

21 February 2020
Delivered by email

Planning Policy
Planning and Development
Birmingham City Council
PO Box 28
1 Lancaster Circus
Birmingham
B1 1TU

Dear Sir/Madam,

**DEVELOPMENT MANAGEMENT IN BIRMINGHAM DEVELOPMENT PLAN DOCUMENT – PUBLICATION VERSION
(REGULATION 19)**

We write on behalf of our client, Argent LLP, in response to the Development Management in Birmingham Development Plan Document (DMB) Publication version (Regulation 19) dated October 2019. Our client raises these comments in the context of their ongoing development and emerging proposals at Paradise (planning permission reference 2017/03356/PA), the design and delivery of which is managed by Argent on behalf of Paradise Circus General Partner Limited, a joint venture company between Birmingham City Council and Hermes Real Estate.

Argent welcomes the Council's publication of the proposed Development Management policies which will sit alongside the Birmingham Development Plan (BDP) 2031 to guide development on the more detailed aspects of design and other development management considerations.

Argent are generally supportive of the policies contained within the DMB, however is concerned that some of the specific policies do not meet the tests of 'soundness' as set out in paragraph 35 of the National Planning Policy Framework (NPPF) (February 2019).

These representations provide specific comments in relation to 'soundness' of draft policies DM2 (Amenity), DM4 (Landscaping and Trees), DM6 (Noise and vibration) and DM10 (standards for residential development).

Policy DM2 Amenity

Argent is committed to delivering developments which create and maintain a high quality living and working environment, with high standards of amenity for both occupiers and neighbours.

Policy DM2 requires that "*all development will need to be appropriate to its location and not result in unacceptable adverse impacts on the amenity of occupiers and neighbours [emphasis added]*".

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Policy DM2 covers a range of amenity considerations including, noise, sunlight and overshadowing, pollution, access to amenity space, and others. Many of these considerations have different policy approaches within the NPPF and the policy in its current wording fails to give sufficient flexibility in the approach to assessing these different amenity factors.

With regard to noise and pollution, Paragraph 180 of the NPPF seeks to ensure that new development is *“appropriate for its location taking into account the likely effect of pollution on health, living conditions and the natural environment as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development”*. This includes mitigating and reducing to a minimum potential adverse impacts resulting from noise from new development – and avoiding noise giving rise to significant adverse impacts on health and the quality of life. With regard to lighting, Paragraph 180 states that development should seek to *“limit the impact of light pollution from artificial light on local amenity”*.

With regard to daylight and sunlight, Paragraph 123 of the NPPF confirms that *“when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards)”*.

It should therefore be acknowledged that there is a need for the Local Planning Authorities to ensure they are encouraging the most efficient use of land, and should take a flexible approach in considering the impacts of development on daylight and sunlight. This is particularly relevant in city centre locations where development densities are often higher.

On the basis of the above, it is considered that Policy DM2 as currently drafted, is more onerous and inconsistent with the requirements of the NPPF, and is therefore not considered ‘sound’. In order to ensure the policy can be considered ‘sound’ its wording should be revised as follows:

“Development should seek to mitigate and reduce to a minimum potential adverse impacts on amenity resulting from new development”.

Policy DM4 (Landscaping and Trees)

Argent acknowledges the importance of landscaping and trees in townscapes and the importance of their inclusion in new developments to enhance the quality of the environment and human wellbeing. Argent is therefore fully supportive of the Council’s aspiration to ensure that new and replacement tree planting will occur on sites, where this is feasible.

However, Policy DM4 also requires that where on-site replacement is not possible, contributions towards off-site planting will be sought. Whilst Argent has no objection in principle to this, the policy should seek to recognise that the appropriateness of any contribution sought will need to be considered on a case by case basis in the context of any overall viability discussions.

Paragraph 34 of the NPPF confirms that where policies confirm contributions will be expected from developers, these policies should not undermine the overall deliverability of the plan.

Whilst only a minor point, in order to ensure this policy is ‘effective’ (i.e. deliverable) and consistent with National Policy, a caveat should therefore be added to this policy to confirm that this contribution will only be sought *“where viable”*.

DM6 (Noise and vibration)

Argent agrees with the statement at paragraph 2.48 of the Publication Version that noise is an inherent part of everyday life and contributes to the character of different places. To this end, Argent supports the purpose of DM6 in that it will seek to mitigate the impact of new noise and vibrating generating development.

Policy DM6 notes that where a potential adverse impact is identified the development proposal shall include details on how the adverse impact will be reduced and/or mitigated. Argent is supportive of noise impact and mitigation being assessed on a case by case basis and particularly the use of the wording *“how adverse impact will be reduced”*, which is contrary to the more onerous wording used in Policy DM2.

However, paragraph 2.52 of supporting text sets out that BCC *“also has a detailed guidance note on Noise and Vibration maintained by Environmental Health”*. It is unclear how BCC will apply this guidance, which is non-statutory, during the determination of planning applications and/or reserved matters. As the guidance has not been subject to public consultation and has not been tested as part of as part of the development plan process, it is recommended that only limited weight should be afforded to this guidance for decision-making to ensure the authorities approach to assessing noise and vibration remains sound.

DM10 (standards for residential development)

Argent agrees that the provision of the right amount and right type of housing in the right location is essential to supporting the city’s growing population and creation of sustainable neighbourhoods. It is also recognised that the DMB places an emphasis on ensuring a high quality residential environments to protect the health and well-being of existing and new residents, which is supported by Argent.

This has in turn influenced the policy principles set out in DM10 on Nationally Described Space Standards; accessible and adaptable homes; separation distances; and adequate outlook and daylight, which are important considerations during the decision making process.

It is acknowledged and welcomed by Argent that an ‘exceptions test’ has been included at Policy DM10(6) should a development proposal be unable to meet the development management principles set out at Policy DM10(1-5). However, our client contends that the scope of this ‘exception test’ should be expanded to allow for a more balanced approach to the assessment of the overall merits of a proposal.

In particular, a degree of flexibility should be incorporated into the policy to reflect the variety of types and tenures of residential development being brought forward in the city, including build to rent and potentially co-living, which offer different types of provision to more traditional housing and may not be able to meet all of the criteria within this policy.

The Planning Practice Guidance (PPG) sets out guidance on planning for built to rent accommodation. In relation to Nationally Described Space Standards, it states that *“where authorities choose to apply them the national policy does not preclude authorities from dis-applying them for particular parts of the local plan area, or for particular development types, such as build to rent schemes”*.

In addition, the ‘exception’ test should also include reference to economic viability in accordance with paragraph 122 of the NPPF, which confirms that policies should *“support development that makes efficient use of land, taking into account... local market conditions and viability”*.

In order to ensure there is sufficient flexibility within this policy to enable to delivery of a range of housing types in accordance with the NPPF, it is recommended that the exception criterion is expanded to include the following considerations:

- (i) Where the development includes housing types with specific and unique considerations i.e. build to rent and co-living.
- (ii) Economic viability.

The inclusion of additional criteria for the exceptions test is deemed necessary to ensure the policy is 'effective' (i.e. deliverable) and thus to make the policy sound.

Conclusion

Argent supports the purpose of the DMB and its aim to support the strategic policies set out in the BDP. Once adopted, the development management policies will form part of the primary material consideration for future applications for approval of reserved matters at Paradise and any other future application Argent may wish to submit to the City Council.

Argent trust that the information provided within these representations, will be taken into consideration before the DMB DPD is submitted to the Secretary of State, so that the development management policies are sound and do not prejudice the delivery of future development.

Argent would welcome the opportunity to attend any future Examination in Public in relation to the DMB if necessary.

Please do not hesitate to contact should you wish to discuss the content of this letter in further detail.

Yours sincerely

Charlotte Palmer
Senior Planner

charlotte.palmer@turley.co.uk

Representation Form (Part A)

Development Management in Birmingham Development Plan Document (DMB)

Publication (Reg. 19) Consultation



(For office use only)

Date Received

Date acknowledged

Ref:

How to use this Representation Form

Please complete this Part A in full. Please note that anonymous comments cannot be accepted. Then please complete a Part B form for each representation that you wish to make.

The Development Management in Birmingham DPD (DMB), including all supporting and accompanying documentation, is available to view in full online at www.birmingham.gov.uk/DMB

Representations on the Publication version of DMB can be made from **Thursday 9th January 2020 to 17:00hrs on Friday 21st February 2020**. Please note that the Council is unable to accept representations after this point.

The Council strongly recommends the use of this Representation Form for submitting any comments. This will help to ensure that any formal representations that are made are matters of relevance to the subsequent examination by the Planning Inspectorate – an Inspector will only consider issues relating to the 'soundness' or 'legal compliance' of the DMB at examination.

PART A

1. Personal Details*

** if an agent is appointed, please complete only the Title, Name and Organization boxes below but complete the full contact details of the agent in Section 2*

Title: c/o agent

First Name: c/o agent

Last Name:

Job title (where relevant):

Organisation (if relevant): Argent LLP

Address Line 1:

Address Line 2:

Town:

County:

Postcode:

Telephone:

Email address:

2. Agent Details* <i>* only complete this section if an agent has been appointed</i>	
Title: Miss	
First Name: Charlotte	
Last Name: Palmer	
Job title (where relevant):	
Organisation (if relevant): Turley	
Address Line 1: 9 Colmore Row	
Address Line 2:	
Town: Birmingham	County:
Postcode: B3 2BJ	Telephone: 0121 2330902
Email address: charlotte.palmer@turley.co.uk	

3. Requests for Notifications	
<i>This section is for requests to be notified of progress with the DMB for those who are not submitting a formal representation. If you do submit a representation using a part B form then you will automatically be notified of all stages of the DMB and can disregard this section.</i>	
I wish to be notified of the following stages of the DMB (please tick/check all that apply):	
Submission to the Secretary of State for Communities and Local Government Y/N	Y
Publication of the Planning Inspector's Report on the Publication Version Y/N	Y
Adoption by the Council Y/N	Y

4. Declaration	
If you are submitting Part B form(s), please confirm how many:	1
Data Protection The personal information that you provide as part of this representation will only be used by Birmingham City Council for the purposes of preparing this DMB document.	
Declaration: I understand that any representations submitted will be made public and that my personal details will not be passed to any third parties without my prior written consent.	
Name: Charlotte Palmer	Date: 21/02/2020

Please ensure that you submit this form no later than **17:00hrs** on Friday 21st February 2020

Email completed forms to: planningstrategy@birmingham.gov.uk

Post to: Planning Policy, Planning and Development, PO Box 28, Birmingham, B1 1TU.

Tel: 0121 303 4323

Representation Form (Part B)

Development Management in Birmingham Development Plan Document (DMB)

Publication (Reg. 19) Consultation



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Date Received

Date acknowledged

Ref:

How to use this Representation Form

Please complete the Part A (Personal Details) form in full.

Then, please complete this Part B form for each representation that you wish to make. It is important that you identify on this Part B form which part of the DMB (e.g. paragraph and / or policy number) on which you are making the representation. Please use a separate form for each representation that you wish to make.

PART B

1. Confirmation of Name*

** please print your name on each separate representation (the name should match that entered on the Part A form)*

Full Name: Charlotte Palmer

Organisation (if relevant): Turley on behalf of Argent LLP

2. Your Representation

Important Note: For each question, please mark with an X, ONE of the available options only. Please complete a separate form for EACH of your comments. Please also refer to the accompanying guidance note for an explanation of the terms used.

Q1. Do you consider the DMB to be legally compliant?	YES	X	NO	
Q2. Do you consider the DMB to be sound?	YES		NO	X
Q3. Does the DMB comply with the Duty to Cooperate?	YES	X	NO	

If you have answered yes to both Q1 Q2 and Q3, please proceed to Q9. If you answered no to Q1 or Q3, please proceed to Q5. If you answered NO to Q2, then please go to Q4.

Q4. Why do you believe that the DMB is NOT sound?

a/ It is not positively prepared	
b/ It is not justified	
c/ It is not effective	
d/ It is not consistent with national policy	X

Q5. Which part of the DMB are you commenting on?	
Page Number	
Policy Number	DM2
Paragraph Number	
Table / Figure / Appendix	
Other	
Q6. Why do you feel that this part of the DMB is not legally compliant, sound or does not comply with the Duty to Cooperate?	
<i>Important note: There will not normally be another opportunity to make further representations, only unless invited to do so by the Planning Inspector, based on the matters he/she identifies for examination. As such, please be as clear and detailed as possible in your response, including any information, evidence or supporting documentation that you are relying on to justify your representation.</i>	
It is considered that Policy DM2 as currently drafted, is more onerous and inconsistent with the requirements of the NPPF, and is therefore not considered 'sound'.	
Please refer to further detail in accompanying letter.	
Q7. What changes do you consider are necessary in order to make the DMB legally compliant, or sound?	
<i>Please note: it would be helpful if you could suggest revised wording for any policy or text, being as precise as possible.</i>	
In order to ensure the policy can be considered 'sound' its wording should be revised as follows:	
"Development should seek to mitigate and reduce to a minimum potential adverse impacts on amenity resulting from new development".	
Please refer to further detail in accompanying letter.	
Q8. If your representation is seeking a modification, do you wish to participate at the oral examination (i.e. in person at the hearing sessions rather than via written representations)?	
<i>If you answered yes to Q7, please outline why you consider this to be necessary. Please note that the Planning Inspector will determine the most appropriate procedure to adopt in order to hear those who have indicated they wish to participate in person</i>	
Yes	
Q9. Are there any additional comments you would like to make with regard to the DMB?	
<i>Enter your reply here</i>	

3. Declaration

Data Protection

The personal information that you provide as part of this representation will only be used by Birmingham City Council for the purposes of preparing this DMB document.

Declaration:

I understand that any representations submitted will be made public as set out above, and that my personal details will not be passed to any third parties without my prior written consent.

Name: Charlotte Palmer	Date: 21/02/2020

Please ensure that you submit this form no later than 17:00hrs on Friday 21st February 2020, with an accompanying Part A form completed.

Email completed forms to: planningstrategy@birmingham.gov.uk

Post to: Planning Policy, Planning and Development, PO Box 28, Birmingham, B1 1TU.

Tel: 0121 303 4323

Representation Form (Part B)

Development Management in Birmingham Development Plan Document (DMB)

Publication (Reg. 19) Consultation



(For office use only)

Date Received

Date acknowledged

Ref:

How to use this Representation Form

Please complete the Part A (Personal Details) form in full.

Then, please complete this Part B form for each representation that you wish to make. It is important that you identify on this Part B form which part of the DMB (e.g. paragraph and / or policy number) on which you are making the representation. Please use a separate form for each representation that you wish to make.

PART B

1. Confirmation of Name*

** please print your name on each separate representation (the name should match that entered on the Part A form)*

Full Name: Charlotte Palmer

Organisation (if relevant): Turley on behalf of Argent LLP

2. Your Representation

Important Note: For each question, please mark with an X, ONE of the available options only. Please complete a separate form for EACH of your comments. Please also refer to the accompanying guidance note for an explanation of the terms used.

Q1. Do you consider the DMB to be legally compliant?	YES	X	NO	
Q2. Do you consider the DMB to be sound?	YES		NO	X
Q3. Does the DMB comply with the Duty to Cooperate?	YES	X	NO	

If you have answered yes to both Q1 Q2 and Q3, please proceed to Q9. If you answered no to Q1 or Q3, please proceed to Q5. If you answered NO to Q2, then please go to Q4.

Q4. Why do you believe that the DMB is NOT sound?

a/ It is not positively prepared	
b/ It is not justified	
c/ It is not effective	X
d/ It is not consistent with national policy	

Q5. Which part of the DMB are you commenting on?	
Page Number	
Policy Number	DM4
Paragraph Number	
Table / Figure / Appendix	
Other	
Q6. Why do you feel that this part of the DMB is not legally compliant, sound or does not comply with the Duty to Cooperate?	
<i>Important note: There will not normally be another opportunity to make further representations, only unless invited to do so by the Planning Inspector, based on the matters he/she identifies for examination. As such, please be as clear and detailed as possible in your response, including any information, evidence or supporting documentation that you are relying on to justify your representation.</i>	
Policy DM4 requires that where on-site tree replacement is not possible, contributions towards off-site planting will be sought. Whilst Argent has no objection in principle to this, the policy should seek to recognise that the appropriateness of any contribution sought will need to be considered on a case by case basis in the context of any overall viability discussions.	
Paragraph 34 of the NPPF confirms that where policies confirm that contributions will be expected from developers, these policies should not undermine the overall deliverability of the plan.	
Q7. What changes do you consider are necessary in order to make the DMB legally compliant, or sound?	
<i>Please note: it would be helpful if you could suggest revised wording for any policy or text, being as precise as possible.</i>	
In order to ensure this policy is 'effective' (i.e. deliverable) and consistent with National Policy, a caveat should therefore be added to this policy to confirm that this contribution will only be sought "where viable".	
Q8. If your representation is seeking a modification, do you wish to participate at the oral examination (i.e. in person at the hearing sessions rather than via written representations)?	
<i>If you answered yes to Q7, please outline why you consider this to be necessary. Please note that the Planning Inspector will determine the most appropriate procedure to adopt in order to hear those who have indicated they wish to participate in person</i>	
Yes	
Q9. Are there any additional comments you would like to make with regard to the DMB?	
<i>Enter your reply here</i>	

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Name: Charlotte Palmer	Date: 21/02/2020

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Tel: 0121 303 4323

Representation Form (Part B)

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How to use this Representation Form

Please complete the Part A (Personal Details) form in full.

Then, please complete this Part B form for each representation that you wish to make. It is important that you identify on this Part B form which part of the DMB (e.g. paragraph and / or policy number) on which you are making the representation. Please use a separate form for each representation that you wish to make.

PART B

1. Confirmation of Name*

** please print your name on each separate representation (the name should match that entered on the Part A form)*

Full Name: Charlotte Palmer

Organisation (if relevant): Turley on behalf of Argent LLP

2. Your Representation

Important Note: For each question, please mark with an X, ONE of the available options only. Please complete a separate form for EACH of your comments. Please also refer to the accompanying guidance note for an explanation of the terms used.

Q1. Do you consider the DMB to be legally compliant?	YES	X	NO	
Q2. Do you consider the DMB to be sound?	YES		NO	X
Q3. Does the DMB comply with the Duty to Cooperate?	YES	X	NO	

If you have answered yes to both Q1 Q2 and Q3, please proceed to Q9. If you answered no to Q1 or Q3, please proceed to Q5. If you answered NO to Q2, then please go to Q4.

Q4. Why do you believe that the DMB is NOT sound?

a/ It is not positively prepared	
b/ It is not justified	
c/ It is not effective	
d/ It is not consistent with national policy	X

Q5. Which part of the DMB are you commenting on?	
Page Number	
Policy Number	DM6
Paragraph Number	2.52
Table / Figure / Appendix	
Other	
Q6. Why do you feel that this part of the DMB is not legally compliant, sound or does not comply with the Duty to Cooperate?	
<i>Important note: There will not normally be another opportunity to make further representations, only unless invited to do so by the Planning Inspector, based on the matters he/she identifies for examination. As such, please be as clear and detailed as possible in your response, including any information, evidence or supporting documentation that you are relying on to justify your representation.</i>	
It is unclear how BCC will apply the guidance referred to in this Paragraph, which is non-statutory, during the determination of planning applications and/or reserved matters. As the guidance has not been subject to public consultation and has not been tested as part of as part of the development plan process, it is recommended that only limited weight should be afforded to this guidance for decision-making to ensure the authorities approach to assessing noise and vibration is in accordance with National Policy and remains sound.	
Q7. What changes do you consider are necessary in order to make the DMB legally compliant, or sound?	
<i>Please note: it would be helpful if you could suggest revised wording for any policy or text, being as precise as possible.</i>	
Reference to this document should be removed, or clarity provided on the 'weight' to be afforded to this guidance document.	
Q8. If your representation is seeking a modification, do you wish to participate at the oral examination (i.e. in person at the hearing sessions rather than via written representations)?	
<i>If you answered yes to Q7, please outline why you consider this to be necessary. Please note that the Planning Inspector will determine the most appropriate procedure to adopt in order to hear those who have indicated they wish to participate in person</i>	
Yes	
Q9. Are there any additional comments you would like to make with regard to the DMB?	
<i>Enter your reply here</i>	

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Declaration:

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Name: Charlotte Palmer	Date: 21/02/2020

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Representation Form (Part B)

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How to use this Representation Form

Please complete the Part A (Personal Details) form in full.

Then, please complete this Part B form for each representation that you wish to make. It is important that you identify on this Part B form which part of the DMB (e.g. paragraph and / or policy number) on which you are making the representation. Please use a separate form for each representation that you wish to make.

PART B

1. Confirmation of Name*

** please print your name on each separate representation (the name should match that entered on the Part A form)*

Full Name: Charlotte Palmer

Organisation (if relevant): Turley on behalf of Argent LLP

2. Your Representation

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Q1. Do you consider the DMB to be legally compliant?	YES	X	NO	
Q2. Do you consider the DMB to be sound?	YES		NO	X
Q3. Does the DMB comply with the Duty to Cooperate?	YES	X	NO	

If you have answered yes to both Q1 Q2 and Q3, please proceed to Q9. If you answered no to Q1 or Q3, please proceed to Q5. If you answered NO to Q2, then please go to Q4.

Q4. Why do you believe that the DMB is NOT sound?

a/ It is not positively prepared	
b/ It is not justified	
c/ It is not effective	
d/ It is not consistent with national policy	X

Q5. Which part of the DMB are you commenting on?	
Page Number	
Policy Number	DM10
Paragraph Number	
Table / Figure / Appendix	
Other	
Q6. Why do you feel that this part of the DMB is not legally compliant, sound or does not comply with the Duty to Cooperate?	
<i>Important note: There will not normally be another opportunity to make further representations, only unless invited to do so by the Planning Inspector, based on the matters he/she identifies for examination. As such, please be as clear and detailed as possible in your response, including any information, evidence or supporting documentation that you are relying on to justify your representation.</i>	
Our client contends that the scope of the 'exception test' in Polict DM10 should be expanded to allow for a more balanced approach to the assessment of the overall merits of a proposal.	
In particular, a degree of flexibility should be incorporated into the policy to reflect the variety of types and tenures of residential development being brought forward in the city, including build to rent and potentially co-living, which offer different types of provision to more traditional housing and may not be able to meet all of the criteria within this policy.	
In addition, the 'exception' test should also include reference to economic viability in accordance with paragraph 122 of the NPPF, which confirms that policies should "support development that makes efficient use of land, taking into account... local market conditions and viability".	
Q7. What changes do you consider are necessary in order to make the DMB legally compliant, or sound?	
<i>Please note: it would be helpful if you could suggest revised wording for any policy or text, being as precise as possible.</i>	
In order to ensure there is sufficient flexibility within this policy to enable to delivery of a range of housing types in accordance with the NPPF, it is recommended that the exception criterion is expanded to include the following considerations:	
(i) Where the development includes housing types with specific and unique considerations i.e. build to rent and co-living.	
(ii) Economic viability.	
Q8. If your representation is seeking a modification, do you wish to participate at the oral examination (i.e. in person at the hearing sessions rather than via written representations)?	
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Yes	
Q9. Are there any additional comments you would like to make with regard to the DMB?	
<i>Enter your reply here</i>	

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3. Declaration

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Declaration:
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Name: Charlotte Palmer	Date: 21/02/2020
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Please ensure that you submit this form no later than 17:00hrs on Friday 21st February 2020, with an accompanying Part A form completed.

Email completed forms to: planningstrategy@birmingham.gov.uk

Post to: Planning Policy, Planning and Development, PO Box 28, Birmingham, B1 1TU.

Tel: 0121 303 4323