in this instance a TPO was raised in order to stop the trees from being felled.

The officer and the Senior Arboricultural Officer further responded to queries on liability and potential liability to the Council should Members be minded to confirm without modification TPO (No.2) 2024. In terms of liability and risk, if officers were made aware of a serious problem and chose to ignore it; then the Council would be liable. Officers had to consider the probability of something happening.

The Senior Arboricultural Officer further commented that whilst it was recognised that trees required a certain level of approved maintenance and frequency of any maintenance, trees were pruned / crowned in an appropriate level in accordance with British Standards (BS) guidance.

On being put to the vote, it was

RESOLVED that provisional Tree Preservation Order (No.2) 2024 relating to two Cedar trees on land at The Oasis, Hagley, Worcestershire, DY9 0AT, be confirmed without modification and made permanent, as raised, and shown at Appendix 1 to the report.

23/24

TREE PRESERVATION ORDER (TPO 3) 2024 - TREE ON LAND AT 21 AND 23 HAWTHORNE DRIVE, HOLLYWOOD, B47 5QT

The Committee considered a report which detailed proposals to consider the confirmation without modification Tree Preservation Order (TPO) (N0.3) 2024, relating to trees on land at 21 and 23 Hawthorne Drive, Hollywood, B47 5QT.

The Senior Arboricultural Officer provided a detailed presentation, and in doing so drew Members' attention to the recommendation, as detailed on page 37 of the main agenda pack.

Members were informed that the provisional order was raised on 8th February 2024, as shown at Appendix 1 to the report; in response to an indication received by the Council that the owner of the tree at 23 Hawthorne Drive had intended to fell the Oak tree on that property.

Agenda Item 3

Planning Committee
9th July 2024

A Tree Evaluation Method for Preservation Orders (TEMPO) was carried out on the trees, as detailed at Appendix 2 to the report. The TEMPO showed that the trees had accrued a score worthy of consideration of a TPO.

Three objections were received in respect of the provisional TPO having been raised. The officers' comments in relation to the points raised in the objections were detailed on page 38 of the main agenda pack and referred to: -

- Public Amenity Value.
- Risk of Subsidence and Root Invasion to Property.
- General Deris Fall Nuisance.
- Risk of Root Invasion to Drains.
- Shadowing.

It was noted that on page 39 of the main agenda pack, that under the paragraph 'Shadowing' that the house number should read 27 Beech Road and not 23 Beech Road.

At this stage in the meeting there was a technical issue with the Live Streaming. Therefore, the Chairman announced a short adjournment and comfort break for Members and officers.

Accordingly, the meeting stood adjourned from 18:44 p.m. to 18:54 p.m.

Having reconvened and at the invitation of the Chairman, the Council's Legal Officer read out the speech, in objection to the TPO, provided by Mr. and Mrs P. Conlon, who were unable to attend the meeting.

It was noted that under the Council's Public Speaking rules, that Mr. and Mrs. P. Conlon's speech had taken three minutes to be read out.

At the discretion of the Chairman, Mr. A. Pickersgill, who had also submitted a representation in objection to the TPO, was allowed one minute to address the Committee.

Members then considered the TPO.

In response to a query from the Committee on the TEMPO scoring, as detailed at Appendix 2 to the report. The Senior Arboricultural Officer explained how the scoring had been determined.

The Senior Arboricultural Officer responded to further questions from Members with regards to 'Risk of Root Invasion to Drains' and the estate itself. In doing so, Members were informed that as detailed on page 39 of the main agenda pack; roots did not generally exert any mechanical pressure on drains to create damage, they tended to take the easiest direction of growth and go around any obstruction such as drains. The estate was a modern estate and as such would be expected to have a high quality and robust drainage infrastructure that would be unlikely to

be damaged by root and therefore suffer root invasion. There was no evidence or historical evidence of tree related damage to the drains or work being carried out on the drains due to root invasion, or any damage to nearby drives or kerbs. The estate was built over 30 years ago and anyone purchasing a property on the estate would be aware of nearby mature trees, which predated the estate and the infrastructure.

In respect of overbearing and shadowing, the Senior Arboricultural Officer clarified that the Council had no powers to enforce / instruct the residents of 21 and 23 Hawthorne Drive to carry out work on the trees should they become overbearing or create further shadowing. A TPO would ensure that appropriate levels of tree management and crown thinning was carried out. A TPO did not prevent work being carried out on the trees, an application to carry out appropriate work on the trees could be submitted to the Council for consideration and subsequent approval being agreed prior to any work being carried out on the trees.

On being put to the vote, it was

RESOLVED that provisional Tree Preservation Order (No.3) 2024 relating to trees on land at 21 and 23 Hawthorne Drive, Hollywood, B47 5QT, be confirmed without modification and made permanent, as raised and shown at Appendix 1 to the report.

24/24

23/00324/FUL - REFURBISHMENT OF THE EXISTING BUILDING AND EXTENSION TO ACCOMMODATE NEW BED AND BREAKFAST ACCOMMODATION (USE CLASS SUI GENERIS), ALVECHURCH SPORTS AND SOCIAL CLUB, RADFORD ROAD, ALVECHURCH. C/O AGENT

The Application had been brought to the Planning Committee for consideration at the request of Councillor A. Bailes, Ward Councillor.

Officers drew Members' attention to the Committee Update, whereby one objector had requested that their comments be withdrawn. One objector had added additional comments to their original response. Other comments made by Alvechurch Residents Association about the conduct of the Applicant, were not addressed as it was not a material planning consideration. Worcestershire County Council Highways had provided an update; and the planning officer's response was also included.

A copy of the Committee Update was provided to Members and published on the Council's website prior to the commencement of the meeting.

Officers presented the report and presentation slides, as detailed on pages 81 to 97 of the main agenda pack; and in doing so, highlighted that the application was for the refurbishment of the existing building and extension to accommodate new bed and breakfast accommodation (Use Class *Sui Generis*).

Agenda Item 3

Planning Committee
9th July 2024

The Conservation Officer had confirmed that there would be neutral impact on the significance of the Conservation Area, and that the proposals would not harm the significance of the nearby listed buildings.

The proposed extension would measure approximately 6.4m high, 12m deep and 15.4m long. The extension would include 20 bedrooms with a connecting corridor into the main building. The proposed extension would include bedrooms at ground and first floor level.

The introduction of additional fenestration on the existing building alongside the alteration of existing openings was welcomed and an improvement to the overall design and appearance of the building. The proposed windows and frames to the existing building would be painted timber sash, with or without a restrictor. The proposed windows and frames of the proposed extension would be painted timber casement windows, with or without a restrictor, as detailed on the presentation slides on pages 91 and 92 of the main agenda pack.

The existing building was located approximately 2m from the boundary and approximately 18m from the rear of 1 Swan Street. The existing building was built at an angle to the gardens on Swan Street and therefore the distance between the boundary increased in a south-easterly direction to approximately 4m.

At present the site had 48 car parking spaces which would be reduced to 33 spaces (a reduction of 15 parking spaces) which was deemed to be acceptable to Worcestershire County Council (WCC) Highways as the development met the Streetscape Design Guide parking standards and was in a sustainable location.

At the invitation of the Chairman, Ms. L. Brown on behalf of Alvechurch Residents Association, who were in objection to the application addressed the Committee. Ms. C. McIntyre, the Applicant's Planning Agent spoke in support of the application. Councillor T. Williams, representing Alvechurch Parish Council and Councillor C. Hotham (substituting Ward Councillor for Councillor A. Bailes) addressed the Committee in objection to the application.

Members then considered the application which officers had recommended be granted.

Members raised a number of questions with regards to the application being *Sui Generis* and not as they would expect - C1 (Hotel) Hotels, under the 'Use Classes Order'.

Officers drew Members' attention to the 'Uses' as detailed on page 67 of the main agenda pack which stated: -

'The existing use of the site as a social club/public house is *Sui Generis*. The proposals would be ancillary to the main use. There is no proposed

Agenda Item 3

Planning Committee
9th July 2024

reception area shown on the proposed floor plans, the accommodation is only accessible through the members bar area, there are no other facilities used exclusively by paying guests of the accommodation and the general activity associated with the coming and going of customers staying at the premises would not be markedly different from the existing use. The inclusion of accommodation is a traditional function and accepted as an ancillary use.'

Some Members raised further concerns in respect of the proposed reduction in car parking spaces. The proposal was for 28-bedroom bed and breakfast accommodation with 33 car parking spaces being retained. Members questioned if this were sufficient, as there would also be 2 bars being visited by different people other than those using the bed and breakfast accommodation. If functions (parties) were held there 33 car parking spaces would not be enough. Anyone using the facilities would not want to park further away from the premises. There was a significant risk that the number of car parking spaces provided would be inadequate.

In response the WCC Highways officer commented that there was not another such premises for comparison, so C1 (Hotel) was appropriate for Highways to use. There would be 33 car parking spaces in total and a further 72 spaces available within 300m of the application site. There were double yellow lines around the proposed site and vicinity so there would be no displaced parking.

Members raised the question about staff using the car parking spaces and larger delivery vans accessing the site and parking. The WCC Highways officer confirmed that the staff car parking requirements were included within the car parking standards. Staff may live in the area or use public transport. With regards to delivery vans, this was not usually a recommendation or condition from Highways. There was no request from the applicant and no evidence that large vans would be using the site to park.

Members further questioned using C1 (Hotel) and asked if the application were for a pub, how would that be assessed?

The WCC Highways officer stated that the application had been assessed as C1 (Hotel) due to the bedroom numbers.

The Development Management Manager reiterated that the application had been assessed as C1 (Hotel) category which was the best fit.

Other Members commented that they agreed with the concerns raised by some of the Members with regard to insufficient car parking spaces, no accessible car parking provision and no EV Chargers being provided. Members further highlighted the comments made by the public speakers in objection to the application, and as detailed in the report a total of 134 objections had been also received. The site sat on a bend, and this

Agenda Item 3

Planning Committee
9th July 2024

could prove dangerous with delivery vans, or laundry vans backing into the site.

In response the officer referred to Condition 14 on page 78 of the main agenda report, which stated that: -

'The Development hereby approved shall not be occupied until the parking and turning facilities have been provided as shown on drawing 1132-07G'.

The officer further explained that there would be 2 accessible car parking spaces, as detailed at Condition 17 on page 79 of the main agenda report. The provision of EV Chargers was now the remit of the Council's Building Control department and was not a planning consideration.

It was noted and queried that Alvechurch Sports and Social Club was listed on the Councils' Register of Assets of Community Value. Officers confirmed that as detailed in the report it was nominated and accepted onto the register as of 23rd September 2022. Officers drew Members' attention to page 66 of the main agenda pack 'Asset of Community Value' (ACV).

The Chairman briefly explained that this was not a planning consideration and the Council's Legal Officer stated that this did not stop a planning application from being submitted to the Local Authority, it enabled the local community to purchase the building should it come up for sale.

The Chairman then referred to the Recommendation, as detailed on pages 75 to 79 of the main agenda pack, with no proposer or seconder, and Members having expressed their concerns an Alternative Recommendation for refusal of the application was proposed and seconded.

The Charman took the opportunity to remind Committee Members to be mindful in providing concise and valid planning reasons for refusing the application.

Members then took the opportunity to further discuss and agree their main concerns and reasons for refusing the application.

On being put to the vote it was

RESOLVED that planning permission be refused for the following reasons: -

- a) The proposed development would, by reason of insufficient car parking have a consequential displacement of vehicles to the public highway, resulting in a severe residual cumulative impact upon the surrounding road network; and

- b) The existing building was at odds with the historic and architectural character of the Alvechurch Conservation Area. The proposed extension would, by reason its overall design, bulk, scale and massing, cause an unacceptable visual impact on the Alvechurch Conservation Area.

At this stage in the meeting the Chairman announced a short comfort break.

Accordingly, the meeting stood adjourned from 20:04 p.m. to 20:10 p.m.

25/24

24/00077/REM - RESERVED MATTERS APPROVAL (APPEARANCE, LANDSCAPING, LAYOUT AND SCALE) FOR THE CONSTRUCTION OF 241 DWELLINGS AND ASSOCIATED WORKS AND INFRASTRUCTURE, PURSUANT TO THE OUTLINE PLANNING PERMISSIONS 19/00976/HYB AND 19/00977/HYB (CROSS BOUNDARY APPLICATION WITH REDDITCH BC 24/00083/REM). PHASE 5 DEVELOPMENT BROCKHILL EAST, HEWELL ROAD, REDDITCH, WORCESTERSHIRE. PERSIMMON HOMES LTD

Having reconvened, Officers drew Members' attention to the Committee Update, which detailed further comments from North Worcestershire Water Management, with the plans as listed, being removed from Condition 1.

A copy of the Committee Update was provided to Members and published on the Council's website prior to the commencement of the meeting.

Officers presented the report and presentation slides, as detailed on pages 113 to 129 of the main agenda pack; and in doing so, highlighted that the application was for reserved matters approval, appearance, landscaping, layout and scale. For the construction of 241 dwellings and associated works and infrastructure, pursuant to the outline planning permissions 19/00976/HYB and 19/00977/HYB (Cross boundary application with Redditch BC 24/00083/REM). Phase 5 Development Brockhill East, Hewell Road, Redditch, Worcestershire.

Officers highlighted that the consideration of the impacts of a development proposal was not altered by political boundaries and could not be considered in isolation. Members needed to consider the application as a whole, (not just that part of the development within its own administrative boundary) and come to a decision based upon that consideration. However, Members would only be determining the application in so far as it related to the administrative boundary of Bromsgrove. For reference, this related to land extending from the approved phase 6 north towards the area for phase 4. The proposed housing and green infrastructure areas were split between both authorities.

Agenda Item 3

Planning Committee
9th July 2024

Hybrid applications 19/00976/HYB and 19/00977/HYB for up to 960 dwellings consisted of a full application for 128 dwellings accessed off Weights Lane, new public open space, drainage system, engineering operations associated works and an outline application (with all matters reserved with the exception of access) for the construction of the remaining dwellings.

Officers drew Members' attention to the 'Proposal Description' as detailed on page 103 of the main agenda pack.

The application sought a total of 142 market homes to be provided across the site to provide 30 (21%), two-bedroom dwelling, 51 (36%), 3-bedroom dwellings and 61 (43%) four bed dwellings. The proposals included the provision of 99 affordable housing units, which equated to 41% of the total dwellings proposed. As part of the proposal, mostly 2 storey dwellings were proposed. However, there were also some 2.5 dwellings incorporating dormers.

Officers further drew Members' attention to the 'Reserved Matters' to be considered under this application, as fully detailed on page 103 of the main agenda pack. It was reiterated that the issue of external access had already been determined and approved.

The proposed layout of the Phase 5 proposals had directly incorporated the ideas of the Framework Plan and Design and Access Statement (DAS) into the layout by mirroring the suggested built form and incorporating areas of green open space along the ridgeline and SuDS basins.

Phase 5 had an average density of 42 dwellings per hectare, allowing for efficient use while being sensitive to the site's landscape and topography. This density is slightly higher than Phases 4 and 6. However, this density was not inappropriate, as Phase 6 was primarily larger, detached units. This density helped to assimilate Phase 5 into the wider site while maintaining its character.

Officers referred to the 'Affordable Housing Provision' and 'Proposed Affordable Housing Mix – Phase 5', as detailed on page 105 of the main agenda pack.

It was highlighted that the majority of Phase 5 was located within Bromsgrove and complied with the s106 Agreement criteria by providing 40.2% affordable housing (78 units). The developer had included a higher provision of affordable housing into this phase to address an under provision in Redditch approved under Phase 6.

With regards to 'Housing Mix,' the DAS required that building heights be primarily two storeys. This was reflected in the proposals, where primarily 2-storey dwellings mimicked local character and occasional 2.5-storey dwellings provided interest and focal points along the street scene.

Agenda Item 3

Planning Committee
9th July 2024

Officers further drew Members' attention to 'Highways and Parking, as detailed on page 108 of the main agenda pack. The Highway Authority had been consulted, and several revisions were made to the plans to ensure the development was acceptable. As a result of these changes, WCC as the Highway Authority, had advised that it had no objection, subject to conditions.

As detailed in 'Impact on Residential Amenity' page 109 of the main agenda report. In relation to the construction phase of this phase of development, under condition 39 of the hybrid permission, a Construction Environment Management would be required prior to the commencement of the 5th phase.

In conclusion, officers explained that this was an allocated development site. The four reserved matters under consideration were found to comply with the relevant conditions imposed as part of the hybrid permission and to adhere to the masterplan, the principles of the Design and Access Statement, the District Plan and the NPPF. In the planning balance and taking account of material planning considerations, the development was acceptable and, subject to the conditions as set out on pages 110 to 112 of the main agenda pack. The Reserved Matters application was recommended for approval.

Members then considered the Reserved Matters application.

Members were curious if a current update was available on the number of dwellings constructed and the build out rate.

Officers commented that they were happy to take this question away in order to provide more detailed information. However, at the end of June there were 73 occupations on the hybrid phase and the Weights Lane work was now completed.

Members further referenced the original Conditions included within Outline Planning Applications 19/00976/HYB and 19/00977/HYB and sought reassurance from officers that these Conditions would be adhered to.

In response to the specific concerns raised by Councillor A. Bailes, officers took the opportunity to reassure Councillor A. Bailes and the Committee that the initial Conditions applied to applications 19/00976/HYB and 19/00977/HYB, were still robust Conditions and that the Planning Authority and WCC Highways would ensure that the Conditions were adhered to and completed with; and that officers would be monitoring this. It was not appropriate at tonight's meeting, to replicate or reinforce Conditions that were already in place. Officers further agreed to provide Councillor A. Bailes with further information in respect of his questions about Conditions 35 and 38.

In response to further questions from the Committee, officers provided brief details on the affordable housing split between Bromsgrove and

Agenda Item 3

Planning Committee
9th July 2024

Redditch, site constraints for Redditch and overprovision in future phases. Officers further clarified that there was a joint s106 agreement between Bromsgrove and Redditch, which required joint signatories. This ensured joint working and to mitigate the requirements of the hybrid applications.

On being put to the vote it was

RESOLVED that the Reserved Matters application for layout, scale, appearance, and landscaping, be approved, subject to the Conditions as detailed on pages 110 to 112 of the main agenda pack.

The meeting closed at 8.32 p.m.

Chairman

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Name of Applicant	Proposal	Expiry Date	Plan Ref.
Mr D Owen	Demolition of Function Room and Erection of 23 Apartments with associated parking provision and landscaping. Rubery Social Club, 141 New Road, Rubery, Worcestershire, B45 9JW	04.01.2024	23/00922/FUL

RECOMMENDATION:

- (a) Subject to the satisfactory final views of Worcestershire Highways, North Worcestershire Water Management, Waste Management and Community Safety, **Minded to GRANT** outline planning permission
- (b) That **DELEGATED POWERS** be granted to the Head of Planning, Regeneration and Leisure to determine the planning application following the receipt of a suitable and satisfactory legal mechanism in relation to a financial contribution of up to £69,324 to be allocated between the following:
- Integrated Care Board for a contribution of *up to* £9600 additional primary healthcare services
 - Worcestershire Acute Hospitals Trust for a sum of *up to* £2,791.08
 - Leisure Service - Open space/play/sports facilities contribution towards St Chad's Park and/or Callowbrook Park based on the sum of *up to* £55,346 (£48.97 per sqm)
 - Monitoring fee
 - Waste and recycling (bins)
- (c) And that **DELEGATED POWERS** be granted to the Head of Planning, Regeneration and Leisure to agree the final scope and detailed wording and numbering of conditions as set out in the summary list at the end of this report.

Consultations

Worcestershire Highways - Bromsgrove

Views awaited on amended plans.

Previous comments raised no objection subject to conditions: cycle parking, vehicle parking, manoeuvring area, CEMP. Requests contribution of £1,587.00 sought towards Community Transport.

WRS - Contaminated Land

Due to the demolition to be undertaken, and proximity to a historic landfill site and a number of areas of unknown infill, WRS recommend conditions to ensure potential contaminated land issues on site are appropriately addressed.

WRS - Noise

The revised noise impact assessment (Walnut Acoustics Document Ref: WA/0520/NA-355 rev1) appears satisfactory and predicts that acceptable internal noise levels should

be achieved by the installation of glazing products that meet the recommended specifications detailed in Table 14 of the assessment. In terms of alternative ventilation, the assessment states that a mechanical ventilation system is to be installed. Noise levels in external amenity areas is predicted to just exceed the BS8233 upper limit in the area serving Block 1 and below the upper limit for the areas serving Blocks 2 & 3 and I therefore consider this acceptable. Noise from commercial sources is not considered to require any additional noise mitigation measures to be implemented.

Conditions recommended: glazing specification, acoustic fence specification, details of mechanical ventilation, management plan detailing the proposed measures to monitor and mitigate emissions of noise, vibration (piling) and dust during the demolition and construction phases for approval.

North Worcestershire Water Management

Views awaited on amended plans.

Previous comments identified that the site falls within flood zone 1 (low risk of fluvial flooding) and is not shown to be susceptible to surface water flooding. The site lies adjacent to the Callow Brook, but as the adjacent land is at a lower elevation the site is not deemed to be at risk of flooding.

I believe the development could go ahead without any drainage or flood risk impact and therefore I have no objections, subject conditions: drainage details.

Severn Trent Water Ltd

I can confirm that we have no objections to the proposals subject to conditions: drainage details.

Housing Strategy

Preference is for three units of affordable housing (a First Homes unit and two units should be social rented). However, as the applicant has demonstrated that no Registered Providers are interested in taking on 3 units in a mixed block, a financial contribution of £114,000.00 is sought in lieu of on-site affordable housing provision and will be utilised in the provision of affordable housing within Bromsgrove District within the next 10 years

Open Space/Parks/ Sports Provision/Facilities/Play Provision

Contribution sought to support open space / sports facilities at St Chads

Park/Callowbrook Park based on the sum of £48.97 per sqm as in the s106 attached to PP 20/00198/OUT. This would be directly relevant to the proposed development which is likely to be occupied only by Adults. This would be towards outdoor fitness equipment and open space improvements/maintenance to include but not limited to paths/benches.

Arboricultural Officer

I do not hold any objection to the proposed development with regards to tree related issues subject to conditions: tree protection

Waste Management

Views awaited on amended plans.

Previously identified concern at the insufficient size of the bin store and its position away from the main drive.

Community Safety Manager

Views awaited on amended plans.

Previous comments: This development is to be situated off the main New Road commercial street centre of Rubery, this is a busy environment with a number of shops, including supermarkets, access to a park and food retail premises. There are problems in this area with anti-social behaviour, retail theft and drug related crime.

Generally, there is good natural surveillance from the front (East) elevation from within the building over the car parking area which is positive. There is no information on planting and landscaping, any subsequent measures should ensure there is no compromise of the natural surveillance over the car parking area. Recommends installation of boundary treatment to the sides of the block to provide secure access for residents only.

General recommendation of the Secured by Design guidance to the developer.

Education Department at Worcestershire

As this application states the apartments will all be 1-bed, we would not expect to see an impact regarding Education, therefore we have no comment to make on this.

NHS/Medical Infrastructure Consultations

A contribution of £9600 is requested for additional primary healthcare services to mitigate the needs of the development.

NHS Acute Hospitals Worcestershire

Worcestershire Acute Hospitals Trust has requested £2,791.08 to mitigate the needs of the development.

Public Consultations

19 letters sent 18 September 2023 (expired 5 October 2023)

Site notice displayed 16 September 2023 (expired 10 October 2023)

Press notice published 22 September 2023 (expired 9 October 2023)

2 objections received raising the following concerns:

- Requesting the Council ensure the function room is redundant and not required for recreational purposes.
- Concern at the number of apartments to be created behind new road properties and consequential level of noise that would result.
- Concern that residents will not use the parking provided and instead will park on the pavements of New Road

Relevant Policies

Bromsgrove District Plan

BDP1 – Sustainable Development Principles

BDP2 – Settlement Hierarchy

BDP6 – Infrastructure Contributions

BDP7 – Housing Mix and Density

BDP8 – Affordable Housing

BDP12 – Sustainable Communities

BDP16 – Sustainable Transport

BDP18 – Local Centres

BDP19 – High Quality Design

BDP21 – Natural Environment

Plan reference

BDP22 – Climate Change
BDP23 – Water Management
BDP25 – Health and Well Being

Others

NPPF – National Planning Policy Framework 2019
NPPG – Planning Practice Guidance
National Design Guide
High Quality Design SPD

Relevant Planning History

20/00198/OUT	Demolition of function room to the rear and erection of up to 20 apartments with associated infrastructure.	Approved	16.06.2023
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Assessment of Proposal

Proposal

Full planning permission is sought for the demolition of the existing function room located to the rear of Rubery Social Club and the construction of a 3-4 storey high block of 23 no. 1-bed units. A communal garden area would run alongside the western boundary. Amended plans have been submitted to address identified deficiencies on the proposed bin store arrangements. A separate single storey block is proposed for secure cycle parking, another for plant along the northern boundary with a separate bin store close to the existing entrance drive (positioned to the rear of the Social Club building). 24 car parking spaces are proposed in front of the residential block within an area of landscaping (included 2 disabled spaces). An existing sycamore tree located close to the site entrance is shown to be retained.

Site and surroundings

The application site is accessed from New Road along an existing driveway located to the east of Rubery Social Club. The majority of the site is located to the rear of the Club and is currently occupied by a function room. The site is on level ground and is set within the Local Centre shopping area. It is bounded to the north by the A38 and Callow Brook and to the west by a residential garden.

Principle of development

The principle of the demolition of the function room and redevelopment of the site for residential purposes was established under the extant planning permission 20/00198/OUT which approved the development of up to 20 apartments on the site.

The application site is located on previously development land, within the settlement boundary of Rubery. This is considered a sustainable location and in accordance with the criteria for the delivery of housing set out in Policy BDP2.

The loss of the function room was considered by Planning Committee during the determination of the extant planning permission (20/00198/OUT). It was satisfactorily demonstrated that there is no realistic prospect of the function room continuing and

assessed that a more economically viable facility will be retained as part of the social club for the benefit of the community following the sale of the site. Therefore, there is no objection to the current application under policy BDP12.

Local Centre

Policy BDP18 (Local Centres) states that the District Council will allow residential use at upper floors. The redevelopment of the site for residential purposes was established under planning permission 20/00198/OUT and continues to be considered acceptable.

Impact on Local Character

The proposed apartment block is 3-storey in height rising to 4-storey at the northern end of the site. The building will be set back from New Road and will largely be screened by the existing social club and other buildings along New Road. It will be seen in glimpsed views through the gaps between buildings as is the existing function room. This is not considered to be harmful and is part of the existing character.

There is a 3 storey block directly to the east of the site entrance on New Road, with further 3 storey development a short distance further east.

The proposal is considered acceptable with regard to local character.

Amenity of Future Residents

BDP1 (Sustainable Development Principles), seeks to ensure compatibility with adjoining uses with regards to impacts on residential amenity and Policy BDP 19 (High Quality Design) makes specific reference at criterion (t) to maximising the distance between noise sources and noise sensitive uses, such as residential. The High Quality Design SPD also requires care to be taken in siting residential development where noise disturbance may be caused. The matter was also considered in the determination of the extant planning permission. WRS has taken account of the submitted noise report in relation to the neighbouring A38 and concluded that with appropriate noise mitigation measures acceptable living conditions for future occupiers will be achieved. Suitable conditions are recommended.

Each residential unit would be dual-aspect (east/west). With this orientation each apartment would benefit from sunlight in addition to daylight at different times of day. It would result in a satisfactory outlook for future residents and overlooking of outdoor areas from both the front and rear elevations to aid surveillance and security.

The layout includes readily identifiable and legible entrance points to the building with direct access to the building from pedestrian routes into the site, car parking, cycle storage and bin storage areas. This results in a good level of site permeability for future residents.

Communal amenity space is shown to the site frontage and rear. The frontage space incorporates an existing established tree. The retention of the tree will provide an established element to the landscaping areas and the overall setting of the site. Satisfactory landscaping can be secured by condition.

Amendments have been sought to the position of boundary treatment from the site frontage to the rear amenity space to improve security following comments from the Council's Community Safety Officer. I will update Members at the Committee on this issue.

In addition, each apartment would meet national space standards, helping to ensure a high quality development.

Impact on Existing Residents

An objection has been received from 135A New Road raising concerns at the number of apartments close to the rear of that property and that the outside amenity areas will result in extra noise.

The proposed block of apartments would be set back from the buildings that front onto New Road and would be approximately 26m from 135A New Road, the closest part of the proposed garden area would be approximately 22m from that building. The existing function room and the car park at the rear of the social club abuts the rear boundary of the neighbouring property. The size of the existing function room, its proximity to the boundary together with that of the existing car parking area will have an existing impact on the neighbour's amenity.

In contrast, the proposed block will be set back from the boundary by approximately 7m, representing an improvement in the amount of built form in proximity to the boundary. Similarly, the removal of the car parking will also result in a corresponding reduction in noise associated with vehicle manoeuvring or other activities which could otherwise take place on this area. There are already a mixture of garden areas and commercial areas to the rear of New Road properties and the creation of an outdoor amenity area to serve the flats is not considered to result in form of development that would justify refusal on this issue alone.

Access to the rear area will be restricted to residents by means of boundary treatment as noted on the layout plan for the site. There may be some overlooking from upper floor windows, though the presence of existing vegetation along the site boundary will also act as a screen to the area. On balance the relationship is considered acceptable.

Parking/Highway Matters/Waste Management

The neighbour has also expressed concern that future residents would be unlikely to utilise the car parking spaces to be provided as part of the proposed development and instead would park on New Road. The layout includes the provision of a total of 37 parking space with 24 spaces identified for residential use and the remainder to serve the Rubery Social Club. 24 no. secure cycle spaces are also shown within a secure cycle store. Given that this vehicle and cycle parking is to be provided as part of the development and is located to the front of the proposed building it is highly likely that residents would make use of this rather than parking on street and walking the remainder of the distance to their apartments. It is not considered reasonable to refuse the application on the basis of parking provision.

In addition, the site is located in a sustainable location in an area identified as suitable for residential development in Policy BDP2 and the site already benefits for a planning permission for 20 dwellings.

Amended plans have been submitted in response to concerns that the bin store was of insufficient size to accommodate the required number of bins and would be difficult to access satisfactorily for waste collection. The amended plans relocate an enlarged bin

store at the entrance of the car park (close to where existing waste collections take place); the car park layout has been reconfigured to accommodate the same number of parking spaces. In addition, 2 disabled spaces are annotated on the amended plans. At the time of writing the report comments are awaited from key consultees. These will be included in an update report to Planning Committee.

Flooding and Drainage

NWWM has raised no objection subject to appropriate drainage design and conditions. This is considered acceptable and reflects the extant planning permission.

Trees

Tree Officer has recommended conditions to ensure the suitable protection of the existing mature tree within the landscaping area. These are considered appropriate.

Ecology

No ecology information has been submitted with the application. However it is noted that the PEA submitted with 20/00193/OUT identified that the site in general and the proposed development area has little to no ecological value. That planning permission included a suitable condition to require the provision of bat/bird boxes. The application was submitted prior to recent changes in legislation requiring a biodiversity net gain metric. It is considered appropriate to attach a similar condition to that attached to the extant planning permission to secure bird/bat boxes.

Contamination Matters

Due to the proximity to the historic Callowbrook landfill and two areas of unknown filled ground, WRS has recommended conditions requiring the applicant to incorporate gas protection measures within the foundations of the proposed new structure; or to undertake a gas risk assessment to ascertain if gas protection measures are required.

Such conditions reflect those attached to the extant planning permission and continue to be considered appropriate.

Public Open Space

Some amenity space is proposed within the development site. However, a contribution has been requested by Leisure Services officers to support open space / sports facilities at St Chads Park/Callowbrook Park, in particular towards outdoor fitness equipment and open space improvements. This would directly relate to supporting the needs of future Adult occupants of the site and would accord with policy BDP6 (Infrastructure Contributions) and Policy BDP25 (Health and Wellbeing).

Affordable Housing

Policy BDP8 (Affordable Housing), sets out that affordable housing provision will be expected to be provided on site at a rate of up to 30% of the dwellings. National Planning Policy allows for consideration of vacant building credit. The s106 Obligation attached to the outline planning permission 20/00198/OUT includes an allowance for vacant building credit. In this policy context, Housing Services has calculated a requirement for 3 no. affordable units, including 1no. First Homes. The applicant has contacted the local Registered Providers of housing, and none has expressed a willingness to take up such units. It has been explained that this is a result of the units being part of a single block of market apartments which is considered to lead to difficulties regarding future management

arrangements. This resulted in the applicant requesting consideration of a financial contribution in lieu of on-site affordable housing provision. Housing Services calculated this at £114,000.00.

The applicant has submitted a financial viability appraisal for the application proposal. This has been considered by the Council's Viability Appraisal Consultant. The advice concluded that there was insufficient value in the scheme to allow the requested affordable housing contribution of £114,000 and other requested contributions in full. This matter is considered further below.

Planning Obligations

Planning obligations (contributions) can be secured by way of a legal agreement under Section 106 of the Town and Country Planning Act 1990.

Policy BDP6 (Infrastructure Contributions) requires the provision of infrastructure to meet the demands of new development and thus to mitigate its impact. This accords with Paragraph 57 of the National Planning Policy Framework.

In addition to submitting a viability appraisal the applicant also confirmed their agreement to the following s106 contributions (totalling £69,324.08):

- Primary Care Commissioning contribution of £9600 additional primary healthcare services
- WCC Highways contribution of £1,587.00 towards community transport
- Worcestershire Acute Hospitals Trust for a sum of £2,791.08
- Leisure Services - Open space/play/sports facilities contribution towards St Chad's Park and/or Callowbrook Park based on the sum of £48.97 per sqm which equates to £55,346

These contributions were not included in the submitted viability appraisal. Also, it was identified that the submitted document erroneously included the build costs as a s106 cost. The applicant subsequently confirmed this error. The Council's Viability Appraisal Consultant identified these errors, and these were taken into account in the review.

The Council's Viability Appraisal Consultant concluded that the benchmark value of the site and also some of the costs have been overstated in the submitted viability appraisal. Taking this into account together with the £69,324.08 contributions the applicant agreed to make, the Council's Viability Appraisal Consultant identified a potential shortfall of approximately £11,000 when assessing the viability of the scheme. However, they also advised that this was marginal and could likely be made up during the course of the build.

As a result of the viability assessment and its review, your officers accept that there is insufficient value in the scheme to allow the requested affordable housing contribution of £114,000 and other requested contributions in full. The applicant has been advised that there is an expectation that the contributions they previously committed to pay would be adhered to. The applicant has confirmed their commitment to honour those contributions (total of £69,324.08).

These were included in the heads of terms of the s106 attached to the extant planning permission, though the sums vary due to the difference in the date of calculation. In addition, the s106 attached to the extant planning permission includes a contribution for

bins and the Council's monitoring fee (in accordance with the Council's adopted charging schedule).

As there is insufficient value in the scheme to afford the full level of contributions sought, it is appropriate to consider how the available contributions should be allocated.

In this particular instance, and due to the relatively small financial amount available, no contribution is being recommended to be allocated towards affordable housing (which is also constrained by the issue of provision detailed in the previous section). The request for a financial contribution towards community transport is based in part on the likely number of over 65 years old that may live in the residential apartments. The age of future occupiers is not known.

With regard to the level of contributions available, in the context of adopted planning policy and with regard to the Council's strategic purposes, it is considered that the contributions should be allocated between healthcare, leisure, provision of refuse bins and the Council's monitoring fee. This would be compliant with the CIL Regulations.

Planning Balance and Conclusions

Overall it is recommended that the proposal be approved subject to suitable conditions and a satisfactory legal mechanism to secure the identified contributions.

RECOMMENDATION:

- (a) Subject to the satisfactory final views of Worcestershire Highways, North Worcestershire Water Management, Waste Management and Community Safety, **Minded to GRANT** outline planning permission
- (b) That **DELEGATED POWERS** be granted to the Head of Planning, Regeneration and Leisure to determine the planning application following the receipt of a suitable and satisfactory legal mechanism in relation to a financial contribution of up to £69,324 to be allocated between the following:
 - Integrated Care Board for a contribution of up to £9600 additional primary healthcare services
 - Worcestershire Acute Hospitals Trust for a sum of up to £2,791.08
 - Leisure Service - Open space/play/sports facilities contribution towards St Chad's Park and/or Callowbrook Park based on the sum of up to £55,346
 - Monitoring fee
 - Waste and recycling (bins)
- (c) And that **DELEGATED POWERS** be granted to the Head of Planning, Regeneration and Leisure to agree the final scope and detailed wording and numbering of conditions as set out in the summary list at the end of this report

Suggested conditions:

- Commencement of development
- List of approved plans
- Materials
- Noise attenuation

Plan reference

- Drainage
- Landscaping
- Tree protection
- Parking/manoeuvring
- CEMP
- Ecology
- Contaminated land remediation

Case Officer: Jo Chambers Tel: 01527 881408
Email: jo.chambers@bromsgroveandredditch.gov.uk

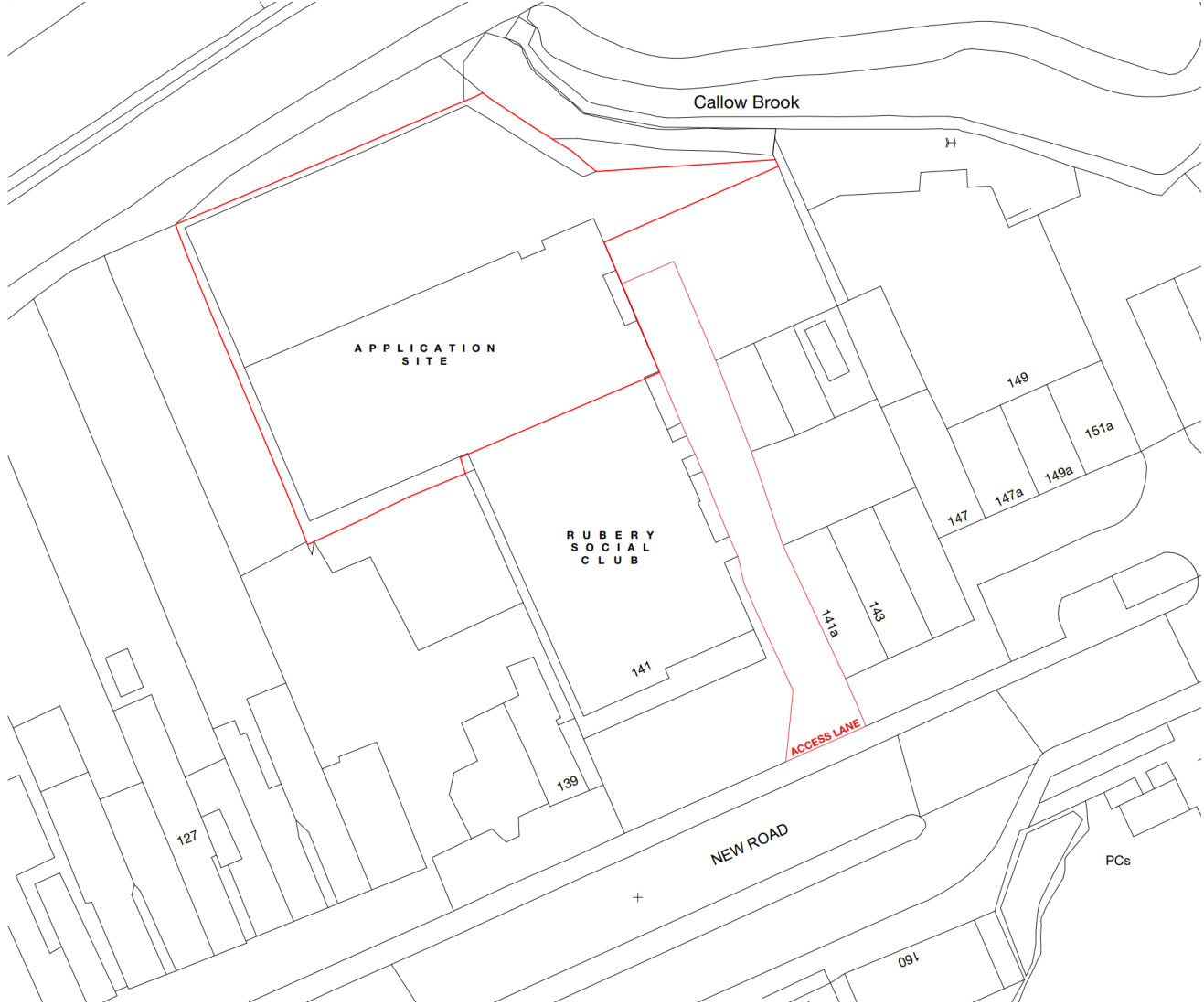
23/00922/FUL

Rubery Social Club, 141 New Road, Rubery, Worcestershire,
B45 9JW

Demolition of Function Room and Erection of 23
Apartments with associated parking provision and
landscaping

Recommendation: Minded to GRANT, delegated powers

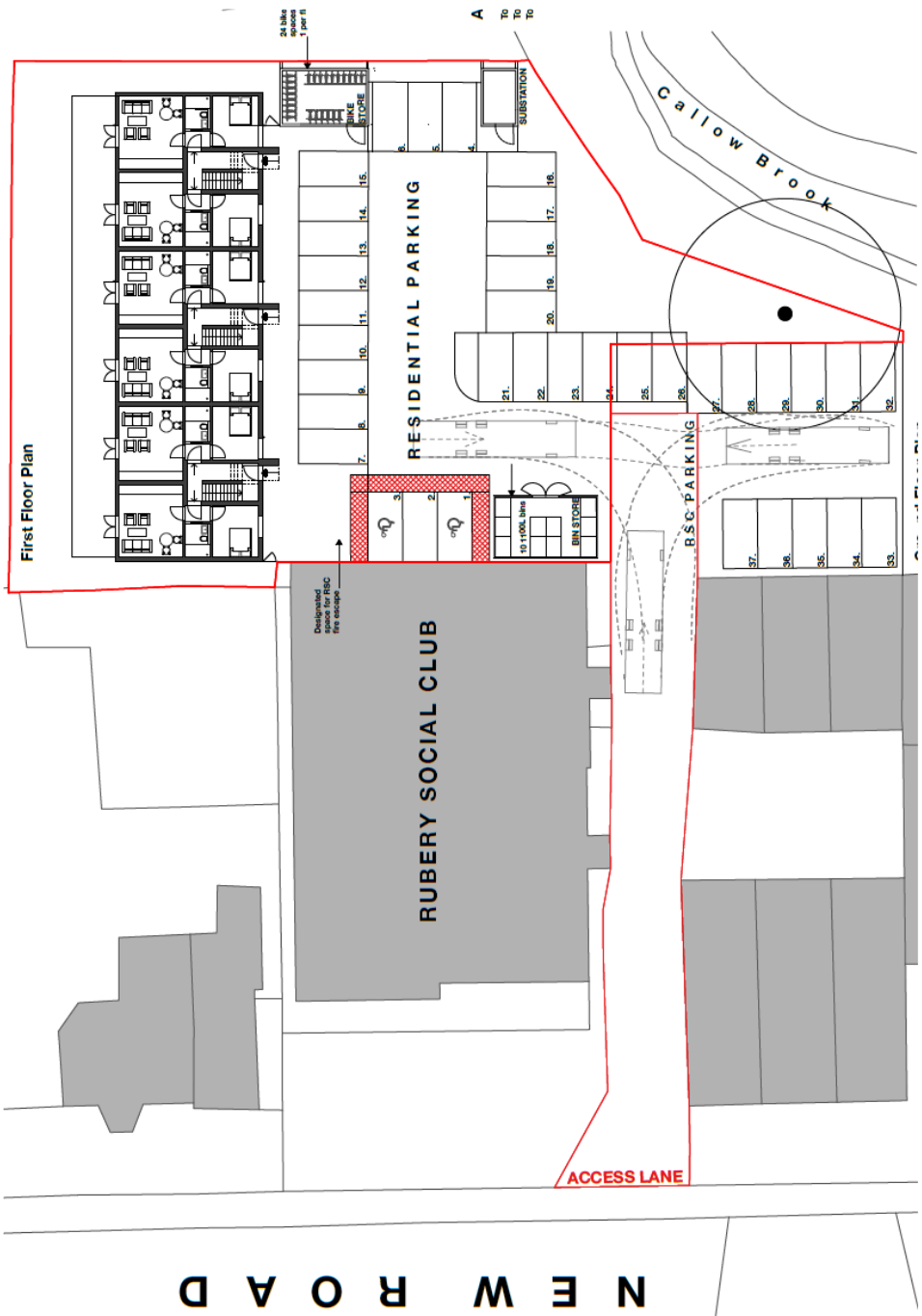
Location Plan



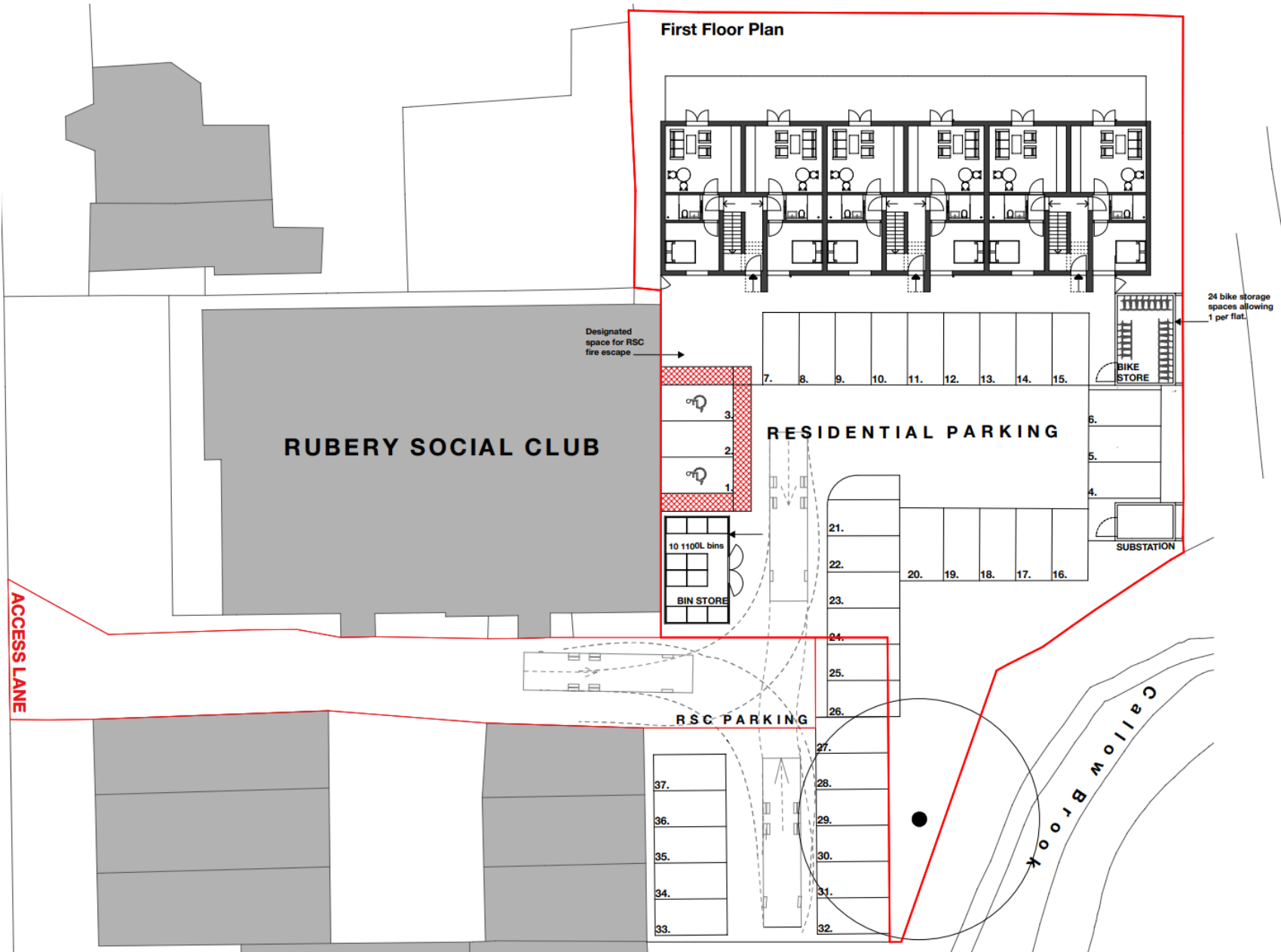
Aerial View



Site Layout



Site Layout



Elevations



West
facing rear garden

Page 36

Tiled roof with metal clad dormer windows to front and back elevations

Facing brickwork with 440mm high soldier course to storey zone

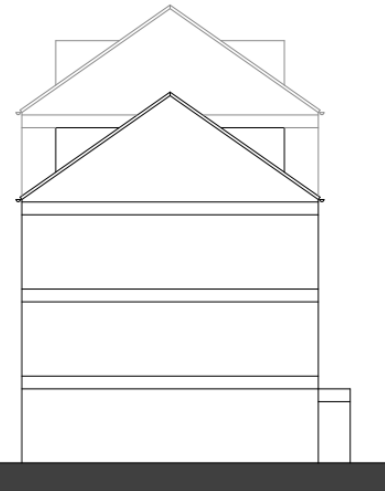
Guarding to French doors in accordance with B'Reg guidance

Private gates to rear amenity space



East
facing parking area

FULL HEIGHT PRIVACY SCREEN AND CANOPY TO FRONT DOORS

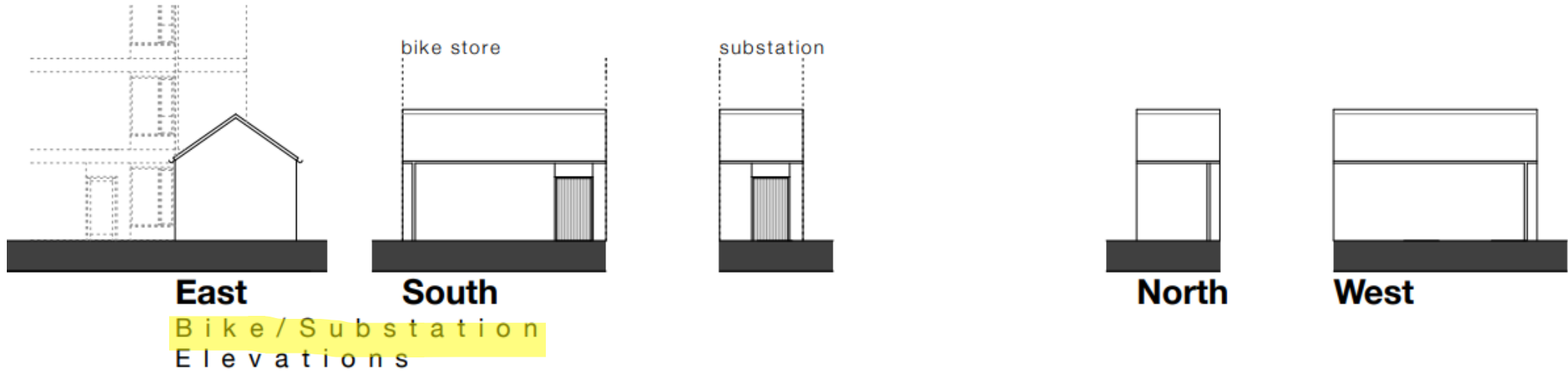
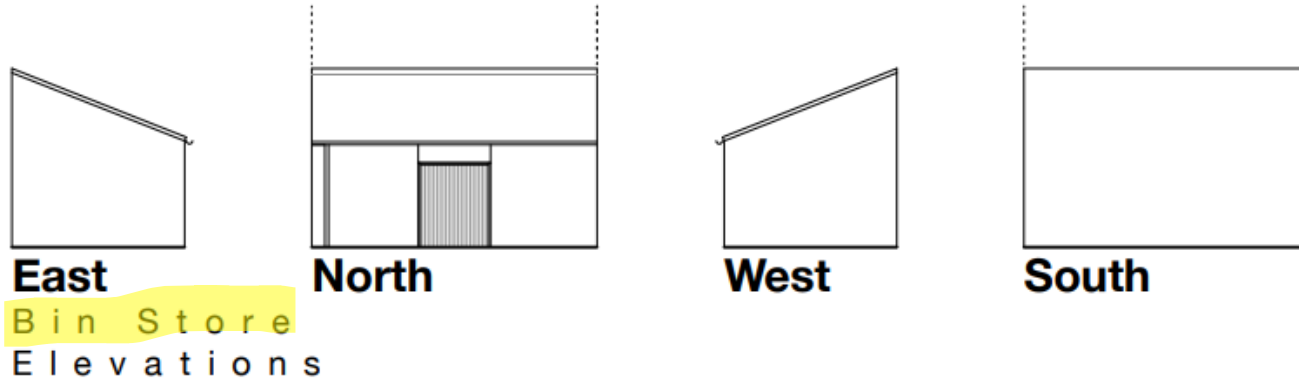


South

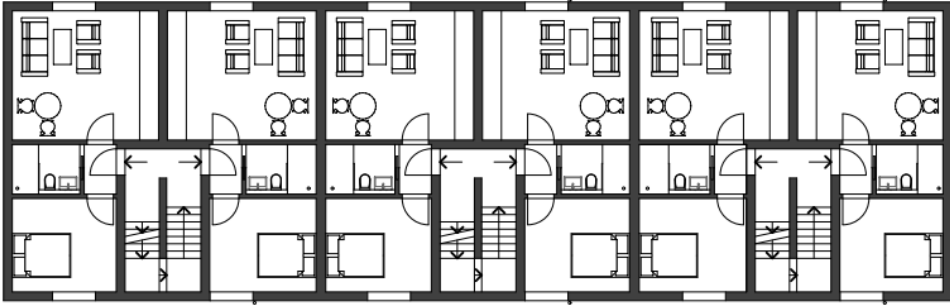


North

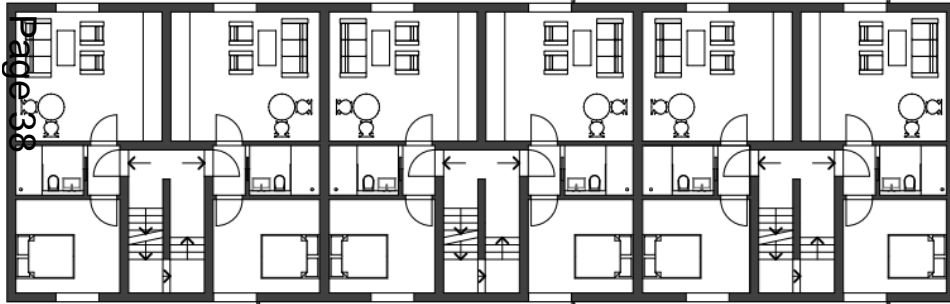
Bin Store, Cycle Store, Sub-Station



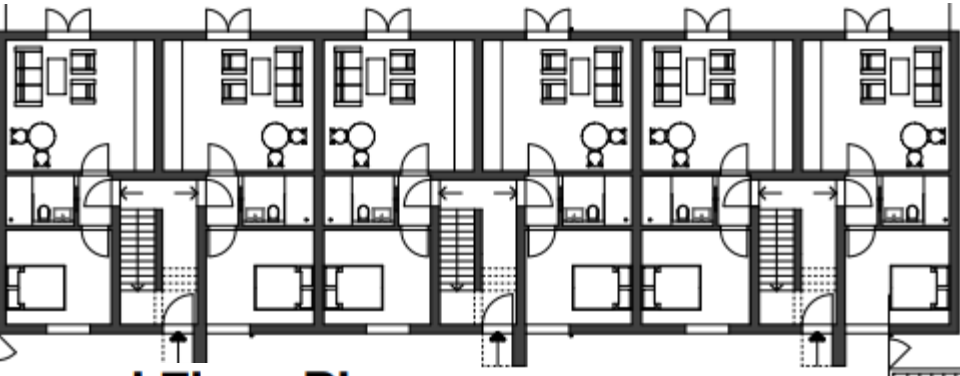
Floor Plans



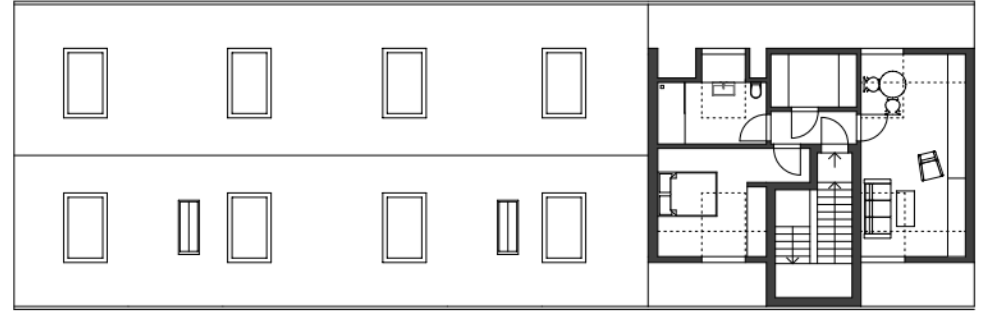
Second Floor Plan



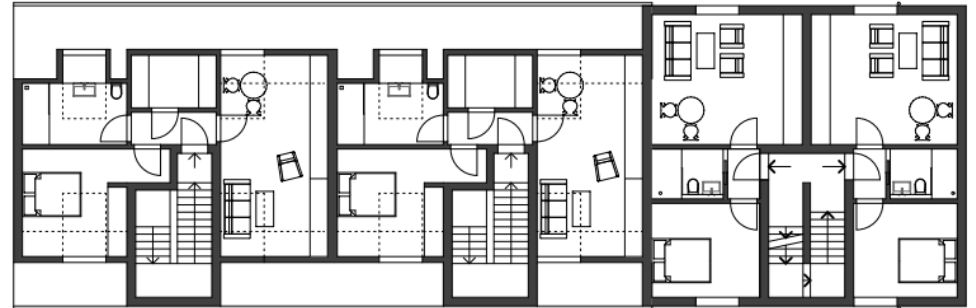
First Floor Plan



Ground Floor Plan



Fourth Floor Plan



Third Floor Plan

Photographs



Photographs



Name of Applicant	Proposal	Expiry Date	Plan Ref.
Hinton Properties (Midlands) Ltd	Reserved Matters application (Layout, Scale, Appearance and Landscaping) to outline planning permission 16/1132 (granted on appeal APP/P1805/W/20/3245111) for the erection of a retail unit and associated infrastructure within Site A. Land at Whitford Road, Bromsgrove,	11.07.2024	24/00150/REM

RECOMMENDATION:

- (a) Subject to the satisfactory final views of Worcestershire Regulatory Services, **Minded to GRANT** Reserved Matters
- (b) That **DELEGATED POWERS** be granted to the Head of Planning, Regeneration and Leisure to determine the planning application following the receipt of a suitable and satisfactory legal mechanism in relation to a financial contribution with regard to a Traffic Regulation Order
- (c) And that **DELEGATED POWERS** be granted to the Head of Planning, Regeneration and Leisure to agree the final scope and detailed wording and numbering of conditions as set out in the summary list at the end of this report.

Consultations

Worcestershire Highways - Bromsgrove

The access is situated the maximum distance away from Whitford Road. Suitable visibility can be provided in both directions from the site access. The layout affords sufficient space to ensure that vehicles can exit the site in a forward gear. Adequate space for delivery service vehicles is provided within the boundary of a site which does not conflict with the proposed parking arrangements. The Highway Authority is satisfied that safe and suitable access can be ensured for all users as per paragraph 114 of the National Planning Policy Framework.

The adopted Streetscapes Design Guide does not specify the minimum car parking spaces requirement for food retail land uses less than 1,000m². The Applicant's parking accumulation exercise indicates that the proposed 10 spaces will be sufficient to accommodate the demand. the Highway Authority has carried out a sensitivity assessment. As a desk-top exercise, the parking accumulation sensitivity test indicates that the parking levels are sufficient to accommodate the associated demand however indicates that there may be times this is exceeded. Such variation would not be unexpected for this type of land use. Moreover, the analysis demonstrates a high turn around, i.e., those arriving and departing during a single hour, which reflects the operation of the small retail offer provided by the proposed land use.

This desktop exercise does not take into account average dwell times associated with retail journey purposes nor takes into account any discounting of trips associated with internalisation i.e., demand that would be generated by the retail land use which originates from within the development or pass-by trips. Pass-by trips are those non-primary trips that visit the new development without having to make any significant diversion from their existing route.

The material highway and transportation concerns of overspill car parking from the development onto the public highway would be instances of the visibility splays at the site access being blocked, blocking of the private driveway serving the parking area for properties 191 – 194 and impacting upon the safe and efficient operation of the main site access from Whitford Road.

The Highway Authority will seek a contribution to monitor and potentially implement a Traffic Regulation Order to ensure that no potential displaced parking occurs within the visibility splays of the site access within the development site and Whitford Road. A contribution of £7,000.00 will be sought:

• **Traffic Regulation Order**

- **Specific Purpose:** A fee to monitor and process a TRO application is required at this location to safeguard the public highway against any potential displaced parking.
- **Contribution:** £7,000.00
- **Trigger and retention period:** Prior to the development being brought into use. The retention period is 10 years upon payment.

In addition to the 10 car park spaces provided, the Applicant proposes to provide 4 Sheffield stands for cycle parking with a maximum occupancy for 8 bicycles. This is considered acceptable and will be secured via advised planning condition. Also recommends conditions regarding Travel Plan, provision of the parking/manoeuvring areas, and visibility splays.

WRS - Contaminated Land

Views awaited

WRS - Noise

Additional information requested on nighttime noise from plant and equipment.
Comments awaited on submission of additional information.

WRS - Air Quality

Views awaited

North Worcestershire Water Management

No adverse comments.

Severn Trent Water Ltd

Views awaited

Environment Agency Consulted

No objection

Arboricultural Officer

Amended tree species considered acceptable. The proposal will provide a suitable level of seasonal interest and structure to the landscaping of the site and proposes to use suitable size / grade of stock at planting phase of the scheme.

Community Safety Manager

Recommends secure by design Commercial 2015. Notes anti-raid bollards in front of ATM facility. South elevation benefits from good natural surveillance, suggests CCTV and alarm system. Planting to be maintained so as not to impede natural surveillance.

Worcestershire Archive And Archaeological Service

The proposed development area has been archaeologically investigated and signed off. Therefore, in terms of archaeology, there are no further comments or recommendations in this instance.

Publicity

16 letters sent 12 March 2024 (expire 5 April 2024)

Site notices displayed 12 March 2024 (expire 4 April 2024)

10 representations received raising the following principal issues:

- Concern at proposed opening hours, delivery hours and hours of collection of refuse.
- Concerned at ATM – may attract additional activity associated noise and disturbance
- Concern at glazing facing Whitford Road – potential nuisance for existing residents (Deansgate Estate).
- Concerned at level of parking
- Concern at potential noise and light pollution.
- Concern at lack of barrier to car park will lead to unsociable behaviour
- Will result in excess noise
- Concern at impact on other shops
- Shop not needed
- Will attract more traffic / more congestion
- Concern at lack of bins/litter generation.

Relevant Policies

Bromsgrove District Plan

BDP1 Sustainable Development Principles

BDP3 Future Housing and Employment Development

BDP5A Bromsgrove Town Expansion Sites

BDP19 High Quality Design

Others

NPPF National Planning Policy Framework (2023)

NPPG National Planning Practice Guidance

National Design Guide

Relevant Planning History

The application site forms part of a larger site that was the subject of a planning appeal (APP/P1805/W/20/3245111). The appeal was allowed in 2021 granting outline planning

permission for and approving Access for:

Site A—(land off Whitford Road), provision of up to 490 dwellings, class A1 retail local shop (up to 400sqm), two new priority accesses onto Whitford Road, public open space, landscaping and sustainable urban drainage; on site B (Albert Road), demolition of the Greyhound public house, provision of up to 15 dwellings, an new priority access onto Albert Road, landscaping, and sustainable drainage

The Planning Inspector considered and allowed the Reserved Matter of Access. This included consideration of traffic movement and highway safety together with a proposed mitigation package and approved 2 vehicular access points into Site A from Whitford Road.

The appeal was allowed subject to a s106 Legal Obligation that secured a number of contributions and mitigation measures and conditions that set out a number of requirements to be addressed as part of the Reserved Matters application.

s106 Legal Obligation contributions and mitigation measures including:

- Financial contribution towards the cost enhancement of pedestrian & cycle links through Bromsgrove Town Centre and capacity and infrastructure improvements on key corridors including Market Street;
- A38 Bromsgrove Route Enhancement Contribution to deliver improvements and upgrade works to the A38 corridor between the junction of the A38 Eastern Bypass (Lydiate Ash) and the B4094 Worcester Road to the South and M5 junction 4 to the north Hanbury Turn; junction improvement works at Market Street/St Johns street and St Johns Street/Hanover street/Kidderminster Road;
- Public Transport Contribution;
- Sustainable Infrastructure contribution towards the Active Travel Infrastructure and Whitford Road Cycle Route.

Condition 5 of the Outline permission requires that the Reserved Matters accord with the indicative masterplan 16912/1012 rev B, development parameters plan 16912/1017B and the principles described in the DAS dated 7th January 2016 and the addendum dated 3rd January 2018. This condition requires that any RM application shall include a statement providing an explanation as to how the design of the development responds to the relevant DAS.

Condition 6 sets out the maximum scale of the buildings and condition 24 restricts the maximum gross floorspace of the retail; unit to 400sqm.

22/00090/REM	Reserved Matters (layout; scale; appearance and landscaping) to outline planning permission 16/1132 (granted on appeal APP/P1805/W/20/3245111) - for the erection of 370 dwellings with associated car parking, landscaping and other infrastructure within the southern section of Site A Non Material Amendment to condition 1 landscaping drawings of Reserved	Approved 08.07.2022
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Matters approval 22/00090/REM:
Replacement of translocated hedge.
New hedge planting along Whitford
Road

Other applications currently under consideration on Site A

- 23/00993/REM Reserved Matters (Layout; scale; appearance and landscaping) to outline planning permission 16/1132 (granted on appeal APP/P1805/W/20/3245111) for the erection of 120 dwellings with associated car parking, landscaping and other infrastructure within the northern section of Site A.
- 24/00117/S73 Variation of condition 25 of planning permission APP/P1805/W/20/3245111 allowed on appeal 09/02/2021 (LPA 16/1132):
FROM: No part of the development shall be occupied until the junction of Fox Lane/ Rock Hill has been altered in accordance with the scheme for a roundabout shown on the plan Fox Lane/ Rock Hill schematic ref 7033-SK-005 revision F.
AMEND TO: No more than 39 dwellings shall be occupied until the junction of Fox Lane/Rock Hill has been altered in accordance with the scheme for a roundabout shown on the plan Fox Lane/Rock Hill schematic scheme ref 7033-SK-005 revision F
- 24/00516/S73 Variation of condition 22 of planning permission APP/P1805/W/20/3245111 allowed on appeal 09/02/2021 (LPA 16/1132):
FROM: 22) No dwelling shall be occupied until the acoustic fencing on the north-western part of the site has been erected in accordance with a scheme which has been submitted to and approved in writing by the local planning authority. The acoustic fencing shall be retained thereafter.
AMEND TO: 22) No dwelling shall be occupied on the north-western part of the site Phase 2 (Miller Homes Area) as

indicated on drawing number 16912/1004 N01 until the acoustic fencing on the north-western part of the site to which it relates, has been erected in accordance with a scheme which has been submitted to and approved in writing by the local planning authority. The acoustic fencing shall be retained thereafter. In relation to the remainder of the site, Phase 1 as indicated on drawing number 16912/1004 N01 (Bellway Homes Area) a noise mitigation measures scheme shall be submitted to and approved in writing by the local planning authority. (enclosed with this application)

The Site and its Surroundings

The site forms part of the Bromsgrove Town Expansion Site BROM3 allocated for development in the District Plan. It forms part of a larger site (Site A) granted outline planning permission by The Planning Inspectorate.

It is located to the western side of Whitford Road and approximately mid-way between the two Deansway junctions that are positioned on the eastern side of Whitford Road. The site measures approximately 0.13 hectares.

It is bounded to the north, south and west by residential development (Bellway Homes Ltd) that was previously approved in 2022 (22/00090/REM).

Proposal

Following the grant of outline planning permission and the approval of Access by the Planning Inspector, this application seeks consent for the remaining 4 Reserved Matters: Appearance, Landscaping, Layout and Scale for the erection of a retail unit and associated infrastructure.

A single storey 372sqm retail unit is proposed. The design incorporates a mono-pitch roof sloping downwards towards the rear (north of the site). The building height is stated as approximately 4.6m to eaves and 5.3m to ridge. The proposed elevations and roof are primarily finished in metal cladding (Alaska Grey), with areas of timber boarding used around the building entrance, the plinth around the building is proposed to be finished in either concrete smooth finish or grey brick masonry. Glazing is proposed to both the front elevation and part of the side elevation towards Whitford Road. An internal refuse storage area is included within the retail unit.

The site layout includes retaining walls.

The building is shown to be located behind the proposed parking area. 10 car parking spaces are proposed (including 1 no. disabled bay); cycle parking comprising 4 no. Sheffield hoops. A service bay is located to the west of the retail unit.

Separate vehicle and pedestrian access points would be taken from the internal roadway serving Site A. Soft landscaping is proposed to the north, east and south.

Proposed opening times: 07:00 to 23:00 Monday to Saturday, and 07:30 to 22:30 Sunday and Bank Holidays.

Proposed delivery hours: 07:00 to 21:00 Monday to Saturday, and 08:00 to 18:00 Sunday and Bank Holidays

This application does not relate to the display of any form of advertisement. This will be subject to a separate application.

The principle of the development has been established though the appeal decision, therefore, the issues for consideration by Members are limited to matters of the internal vehicular access arrangement, layout, scale, appearance and landscaping. No weight can be attached to objections raised with regard to the need for a retail unit, matters of competition and the effect on other retail providers. Similarly, the matters of traffic generation, and the principle of a shop up to 400sqm has already been established by the outline planning permission allow on appeal – these matters cannot be re-considered under this Reserved Matters application.

The 4 Reserved Matters to be considered relate to:

- **Layout** - the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development.
- **Scale** - the height, width and length of each building proposed within the development in relation to its surroundings.
- **Appearance** - the aspects of a building or place within the development which determines the visual impression the building or place makes, including the external built form of the development, its architecture, materials, decoration, lighting, colour and texture; and
- **Landscaping** - the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes—
 - (a) screening by fences, walls or other means;
 - (b) the planting of trees, hedges, shrubs or grass;
 - (c) the formation of banks, terraces or other earthworks;
 - (d) the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and
 - (e) the provision of other amenity features.

For clarity, the matter of external **Access** has already been determined and approved, thus does not fall to be considered as part of the current application.

Assessment of Proposal

Phasing

The proposal relates to the detail of the retail element of the outline approval on what is referred to in the appeal as Site A. In determining the appeal, the Inspector anticipated

development taking place on a phased basis and this is reflected in the wording of many of the conditions. The submission of a RM application for this specific part of site A is considered acceptable.

Layout

The retail unit site lies adjacent to one of the two access roads off Whitford Road serving Site A that were allowed by the Inspector. This accords with the Design and Access Statement submitted with the outline appeal that identified that the retail unit would be sited off the main (northern-most) access location into site A to promote easy access to the development site and the wider settlement. This was also indicated on the masterplan. Planning conditions attached by the Inspector require that the Reserved Matters accord with both these documents. The principle of the location of the retail unit proposal complies with both.

The Design and Access statement identifies this location adjacent to the approved access off Whitford Road as a site for a focal building. The layout of the site is considered to be appropriate with regard to the provision of a focal building.

The layout shows a retail unit of 372sqm. This is less than the extant planning permission which allows a unit size up to 400sqm and this accords with condition 24 of the outline approval.

The retail unit is set behind the proposed parking area and landscaped frontage – this is considered to be a logical layout for this site and serves to limit the potential for vehicle noise adjacent to the boundaries with residential properties.

Residential dwellings would be located adjacent to the boundaries of the retail site. Consideration must be given to the impact of the development on residential amenity. A shadow study has been submitted with the application, showing that the impact from any overshadowing would be transient and is therefore considered acceptable.

It is considered that the proposed building, routes and open spaces within the development are well considered and positioned in an acceptable orientation in relation to each other and to buildings and spaces outside the development, including new residential development to the north, west and south and the existing residential properties to the east.

The submitted Acoustic report proposes an acoustic fence of between 1.8m and 2.2m high along the western boundary to protect residential amenity for noise arising from the use of the site and the location of the delivery area close to the boundary. WRS requested further information on noise generation. This has been submitted and at the time of writing this report the further comments from WRS are awaited. I will update Members at the Committee on this issue.

Some comments received are concerned at the potential for litter arising from the development. The Inspector did not impose any conditions requiring the provision of litter bins for customer use. Therefore it is considered that this would be addressed as part of the operator's site management regime.

The Highway Authority (HA) has identified the possibility of parking demand greater than the spaces provided on the basis of a desktop study. The HA also identifies that this is not

unusual for the type of development . To overcome any possible issues of displacement of vehicles within the visibility splay or the residential access opposite a contribution is requested for monitoring and the introduction of a TRO if necessary. This is considered appropriate.

Appearance

The proposed retail unit is single storey. The entrance into the shop faces the car park and is readily legible with a largely glazed front elevation. Two panels of glazing extend along the Whitford Road elevation. Some concern has been raised that glazing along Whitford Road elevation would be detrimental to the amenity of residents opposite. The closest dwelling directly to the east is located in excess of 50m away. In addition, there is existing intervening vegetation along the eastern side of Whitford Road. Although the new development would be likely visible and glimpsed between tree branches from the existing dwellings, the impact is not considered to be sufficiently harmful to warrant a refusal. This glazing is considered to add interest to the eastern elevation, which would otherwise be bland and fail in the requirement to achieve good design. The inclusion of glazing on the side elevation along Whitford Road is considered to reflect the character of the residential development already approved which includes windows within those front elevations that directly front onto Whitford Road. The inclusion of glazing is considered to enhance the building, the site entrance into the Site A development and to be part of the design as a focal building to comply with condition 6.

Landscaping

The proposal includes a combination of soft and hard landscaping. Soft landscaping is proposed along the western, southern and eastern boundaries of the site. The planting bed to the north measures approximately 2.5m wide. Planting is also shown to the Whitford Road boundary and will be viewed within the context of retaining walls. A group of 3 trees are proposed along the site frontage to the internal access road serving Site A. The tree species have been amended following advice from the Tree Officer. The Tree Officer has advised that the revised landscaping plan contains a suitable range of planting to provide seasonal interest and produce suitable level of landscape structure on the site.

Hard surfacing within the site includes a combination of tarmac for the roadway, gravel around the plant to the rear and textured buff flag paving to the pedestrian walkways. These aspects of the proposed landscaping are considered acceptable.

Close board fencing, 1.2m high post and rail fencing and gabion baskets also feature with the proposed landscaping together with a 0.3m high rail to the frontage. These are considered to accord with the design principles of the Design and Access statement. Subject to the detailed matter of appropriate acoustic boundary treatment with regard to residential amenity that is subject to the comments awaited from WRS as reported above, the proposed landscaping is considered acceptable.

Scale

Condition 6 requires that the Reserved Matters accord with the maximum scale parameters for buildings as set out in paragraph 5.5.4 of section 5.5 of the Design and Access Statement. This states that the majority of the built form will be two storeys

(approximately 5m to eaves, 8-9m to ridgeline). It is noted that the majority of the buildings on Site A will be residential.

The retail unit is single storey, the supporting statement explains the proposed ridge height is approximately 5.3m and the eaves approximately 4.6m. Due to site levels, a retaining wall will support the development set back from Whitford Road; the combined height to ridge level would be 7.2m-7.8m approximately. Thus, the scale of the development proposed would comply with the requirements of condition 6.

Having considered all material planning matters and assessed the scheme against the required parameters of the outline planning consent, I am content the scheme is acceptable.

RECOMMENDATION:

- (a) Subject to the satisfactory final views of Worcestershire Regulatory Services, **Minded to GRANT** Reserved Matters
- (b) That **DELEGATED POWERS** be granted to the Head of Planning, Regeneration and Leisure to determine the planning application following the receipt of a suitable and satisfactory legal mechanism in relation to a financial contribution with regard to a Traffic Regulation Order
- (c) And that **DELEGATED POWERS** be granted to the Head of Planning, Regeneration and Leisure to agree the final scope and detailed wording and numbering of conditions as set out in the summary list at the end of this report.

Conditions:

- List of approved plans
- Materials
- Noise attenuation measures (if deemed appropriate)
- Hours of use
- Delivery hours
- Landscape implementation and maintenance
- Cycle parking
- Travel Plan
- Provision of parking/ manoeuvring areas
- Visibility splays

Case Officer: Jo Chambers Tel: 01527 881408
Email: jo.chambers@bromsgroveandredditch.gov.uk

24/00150/REM

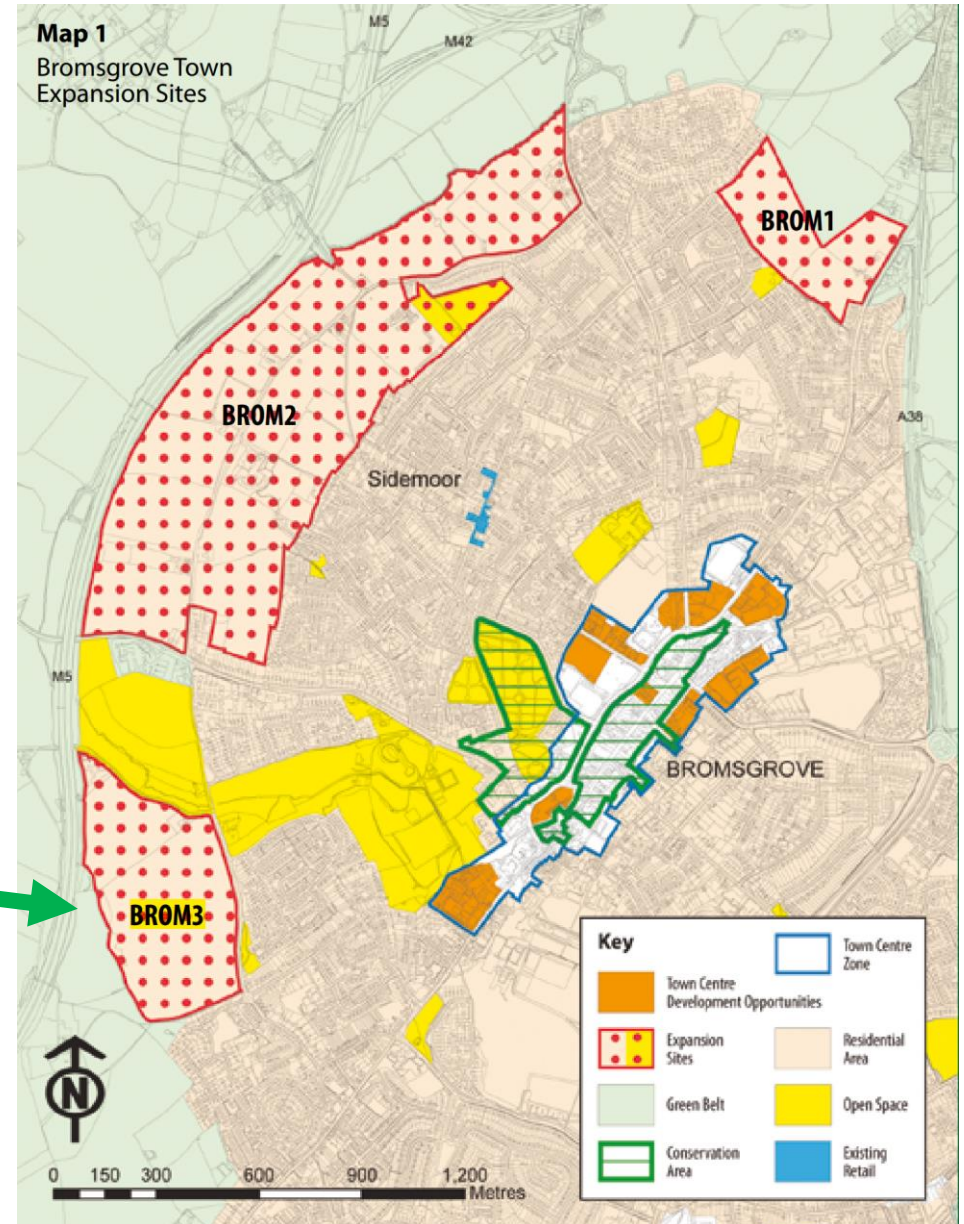
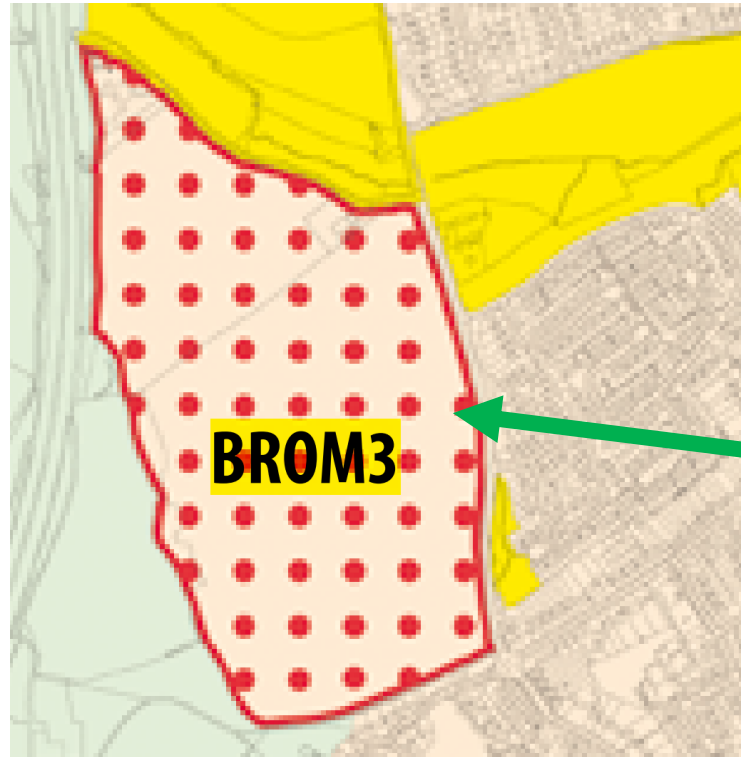
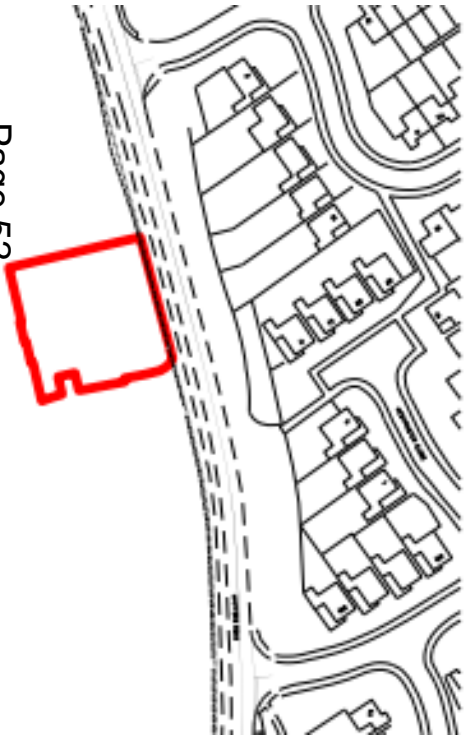
Land At Whitford Road Bromsgrove

Reserved Matters application (Layout, Scale, Appearance and Landscaping) to outline planning permission 16/1132 (granted on appeal APP/P1805/W/20/3245111) for the erection of a retail unit and associated infrastructure within Site A

Recommendation: Minded to GRANT, delegated powers

Application site in relation to Bromsgrove District Plan site – BROM 3

Page 52



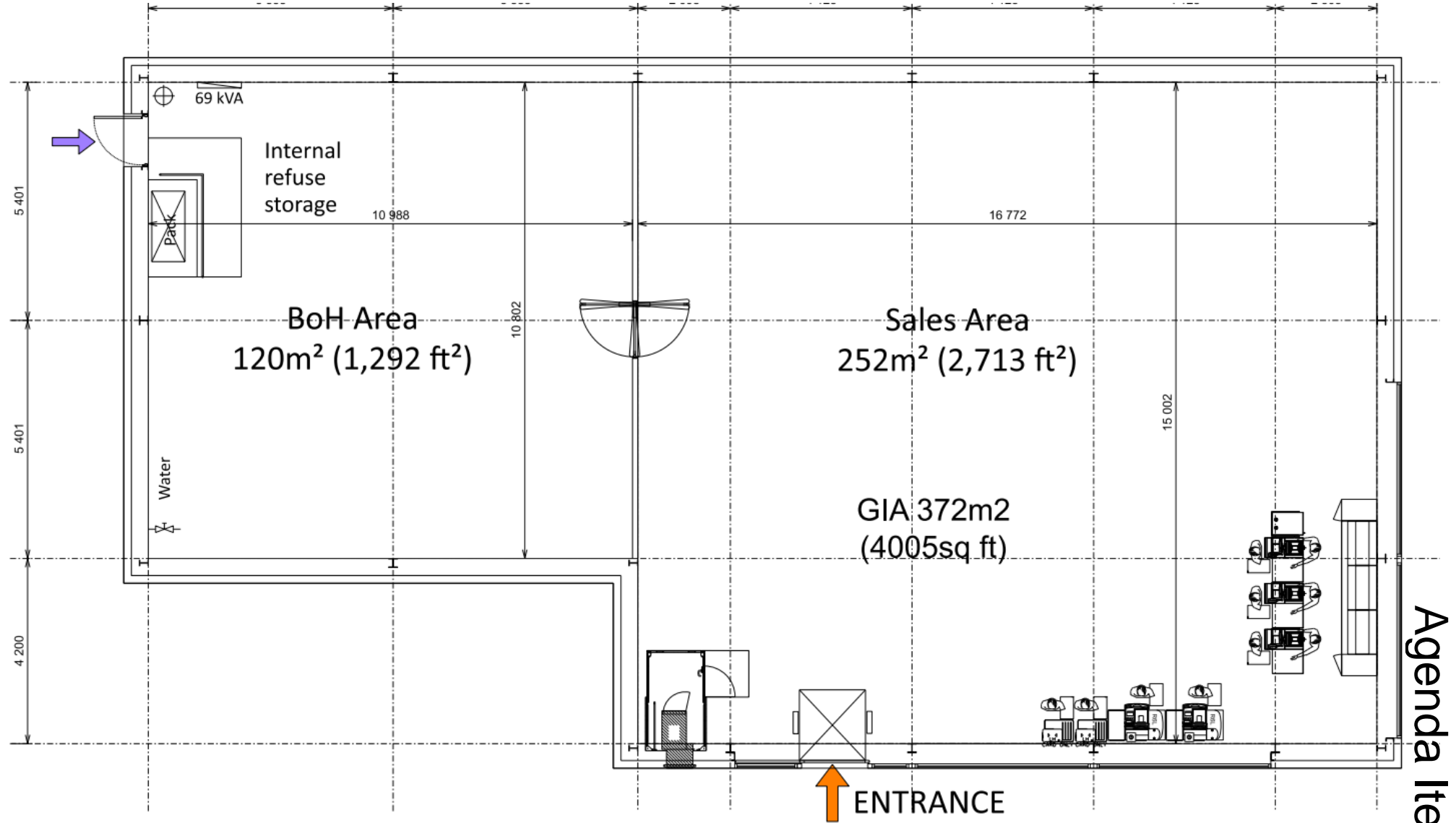
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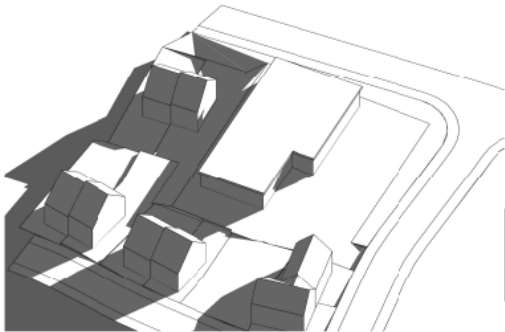
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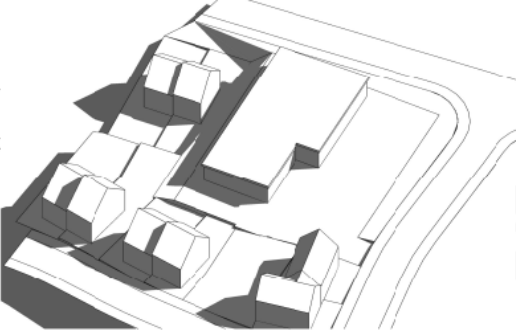
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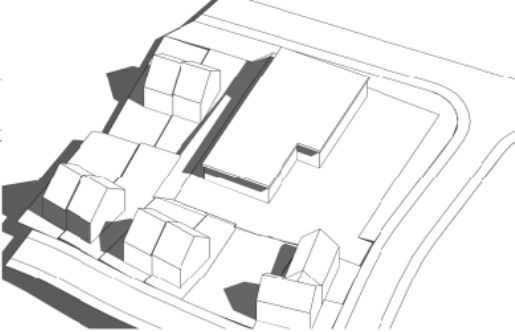
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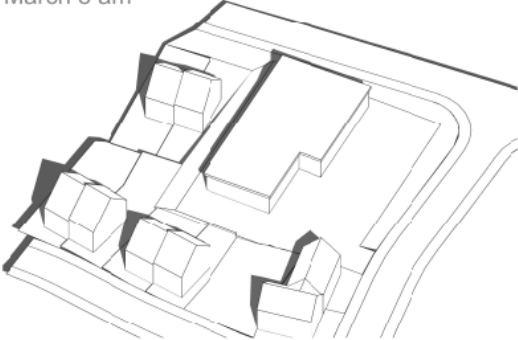
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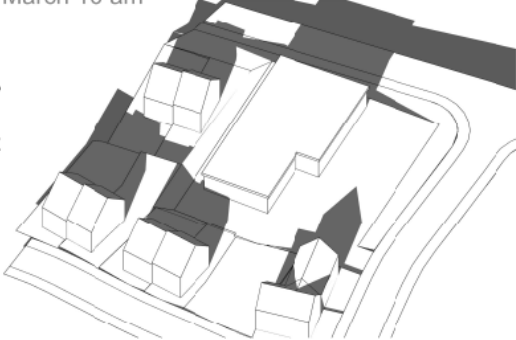
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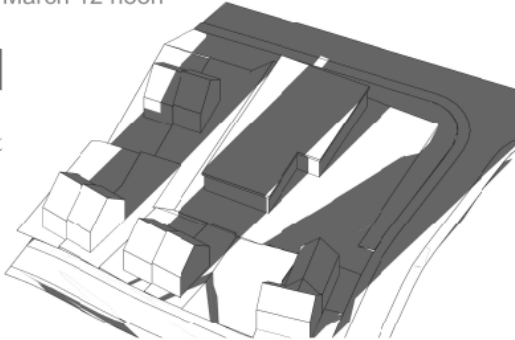
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March 2 pm

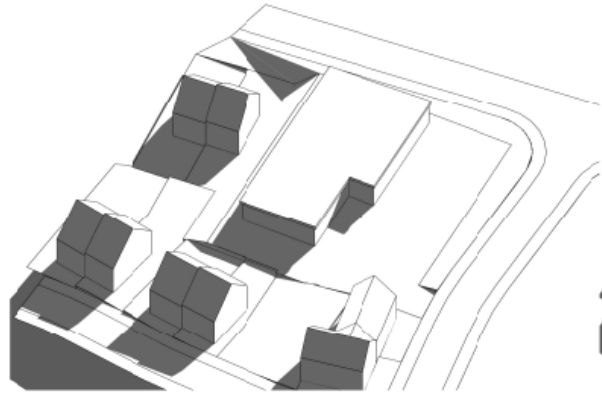


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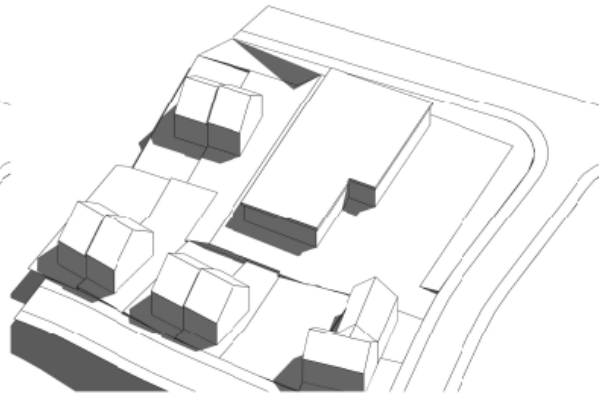


March 6 pm

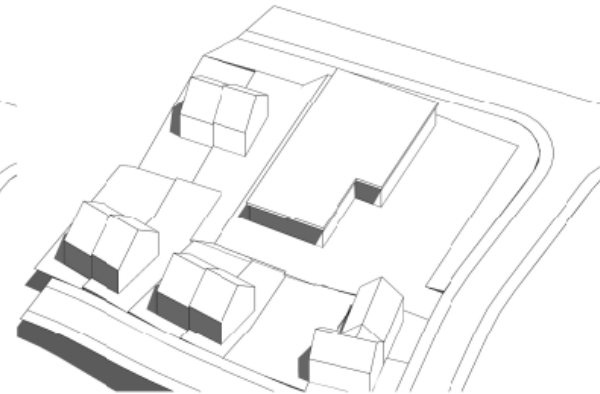
Shadow diagram June



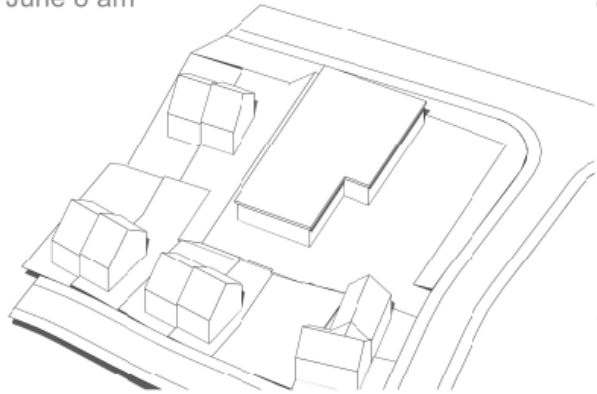
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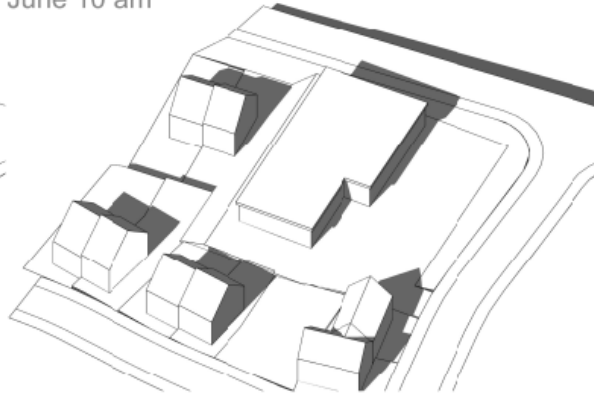
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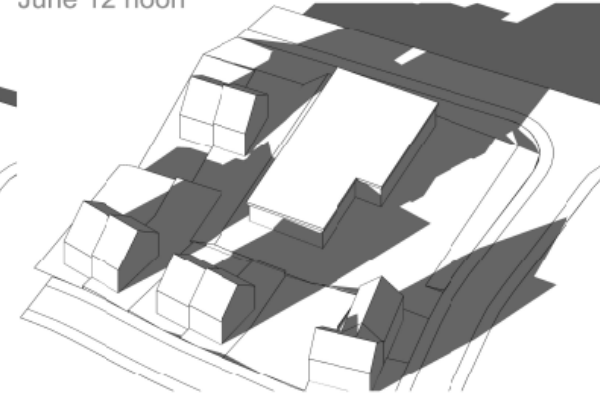
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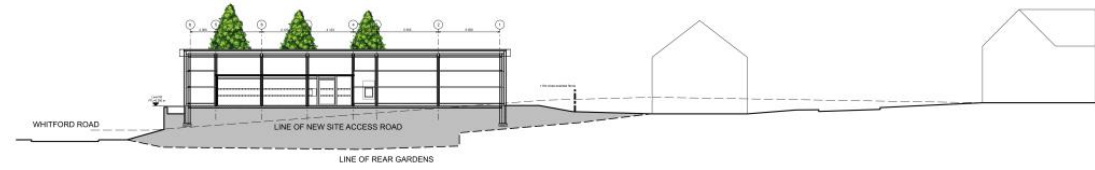


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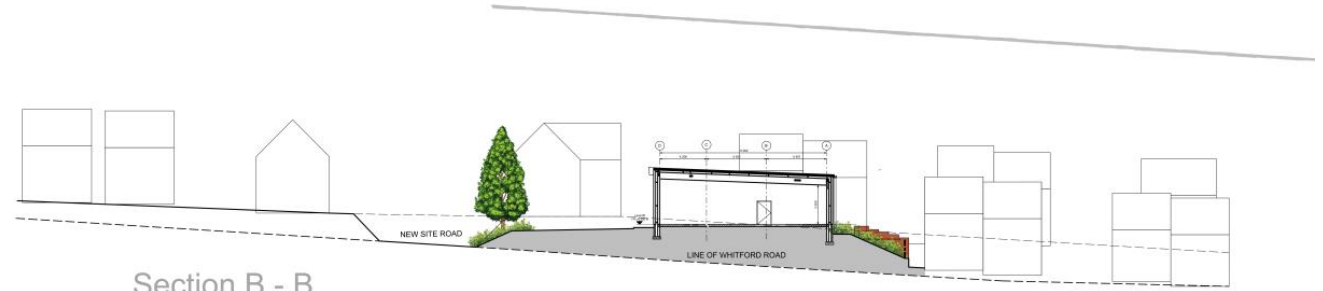


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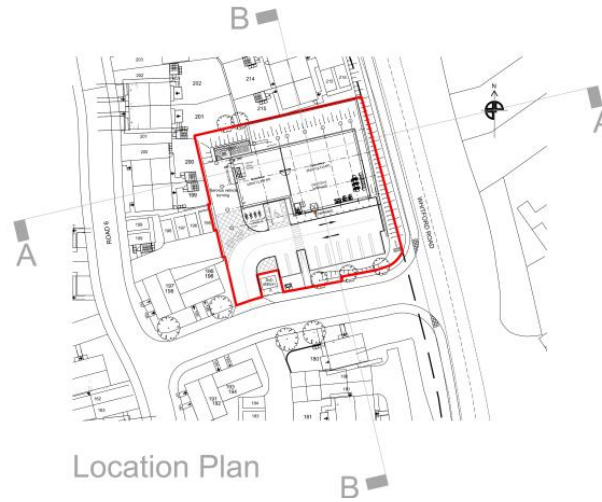
Site Sections



Section A - A



Section B - B



Location Plan




Landscaping

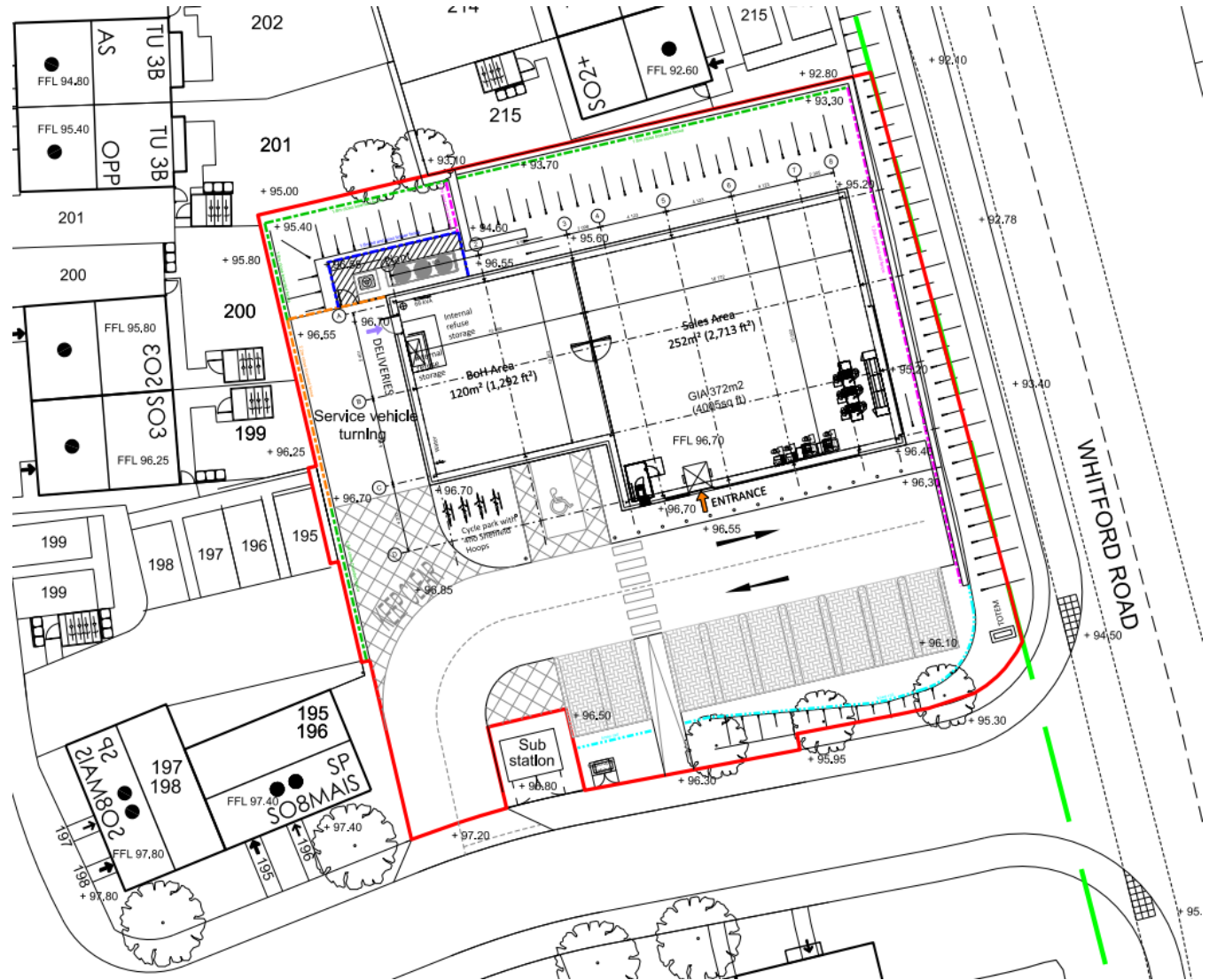


Boundary treatments

Page 61

Boundary Treatments

-  2.2m high acoustic fence
-  1.8m high close boarded fence
-  1.8m hit and miss fence
-  1.2m high post and rail fence
-  0.3m high knee rail



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Name of Applicant	Proposal	Expiry Date	Plan Ref.
Mr Loveridge	Part-retrospective change of use of land for the creation of 2no. Gypsy/Traveller pitches, comprising the siting of 1 mobile home, 1 touring caravan and 1 dayroom per pitch, alongside the formation of an access road and associated landscaping Land At Junction of Blackwell Road/Alcester Road, Burcot, Bromsgrove	23.05.2024	24/00342/FUL

RECOMMENDATION: That planning permission be **Refused**.

Consultations

Worcestershire Highways - Bromsgrove

The Highway Authority recommends refusing the application due to the significant negative impact on pedestrian safety and non-compliance with design standards.

- **Pedestrian Safety Concerns:**
 - Bus stops are within walking distance (200m) but on the opposite side of a busy B-road (Alcester Road).
 - No safe pedestrian crossings exist (dropped kerbs) to access these bus stops.
 - The developer's proposed pedestrian access lacks proper dropped kerbs and has poor visibility, making it unsafe for pedestrians.
- **Non-Compliance with Design Guides:**
 - The location of the vehicular access might cause conflicts with oncoming traffic on Blackwell Road.
 - Analysis of vehicles towing caravans suggests they might encroach into the opposite lane when entering the site.
 - The developer failed to provide a properly dimensioned site plan with details like:
 - Vehicular access radius dimensions
 - Setback distance of proposed gates
 - Width of internal roads
 - Parking space dimensions
 - Turning head dimensions
 - Location of proposed lighting, drainage, and fencing
 - The developer also failed to provide evidence that large vehicles with trailers can safely navigate the turning area within the site.

Policies Breached:

- The development prioritizes car use over pedestrian and public transport access, violating the National Planning Policy Framework (NPPF) paragraphs 114 and 116.

- It doesn't effectively consider access to nearby public transport (bus stops), contradicting NPPF 114.
- The design might create conflicts between vehicles and pedestrians, going against NPPF 116.

Additional Notes:

- While the applicant highlights a nearby development with pedestrian access approved, the current application's pedestrian safety issues were not present in the previous case.
- The recent accident record doesn't consider the potential impact of the proposed development's traffic generation.
- The applicant's claim that the lack of dropped kerbs is typical in rural communities is not accepted by the Highway Authority due to safety concerns.

Bromsgrove Strategic Planning and Conservation

The Council's 2021 Gypsy and Traveller Accommodation Assessment (GTAA) provides the most up to date picture of need for traveller pitches in the district. It finds that in the 5 year period 2021/22-2025/26, there was a need for 17 pitches, and for the subsequent 5 year period 2026/27-2030-31, there was a need for a further 4 pitches. These are the two relevant 5 year demand periods in the GTAA for the purposes of calculating the up to date 5 year supply at 1st April 2024.

As of 1st April 2024, the Council can demonstrate a 2.59 year's supply of Traveller pitches. The Bromsgrove Local Plan is being developed and sites will be proposed for allocation to meet the identified shortfall in in traveller pitches in due course as the plan progresses. The Council held a Call for Sites exercise in 2019-2023, seeking suggestions of sites for all forms of development, including traveller sites. The application site was part of a much larger 5ha site proposed for residential development, with no reference made to the potential for traveller accommodation.

This application constitutes inappropriate development in the Green Belt. Para 15 of the NPPF states that the planning system should be genuinely plan-led and para 145 makes clear that "changes [to the Green Belt] should be made only through the plan-making process". The Government's Planning Policy for traveller sites (PPTS), reiterates this at para 17, stating that should there be a wish to alter Green Belt boundaries to meet the need for traveller sites this should only be done through the plan-making process. The Bromsgrove Local Plan will include a full and comprehensive Green Belt Review to direct allocations to avoid areas where harm to the Green Belt would be highest.

Private Sector Housing Team

In the event that the site is permitted through planning, it will be necessary for the site owner to apply for a Mobile Home Site Licence with regular inspections in order to ensure compliance with the model standards and safety of the residents.

Arboricultural Officer

The proposal highlights an intention to install 2 x Day Rooms both of which fall within the BS5837:2012 Root Protection Area (RPA) of Oak trees within the hedge on the boundary of Blackwell Road. These facilities will need to be provided with utility services. Both the construction of the Day Rooms and installation of the utility services may require

groundwork which would have a high likelihood to cause root damage to the trees in the hedge row. Therefore, I request that the proposed development is redesigned to remove the conflict with the Oak trees in the hedge line on the boundary of Blackwell Road.

North Worcestershire Water Management

No objection subject to condition.

The site falls within flood zone 1 (low risk of fluvial flooding) and is not shown to be susceptible to surface water flooding, although the adjacent highway may be at times. The proposals will increase the amount of hard-standing on site, and therefore the volume and rate of surface water runoff will increase. In order to ensure no increase in flood risk, all hardstanding areas will need to be properly drained.

Severn Trent Water Ltd

No Comment

Worcestershire Archive and Archaeological Service

An archaeological investigation is recommended because the site has moderate potential to contain buried remains of a medieval settlement despite no findings on the opposite side of the crossroads.

Lickey And Blackwell Parish Council

Lickey and Blackwell Parish Council object to this application on the following grounds;

- This development is contrary to BDP4.4 from the Bromsgrove District Plan regarding the development of new buildings in green belt.
- This development is outside of the settlements of Blackwell and Burcot and cannot be considered to be within the village envelope.
- There are no exceptional circumstances that would permit a development.
- It is out of character with the nearby settlement of Burcot.
- Highways. The visibility splay is poor and an accident is likely.
- The Lickey and Blackwell and Cofton Hackett Neighbourhood Plan does not support development of this type.
- Local objection to scheme

Publicity

160 letters sent 5 April 2024 (expired 29 April 2024)

Site notice displayed 4 April 2024 (expired 28 April 2024).

136 letters of objection have been as a result of this consultation. The comments received have been summarised as follows;

- Concerns raised about the impact of proposed development on Green Belt area in Burcot.
- Potential negative effects on wildlife and countryside.
- Safety concerns regarding increased traffic congestion and road hazards.
- Lack of amenities and services in the area to support further residential development.
- Environmental impact and unsuitability for the area.
- Previous withdrawn application and concerns about potential future developments.
- Issues with sewage, drainage, and road infrastructure capacity.

- Mention of existing traveller sites in Worcestershire and nearby housing developments.
- Mr. Loveridge's current residence in Redditch and other local/national sites raises questions about the need for an additional site in Burcot
- Concerns about flooding risks due to increased runoff from hard standing areas.
- Safety hazards from new access points and traffic congestion.
- Concerns about the visual impact and isolation of the proposed site from the community.
- Impact on green spaces, flora, and fauna in the area
- Concerns about the precedent set by granting planning permission for the proposed development.

One letter of support has been received. The comments received have been summarised as follows:

- We are a plot holder on the site where this planning application is being considered
- We have observed that the proposed occupant, John, and his young family have consistently shown respect towards other plot holders and the general area.

Cllr Bakul Kumar

Objection as summarised;

- **Road Safety:** The new access on Blackwell Road is dangerous due to poor visibility.
- **Green Belt:** The development is inappropriate for the Green Belt because it:
 - Is not one of the few allowed uses (agriculture, recreation etc.
 - Harms the Green Belt's openness and rural character.
 - Doesn't consider using already developed land.
- **Visual Impact:** The caravans and vehicles will be unsightly for years until landscaping matures.
- **Traffic:** The access point will increase traffic congestion at a busy junction.
- **Sustainability:** Residents will rely on cars, increasing traffic and harming the environment.

Relevant Policies

Bromsgrove District Plan

BDP1 Sustainable Development Principles

BDP2 Settlement Hierarchy

BDP4 Green Belt

BDP11 Accommodation for Gypsies, Travellers and Showpeople

BDP16 Sustainable Transport

BDP19 High Quality Design

BDP20 Managing the Historic Environment

BDP21 Natural Environment

BDP23 Water Management

Others

NPPF National Planning Policy Framework

NPPG National Planning Practice Guidance

PPTS Planning Policy for Traveller Sites

GTAA Worcestershire Gypsy and Travellers Accommodation Assessment 2014

GTAA Gypsy and travellers Accommodation Assessment Addendum 2019
Bromsgrove Gypsy and Traveller Assessment (GTAA) Update – Dec 2021
The House of Commons briefing paper entitled Gypsies and Travellers; Planning Provisions 19 December 2019
High Quality Design SPD
Lickey and Blackwell and Cofton Hackett Neighbourhood Plan
Lickey and Blackwell Village Design Statement

Relevant Planning History

23/00582/CPL	Use of land for grazing	Approval	24.08.2023
22/01264/FUL	Change of use of land for the creation of 2no. Gypsy/Traveller pitches, comprising the siting of 1 mobile home, 1 touring caravan and 1 dayroom per pitch, alongside the formation of an access road and associated landscaping	Withdrawn	16.06.2023

Site Description and Proposal

The application seeks permission for the use of the site to facilitate a gypsy lifestyle. The application seeks a part-retrospective change of use of land for the creation of 2no. Gypsy/Traveller pitches, comprising the siting of 1 mobile home, 1 touring caravan and 1 dayroom per pitch, alongside the formation of an access road and associated landscaping.

The application site is a greenfield site situated on the outskirts of the Burcot area. Situated at the junction of Alcester Road and Blackwell Road, the site is currently accessed via an existing field entrance from Alcester Road however a new access is proposed along Blackwell Road. The land itself is currently undeveloped grassland and falls within the designated Green Belt, positioned outside of any defined settlement boundary.

Procedural matter

Some Members may be aware that certain works have been undertaken at the site without the benefit of planning permission. This application seeks to regularise that work, hence why the application is described as part-retrospective. The exact layout onsite currently may differ from the proposal however for the avoidance of doubt permission is sought for the development as shown on the proposed drawings.

Assessment of Proposal

Gypsy Traveller Status

The definition of gypsies and travellers is set out in Annex 1 (Glossary) to the Planning policy for traveller sites 2015 (PPTS) as:

“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.”

Whilst the application seeks permission for a permanent settled base the application sets out that the proposed occupiers of the pitches continue to travel frequently throughout the year. As such it is considered that the occupiers fall within the above definition as Travellers.

Those occupying the site will be as follows.

- John Loveridge (d.o.b. 24/11/1991)
- Ashley-Jade Sheridan (d.o.b. 23/03/2001)
- Harper-Rose Loveridge (d.o.b. 08/03/2021)

It is noted that one family has been listed as occupiers of the site and this proposal is for the creation of 2no. Gypsy/Traveller pitches. No information has been provided on the residents of the second pitch.

Green Belt

The site lies in the Green Belt. Policy E of the PPTS states that traveller sites, whether temporary or permanent, in the Green Belt are inappropriate development. Paragraph 152 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Openness and the Purposes of the Green Belt

Paragraph 142 of the NPPF states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open with the essential characteristics of Green Belts being their openness and permanence. There is no definition of openness within the NPPF, however the courts have found that openness has both visual and spatial aspects.

Prior to the unauthorised works taking place the site was largely laid to grass with hedgerow to the two roadside site boundaries and an agricultural style access gate to the site frontage along Alcester Road. The site benefits from a Certificate of Lawfulness approval reference 23/00582/CPL which demonstrates the use onsite is for grazing. The overall topography is relatively flat, although the site sits at a slightly higher elevation compared to the adjacent road.

The proposal entails the introduction of two dayrooms, two touring caravans, and two mobile homes onto the site. This would necessitate the creation of a vehicular access point from Blackwell Road. Additionally, the development would require the installation of hardstanding to provide a designated driving and turning area, along with two parking spaces for each designated pitch. As a matter of fact the introduction of these structures will impact on the spatial openness of the Green Belt. The site itself holds a high degree of prominence for those traveling along both directions of Alcester Road. Furthermore, it would be readily visible from approaches along Blackwell Road and Pikes Pool Lane. Consequently, the proposal would result in a visual intrusion upon the Green Belt.

Considering these factors, particularly the prominent location and public visibility of the site, the proposed development would have a significant negative impact on the openness of the Green Belt.

The National Planning Policy Framework (NPPF) outlines the purposes of Green Belts in paragraph 143, one of which is to safeguard the countryside from encroachment. As previously mentioned, the site was primarily an undeveloped field before the unauthorised works. Furthermore, it lies outside the established village envelope. While development beyond the formal envelope doesn't automatically exclude a site from being considered part of the village, in this case, the application site exhibits a clear separation from the village due to the major road dividing them and the abrupt cessation of built structures. Considering these factors, the proposed development can be viewed as an encroachment on the surrounding countryside, thereby contradicting the fundamental purpose of the Green Belt.

Overall, the development would harm the Green Belt through inappropriateness, there would be spatial and visual harm to the openness of the Green Belt and harm to the purposes of including land within the Green Belt. Paragraph 153 of the NPPF goes on to state that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Policy E of the PPTS goes on to state that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.

Need and Supply of Pitches

The Council's previously published 5-year land supply position dated 1st April 2022 was considered at the Mintola Corral appeal hearing in November 2023 and was agreed to have been calculated incorrectly. Therefore, for the avoidance of doubt, this 5 year supply position for traveller pitches replaces that previously published by the Council.

The Council's 2021 Gypsy and Traveller Accommodation Assessment (GTAA) provides the most up to date picture of need for traveller pitches in the District. It finds that in the 5 year period 2021/22-2025/26, there was a need for 17 pitches, and for the subsequent 5 year period 2026/27-2030-31, there was a need for a further 4 pitches. These are the two relevant 5-year demand periods in the GTAA for the purposes of calculating the up to date 5 year supply at 1st April 2024.

As of 1st April 2024, the Council can demonstrate a 2.59 year's supply of Traveller pitches. The Bromsgrove Local Plan is being developed and sites will be proposed for allocation to meet the identified shortfall in traveller pitches in due course as the plan progresses. The Council held a Call for Sites exercise in 2019-2023, seeking suggestions of sites for all forms of development, including traveller sites. The application site was part of a much larger 5ha site proposed for residential development, with no reference made to the potential for traveller accommodation.

Policy H of the PPTS states that if a local authority cannot demonstrate an up to date 5-year supply of deliverable sites, this should be a significant material consideration when

considering the grant of temporary planning permission. However, one of the exceptions to this is where the site is located on land designated as Green Belt.

Character and Appearance

Policy H of the PPTS states that a number of matters should be given weight when considering applications for traveller sites. These include, at paragraph 26:

b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness

c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children

d) not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community

The proposed development site is a large, open field at the edge of Burcot, a primarily residential village. Across the road (Alcester Road), traditional red-brick houses with gardens and driveways define the existing built environment. Currently undeveloped, this field acts as a clear boundary between the village and the open countryside beyond.

The proposal to introduce two dayrooms, two touring caravans, and two mobile homes, along with hardstanding areas, would sprawl development into the countryside. The proposal has created a significant breach in the existing hedgerow to allow for vehicle access. This clashes with the established character of Burcot on this corner. Policy BD2 in the Lickey and Blackwell and Cofton Hackett Neighbourhood Plan (LBCHNP) sets out that suitable access should be provided and measures should take account of existing roadside trees, hedges and green verges. While the applicant suggests planting along Alcester Road, Blackwell Road, and the south side of the field to screen the development, such measures wouldn't guarantee the long-term preservation of these visual barriers. Effective development should prioritise integrating seamlessly with the surrounding environment and community, rather than relying solely on planting to mitigate its negative impact.

Having regard to the list of matters for consideration above, it is considered that the site has not been designed with these matters in mind and therefore is contrary to Policy H of the PPTS. This, in turn, means that the proposed development would detract from the existing character and appearance of the area contrary to policy BDP19 of the BDP and BD2 and NE1 of the LBCHNP.

Location of the Site

Policy H of the PPTS sets out a series of issues which should be considered when considering planning applications for traveller sites. Amongst these at d) it states: that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites.

Policy BDP11 of the BDP at 11.2, seeks to ensure that sites should be in sustainable locations that provide good access to essential local facilities e.g. health and education.

In addition, sites should accord with the sustainable development principles set out in BDP1. Furthermore, policy BDP2 sets out a settlement hierarchy which sets out that new residential development should accord with the listed hierarchy in order to meet Bromsgrove needs. Burcot is listed as a small settlement in this hierarchy.

Whilst BDP2 is a restraint on new housing development in itself it is not “up-to-date” with the NPPF, the sub-text to Policy BDP2 in the District Plan (paragraph 8.6) sets out the policy on the future role of the District’s settlements and villages to enable allocation of appropriate levels and types of development to different settlements. The site is close to the village boundary of Burcot which benefits from a variety of local amenities, including Blackwell First School and Blackwell convenience store.

While the proposed development is within a reasonable walking distance (approximately 200 meters) of bus stops, the lack of safe pedestrian crossings across the busy B-classified Alcester Road poses a significant pedestrian safety concerns. No dropped kerbs or designated crossings exist, compromising pedestrian access to public transport and essential services.

This raises serious sustainability issues. The infrequent bus service (running only every two hours and not on Sundays) makes car ownership practically essential for future residents. Given the limited access to public transport and the lack of safe pedestrian routes, the development would likely result in a high dependency on private vehicles for even basic errands. This contradicts policies BDP11, and Policy H of the PPTS.

Furthermore, despite Burcot's designation within the settlement hierarchy, the physical separation from the village by Alcester Road significantly weakens the site's connection to the existing community. This isolation further undermines the development's sustainability credentials contrary to policy BDP2.

Ecology

Ordinarily a proposal of this nature would be accompanied by a Preliminary Ecological Appraisal and any subsequent survey effort that was identified as being necessary. In this case, unauthorised works have already taken place at the site which have removed much of the parts of the site which may have formed a habitat for any protected species, therefore a survey has not been requested. If planning permission was forthcoming for the proposed development would be reasonable to attach a condition seeking details of biodiversity enhancement for the site

Drainage

There are concerns that more hard surfaces will increase rainwater runoff. Soakaways are proposed, but ground conditions need to be checked to see if they'll work. Another drainage plan must be submitted if soakaways aren't suitable. The recommendation is to use gravel or similar materials for driveways and parking to reduce runoff. The application's suggestion of a cesspit is rejected, and a connection to the public sewer is required. If planning permission is granted, a condition requiring a proper drainage system to be built before the site is used should be included.

Highways

The vehicular access located off Blackwell Road does not have planning permission. The plans show the proposed access however in a different position. The proposal shows this vehicular access to be relocated further away from the junction. The vehicular access, as proposed, would be located 20m from the existing junction and is deemed to be in accordance with WCC Streetscape Design Guide.

The applicant has provided trip generation data confirming that over the course of a day, it is predicted that there will be 5 arrival trips to the site and 5 departure trips to the site and these trips would not have a severe impact on the highway. It is agreed the trips generated by the proposed development will not have a severe impact on the highway.

The Swept Path Analysis for a Private Car Towing a Caravan shown on plan 2301066-TK03 shows the vehicles encroaching into the opposite lane when entering the site, this is deemed to be unacceptable since there would be an increase in the potential for road user conflicts.

The applicant has provided a speed survey via an Automatic Traffic Counter (ATC) between Saturday 20th January – Saturday 27th January 2024 to assess observed vehicle speeds. This data identified speeds in both directions at the access on Blackwell Road during this time period.

The 85th percentile speeds for each direction have been provided.

- Westbound: 26.6mph
- Eastbound 27.7mph.

The applicant has provided 36.3 metre visibility splay to the east, to account for westbound travel, and a 38.3 metre visibility splay to the west, to account for eastbound travel. However, it should be noted if the speed survey speeds are below the posted speeds, then WCC require the visibility splays to be provided for the posted speed in this instance being 30mph, therefore a visibility splay of 2.4m x 43m should be provided in this instance. It is noted for the construction of the visibility splays a considerable amount of vegetation along the boundary of Blackwell Road will need to be removed to ensure the visibility splays are clear of obstruction. This would not be supported given the character issues outlined earlier within the report.

The applicant has provided a separate pedestrian access to the west of the site on to a lit grass verged area adjacent to the junction between Blackwell Road and Alcester Road. No dropped crossings are available at this location for future residents of the site to safely cross Alcester Road onto the footway provision that exists to the west of Alcester Road.

The applicant has stated within the Tec Note “whilst it is accepted that this doesn’t include a formal footway with dropped kerbs” and goes on to conclude “it is a practice typically undertaken within rural communities where footway provisions are limited”. This justification is not accepted by highways since pedestrian safety is compromised at this location.

Pedestrians crossing at this location would not be acceptable for the following reasons:

1. The visibility available at this location is poor.
2. Crossing point would be located on the radius of both arms of the junction.
3. There are too many movements and directions for the pedestrians to check before crossing the road.
4. Low traffic signs obscuring visibility.
5. Dropped kerbs would not be accepted at this location since some of the radiuses would need to be squared off to accommodate the dropped kerbs properly and the large vehicles with trailers would not be able to negotiate this turn with any changes.

Worcestershire County Highways have raised objection to the visibility splays provided and pedestrian safety. Notwithstanding this it is also highlighted that the applicant has also failed to provide a dimensioned site plan for highways to review. The site plan omitted: vehicular access radius dimensions, set back distance of proposed gates, width of the internal road, parking space dimensions, turning head dimensions and also location of any proposed lighting, drainage details, proposed finish of the track and boundary treatment / fencing etc. The applicant has failed to provide Swept Path Analysis evidence demonstrating a Private Car Towing a Caravan has the ability to enter and leave the site in a forward gear using the turning head provided within the site.

Trees

The proposal highlights an intention to install 2 x Day Rooms both of which fall within the BS5837:2012 Root Protection Area (RPA) of Oak trees within the hedge on the boundary of Blackwell Road. These facilities will need to be provided with utility services. Both the construction of the Day Rooms and installation of the utility services may require groundwork which would have a high likelihood to cause root damage to the trees in the hedge row. The Tree Officer has raised concern on the layout of the development as proposed on these grounds.

Public comments

It is acknowledged that a large number of objections have been received from the local community, the Ward member and Lickey and Blackwell Parish Council. This report has already comprehensively addressed matters related to the Green Belt, highways, sustainability, drainage, character, and visual impact. Other issues raised include the lack of amenities and services in the area to support further residential development. Since Burcot is considered a small settlement in the settlement hierarchy, the principle of residential development within the village is considered acceptable. Concerns have been raised regarding the applicant's need to live on-site due to other residences he may possess both within the District and elsewhere. No evidence has been submitted to substantiate this claim. While a planning application in Stratford was referenced, inspection of the approval notice revealed that the permission related to individuals with the same surname, but not the applicant's direct family as listed as occupiers of this site. Concerns about setting a precedent are noted, however each application is considered on its own merits.

It is further noted that the plans do not fully accord with the development that has taken place onsite in respect of the access and position of caravans. This is a part-retrospective application and subject to Members decision on this application consideration will be had separately to any unauthorised development onsite.

Planning Balance

Policy E of the PPTS sets out that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. Unlikely should not be read to mean that these considerations will never clearly outweigh the harm, and any decision must take account of the weight afforded both the harm and the other considerations.

The proposal represents inappropriate development in the Green Belt by definition, it would harm the openness of the Green Belt and conflict with the purposes of including land within it. Paragraph 153 of the NPPF states that substantial weight should be given to any harm to the Green Belt.

The proposal raises significant concerns beyond the established harm to the Green Belt. These include;

- Damage to the character and appearance of the area. This encompasses the loss of a large section of hedge and open field on a prominent site at the edge of the village, including potential harm inflicted upon the local oak trees. This carries significant weight in the decision-making process.
- Serious highway safety issues, especially regarding pedestrian safety when crossing Alcester Road to access local services in Burcot. This concern also holds substantial weight.
- Insufficient visibility splays and potential lane encroachment by vehicles entering the site, as identified by the Swept Path Analysis for a car towing a caravan. These highway issues are significant and deserve careful consideration.

The best interests of the children are a primary consideration in this case, and it is clear that no other consideration must be given greater weight than the interests of the child. As such, it is considered that the best interests of the children should be afforded substantial weight. This matter has been recently re-addressed in Case Law Ward v SSLUHC & Anor 2024 which outlined that the decision maker should identify the child's best interests, which are likely consistent with those of the parent or carer involved in the planning process. The decision maker can assume that the carer will represent the child's best interests unless circumstances indicate otherwise. In Ward v SSLUHC & Anor 2024 the Claimant sought to challenge the decision by questioning whether the Inspector properly considered the impacts on the children and whether a personal or temporary permission was proportionate. Additionally, there were concerns raised about the Inspector's reasoning process, particularly in weight afforded to Green Belt harm and needs of a child and whether the decision was within the range of reasonable decisions open to the decision-maker. This is particularly relevant to this case and as such the decision has been included as an Appendix to this report.

By refusing this application the family lives and the best interests of the children involved would be affected, as the refusal of this application could lead to the applicants resorting

to roadside camping and travelling. This could undoubtedly represent an interference with their human rights under Article 8. However, this interference and harm must be weighed against the wider planning considerations and public interest, as these factors are not determinative on their own.

It is acknowledged that there is an identified unmet need for Traveller pitches in the District. However Policy BDP11 states that provision for new pitches should be made through the Plan review which could identify appropriate sites outside of the Green Belt. Paragraph 15 of the NPPF states that the planning system should be genuinely plan-led and para 145 makes clear that “changes [to the Green Belt] should be made only through the plan-making process”. The Government’s Planning Policy for traveller sites (PPTS), reiterates this at paragraph 17, stating that should there be a wish to alter Green Belt boundaries to meet the need for traveller sites this should only be done through the plan-making process. The Bromsgrove Local Plan will include a full and comprehensive Green Belt Review to direct allocations to avoid areas where harm to the Green Belt would be highest.

The scheme’s benefit in helping to reduce the unmet need for pitches attracts significant weight. The PPTS states that unmet need is unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. It is acknowledged through previous Appeal decision APP/P1805/W/23/3325331 at Mintola Corral the Inspector afforded further weight in favour of the scheme by reason of the time the Council has taken to provide allocated sites and lack of provision for sites for Gypsy and Traveller’s. The Council held a Call for Sites exercise in 2019-2023, seeking suggestions of sites for all forms of development, including traveller sites. The application site was part of a much larger 5ha site proposed for residential development, with no reference made to the potential for traveller accommodation. This work is still ongoing and therefore significant weight is afforded in favour of the proposal.

The applicant has further advanced, in the event that the material considerations put forward within the application as a whole are not considered to outweigh any identified harm or conflict with the Development Plan, then it is requested that a temporary permission of at least 5 years be granted, such that the best interests of any Children are taken into account and that the applicant and his family do not need to resort to a roadside existence whilst they seek an alternative site that is suitable for their needs and accords with the Local Development Plan. Particular regard should be given to the emerging Development Plan, and as such the length of time should reflect the likely timeframe for an emerging Plan’s adoption, particularly when there is a lack of a 5-year supply. In this regard, it is requested by the applicant’s agent that a 5-year temporary permission be granted. In considering this request, although this may allow time for the Development Plan to come through with allocated sites, in such time the families would be settled in the village of Burcot attending local schools and services and therefore if no sites are allocated in the local area it would cause issues for the family potentially having to resettle in the long term. Furthermore, given the harm identified in respect of pedestrian safety, a temporary consent would not resolve such matters. It does not therefore seem appropriate to allow a trial run in this location.

In this case, having regards to all the information available before me, it is considered that the harm that the proposal would cause to the Green Belt, and any other harm including harm to openness, purposes of Green Belt, character and appearance of area,

pedestrian safety, highways matters and potential harm to the Oak Trees would not be clearly outweighed by the unmet need, lack of supply of sites or the circumstances put forward in this case in terms of the best interests of the children and the personal circumstances of the family.

On balance, it is considered that the harm by reason of inappropriateness in the Green Belt, and the harm caused to the openness of the Green Belt, is not clearly outweighed by other considerations so as to amount to the very special circumstances needed to justify the development. The scheme is therefore recommended for refusal.

RECOMMENDATION: That planning permission be **REFUSED**

1. The proposed development would be inappropriate development in the Green Belt which would be harmful by definition. In addition, harm would arise through the impact on the openness of the Green Belt and conflict with purposes of including land within the Green Belt. Other harm has been identified to the character of the area, highways safety and trees. Circumstances have been advanced including the best interests of children, unmet need for gypsy traveller sites and offer of a 5 year temporary permission, however these are not considered to amount to the very special circumstances required to clearly outweigh the harm to the Green Belt. The proposal is therefore contrary to Policy BDP4 of the Bromsgrove District Plan, Planning Policy for Traveller Sites 2015 and the National Planning Policy Framework.
2. The currently undeveloped field serves as a clear distinction between the village and the open countryside. However, the proposed development, which includes two dayrooms, two touring caravans, two mobile homes, and hardstanding areas, would sprawl development into the countryside. The site is prominent in public views and although screening planting is proposed the vehicular access results in a significant breach of the existing hedgerow. This detrimental impact on the character and appearance of the area contravenes Policy BDP19 of the Bromsgrove District Plan and BD2 and NE1 of the Lickey and Blackwell and Cofton Hackett Neighbourhood Plan.
3. The proposed development does not provide adequate and safe pedestrian to access the site from Burcot. Bus stops are located approx. 200m from the proposed development and are located within acceptable walking distance. However, the route to reach these bus stops would require crossing Alcester Road a 'B' classification road, no dropped crossings are located to aid pedestrians across this road therefore pedestrian safety would be compromised. The application fails to accord with the adopted policy and the consequences of this will result in an unacceptable impact on the highway network, which is contrary to paragraph 114, 115 and 116 of the 2023 NPPF.
4. The applicant has failed to provide a dimensioned site plan for highways to review. The site plan omitted: vehicular access radius dimensions, set back distance of proposed gates, width of the internal road, parking space dimensions, turning head dimensions and also location of any proposed lighting, drainage details, proposed finish of the track and boundary treatment / fencing. The Swept Path Analysis on plan 2301066-TK03 for a private car towing a caravan does not demonstrate the

ability of such a vehicle to enter and exit the site in forward gear using the provided turning head. It is therefore considered that insufficient information has been provided to take a view on whether the proposal will result in an unacceptable impact on the highway network, which is contrary to paragraph 114, 115 and 116 of the 2023 NPPF.

5. Insufficient visibility splays have been provided onsite having regards to the speed surveys submitted. Furthermore, the Swept Path Analysis for a Private Car Towing a Caravan shown on plan 2301066-TK03 shows the vehicles encroaching into the opposite lane when entering the site, this is deemed to be unacceptable since there would be an increase in the potential for road user conflicts. The application therefore fails to accord with the adopted policy and the consequences of this will result in an unacceptable impact on the highway network, which is contrary to paragraph 114, 115 and 116 of the 2023 NPPF.
6. The proposal highlights an intention to install 2 x Day Rooms both of which fall within the BS5837:2012 Root Protection Area (RPA) of Oak trees within the hedge on the boundary of Blackwell Road. These facilities will need to be provided with utility services. Both the construction of the Day Rooms and installation of the utility services may require groundwork which would have a high likelihood to cause root damage to the trees in the hedge row. Insufficient information has been submitted to determine the impact of any utility services on these trees contrary to policy BDP19 and BDP21 of the Bromsgrove District Plan.

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Neutral Citation Number: [2024] EWHC 676 (Admin)

Case No: CO/466/2022
AC-2022-LON-001196

IN THE HIGH COURT OF JUSTICE
KING’S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 March 2024

Before :

MRS JUSTICE LANG DBE

Between :

WINIFRED HELEN WARD
- and -

Claimant

**(1) SECRETARY OF STATE FOR LEVELLING
UP, HOUSING AND COMMUNITIES**
(2) BASILDON DISTRICT COUNCIL

Defendants

Stephen Cottle (instructed by the **Public Interest Law Centre**) for the **Claimant**
Killian Garvey (instructed by the **Government Legal Department**) for the **First Defendant**
The **Second Defendant** did not appear and was not represented

Hearing date: 7 March 2024

Approved Judgment

This judgment was handed down remotely at 10 am on 25 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Lang :

1. The Claimant applies, under section 288 of the Town and Country Planning Act 1990 (“TCPA 1990”), for a statutory review of the decision, made on 30 December 2021, by an Inspector, appointed by the First Defendant, which dismissed Mr Mark Cooper’s appeal against the refusal of planning permission by the Second Defendant (“the Council”) for a material change of use of land in the Green Belt for the stationing of caravans for residential occupation, on the south side of Carlton Road, Bowers Gifford, Basildon (“the Site”).
2. The Claimant resides at the Site with Mr Cooper and their three children in one mobile home and one touring caravan. The Claimant is an Irish Traveller and Mr Cooper is a Romani Gypsy. Mr Cooper was the applicant for planning permission and the appellant in the appeal under section 78 TCPA 1990. He has not been joined as a claimant in this application because he has not been able to obtain legal aid. The Claimant has been granted legal aid and she is a person aggrieved by the decision, within the meaning of section 288(1)(a) TCPA 1990 as she is at risk of losing her home.
3. The Council is the local planning authority.

Grounds of challenge

4. There is a dispute between the parties over the extent of the grant of permission to apply for statutory review.
5. The grounds of challenge as originally pleaded, when the claim was filed on 8 February 2022, were as follows:
 - i) **Ground 1.** The Inspector erred in law when she concluded in paragraph 24 of the Decision Letter (“DL/24”) that ‘substantial weight’ should be attributed to *both* the harm in the Green Belt by reason of inappropriateness and the harm to the openness of the Green Belt.
 - ii) **Ground 2.** The Inspector’s decision not to grant a temporary planning permission which would be personal to the First Claimant and her family was disproportionate and irrational.
6. Permission to apply for statutory review was refused on the papers by Johnson J. on 24 June 2022. The Claimant renewed her application for permission on Ground 2 only. Ground 1 was not pursued.
7. The oral renewal hearing took place on 8 November 2022. HH Judge Walden-Smith, sitting as a Judge of the High Court, refused permission on all grounds. During the hearing, she allowed Counsel for the Claimant to rely upon new grounds which were only made orally and not recorded in writing, either before or immediately after the renewal hearing. They were summarised in paragraph 12 of her judgment, as follows:

“Mr Cottle significantly expanded the extent of his challenge ... that ground to contend that there was a failure to apply the public sector equality duty; that there was a failure to consider

an absence of policy for the provision of sites; that some of the inspector's decisions were not supported by evidence; and there was a failure to have regard to the best interests of the children."

8. Upon an appeal to the Court of Appeal, Lewison LJ granted permission to apply for statutory review, on 25 January 2023, for the following reasons:

"I do not underestimate the difficult of challenging what, on its face, appears to be a carefully reasoned balance of the various factors for and against the grant of planning permission. I do, however, consider that it is at least arguable that in para [25] of the DL the inspector in making the transition from "primary consideration" to "significant weight" (as opposed to "substantial weight" used elsewhere in the DL made an error of law. There is also some force in the Appellant's contention that the inspector, in addition to balancing the various factors, ought to have given greater consideration to the question of proportionality (dealt with simply as a conclusion in one sentence of para [31] of the DL)."

9. Mr Garvey, Counsel for the First Defendant, contends that the grant of permission was limited to the two issues specified in the 'Reasons' section of Lewison LJ's order.
10. Mr Cottle, Counsel for the Claimant, submits that, in the Court of Appeal, permission was sought and granted on the basis of the Grounds of Appeal submitted by him, in particular:

"3. Having regard to all the circumstances (and particularly the small scale of the proposed development, the consequential degree of harm to the Green Belt and the matters which the Inspector identified should be attributed 'significant weight' in favour of the appeal) the Inspector's decision not to grant temporary planning permission made personal to the Claimant and her family was disproportionate and perverse.

4. Such is the combined weight of the matters relied upon in support of the appeal, such was the very limited extent of harm that the Inspector found was caused by the proposal given it is situated in a settlement, said to be a degree of harm, it was not a fair reflection of the factors to then go on to conclude that that harm was so substantial that it was not clearly outweighed. The substantial weight that must be given to protection of the green belt was so obviously outweighed it was perverse to decide otherwise and it was relevant to know what the profound health need was, that the Inspector was referring to."

11. In the 'Permission to appeal skeleton argument', Mr Cottle stated, at paragraph 17, that there was only one ground of appeal, namely, the ground set out in paragraph 3 of the Grounds of Appeal, taken from paragraph 21 of the Statement of Facts and Ground (in its original form).

12. In the light of the skeleton argument and the grounds of appeal, I consider that Lewison LJ must have treated the sole ground of challenge as being the text set out in paragraph 3 of the Grounds of Appeal. He did not grant permission on some grounds and not others because there was only one ground before him. The further grounds raised orally before HH Judge Walden-Smith were not before him.
13. Ground 2 was widely drafted. Mr Cottle submits that Lewison LJ gave permission for Ground 2 to be pursued in its entirety. Mr Garvey submits that Lewison LJ did not accept that the entirety of Ground 2 was arguable. He found that the Inspector’s decision “on its face, appears to be a carefully reasoned balance of the various factors for and against the grant of planning permission”. Lewison LJ only identified two arguable errors of law within Ground 2, which were as follows:
 - i) In DL/25, the Inspector in making the transition from “primary consideration” to “significant weight” (as opposed to “substantial weight” used elsewhere in the DL) made an error of law.
 - ii) The Inspector, in addition to balancing the various factors, ought to have given greater consideration to the question of proportionality, dealt with simply as a conclusion in one sentence of DL/31.
14. In my view, the decision is ambiguous and could be read either way. Therefore, I have decided to give the Claimant the benefit of the doubt and proceed on the basis that permission was granted for Ground 2 as then pleaded.
15. A further complication is that the parties subsequently submitted to the Court directions which they had agreed between themselves, which permitted the Claimant to file an Amended Statement of Facts and Grounds (“SFG”). An Administrative Court Office Lawyer made an order accordingly on 14 April 2023.
16. In the Amended SFG, Mr Cottle recast his case with a substantial amount of new text. He re-numbered the Grounds, so that what was Ground 2 has become Ground 1. The Amended Grounds may be summarised as follows:
 - i) **Ground 1: irrationality.** The Inspector’s decision not to grant a temporary planning permission was disproportionate and perverse.
 - ii) **Ground 2: children’s best interests.** The Inspector misdirected herself by regarding the primary consideration of achieving the outcome that was in the best interests of the children as attracting less weight than the public interest in protecting the Green Belt.
 - iii) **Ground 3: proportionality.** In carrying out the balancing exercise required by Article 8 ECHR, the Inspector failed to give sufficient consideration to the issue of proportionality. Further or alternatively, she failed to give sufficient reasons for her conclusion.
 - iv) **Ground 4: flawed balancing exercise.** The Inspector’s balancing exercise was flawed because she failed to factor in the right ingredients.

17. Ground 4 was not pleaded in the original SFG, and so Lewison LJ did not grant permission to pursue it. However, I have considered the specific points made under Ground 4 when determining Grounds 1 and 3.

Factual background

The Site and planning policies

18. The Site, which is about 527 sq. ft in size, is located on the south side of Carlton Road, Bowers Gifford, Basildon within the North Benfleet former Plotlands Estate. The Site is within the Metropolitan Green Belt. 63% of the Council's District is designated Green Belt; the rest is urban development. It lies between the built up areas of Basildon and Benfleet. The area is characterised by sporadic, low density, low rise residential development, interspersed with open, undeveloped plots of land. The Claimant submitted that the proposal was essentially infill development but the Council disagreed, as development on the land bordering the east and south was unauthorised, and affected the character of the area.
19. The development plan is the Basildon District Local Plan Saved Policies 2007. The Saved Policies are part of the Basildon District Local Plan, adopted in 1998, so the Local Plan is very out-of-date. There are no policies for meeting the accommodation needs of travellers. In 2018 a Basildon Borough Site Potential Study was published which assessed existing sites and found a significant shortfall.
20. The Green Belt is defined under Policy BAS GB1 of the saved Local Plan. It states: "The boundaries of the Green Belt are drawn with reference to the foreseen long term expansion of the built up areas acceptable in the context of the stated purposes of the Green Belt and to the provisions specified in this Plan". It does not set out criteria for development within the Green Belt.
21. The Statement of Common Ground set out evidence about the inadequate supply of traveller sites, and the need for development on the Green Belt, some of which was agreed and some of which was disputed by the parties. The Inspector determined the issues at DL/14-17, finding that the Council did not have a 5 year supply of deliverable sites to meet the current and historic need for pitches. There was a clear and immediate need for sites in Basildon.

Use of the Site

22. Mr Cooper has owned the Site since 2014. The Site was previously used for grazing horses. After hardstanding was laid, Mr Cooper stationed two caravans on the Site, in December 2017.
23. Mr Cooper, the Claimant and three children live in two caravans (a tourer and a static caravan) on the Site. There is a grassed amenity area for play and grazing for a pony/donkey. Living on a permanent site enables the children to attend school and other local activities, and to access medical and other services as may be required.

Judgment Approved by the court for handing down.

24. Mr Cooper was born and brought up in Basildon, and his parents and brothers live nearby. Two of his children live with his ex-partner in the Basildon area. Therefore it is important to him to live near Basildon.
25. The Claimant was born and brought up in West London. She suffers from severe anxiety and depression, and she is vulnerable by reason of her learning disability. Stability and familiarity are important to her.
26. The Council served two enforcement notices (which were later withdrawn). The Council also obtained an injunction, the terms of which were not available to me.
27. On 22 October 2018 Mr Cooper applied for part-retrospective planning permission (permanent or temporary) for a material change of use of land for stationing of caravans for residential occupation with associated development (hard standing and a day room constructed of either brick or wood).
28. The Council refused planning permission on 19 February 2019 for the following reasons:

“The proposal represents inappropriate development in the Green Belt, contrary to its aims and objectives. The absence of suitable pitches in the borough in tandem with unmet need weighs in favour of the proposal, as does a demonstrable lack of a 5-year land supply and the weight attached to these factors is significant. However, these factors, in conjunction with the applicant’s personal circumstances, are not sufficiently compelling to amount to very special circumstances and clearly outweigh the substantial harm caused by the proposal and therefore overcome the attributable policy objections. The proposal does not accord with the aims of the Basildon’s Local Plan Policies BAS GB1 & BAS BE12; policies contained in Chapter 13 of the National Planning Policy Framework 2019; The Planning Policy for Traveller Sites 2015 and policies contained in Basildon’s Emerging Local Plan.”

29. The Claimant appealed against the refusal of planning permission. The Inspector (Nicola Davies BA DipTP MRTPI) held a hearing and made a site visit in November 2021. At DL/7, she identified the main issues as follows:
 - i) The effect of the proposal on the openness of the Green Belt; and
 - ii) Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal?
30. After a thorough review of the issues, the Inspector concluded, at DL/34:

“Conclusion

34. The proposed development would, by definition, be harmful to the Green Belt, and I attach substantial weight to the

harm to the Green Belt having regard to the policy in the Framework. The proposal would also result in harm to the openness of the Green Belt. The benefits of the other considerations, including those personal circumstances of the appellant and his family, do not clearly outweigh this harm. Consequently, there are not the very special circumstances necessary to justify inappropriate development in the Green Belt whether on a permanent or temporary basis. There would be no violation of the human rights on this occasion.”

Legal and policy framework

The development plan and material considerations

31. Section 70(2) TCPA 1990 provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”) provides:

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

Gypsies and travellers

32. I have been assisted by the judgment of Coulson LJ in *Bromley LBC v Persons Unknown & Ors* [2020] EWCA Civ 12, [2020] PTSR 1043, in which he described the position of Gypsies and Travellers as follows:

“4. Romany Gypsies have been in Britain since at least the 16th century, and Irish travellers since at least the 19th century. They are a particularly vulnerable minority. They constitute separate ethnic groups protected as minorities under the Equality Act 2010 (see *R (Moore) v Secretary of State for Communities and Local Government (Equality and Human Rights Commission intervening)* [2015] EWHC 44 (Admin); [2015] PTSR D14), and are noted as experiencing some of the worst outcomes of any minority across a broad range of social indicators (see, for example, Department for Communities and Local Government, *Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers* (2012) and Equality and Human Rights Commission, *England’s most disadvantaged groups: Gypsies, Travellers and Roma* (2016)).

5. A nomadic lifestyle is an integral part of Gypsy and Traveller tradition and culture. While the majority of gypsies and travellers now reside in conventional housing, a significant number (perhaps around 25%, according to the 2011 United

Kingdom census) live in caravans in accordance with their traditional way of life. The centrality of the nomadic lifestyle to the gypsy and traveller identity has been recognised by the European Court of Human Rights. In *Chapman v United Kingdom* (2001) 33 EHRR 18, the court held at para 73:

“The court considers that the applicant’s occupation of her caravan is an integral part of her ethnic identity as a Gypsy, reflecting the long tradition of that minority of following a travelling lifestyle. This is the case even though, under the pressure of development and diverse policies or from their own volition, many gypsies no longer live a wholly nomadic existence and increasingly settle for long periods in one place in order to facilitate, for example, the education of their children. Measures which affect the applicant’s stationing of her caravans therefore have a wider impact on the right to respect for home. They also affect her ability to maintain her identity as a Gypsy and to lead her private and family life in accordance with that tradition.”

6. In the UK, there is a long-standing and serious shortage of sites for gypsies and travellers. A briefing by the Race Equality Foundation found that gypsies and travellers were 7.5 times more likely than white British households to suffer from housing deprivation (Race Equality Foundation, *Ethnic Disadvantage in the Housing Market: Evidence from the 2011 census*, April 2015). The lack of suitable and secure accommodation includes not just permanent sites but also transit sites. This lack of housing inevitably forces many Gypsies and Travellers onto unauthorised encampments.”

Planning policy for traveller sites

33. The Government’s ‘Planning policy for traveller sites’ (“PPTS”) was updated in December 2023). It is intended to be read in conjunction with the National Planning Policy Framework (“the Framework”).

34. The policy’s aims are set out, so far as is material, in paragraphs 3 and 4 (“PPTS/3-4”)

“3. The government’s overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.

4. To help achieve this, government’s aims in respect of traveller sites are:

.....

(d) that plan-making and decision-taking should protect Green Belt from inappropriate development

.....

(f) that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective

.....”

35. Development in the Green Belt is considered in Policy E:

“Policy E: Traveller sites in Green Belt

16. Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.

.....”

36. The determination of planning applications is addressed in Policy H:

“Policy H: Determining planning applications for traveller sites

...

24. Local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:

- a) the existing level of local provision and need for sites
- b) the availability (or lack) of alternative accommodation for the applicants
- c) other personal circumstances of the applicant
- d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites
- e) that they should determine applications for sites from any travellers and not just those with local connections

However, as paragraph 16 makes clear, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.

25. Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.

.....

27. If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. The exception is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).”

37. I agree with Mr Garvey that Mr Cottle was mistaken in relying upon the policy for plan-making in PPTS/13, as the PPTS clearly distinguishes between the local planning authority’s functions of making plans, and its function of determining individual planning applications.

The Framework: Green Belt policy

38. The Framework is a material consideration when planning decisions are made under section 70 TCPA 1990 and section 38(6) PCPA 2004.
39. Section 13 of the Framework, under the heading “Protecting Green Belt land” describes the objectives of Green Belt policy, as follows:

“142. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

143. Green Belt serves five purposes:

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;

- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”

40. Guidance on determining planning applications in the Green Belt provides, so far as is material:

“152. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

153. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.”

Statutory review applications under section 288 TCPA 1990

41. In *Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin), Lindblom LJ set out principles applicable to a claim under section 288 TCPA 1990, at [19], which include the following:

“(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to rehearse every argument relating to each matter in every paragraph: see the judgment of Forbes J in *Seddon Properties Ltd v Secretary of State for the Environment* (1978) 42 P & CR 26, 28.

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the principal important controversial issues. An inspector’s reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every

material consideration: see the speech of Lord Brown of *Eaton-under-Heywood in South Bucks District Council v Porter (No 2)* [2004] 1 WLR 1953, 1964B—G.

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, provided that it does not lapse into Wednesbury irrationality (see *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223) to give material considerations whatever weight [it] thinks fit or no weight at all: see the speech of Lord Hoffmann in *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780F—H. And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision: see the judgment of Sullivan J in *Newsmith Stainless Ltd v Secretary of State for the Environment, Transport and the Regions (Practice Note)* [2001] EWHC Admin 74 at [6]; [2017] PTSR 1126, para 5 (renumbered).

.....”

42. An Inspector's decision letter must be read (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well-informed reader who understands the principal controversial issues in the case: see Lord Bridge in *South Lakeland v Secretary of State for the Environment* [1992] 2 AC 141, at 148G-H; Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, at 271; *Seddon Properties v Secretary of State for the Environment* (1981) 42 P & CR 26, at 28; and *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P & CR 83.
43. Two citations from the authorities listed are relevant in this case.
- i) *South Somerset District Council*, per Hoffmann LJ at 84:
- “The inspector is not writing an examination paper on current and draft development plans. The letter must be read in good faith and references to policies must be taken in the context of the general thrust of the inspector's reasoning ... Sometimes his statement of the policy may be elliptical but this does not necessarily show misunderstanding. One must look at what the inspector thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood a relevant policy or proposed alteration to policy.”
- ii) *Clarke Homes*, per Sir Thomas Bingham MR at 271-2:

“I hope I am not over-simplifying unduly by suggesting that the central issue in this case is whether the decision of the Secretary of State leaves room for genuine as opposed to forensic doubt as to what he has decided and why. This is an issue to be resolved as the parties agree on a straightforward down-to-earth reading of his decision letter without excessive legalism or exegetical sophistication.”

44. The general principles of judicial review are applicable to a challenge under section 288 TCPA 1990. An Inspector is subject to the general public law duty to make a rational decision, taking into relevant matters and disregarding irrelevant matters, and to give proper and adequate reasons for his decision: *Seddon Properties v Secretary of State for the Environment* (1978) 42 P & CR 26, per Forbes J..
45. However, a Claimant cannot use a rationality challenge as a vehicle for challenging the merits of legitimate planning judgments. In *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, Sullivan J. said at [6] – [8]:

“6. ... An allegation that an Inspector's conclusion on the planning merits is *Wednesbury* perverse is, in principle, within the scope of a challenge under section 288, but the court must be astute to ensure that such challenges are not used as a cloak for what is, in truth, a rerun of the arguments on the planning merits.

7. In any case, where an expert tribunal is the fact finding body the threshold of *Wednesbury* unreasonableness is a difficult obstacle for an applicant to surmount. That difficulty is greatly increased in most planning cases because the Inspector is not simply deciding questions of fact, he or she is reaching a series of planning judgments. For example: is a building in keeping with its surroundings? Could its impact on the landscape be sufficiently ameliorated by landscaping? Is the site sufficiently accessible by public transport? et cetera. Since a significant element of judgment is involved there will usually be scope for a fairly broad range of possible views, none of which can be categorised as unreasonable.

8. Moreover, the Inspector's conclusions will invariably be based not merely upon the evidence heard at an inquiry or an informal hearing, or contained in written representations but, and this will often be of crucial importance, upon the impressions received on the site inspection. Against this background an applicant alleging an Inspector has reached a *Wednesbury* unreasonable conclusion on matters of planning judgment, faces a particularly daunting task ...”

Irrationality and proportionality

46. In *R(Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin) the Divisional Court provided a comprehensive description of irrationality as a ground of challenge, per Carr J. at [98]:
- “98. The second ground on which the Lord Chancellor’s Decision is challenged encompasses a number of arguments falling under the general head of “irrationality” or, as it is more accurately described, unreasonableness. This legal basis for judicial review has two aspects. The first is concerned with whether the decision under review is capable of being justified or whether in the classic *Wednesbury* formulation it is “so unreasonable that no reasonable authority could ever have come to it”: see *Associated Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223, 233-4. Another, simpler formulation of the test which avoids tautology is whether the decision is outside the range of reasonable decisions open to the decision-maker: see e.g. *Boddington v British Transport Police* [1998] UKHL 13; [1999] 2 AC 143, 175 (Lord Steyn). The second aspect of irrationality/unreasonableness is concerned with the process by which the decision was reached. A decision may be challenged on the basis that there is a demonstrable flaw in the reasoning which led to it - for example, that significant reliance was placed on an irrelevant consideration, or that there was no evidence to support an important step in the reasoning, or that the reasoning involved a serious logical or methodological error.....”
47. The Claimant submitted that the nature of a review on rationality grounds depends upon the significance of the right interfered with; the degree of interference involved, and the extent to which the court is competent to re-assess the balance which the decision maker was required to make.
48. The Claimant referred to *Pham v Secretary of State for the Home Department* [2015] 1 WLR 1591, in which the claimant challenged a citizenship deprivation order, which had the effect of depriving him of EU citizenship, on the basis that it did not comply with the principle of proportionality in EU law. The Court held that the issue was not properly before it but in any event doubted whether applying EU law would produce a different outcome, given the flexible approach the courts adopted to standards of review. Lord Reed identified categories of cases in which a proportionality principle had been applied at [114] and [118]. Lord Mance went further and said that the tool of proportionality would be both valuable and available in that case. However, as the Supreme Court judgment in *R(Keyu) v Secretary of State for the Foreign and Commonwealth Affairs* [2016] AC 1335 made clear, reasonableness and not proportionality remains the generally applicable standard in cases without a Convention right or EU law dimension (per Lord Neuberger at [132] – [133]). Post-Brexit, cases are unlikely to have an EU law dimension.

49. In this case, Article 8 ECHR is engaged because the Claimant and her family are liable to lose their home, which is an interference with their rights under Article 8(1). Under Article 8(2), the interference can only be justified if it is “necessary in a democratic society” which means that it must be in pursuit of a pressing social need, justified by sufficient reasons, and it must be proportionate to the social need; that is to say, it must go no further than is necessary to secure that need.
50. In *Bank Mellat v HM Treasury* [2013] UKSC 39, Lord Sumption reviewed the authorities on proportionality, at [20], and set out the test to be applied, in the following terms:
- “Their effect can be sufficiently summarised for present purposes by saying that the question depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community. These four requirements are logically separate, but in practice they inevitably overlap because the same facts are likely to be relevant to more than one of them.”
51. In this case, the Inspector recognised that Article 8 ECHR was engaged, and applied the proportionality test in making her decision. This Court is required to assess whether she did so lawfully, as part of the statutory review. However, as Hickinbottom J. explained in *Stevens v Secretary of State for Communities and Local Government* [2013] EWHC 792 (Admin), [2013] JPL 1383, at [85], in a statutory review this Court should not decide whether or not the interference was proportionate. Its role is confined to identifying any error of law and remitting the application for reconsideration, if necessary.

Green Belt land and travellers

52. The First Defendant relied upon the case of *Samuel Smith Old Brewery v North Yorkshire County Council* [2020] UKSC 3, in which Lord Carnwath JSC, giving the judgment of the Supreme Court, held that impacts on the Green Belt were all matters of planning judgment, not law, at [39]:

“39. With respect to Lindblom LJ’s great experience in this field, I am unable to accept his analysis. The issue which had to be addressed was whether the proposed mineral extraction would preserve the openness of the Green Belt or otherwise conflict with the purposes of including the land within the Green Belt. Those issues were specifically identified and addressed in the report. There was no error of law on the face of the report. Paragraph 90 does not expressly refer to visual impact as a necessary part of the analysis, nor in my view is it

made so by implication. As explained in my discussion of the authorities, the matters relevant to openness in any particular case are a matter of planning judgement, not law.”

53. In *R(Sefton MBC) v Secretary of State for Housing Communities and Local Government* [2021] EWHC 1082 (Admin), in which HH Judge Eyre QC, sitting as a Judge of the High Court, gave the following helpful guidance on the application of the Framework’s Green Belt policies, at [32] – [34]:

“32 The claimant’s approach to the interpretation of paragraph 144 is vitiated by an excessively forensic analysis and by a failure to read that paragraph in the light of paragraph 143. It is paragraph 143 which sets out the proposition that inappropriate development is by definition harmful to the Green Belt and it is paragraph 143 which sets out the requirement that such development should not be approved unless there are very special circumstances. The second sentence of paragraph 144 is, in terms, setting out the only situation in which it will be appropriate to find that there are very special circumstances. It is clearly intended as an elucidation and development of paragraph 143. The first sentence of paragraph 144 is to be read in the light of the paragraph which precedes it and the sentence in the same paragraph which follows it. That first sentence is not setting out a new requirement separate from paragraph 143 but is part and parcel of the elucidation of paragraph 143 which paragraph 144 is intended to provide.

33 The claimant’s argument is also flawed by taking metaphorical language unduly literally. The reference to “substantial weight” being given to harm is ultimately a metaphor as is the reference to the harm being “clearly outweighed” by other considerations. The exercise to be undertaken is not one of balancing weights on scales nor even one of saying that harm to the Green Belt is equivalent to a particular weight (say ten stone) while a different circumstance such as an applicant’s family circumstances can never be rated as equivalent to more than a different weight (say five stone). Rather, the language of weight and weighing is being used to emphasise the importance of the Green Belt. It is used to make it clear to decision-makers that they cannot approve inappropriate development in the Green Belt unless the considerations in favour of the development are such as truly constitute very special circumstances so that the development can be permitted notwithstanding the importance given to the Green Belt. The realisation that the reference to weight is ultimately a metaphor highlights a practical difficulty in the approach for which Mr Riley-Smith presses. How is the decision-maker to decide what is equivalent to “substantial + substantial”? The claimant envisages the balancing exercise being quasi-mathematical but if that is the appropriate exercise

then paragraph 144 fails to provide the decision-maker with guidance as to the values to be placed in the necessary mathematical calculations.

34 When paragraphs 143 and 144 are read together they can be seen as explaining that very special circumstances are needed before inappropriate development in the Green Belt can be permitted. In setting out that explanation they emphasise the seriousness of harm to the Green Belt in order to ensure that the decision-maker understands and has in mind the nature of the very special circumstances requirement. They require the decision-maker to have real regard to the importance of the Green Belt and the seriousness of any harm to it. They do not, however, require a particular mathematical exercise nor do they require substantial weight to be allocated to each element of harm as a mathematical exercise with each tranche of substantial weight then to be added to a balance. The exercise of planning judgement is not to be an artificially sequenced two-stage process but a single exercise of judgement to assess whether there are very special circumstances which justify the grant of permission, notwithstanding the particular importance of the Green Belt.”

54. The Claimant submitted that this was a case analogous to *Moore v Secretary of State for Communities and Local Government* [2013] EWCA Civ 1194 where the Court of Appeal was not persuaded that an inspector’s refusal of temporary planning permission was a reasonable reflection of the factors he was required to take into account (per Richards LJ at [28]). Cox J., at first instance, held that the balancing exercises for temporary and permanent permissions were necessarily different, and that the serious difficulties that the family would face if evicted constituted ‘very special circumstances’ rendering it irrational for the inspector to refuse temporary planning permission.
55. The Claimant referred to *West Glamorgan CC v Rafferty* [1987] 1 WLR 457, a judicial review of a local authority’s decision to evict gypsies from a site, in which Ralph Gibson LJ observed, at 477A-B, the “court is not precluded from finding a decision to be void for unreasonableness merely because there are admissible factors on both sides of the question”.
56. In *Wychavon DC v Secretary of State for Communities and Local Government* [2008] EWCA Civ 692, [2009] PTSR 19, Carnwath LJ gave guidance on an earlier iteration of the ‘very special circumstances’ test, in the following terms:

“(i) Interpretation of Green Belt guidance

21 I say at once that in my view the judge was wrong, with respect, to treat the words “very special” in para 3.2 of PPG2 as simply the converse of “commonplace”. Rarity may of course contribute to the “special” quality of a particular factor, but it is not essential, as a matter of ordinary language or policy. The word “special” in PPG2 connotes not a quantitative test, but a

qualitative judgment as to the weight to be given to the particular factor for planning purposes. Thus, for example, respect for the home is in one sense a “commonplace”, in that it reflects an aspiration shared by most of humanity. But it is at the same time sufficiently “special” for it to be given protection as a fundamental right under the Convention. Furthermore, case law of the European Court of Human Rights ... places particular emphasis on the special position of gipsies as a minority group, notwithstanding the wide margin of discretion left to member states in relation to planning policy: see *Chapman v United Kingdom* (2001) 33 EHRR 399 and the comments of Lord Brown of Eaton-under-Heywood in *Kay v Lambeth London Borough Council* [2006] 2 AC 465, para 200. Thus, in the *Chapman* case, at para 96, the Strasbourg court recognised that the gipsy status did not confer “immunity from general laws intended to safeguard the assets of the community as a whole, such as the environment” but added:

“96. . . . the vulnerable position of gipsies as a minority means that *some special consideration should be given to their needs and their different lifestyle* both in the relevant regulatory planning framework and in arriving at the decisions in particular cases To this extent, there is thus a positive obligation imposed on the contracting states by virtue of article 8 to facilitate the Gypsy way of life” (Emphasis added.)

The special position of gipsies in this respect is reflected in the 2006 circular.

22 Against this background, it would be impossible in my view to hold that the loss of a Gypsy family’s home, with no immediate prospect of replacement, is incapable in law of being regarded as a “very special” factor for the purpose of the guidance. That, however, is far from saying that planning authorities are bound to regard this factor as sufficient in itself to justify the grant of permission in any case. The balance is one for member states and involves issues of “complexity and sensitivity”: see *Chapman v United Kingdom* 33 EHRR 399, para 94. That is a judgment of policy not law, and it needs to be addressed at two levels: one of general principle, the other particular to the individual case.”

Best interests of the child

57. Article 3(1) of the United Nations Convention on the Rights of the Child 1989 (“UNCRC”) provides:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law,

administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

58. In *ZH (Tanzania) v Secretary of State for the Home Department* [2011] 2 AC 166, the Supreme Court concluded that the best interests of the child should be taken into consideration when considering the proportionality of interference with rights under Article 8 ECHR in an immigration context. Subsequently the Secretary of State for Levelling Up, Housing and Communities accepted that the “best interests” principle should also be applied in the context of planning.

59. In *Stevens v Secretary of State for Communities and Local Government* [2013] EWHC 792 (Admin), [2013] JPL 1383 Hickinbottom J. set out the general principles for assessing the best interests of the child in the context of a planning decision at [69]:

“(i) Given the scope of planning decisions and the nature of the right to respect for family and private life, planning decision making will often engage art.8. In those circumstances, relevant art.8 rights will be a material consideration which the decision maker must take into account.

(ii) Where the art.8 rights are those of children, they must be seen in the context of art.3 of the UNCRC, which requires a child’s best interests to be a primary consideration.

(iii) This requires the decision maker, first, to identify what the child’s best interests are. In a planning context, they are likely to be consistent with those of his parent or other carer who is involved in the planning decision-making process; and, unless circumstances indicate to the contrary, the decision maker can assume that that carer will properly represent the child’s best interests, and can properly represent and evidence the potential adverse impact of any decision upon that child’s best interests.

(iv) Once identified, although a primary consideration, the best interests of the child are not determinative of the planning issue. Nor does respect for the best interests of a relevant child mean that the planning exercise necessarily involves merely assessing whether the public interest in ensuring planning controls are maintained outweighs the best interests of the child. Most planning cases will have too many competing rights and interests, and will be too factually complex, to allow such an exercise.

(v) However, no other consideration must be regarded as more important or given greater weight than the best interests of any child, merely by virtue of its inherent nature apart from the context of the individual case. Further, the best interests of any child must be kept at the forefront of the decision maker’s mind as he examines all material considerations and performs the exercise of planning judgment on the basis of them; and, when

considering any judgment he might make (and, of course, the eventual decision he does make), he needs to assess whether the adverse impact of such a decision on the interests of a child is proportionate.

(vi) Whether the decision maker has properly performed this exercise is a question of substance, not form. However, if an inspector on an appeal sets out this reasoning with regard to any child’s interests in play, even briefly, that will be helpful not only to those involved in the application but also to the court in any later challenge, in understanding how the decision maker reached the decision that the adverse impact to the interests of the child to which the decision gives rise is proportionate. It will be particularly helpful if the reasoning shows that the inspector has brought his mind to bear upon the adverse impact of the decision he has reached on the best interests of the child, and has concluded that impact is in all the circumstances proportionate. ...”

60. Hickinbottom J. then went on to consider the Court’s role in reviewing a proportionality issue in the course of an application under section 288 TCPA 1990, and gave guidance in the following terms:

“85.

(i) It was common ground before me that, for the purposes of section 70 of the 1990 Act, any article 8 rights that are in play are a material consideration that a planning decision-maker is bound to take into account. I have no doubt that that is so. It is well-established that, in a field such as planning, the interests of any relevant children cannot properly be regarded as something distinct and apart from the necessary section 70 balancing exercise: they are an inherent, integral, and important, part of that exercise.....

(ii) If the inspector fails to take a material consideration into account, as a matter of general public law principles, he errs in law. Section 70 requires him to take all material considerations into account; and, if he fails to do so, his decision is not “within the powers of [the 1990] Act” for the purposes of section 288(5)(b).....

(iii) By section 288(5)(b), this court is restricted by way of remedy to quashing a decision of an inspector that is not within the powers of the 1990 Act. It is therefore necessarily the case that, even if this court considers an inspector’s decision unlawful on the ground that he failed properly to take into account as a material consideration article 8 rights in play, then it can only quash that decision. It would not be open to this court to make a new decision in its place.

(iv) In this application, neither party suggested that, if I were to find the inspector had failed properly to take into account the relevant article 8 rights, then this court should begin performing the section 70 balancing exercise giving the weight I considered appropriate to all of the material considerations, including all planning policy factors as well as article 8 rights. Indeed, all parties appeared to view that prospect with some alarm. They submitted that I should treat the case as any other case of a failure of an inspector to take into account a material consideration. All submitted that, if that error is material (in the sense that, without it, the decision would or may have been different) then I should quash the decision.”

61. The Court of Appeal in *Collins v Secretary of State for Communities and Local Government* [2013] EWCA Civ 1193, [2013] PTSR 1594 approved Hickinbottom J.’s list of principles at [69].

62. In the immigration case of *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74, [2013] 1 WLR 3690, Lord Hodge JSC, giving the judgment of the Supreme Court, set out the following principles which had been agreed between the parties, at [10]:

“(1) The best interests of a child are an integral part of the proportionality assessment under article 8 of the Convention;

(2) in making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child’s best interests do not of themselves have the status of the paramount consideration;

(3) although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;

(4) while different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;

(5) it is important to have a clear idea of a child’s circumstances and of what is in a child’s best interests before one asks oneself whether those interests are outweighed by the force of other considerations;

(6) to that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and

(7) a child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent.”

The Inspector's witness statement

63. When the First Defendant filed his Detailed Grounds of Resistance, he also filed a witness statement from the Inspector, dated 20 July 2023, which stated:

“Ground 2 of the claim alleges that by affording substantial weight to harm to the Green Belt (for example at paragraph 24), that was a greater degree of weight than the significant weight I afforded to the best interests of the children (at paragraph 25).

However, I did not treat substantial as being a greater (or different) amount of weight than significant.

3. I tend to use the terms ‘significant’, ‘moderate’ or ‘limited’ when referring to different degrees of weight in my decision letters. However, paragraph 148 of the NPPF says, “*When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt*”. I reiterate this terminology in paragraphs 7, 20, 23 and 27 of my decision letter where I refer to harm to the Green Belt. This terminology is, therefore, consistent with the NPPF.

4. The Collins Online dictionary and thesaurus defines substantial to mean:

5. The Collins Online dictionary and thesaurus defines significant to mean:

6. I know that inspectors often use the words ‘substantial’ and ‘significant’ in an interchangeable way. This is even reflected in national policy, for example in paragraph 49(a) of the NPPF. Thus, I do not regard a substantial weight as being greater than a significant weight. So whilst I tend to use the word ‘significant’ when describing weight, given the NPPF uses the word substantial when referring to the Green Belt, I adopted that term. But, in doing so, I did not afford this any greater weight than when I used the word significant elsewhere in my decision.

7. I am aware that the best interests of the children must be a primary consideration. I note this point specifically at paragraph 33 of the decision. In treating this as a primary consideration, there was no other matter that I afforded greater weight. The distinction between my use of ‘substantial’ and ‘significant’ simply reflected the NPPF’s use of the word substantial in respect to Green Belt. For the purposes of my planning balance, the two words constituted the same degree of weight.

8. As regards the Claimant’s third ground of challenge, as regards proportionality, I did have regard for the impact of the proposal on the best interests of the child and whether a personal or temporary permission was proportionate. My conclusion that dismissing the appeal would be proportionate and necessary expanded upon my earlier conclusions.

Further, I expanded upon the impacts on the children at paragraph 33. I equally had this at the forefront of my mind, as I referred to it in the final sentence of paragraph 34. I also referred to the impacts upon the children at paragraphs 19 and 27. I had regard for the impacts on the children and this was a primary consideration in my decision. However, in my planning judgement, it was proportionate and necessary that these interests were overcome by the adverse impacts associated with the development (including in respect to a personal or temporary permission).”

64. Witness statements of this nature, which respond to a legal challenge, are generally considered inappropriate because they “create all the dangers of rationalisation after the event, fitting answers to omissions into the already set framework of the decision letter, risking demands for the Inspector to be cross-examined on his statement, and creating suspicion about what had actually been the reasons” per Ouseley J. in *Ioannou v Secretary of State for Communities and Local Government* [2013] EWHC 3945 (Admin).
65. In this case, the First Defendant had permission to file evidence with its Detailed Grounds of Resistance, and the Claimant made no objection to the filing of the statement or its content. Therefore I was not aware of it until I read the papers on the day before the hearing. By that stage, both parties had prepared their skeleton arguments and submissions on the basis of the statement, and both wanted to rely upon it, for different reasons. In these circumstances, I concluded that it was contrary to the overriding objective to exclude the witness statement and so adjourn a long overdue hearing so that the parties could re-cast their cases, and it was also artificial and possibly unfair to the parties for the Court to ignore the Inspector’s evidence in determining the claim.

The Inspector’s assessment

66. The Inspector structured her decision in four main sections: (1) Green Belt; (2) Other Considerations; (3) Planning Balance and Human Rights; and (4) Conclusion. On a fair reading of the decision letter, I consider that Inspector applied her findings in sections 1 and 2 when reaching her conclusions on the planning balance and Article 8 ECHR in section 3.

(1) Green Belt

67. The Inspector made the following findings.

68. Policy BAS GB1 of the Local Plan, which set out the Green Belt boundaries, supported the Framework's aim to prevent urban sprawl and keep the land within Green Belts permanently open (DL/9). However, as it did not include management criteria for development within the Green Belt, the Inspector considered the objectives of the Framework and the PPTS to be more applicable (DL/13).
69. The parties agreed that the proposal would represent inappropriate development in the Green Belt (DL/10). Therefore by definition it was harmful (paragraph 152 of the Framework).
70. Although the scale of the development was small, it would reduce the openness of the Green Belt by placing a caravan and dayroom on a location which had previously been free from development. The negative effect on the openness of the Green Belt was an additional degree of harm, in addition to the harm arising from the inappropriate nature of the development (DL/11).
71. The proposed material change of use was also inappropriate development because, by reference to paragraph 138 of the Framework, it would not preserve openness and it would conflict with purposes to check urban sprawl and to safeguard the countryside from encroachment (DL/12).
72. In my view, the Inspector directed herself correctly on the Green Belt policies, and applied them appropriately to the evidence. Paragraph 153 of the Framework advised that she should give "substantial weight to any harm to the Green Belt", and accordingly she gave "substantial weight" to the inappropriate development and the harm to the openness of the area (DL/24). Policy E of the PPTS, advises that traveller sites are inappropriate development in the Green Belt, and subject to the best interests of the child, personal circumstances and unmet need are unlikely to outweigh harm to the Green Belt. The Inspector's findings on the Green Belt were weighed in the planning balance and taken into account in the assessment of proportionality in section 3.

(2) Other Considerations

Supply of traveller sites

73. The Inspector made the following findings on the supply of traveller sites in the area.
74. The Council did not have a 5 year supply of land to address the current and historic need for pitches within the Borough. There was a clear and immediate need for sites in Basildon. The Inspector gave the lack of sites significant weight in favour of the proposal when considering the planning balance and proportionality (DL/14).
75. Although the Council submitted that it was currently seeking to address the lack of sites through the emerging Local Plan, any potential traveller sites would not come forward until sometime after its adoption, and would then be allocated through the relevant plan process (DL/15).
76. The Inspector found that Bowers Gifford Parish was earmarked for residential development, but any allocations for traveller sites would have to be considered

through the relevant plan adoption process (DL/15).

77. At DL/17, the Inspector considered the requirements in the PPTS for local planning authorities to set targets for pitches, and to assess need. She considered the Claimant's criticisms of the 2018 survey, which was being used to inform the emerging Local Plan. She concluded that this would be a matter for the Local Plan examination and did not alter the fact that the Council did not currently have a 5 year supply of pitches.
78. The Claimant argued that development on the Green Belt was likely to occur in future, or had already occurred, in any event. The undisputed evidence before the Inspector, in the Statement of Common Ground, was that 63% of the Council's District was designated Green Belt and the rest was in urban areas. The Claimant contended (at paragraph 9 of the Statement) that the Council relied on land in the Green Belt to meet the need for more dwellings and traveller sites. The Council's position was that they were "relying on a mix or [of?] infill sites and a substantial redevelopment of the town centre to provide many new residential units, as well as Green Belt sites to full [fulfil] the Borough's future housing needs" (my suggested typographical corrections are included in brackets).
79. The Inspector made the following findings on this issue, at DL/16:
- "16. Basildon Borough is constrained by its Green Belt designation with limited undeveloped land available outside of it. I acknowledge that there are other lawful sites or tolerated sites in the Green Belt plotland areas. However, I have not been directed to any within the vicinity of the appeal site, other than that of a long-standing planning application for a traveller plot on Grange Road that remains undetermined. It is not clear at this point in time how the emerging Local Plan would overcome the policy presumption against sites in the Green Belt or address the historic shortfall of pitch provision. Whilst it has been suggested that the emerging Local Plan may seek to facilitate development in the Green Belt, given the early stage of that plan very little weight can be attributed to this possibility."
80. In my view, the Inspector was entitled to make these findings on the use of Green Belt land, on the basis of the evidence and submissions before her. She was also entitled to conclude that little weight could be placed on the emerging Local Plan, applying the guidance in Framework/48. This conclusion was a point in the Claimant's favour, as the Council was seeking to rely on the emerging Local Plan in support of its case. Contrary to the Claimant's submissions, the Inspector was not required in law to give these factors separate weight in the balancing exercise.
81. The Claimant argued at the hearing before me that the Inspector should have acknowledged that, if the Claimant was forced to live "a roadside existence", it would be in the Green Belt, and thus cause harm. The First Defendant submitted that this point was not raised before the Inspector, nor in the grounds for statutory review. If it had been raised, my view is that the Inspector would have recognised that this was a possibility, in line with her findings in DL/16 that so much of the District was Green Belt, though there was insufficient evidence to assess how likely that was to be the

case. Moreover, there was no evidence before her as to the likelihood that the authorities would enforce against unauthorised roadside camping in the Green Belt, to avoid harm to the Green Belt.

82. The Claimant criticised the Inspector for not giving significant weight to the Council's lack of an up-to-date Local Plan. In my view, the Inspector made a reasonable exercise of judgment by giving significant weight, at DL/14, to the key issue which was the lack of sites, which she explained was a result of the Council's failure to identify a 5 year supply of land in the Local Plan (as required by PPTS/10). The Inspector then elaborated further at DL/26 where she acknowledged the national and regional need for pitches, to which she attached significant weight, and went on to say that the Council's failure to demonstrate an up to date 5 year supply of deliverable pitches did not address the housing needs of the appellant, contrary to the Government's objectives.

The housing needs of the Claimant and her family

83. The Claimant and Mr Cooper were of mixed heritage and so would not be accepted on many traveller sites. Site sharing was unlikely to be an option for them and so they could not benefit from future allocations for multi-pitch sites under the emerging Local Plan. This carried significant weight in favour of the proposal when considering the planning balance and proportionality (DL/18).
84. Mr Cooper had family ties with gypsies living within the Borough. The Claimant and Mr Cooper had five children between them, three of whom lived with them at the Site. The school age children were attending school locally. The family was registered with a local health provider. The Claimant had on-going serious health conditions and it was important for her to have stability and familiarity (DL/19).
85. Mr Cooper owned the Site and he advised the Inspector that he had no other site available to him and other family members could not accommodate them. The Council could not suggest suitable alternative sites. Mr Cooper considered that he and his family would be forced to live a roadside existence, without a fixed address (DL/20).
86. The Inspector found that the lack of an alternative site and the personal circumstances of the family carried significant weight in favour of the proposal when considering the planning balance and proportionality.
87. The Claimant criticised the Inspector for considering the lack of an alternative site and the personal circumstances of the family together in this way, arguing that significant weight should have been accorded to each factor. In my view, this was a matter for the Inspector's judgment. It was not unreasonable for her to consider the housing needs of the family as a single factor, at DL/20, particularly bearing in mind that she separately accorded significant weight to the problems arising from the family's mixed heritage, and to the best interests of the children (at DL/25).
88. At DL/22, the Inspector took into account that there was local support for the proposal. However, that had to be considered in terms of the wider public interest and the great importance attached to protecting the Green Belt. The Inspector was not

required, as a matter of law, to accord this consideration specific weight in the planning balance.

(3) Planning balance and Human Rights

89. At DL/23, the Inspector correctly directed herself in accordance with the statutory test, namely, that determinations must be made in accordance with the development plan unless material considerations indicate otherwise. In accordance with the guidance in *Stevens*, she identified and assessed the Article 8 rights of the family, and in particular the best interests of the children, as material considerations.
90. At DL/24, the Inspector found that the proposal would be inappropriate development in the Green Belt, which carried substantial weight, as required by Framework/152 and 153. The scheme would also result in harm to the openness of the area; such harm also carried substantial weight.
91. At DL/25, the Inspector found that it was in the best interests of the children involved to have a settled base which affords them access to education and other services. Applying the principles established in the case law I have set out above, she stated that this was “a primary consideration”. She attached significant weight to the best interests of the children.
92. At DL/26, the Inspector acknowledged the national and regional need for pitches, to which she attached significant weight. She referred again to the Council’s failure to demonstrate an up to date 5 year supply of deliverable pitches which did not address the housing needs of Mr Cooper and his family.
93. The Inspector considered and acknowledged the personal housing needs of the Mr Cooper, the Claimant and their children, and the benefit of having a settled base close to health care facilities and education, along with the lack of available sites in the Borough and elsewhere. These factors had significant weight. However, applying the test in Framework/153, the Inspector did not consider that these matters, would “clearly outweigh the substantial harm to the Green Belt” and justify inappropriate development in the Green Belt (DL/27).
94. The Inspector considered and applied the guidance in the PPTS on the grant of a temporary planning permission, namely, a local planning authority’s failure to demonstrate an up to date 5 year supply of deliverable sites should be treated as a significant material consideration, but not where the proposal is on Green Belt land. The Inspector attached significant weight to this (DL/29).
95. The Inspector also found that the harm to the Green Belt would take place over any temporary period of occupation of the Site (DL/29).
96. In considering a time limited occupation, the Inspector recognised that the bar would be set at a lesser level than that of a permanent permission. Mr Cooper said he would accept a condition allowing a 5 year occupation of the Site. The Inspector found that the harm to the Green Belt would exist over that time (DL/30).
97. The Inspector’s findings on Article 8 were at DL/31, as follows:

“31. I have had regard to the Human Rights Act 1998 and rights under Article 8 in respect of the private and family life and the home and the rights of the children. The applicant and his family are in clear need of a pitch and would benefit from being settled where his family can access health care facilities and education. In dismissing the appeal this would result in the occupiers not having a settled home in which to locate. This would be an interference of the appellant’s rights under Article 8 of the Convention incorporated into the Act. Nonetheless, I find that the issue of inappropriateness in relation to the Green Belt along with the resulting harm to the openness is so substantial and that, in the wider public interest, it cannot be clearly outweighed by the personal circumstances of the appellant and/or the other considerations. I have considered whether a lesser requirement or alternative would overcome the harm. For those reasons give above, I have ruled out the possibility of imposing a temporary or personal permission. Dismissing the appeal would be proportionate and necessary.”

98. At DL/32 and 33, the Inspector discharged the public sector equality duty under the Equality Act 2010, by having regard to the family’s traditional way of life, and their personal circumstances, including the Claimant’s health. She expressly had regard to the best interests of the children as a primary consideration. These matters were clearly taken into account by the Inspector in making her decision. They were accorded specific weight: see DL/18-29; DL/25, DL/27, DL/31.

Ground 1 and 3

Claimant’s submissions

99. **Under Ground 1**, the Claimant contended that the Inspector’s decision not to grant a temporary planning permission was disproportionate and perverse.
100. The Claimant accepted that whether “very special circumstances” existed, for the purposes of Framework/153, was a matter for the Inspector’s planning judgment. However, that was not determinative of the issue. The countervailing considerations relied upon by the Claimant clearly outweighed the harm to the Green Belt on any reasonable view. The Inspector explained in her witness statement that the term “significant” carried the same degree of weight as “substantial” when used in the DL. She only used the term “substantial” in respect of the Green Belt harm in order to comply with the guidance in Framework/153. This lent support to the claim, as the substantial weight accorded to Green Belt harm was outweighed by the much greater number of facts in favour of the proposal which also attracted substantial weight.
101. Following *Moore*, this was a case where the Court should find that the Inspector’s refusal of temporary planning permission was not a reasonable reflection of the factors she was required to take into account. It was irrational in the sense that there was an error of reasoning which robbed the decision of logic.

102. **Under Ground 3**, the Claimant contended that in carrying out the proportionality exercise required by Article 8 ECHR, the Inspector failed to give sufficient consideration to the issue of proportionality and failed to give sufficient reasons.
103. The Inspector's conclusion did not properly take into account the different directions in which the public interest was pulling, and the balancing exercise was flawed.
104. The Inspector erred by failing to give greater consideration to the question of proportionality in the context of a temporary permission.
105. The Inspector erred in failing to count interference with human rights as a material consideration of substantial weight in its own right.
106. The last sentence of DL/31 was insufficiently reasoned. The proportionality exercise, as described in *Bank Mellat*, required more of the Inspector.

Conclusions

107. I have considered Grounds 1 and 3 together to avoid duplication, as both rely on proportionality.
108. I addressed the law on irrationality and proportionality at Judgment/47-51.

Irrationality

109. The Claimant rightly conceded that the "very special circumstances" test was a matter of judgment for the Inspector. In *Samuel Smith Old Brewery*, the Supreme Court confirmed that an inspector's assessment of the impact of a development on the openness of the Green Belt was a matter of planning judgment, not law.
110. The Claimant submitted that the number of factors in favour of the proposal outweighed the number of factors against, and since they were all accorded the same weight, the Inspector should have granted temporary planning permission. However, as HH Judge Eyre QC explained in *Sefton* (Judgment/53), this assessment is not a mathematical exercise; it is a matter of planning judgment. The Government attaches great importance to the Green Belt (Framework/142) and inappropriate development in the Green Belt is subject to a stringent test of "very special circumstances" which only exist where the potential harm to the Green Belt (and any other harm) is "clearly outweighed by other considerations" (Framework/153). It is therefore unsurprising that the test may not be met, even where the number of factors in favour of the proposal exceed the number of factors against it.
111. In this case, the Inspector carefully considered all the relevant factors, and made findings and reached rational conclusions which were clearly open to her, in the exercise of her judgment. In reality, the Claimant seeks to make an impermissible challenge to the merits of her decision-making.
112. The decision of the Court of Appeal in *Moore* was a conclusion reached on the particular facts and decision-making in that case. The facts and decision-making in this claim are clearly distinguishable.

Proportionality

113. In my judgment, on a fair reading of the decision letter, applying the principles set out in the case law at Judgment/42-43, the Inspector's assessment of proportionality under Article 8 ECHR did not merely comprise one sentence at the end of DL/31, when she concluded that "[d]ismissing the appeal would be proportionate and necessary". Her assessment was based upon all the findings made, and conclusions reached, earlier in the DL where she had thoroughly explored all the relevant factors. This reading accords with the guidance of Sir Thomas Bingham MR in *Clarke Homes* that the issue is whether "the decision leaves room for genuine as opposed to forensic doubt" as to what the decision-maker has decided and why. "This is an issue to be resolved on a straightforward down-to-earth reading of his decision letter, without excessive legalism or exegetical sophistication".
114. At DL/31, the Inspector clearly identified the interference with the Article 8 right to a private and family life, the home, and the rights of the children. In summary, the family were in clear need of a pitch and would benefit from being settled where they can access health care facilities and education. Dismissing the appeal would result in the family not having a settled home.
115. The Inspector explained why the interference was necessary, stating that the issue of inappropriateness in relation to the Green Belt, along with the resulting harm to the openness of the Green Belt, was so substantial that, in the wider public interest, it was not outweighed by "the personal circumstances of the appellant and/or the other considerations". I have no doubt that the Inspector had well in mind the needs and best interests of the children, as she had just referred to them earlier in the same paragraph, as well as at DL/19, DL/25 and DL/27.
116. The Inspector considered whether there was an alternative measure which would be less intrusive, namely, a temporary or personal permission. The Inspector acknowledged, at DL/30, that in the case of time-limited planning permission, the bar would be set at a lesser level than that of a permanent permission. However the harm to the Green Belt would still exist for the duration of the occupation of the Site, which was contrary to the wider public interest in the protection of the Green Belt.
117. In *Stevens*, (at [69(vi)]), the Court acknowledged that the proportionality exercise can be briefly stated. In my view, a planning inspector should not be required to set out the legal test of proportionality in the way that a judge is expected to do. The Inspector is not writing an "examination paper" (*South Somerset District Council* at Judgment/43). It is sufficient to identify the key elements of the proportionality exercise, which the Inspector did here. When the Inspector's conclusions on Article 8 are read in the context of her findings and conclusions earlier in the DL, it is apparent that she did take into account the competing considerations. Her consideration of proportionality, in the context of a temporary permission, was sufficient.
118. The Claimant contended that the Inspector erred in failing to count interference with human rights as a material consideration of substantial weight in its own right. In my view, there was no requirement in law to do so. The Inspector gave significant weight (which she treated as substantial weight) to the conduct by the Council which gave

rise to the interference with the family’s human rights, namely, the eviction from their home. She then correctly identified this as an interference with their Article 8 rights.

119. The standard of reasons required in a planning appeal was set out by Lord Brown in *South Buckinghamshire District Council v Porter (No 2)* [2004] 1 WLR 1953, at [36]. The reasons given must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal important controversial issues. Reasons need refer only to the main issues in the dispute and not to every material consideration, and the reasons can be briefly stated, with the “degree of particularity required depending entirely on the nature of the issues falling for decision”.
120. In my judgment, the Inspector’s reasons met the required legal standard, for the reasons I set out in Judgment/113 – 117.
121. Therefore Grounds 1 and 3 do not succeed.

Ground 2

122. Under Ground 2, the Claimant submitted that the Inspector erred in law in DL/25 by regarding the primary consideration of achieving the outcome that was in the best interests of the children as attracting less than substantial weight. In *Zoumbas*, at [10], the Supreme Court confirmed that “although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant”. The substantial weight to be attached to the Green Belt should have been equated with the substantial weight to be attached to achieving the best interests of the child.
123. In her witness statement, at paragraph 7, the Inspector stated:

“I am aware that the best interests of the children must be a primary consideration. I note this point specifically at paragraph 33 of the decision. In treating this as a primary consideration, there was no other matter that I afforded greater weight. The distinction between my use of ‘substantial’ and ‘significant’ simply reflected the NPPF’s use of the word substantial in respect to Green Belt. For the purposes of my planning balance, the two words constituted the same degree of weight.”

The Claimant did not seek to challenge the veracity of this evidence.

124. I accept the First Defendant’s submission that the word ‘substantial’ does not denote a greater quantum of weight than ‘significant’: see the dictionary definitions provided by the Inspector; *R v Golds* [2016] UKSC 61, at [27] and [40]; *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17, at [31]; and the authorities cited in ‘Words and Phrases Legally Defined’ (see the First Defendant’s skeleton argument at paragraph 2.10).
125. At DL/25, the Inspector expressly treated the best interests of the children as a primary consideration. This was confirmed at DL/33. I am satisfied that she did not

treat any other consideration as inherently more significant.

126. Therefore Ground 3 does not succeed.

Ground 4

127. Under Ground 4, the Claimant submitted that the Inspector “failed to factor in the right ingredients for a lawful decision”. This pleading was outside the scope of the grant of permission to apply for statutory review. Nonetheless, the First Defendant was content for me to consider it, to avoid further litigation. Dealing with the points made in turn, the Inspector was obviously aware that the Site was small (DL/11), but she did not find that the harm at the lowest end of the scale. At DL/16 she addressed the difficult matter of whether and to what extent the Council could or would make pitch provision on Green Belt land in future. The Inspector did not find any local harm in addition to the Green Belt harm. Finally, at Judgment/82, I found that the Inspector’s findings and conclusions, in regard to the Council’s failure to meet the accommodation needs of travellers under its Local Plan, were a reasonable exercise of judgment on her part.

128. Therefore Ground 4 does not succeed.

Final conclusion

129. The claim for statutory review is dismissed for the reasons set out above.

24/00342/FUL

Land At Junction Of Blackwell Road and Alcester Road,
Burcot, Worcestershire

Part-retrospective change of use of land for the creation of 2no. Gypsy/Traveller pitches, comprising the siting of 1 mobile home, 1 touring caravan and 1 dayroom per pitch, alongside the formation of an access road and associated landscaping

Recommendation: Refuse

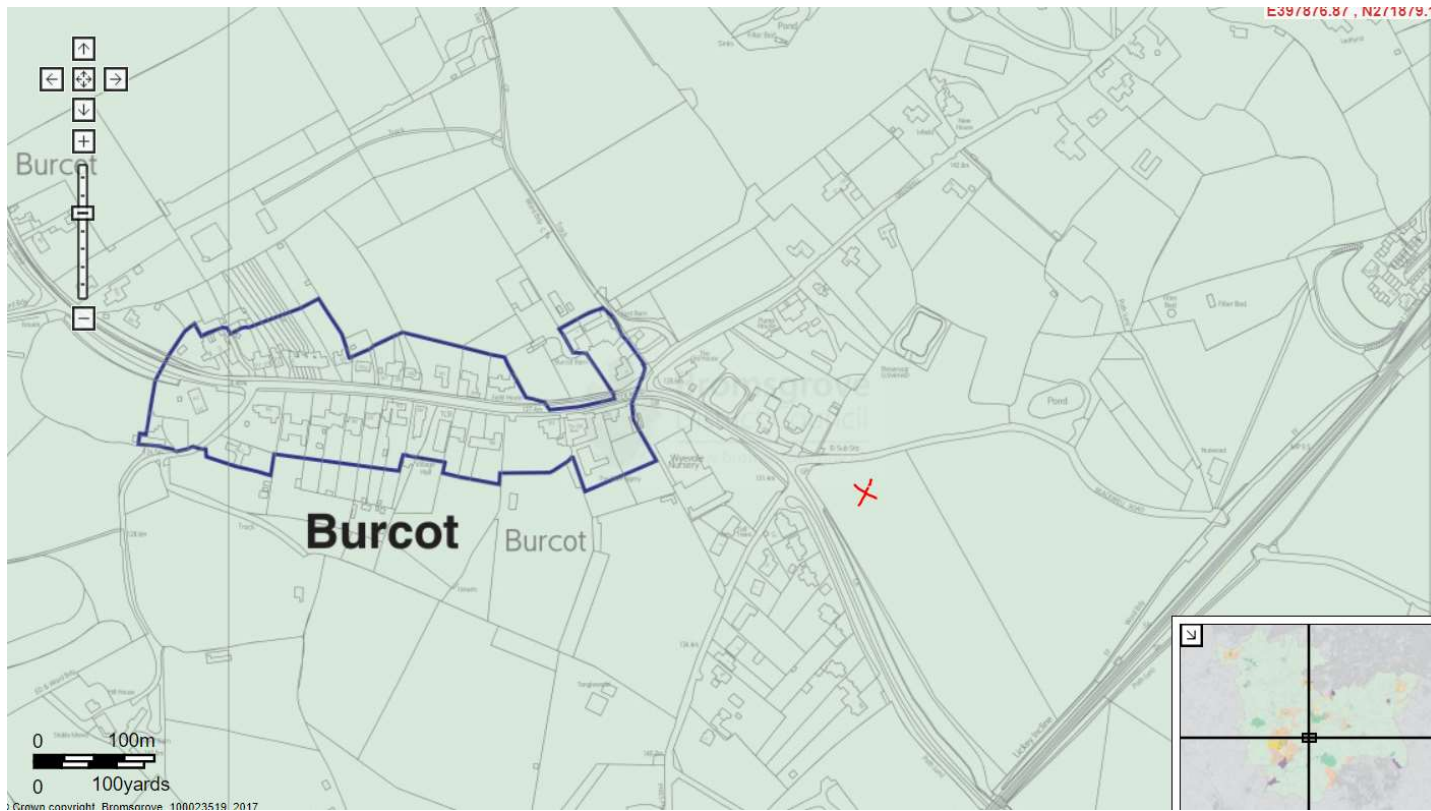
Location Plan



Aerial View



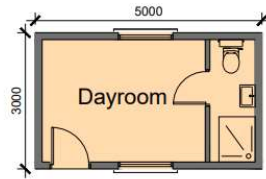
Local Plan Proposals Map



Proposed Site Plan



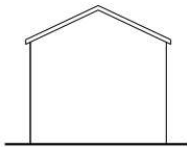
Proposed Day Room



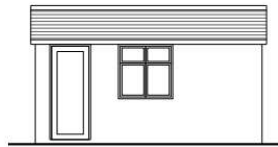
Ground Floor Plan



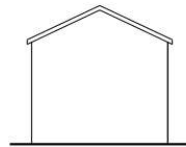
Roof Plan



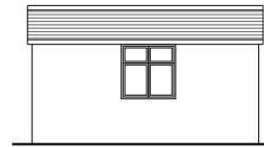
Side Elevation



Front Elevation



Side Elevation



Rear Elevation

Site Photos



Travelling along Alcester Road from west to east



Travelling along Alcester Road from east to west

Site Photos



Burcot gardens development to south of site

Site Photos

Page 119



Travelling south along Blackwell Road (new access as constructed)



Agenda Item 7

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Name of Applicant	Proposal	Expiry Date	Plan Ref.
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ARTICLE 4(1) – Removal of Permitted Development Rights to Demolish (Part 11) – CONFIRMATION

Former Severn Trent Building, Alcester Road, Burcot, Bromsgrove

Relevant Portfolio Holder	Cllr Kit Taylor
Portfolio Holder Consulted	Yes (03/04/2024)
Relevant Head of Service	Ruth Bamford, Head of Planning, Regeneration and Leisure Services
Parish Affected	Lickey and Blackwell
Ward Affected	Lickey Hills Ward
Non-Key Decision	

1.0 SUMMARY OF PROPOSALS

1.1 This report proposes the long-term protection of a building which is considered to be a heritage asset which makes a positive benefit to public amenity. The purpose of the Article 4 Direction is to restrict permitted development rights in relation to demolition is to achieve its retention in the longer term.

2.0 RECOMMENDATION

2.1 **The Committee is asked to RESOLVE that:
The Article 4(1) Direction at Appendix 1 and its attached plan be confirmed without modification.**

3.0 Background

3.1 Article 4 Directions are a means of removing Permitted Development Rights in order for the Local Planning Authority to regain some control over premises. The particular rights being removed should be specified and their removal should be justified in planning terms. It should be done in the public interest. When it is considered expedient to do so, an Article 4 Direction is made which can come into effect immediately and remains in force for a period of six months. During this time, there is a consultation period where interested parties can make representations against or in favour of the Direction. If a decision is not made at the end of the six month period, the Direction lapses and ceases to have effect.

3.2 Following the consultation period, a decision must be made to either confirm (i.e. make permanent) the Direction or not. If the decision is not to confirm, then the Direction lapses at the point the decision is made or 6 months from the making of the Direction, whichever is the sooner.

3.3 On 12th March 2024, an application for the prior approval of the demolition of the building was received under the provisions Schedule 2, Part 11, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). It was noted that the building *is on the draft local list* and a

heritage asset of merit and thus that planning policy, if it were applied, would seek the retention and reuse of the building. Such matters cannot be taken into account in the determination of a prior approval application and, as such, the building was considered to be at risk.

3.4 Therefore, on 3rd April 2024, a Direction was made to remove the permitted development rights in relation to the demolition of the building and this took effect immediately and the application for prior approval was refused on 4th April 2024 and the applicant was notified accordingly.

3.5 Publicity of the Direction was carried out in accordance with the requirements of Schedule 3 (1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 and a consultation period for representations ran, ending on 28th April 2024. The Secretary of State was notified in relation to the Article 4 Direction.

4.0 Summary of consultation responses

4.1 Conservation Officer Response Received 23.07.24:

- Severn Trent Waterworks Building comprises the original East Worcestershire pumping house building constructed in 1882 to designs by their engineer S W Yockney. It is a three bay red brick building, beneath pitched slate roof, with detailing around the windows, verge and cornice picked out in blue bricks. The central bay containing the entrance, projects forward of the east and west bays, and this combined with the use of rusticated stone arches above the front entrance door and windows, adds to its dominance of what is a symmetrical composition. The west elevation contains a further entrance with a Dutch inspired gable feature. The east elevation by contrast is far more simple with recessed blank panels. Perhaps this elevation was not designed to be seen, with the public area having more architectural ornamentation. The detailing of the front of the east bay does balance with the west bay in the overall composition. The building has the typical strong Victorian architectural details of utilitarian industrial buildings of this date.

Age, Authenticity and Rarity

- The pumping Station dates to 1882 and was constructed at a time when there was a huge expansion of infrastructure to provide water to the inhabitants of Worcestershire. It is not clear when the building was last used, but the exterior architecture remains clearly legible. No fixtures or fittings relating to its original use remain in the interior.

Architectural Interest

- The pumping station was designed by Sydney William Yockney (1841-?) in 1882, a civil engineer. Sydney joined his father, Samuel Hansard Yockney (1813-1893) who had worked extensively in designing railways and their infrastructure with Great Western Railways, and then in south Wales and the Midlands. The firm established an office in Westminster and father and son worked on many railway and transport projects including the Wye Valley

Railway, the Guernsey Tramway, the Cardiff and Penarth Tramway, the East Worcestershire Waterworks, and Totland Bay Pier.

As noted in the description above, despite the utilitarian nature of the building, there was a significant degree of ornamentation to the exterior, with the use of contrasting brick work, stone detailing and architectural flourishes such as the Jacobean inspired gable. This was typical of Victorian buildings associated with initiatives to improve public sanitation, including water supply and sewage disposal, which were designed to make a statement and be a symbol of investment in public health.

Historical Interest

- The Pumping station relates to a period of time when there was a huge expansion of public utilities such as waterworks and sewerage works, provided by relatively local companies and local authorities rather than national companies. From the mid-19th century, growing concerns about water and air quality in the rapidly developing towns and cities encouraged a series of Public Health Acts. The nature of the expansion is detailed in an Application under the Waterworks Facilities Act, 1870, by East Worcestershire Water to the Board of Trade for an extensive list of works including new pumping stations, pipework and aqueducts to allow the supply of water to areas of East Worcestershire, including around Bromsgrove as well as Worcester.

From the mid-19th century, growing concerns about water and air quality in the rapidly developing towns and cities encouraged a series of Public Health Acts. The architecture of buildings and places associated with initiatives to improve public sanitation, including water supply and sewage disposal, became important symbols of public investment in health and hygiene, by both local authorities and private companies and can include some of the most spectacular examples of Victorian and later engineering and their associated landscapes in England

Townscape/Villagescape /landscape Interest

- The Pumping Station is set back from Alcester Road, but there are glimpses of this distinctive building from the entrance off the main road.

4.2 WCC Historic Environment Advisor Response Received 23.07.24:

- The Historic Environment Planning and Advisory Service at Worcestershire County Council firmly support an Article 4 Direction to prevent demolition of the disused 19th century pumping station (former Severn Trent Building) on Alcester Road, which is a significant local example of Victorian engineering and growing awareness and pride for public utility.

4.3 No third party representations have been received as a result of the consultation exercise.

5.0 Relevant Planning History

24/00263/DEM	Demolition of former waterworks buildings used for offices and storage	Prior Approval	04.04.2024
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Agenda Item 8

Former Severn Trent Building, Alcester Road, Burcot Article 4 Direction

		refused	
24/00164/DEM	Demolition of former waterworks buildings used for offices and storage	Prior Approval refused	11.03.2024
19/00246/FUL	Demolition of existing storage building and replacement with two dwellings	Approved	18.10.2019
15/0609	Conversion and partial demolition of existing office and storage buildings to form 2 No Dwellings	Approved	28.10.2016
14/0558	Partial demolition of section of Severn Trent Buildings	Refused	08.08.2014
11/0328	Four detached dormer bungalows for the use of local residents over the age of 50.	Refused	19.07.2011
B/2004/1171	Conversion of existing building to form 3 residential units, parking, garaging & other works inc. New access road.	Approved	09.11.2004
B/2003/1025	Conversion of existing building to form 3 no. residential units and associated car parking, garaging and other works, demolition of brick/timber clad building.	Approved	16.09.2003
B/2002/0653	Redevelopment of existing depot, pumping station, reservoir, to provide nine dwellings, alterations to existing access - Outline Consent.	Withdrawn	12.07.2002
B/1998/0109	Redevelopment for residential development (outline) comprising 4 dwellings at East Worcestershire Waterworks, Alcester Road, Burcot.	Refused	11.05.1998
B/16478/1988	Residential Development (Outline)	Refused	20.06.1988
B/16479/1988	Residential Development (Outline). Appeal Allowed 2.2.89	Refused	20.06.1988

B/15392/1987 Residential Development (Outline) Refused 17.08.1987

6.0 Officer Assessment

- 6.1 The reasons in the legislation for putting an Article 4 Direction on a building are given as being where it is necessary to protect the historic environment, local amenity and wellbeing of an area and requires that the harm of the loss of the building should be identified.
- 6.2 The legislation also requires that all the representations received should be taken into account.
- 6.3 The building constitutes a non-designated heritage asset and therefore worthy of protection as outlined within policy BDP20 of the Bromsgrove District Plan and section 16 of the NPPF. The response should be proportionate to the significance of the asset, and in this case, it is considered that the building makes a significant contribution to the character of the streetscene in this location and, as such, its loss would have a negative visual impact on the surrounding area.
- 6.4 Para 201 of the NPPF (the Framework) advises that Local Planning Authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset), taking account of the available evidence and any necessary expertise. This evaluation should be taken into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.
- 6.5 Paragraph 209 of the Framework advises that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining any application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. Policy BDP20 states the District Council will support the sensitive reuse of redundant historic buildings and will encourage proposals which provide for a sustainable future for Heritage Assets, particularly those at risk. The Conservation Officer has undertaken an appropriate evaluation of the architectural and historic significance of the building in accordance with the requirements of the Framework.
- 6.6 It is evident that national and local policies support the retention and reuse of heritage assets such as this one and state that buildings should be protected in accordance with such policies. The application for prior approval for the demolition of the building (Ref: 24/00263/DEM) demonstrated that the heritage asset was at risk. The planning history also shows that many consents have been granted for the reuse of the building but none have been implemented to date. Therefore, it was considered necessary to ensure that the LPA retained some control over the building in respect of permitted development rights under Part 11 of the GPDO (demolition) to ensure compliance with the objectives of the Development Plan and National Guidance. In policy terms, the reuse of the premises for a variety of other

uses would be acceptable in principle and therefore it is considered that it would indeed be possible to retain and reuse the building.

- 6.7 In summary, the Council has made a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) on 03rd April 2024 (Appendix 1). The effect of the Direction is that the permission granted by Article 3 of the said Order shall not apply to such development and such development shall not be carried out within that site unless planning permission has been granted by the Council. The Article 4 Direction specifically precludes any building operation consisting of the demolition of a building being development, comprised within Class B of Part 11 of Schedule 2 of the above Order. shall remain in force until 3rd October 2024 (being six months from the date of the Direction) and shall then expire unless it has been confirmed by the Council in accordance with Paragraphs 1(9) and (10) of Schedule 3 to the said Order before the end of the six month period. It is recommended that the Article 4 Direction, as outlined above, is confirmed.

7.0 Financial Implications

- 7.1 The costs of the administrative and technical processes associated with this matter may be met from within existing budgets, and the financial aspects are not a matter for the Planning Committee to consider. However, there are circumstances in which the Local Planning Authority may be liable to pay compensation having made an Article 4 Direction, although the potential liability is limited in many cases by the time limits that apply. The Local Planning Authority may be liable to pay compensation to those whose permitted development rights have been withdrawn if they:
- Refuse planning permission for development which would have been permitted development if it were not for an Article 4 Direction; or
 - Grant planning permission subject to more limiting conditions than the GDPO would normally allow, as a result of an Article 4 Direction being in place.
- 7.2 Compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. All claims for compensation must be made within 12 months of the date on which the planning application for development formerly permitted is rejected (or approved subject to conditions that go beyond those in the GPDO).
- 7.3 Any planning application required as a consequence of an Article 4 Direction is exempt from the usual planning application fee.

8.0 Legal Implications

- 8.1 These matters are completed in line with the provisions of the Town & Country Planning Act 1990 (as amended).
- 8.2 Legal Services has been consulted with regard to the legal implications and their advice incorporated into the content of this report.

9.0 Customer/Equalities and Diversity Implications

- 9.1 Relevant parties have been provided with the relevant notification and will receive a formal notification of the committee decision.
- 9.2 Equalities and Diversity implications: none.
- 9.3 As this case forms part of the wider review of Locally Listed Buildings(LLBs) and has been brought forward as a result of the submission of an application for prior approval of demolition, and this would be likely on any LLB as a result of this review, then it is not considered that the owner of the premises has been unfairly treated.

10.0 Risk Management

- 10.1 The risk of not protecting the building is that in the long term it is likely to be demolished such that its significance and contribution to the wider area would be lost.

11.0 Author of Report

- 11.1 The author of this report is David Kelly who can be contacted on 01527 881666 or david.kelly@bromsgroveandredditch.gov.uk for more information.

12.0 Appendices

- 11.1 Appendix 1: Article 4 Direction and associated plan

Appendix 1

**Town and Country Planning (General Permitted Development)
(England) Order 2015 (as amended)**

**DIRECTION MADE UNDER ARTICLE 4 TO WHICH PARAGRAPH
2(1)(A) SCHEDULE 3 APPLIES**

WHEREAS Bromsgrove District Council being the appropriate local planning authority within the meaning of article 4(5) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) are satisfied that it is expedient that development of the description set out in the Schedule below should not be carried out on the land shown hatched red on the attached plan, unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990 (as amended).

NOW THEREFORE the said Council in pursuance of the power conferred on them by article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015, as amended, hereby direct that the permission granted by Article 3 of the said Order shall not apply to development on the said land of the description set out in the Schedule below.

THIS DIRECTION is made under article 4(1) of the said Order and, in accordance with Paragraph 2 and Paragraph 2(6) of Schedule 3, shall remain in force until **3rd October 2024** (being six months from the date of this direction) and shall then expire unless it has been confirmed by the appropriate local planning authority in accordance with Paragraphs 1(9) and (10) of Schedule 3 to the said Order before the end of the six month period.

THE SCHEDULE
Any building operation consisting of the demolition of a building being development, comprised within Class B of Part 11 of Schedule 2 of the said Order and not being development comprised within any other Class.

- 1. Made under the common seal of the Council of the District of Bromsgrove this **third day of April 2024.**

The Common Seal of the Council was affixed to this Direction in the presence of



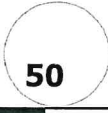
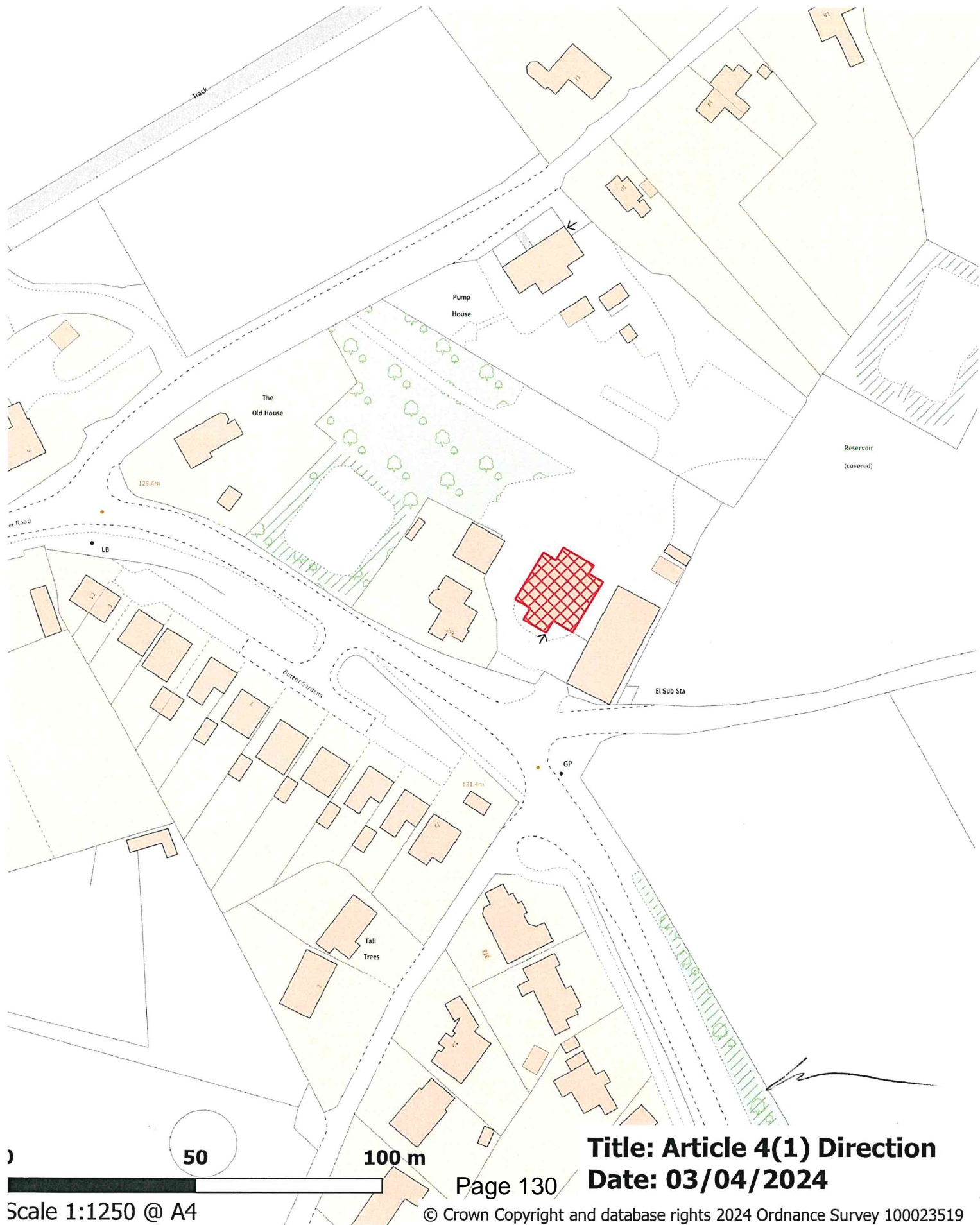
- 2. Confirmed under the common seal of the Council of the District of Bromsgrove this **day of 2024.**

12824

The Common Seal of the Council was affixed to this Direction in the presence of



Dated: 3rd April 2024.



100 m

Scale 1:1250 @ A4

Article 4 Direction

Former Severn Trent Building, Alcester Road,
Burcot, Bromsgrove, Worcestershire

Recommendation: Confirm

Site Location Plan



Photographs

- Side and Rear (NE and NW Elevations)

Page 133



Front Elevation (S)



Agenda Item 8

Photographs

- Front Elevation – east side



- Rear Elevation – facing north



Photographs showing architectural details

Page 135



Agenda Item 8

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Planning Performance Information Quarter One (1 April 2024 – 30 June 2024)

Responsible Portfolio Holder	Councillor Kit Taylor
Responsible Head of Service	Ruth Bamford

1.0 Purpose of Report

- 1.1 To receive an item of information in relation to planning performance and the outcomes of recent planning appeal decisions. Officers will answer any related questions at the meeting as necessary.

2.0 Recommendation

- 2.1 The Committee is asked to **RESOLVE** that this item of information is noted.

3.0 Report

- 3.1 This report provides details on the determination timescales for planning applications and planning appeals at Bromsgrove District Council when tested against the Government set timescales. This paper seeks to provide Members with a quarterly breakdown where applicable. Appendix One to this report contains a list of planning appeals determined in the relevant quarter.

4.0 Planning Statistics

- 4.1 On a quarterly basis, Local Planning Authorities supply information to the Ministry of Housing, Communities and Local Government (MHCLG) on planning application type, volume, the speed of determination and other matters such as the number of planning Enforcement Notices, Breach of Condition Notices, Certificates of Lawfulness and Notification applications. The Government then use this information to publish planning performance data for each Local Authority that assesses the speed of decision making and the quality of decision making for major and non-major applications.

5.0 Speed of Decision-Making

- 5.1 Planning performance is based on a two-year rolling assessment period and measures the speed of decision-making.
- 5.2 Speed of decision-making is measured by the proportion of applications that are decided within the statutory determination period (8 weeks for non-major applications and 13 weeks for major applications), or an agreed extended period of time.
- 5.3 The Government requires a minimum of **60%** of major and **70%** of non-major applications to be determined in time, or within an agreed extension of time.

- 5.4 Underperformance for speed of decision-making is when a Local Planning Authority determines a lesser proportion of applications in time compared to the required threshold.
-

6.0 Bromsgrove District Council Speed of Decision-Making Figures

- Speed of decision-making for major applications over the rolling two-year period = **89.2%**
- Speed of decision-making for non-major applications over the rolling two-year period = **84.6%**

NB: The Government requires a minimum of **60%** of major applications and **70%** of non-major applications to be determined in time, or within an agreed extension of time.

Source: These are internal Officer level calculations.

7.0 Quality of Decision-Making

7.1 The information on the quality of decision making looks at the Local Planning Authority's performance over a two-year period. The performance data looks at the number of major and non-major applications determined by the District Council, how many have been refused, how many decisions have been appealed and how many appeals have been allowed. It then expresses the result of a percentage of the total applications in those categories.

7.2 Quality of decision-making is measured by the proportion of total decisions, or non-determinations, that are allowed at appeal. Fundamentally the performance measure is assessing how many applications the Authority has refused that have gone to appeal and the decision has been overturned by the Planning Inspectorate. The Government have set the maximum threshold that no Authority should exceed **10%** of decisions overturned at appeal.

7.3 The current published data runs for the period July 2021 - June 2023. The data is intentionally nine months behind the date of publication to allow a time lag for appeals in the pipeline to be determined.

7.4 Underperformance for quality of decision-making (represented by the proportion of applications that are subsequently overturned at appeal) is when an Authority achieves a higher proportion of applications overturned at appeal compared to the required threshold.

8.0 Bromsgrove District Council Quality of Decision-Making Figures

- Quality of decision-making for major applications for the most recent period available (July 2021 – June 2023) = **4.8%**

- Quality of decision-making for non-major applications for the most recent period available (July 2021 – June 2023) = **2.1%**

NB: The Government requires that no Local Planning Authority should exceed 10% of decisions overturned at appeal.

Source: Table 152a and 154 [Live tables on planning application statistics - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/live-tables-on-planning-application-statistics)

9.0 Further Statistical Information

- 9.1 Members can access further information relating specifically to applications received and determined, application types, outcomes and those relating to a particular geographical area of the District, by using the Public Access advanced search and completing the relevant drop-down options. Guidance on how to use the advanced search function of Public Access can be found in the Public Access User Guide.
- 9.2 Planning Application statistics for all Local Planning Authorities across England are also published on a quarterly basis by MHCLG. Information on planning application statistical performance is available on the GOV.UK live tables. The tables can be accessed here: [Live tables on planning application statistics - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/live-tables-on-planning-application-statistics).
- 9.3 The Planning Inspectorate also publishes statistics in relation to their timeliness with planning appeals, which can be accessed here: [Statistics at The Planning Inspectorate - Planning Inspectorate - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/statistics-at-the-planning-inspectorate)
-

10.0 Bromsgrove District Council Appeal Decisions

- Number of major appeals allowed in Quarter 1 and dismissed in Quarter 1:
Allowed = 0
Dismissed = 0
 - Number of non-major appeals allowed in Quarter 1 and dismissed in Quarter 1:
Allowed = 1
Dismissed = 4
- 10.1 A list of appeal decisions received in Quarter 1 are provided in Appendix One attached to this report.
-

11.0 Financial, Legal, Policy and Risk Implications

- 11.1 It is important to manage and monitor the speed of decision-making and the quality of decision-making.

12.0 Consultation

12.1 There has been no consultation other than with relevant District Council Officers.

13.0 Author of Report

13.1 The author of this report is Dale Birch (Development Management Manager) who can be contacted on 01527 881341 or d.birch@bromsgroveandredditch.gov.uk for more information.

14.0 Appendices

14.1 Appendix One
Appeal Decisions: Quarter One

Appendix One Appeal Decisions: Quarter One

Major Appeal Decisions Quarter 1 (0)

Non-Major Appeal Decisions Quarter 1 (5)

Application Reference	23/00453/FUL
Decision Status	Delegated
Appeal Reference	APP/P1805/D/23/3328576
Site	The Old Bull Pens, Needle Mill Lane, Stoke Prior
Proposal	Detached double garage
Inspectorate Decision	Dismissed
Date of Decision	2 April 2024

Application Reference	23/00518/FUL
Decision Status	Delegated
Appeal Reference	APP/P1805/D/23/3333510
Site	233 Birmingham Road, Bromsgrove
Proposal	Dropped kerb at the front of the property
Inspectorate Decision	Dismissed
Date of Decision	5 April 2024

Application Reference	23/00600/FUL
Decision Status	Delegated
Appeal Reference	APP/P1805/D/23/3331182
Site	Sandhills Farm, Sandhills Green, Barnt Green
Proposal	Front single storey extension with a pitched roof over
Inspectorate Decision	Allowed
Date of Decision	8 April 2024

Application Reference	23/00408/FUL
Decision Status	Delegated
Appeal Reference	APP/P1805/D/23/3326942
Site	Pleasant View, Wildmoor Lane, Wildmoor
Proposal	Erection of a new agricultural building
Inspectorate Decision	Dismissed
Date of Decision	18 April 2024

Application Reference	22/00570/FUL
Decision Status	Delegated
Appeal Reference	APP/P1805/W/23/3324998
Site	10a and 10b Dale Hill, Blackwell

Agenda Item 9

Proposal	Erection of two detached dwellinghouses
Inspectorate Decision	Dismissed
Date of Decision	3 June 2024
