

THE JEWELLERY QUARTER NEIGHBOURHOOD PLAN 2022 - 2032

(Submission Version February 2022)

Report of the Examination into the
Jewellery Quarter Neighbourhood Plan 2022 - 2032

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To Birmingham City Council
And to the Jewellery Quarter Neighbourhood
Forum

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1. Introduction

Neighbourhood planning

1. The Localism Act 2011 Part 6 Chapter 3 introduced neighbourhood planning, including provision for neighbourhood development plans. A neighbourhood development plan should reflect the needs and priorities of the community concerned and should set out a positive vision for the future, setting planning policies to determine decisions on planning applications. If approved by a referendum and made by the local planning authority, such plans form part of the Development Plan for the neighbourhood concerned. Applications for planning permission should be determined in accordance with the Development Plan, unless material considerations indicate otherwise.

2. This report concerns the Submission draft (February 2022) of the Jewellery Quarter Neighbourhood Plan 2022-2032 (“the Draft NDP”).

Appointment and role

3. Birmingham City Council (“BCC”), with the agreement of the neighbourhood forum Jewellery Quarter Development Trust (“JQDT”), has appointed me to examine the Draft NDP. I am a member of the planning bar and am independent of BCC, JQDT, and of those who have made representations in respect of the Draft NDP. I have been trained and approved by the Neighbourhood Planning Independent Examiner Referral Service and have extensive experience both as a planning barrister and as a neighbourhood plan examiner. I do not have an interest in any land that is, or may be, affected by the Draft NDP.

4. My examination has involved considering written submissions, a detailed site visit on Friday 9th December 2022 and a shorter site visit on Friday 16th December. I have considered all the documents with which I have been provided.

5. My role may be summarised briefly as to consider whether certain statutory requirements have been met, to consider whether the Draft NDP meets the basic conditions, to consider human rights issues, to recommend which of the three options specified in paragraph 12 below applies and, if appropriate, to consider the referendum area. I must act proportionately, recognising that Parliament has intended the neighbourhood plan process to be relatively inexpensive with costs being proportionate.

2. Preliminary Matters

Public consultation

6. Consultation and community involvement are important parts of the process of producing a neighbourhood plan. I am satisfied that JQDT took public consultation seriously. I do not consider there has been a failure in consultation. Consultation has been sufficient and meets the requirements of the Neighbourhood Planning (General) Regulations 2012 (“the General Regulations”).

Other statutory requirements

7. I am also satisfied of the following matters:

- (1) The Draft NDP area is the Neighbourhood Plan area edged red on figure 1 of the draft NDP. On 17th October 2019 this was designated as a neighbourhood area for the purposes of neighbourhood planning. JQDT’s Neighbourhood Planning Forum is authorised to act in respect of this area (Town and Country Planning Act 1990 (“TCPA”) s61F (1) as read with the Planning and Compulsory Purchase Act 2004 (“PCPA”) s38C (2)(a));
- (2) The Draft NDP does not include provision about development that is excluded development (as defined in TCPA s61K), and does not relate to more than one neighbourhood area (PCPA s38B (1));
- (3) No other neighbourhood development plan has been made for the neighbourhood area (PCPA s38B (2));
- (4) There is no conflict with PCPA s38A and s38B (TCPA Sch 4B para 8(1)(b) and PCPA s38C (5)(b)); and
- (5) The Draft NDP specifies the period for which it is to have effect, namely 2022-2032, as required by PCPA s38B(1)(a).

3. The Extent and Limits of an Examiner’s Role

8. I am required to consider whether the Draft NDP meets the basic conditions specified in TCPA Sch 4B para 8(2) as varied for neighbourhood development plans, namely:

- (a) Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Plan;
- (d)¹ The making of the Plan contributes to the achievement of sustainable development;
- (e) The making of the Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- (f) The making of the Plan does not breach, and is otherwise compatible with, EU obligations; and

¹ The omission of (b) and (c) results from these clauses of para 8(2) not applying to neighbourhood development plans (PCPA s38C (5)(d)).

(g) Prescribed conditions are met in relation to the Plan and prescribed matters have been complied with in connection with the proposal for the Plan.

9. There is one prescribed basic condition:² *“The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.”* Chapter 8 comprises regulations 105 to 111.

10. TCPA Sch 4B para 8(6) and para 10(3)(b) and the Human Rights Act 1998 mean that I must consider whether the Draft NDP is compatible with Convention rights. ‘Convention rights’ are defined in the Human Rights Act 1998 as (a) Articles 2 to 12 and 14 of the European Convention on Human Rights (“the Convention”), (b) Articles 1 to 3 of its First Protocol, and (c) Article 1 of its Thirteenth Protocol, as read with Articles 16 to 18 of the Convention. The Convention rights that are most likely to be relevant to town and country planning are those under the Convention’s Article 6(1), 8 and 14 and under its First Protocol Article 1.

11. In my examination of the substantial merits of the Draft NDP, I may not consider matters other than those specified in the last three paragraphs. In particular, I may not consider whether any other test, such as the soundness test provided for in respect of examinations under PCPA s20, is met.³ Rather, Parliament has decided not to use the soundness test, but to use the, to some extent, less demanding tests in the basic conditions. It is important to avoid unduly onerous demands on qualifying bodies. It is not my role to rewrite a neighbourhood development plan to create the plan that I would have written for the area. It is not my role to impose a different vision on the community.

12. Having considered the basic conditions and human rights, I have three options, which I must exercise in the light of my findings. These are: (1) that the Draft NDP proceeds to a referendum as submitted; (2) that the Draft NDP is modified to meet basic conditions and then the modified version proceeds to a referendum; or (3) that the Draft NDP does not proceed to referendum. If I determine that either of the first two options is appropriate, I must also consider whether the referendum area should be extended. My power to recommend modifications is limited by statute in the following terms:

The only modifications that may be recommended are—

(a) modifications that the examiner considers need to be made to secure that the draft [NDP] meets the basic conditions mentioned in paragraph 8(2),

(b) modifications that the examiner considers need to be made to secure that the draft [NDP] is compatible with the Convention rights,

² Sch 2 of the General Regulations prescribes this.

³ Woodcock Holdings Ltd v. Secretary of State for Communities and Local Government [2015] EWHC 1173 (Admin), Holgate J. para 57; R. (Crownhall Estates Limited) v. Chichester District Council [2016] EWHC 73 (Admin), para 29 Holgate J. PPG Reference ID: 41-055-2018022.

- (c) modifications that the examiner considers need to be made to secure that the draft [NDP] complies with the provision made by or under sections 61E(2), 61J and 61L,
- (d) modifications specifying a period under section 61L(2)(b) or (5), and
- (e) modifications for the purpose of correcting errors.⁴

13. The word “only” prevents me recommending any other modifications. The fact that a modification would be of benefit is not a sufficient ground in itself to recommend it. So, for example, the fact that a policy could be strengthened or added to does not justify a modification unless this is necessary for the reasons given above. I must not take an excessively restrictive view of the power to recommend modifications, but must bear in mind Lindblom LJ’s explanation of its extent in his judgment in Kebbell Developments Ltd v. Leeds City Council.⁵ I may not recommend a modification that would put the draft NDP in breach of a basic condition or of human rights. When I conclude that a modification is necessary, I must, in deciding its wording, bear in mind material considerations including government advice. This includes the importance of localism. Where I properly can, my suggested modifications seek to limit the extent to which the substance of the draft NDP is changed.

14. It is not my role to consider matters that are solely for the determination of other bodies such BCC in its capacity as a licensing or highways authority, or the Environment Agency. Nor is it my role to consider matters that an NDP could consider, but which are not considered in the Draft NDP, unless this is necessary for my role as explained above. It is not my role to consider aspirations that are not policies.

4. Consideration of Representations

15. I have given the representations careful consideration, but have not felt it necessary to comment on most of them. Rather in accordance with the statutory requirement and bearing in mind the judgment of Lang J in R. (Bewley Homes Plc) v. Waverley District Council,⁶ I have mainly concentrated on giving reasons for my recommendations.⁷ Where I am required to consider the effect of the whole Draft NDP, I have borne it all in mind.

5. Public Hearing and Site Visit

16. The general rule is that the examination of the issues by the examiner is to take the form of the consideration of the written representations. However, an examiner must cause a hearing to be held for the purpose of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to

⁴ TCPA Sch 4B, para 10(3). The provisions in (a), (c) and (d) are in the TCPA.

⁵ [2018] EWCA Civ 450, 14th March 2018, paras 34 and 35.

⁶ [2017] EWHC 1776 (Admin), Lang J, 18th July 2017.

⁷ TCPA Sch 4B, para 10(6).

ensure (1) adequate examination of the issue or (2) a person has a fair chance to put a case. Since neither applied in this case, I did not hold a public hearing.

17. I decided that an unaccompanied site visit was necessary and held an extensive one on Friday 9th December 2022 and a shorter one on Friday 16th December. The site visit helped me to gain a sufficient impression of the nature of the area for the purpose of my role.

6. Basic conditions and human rights

Regard to national policies and advice

18. The first basic condition requires that I consider whether it is appropriate that the NDP should be made “*having regard to national policies and advice contained in guidance issued by the Secretary of State*”. A requirement to have regard to policies and advice does not require that such policy and advice must necessarily be followed, but they should only be departed from them only if there are clear reasons, which should be explained, for doing so.⁸

19. The principal document in which national planning policy is contained is the National Planning Policy Framework 20th July 2021 (“the NPPF”) and I have borne that in mind. Other policy and advice that I have borne in mind includes national Planning Practice Guidance (“PPG”).

20. The NPPF provides that neighbourhood plans should support the delivery of strategic policies contained in local plans and should shape and direct development that is outside of these strategic policies.⁹ Its paragraphs 28 and 29 state:

28. non-strategic policies should be used by... communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.

29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies.

Contributing to the achievement of sustainable development

21. The second basic condition means that I must consider whether the making of the Plan contributes to the achievement of sustainable development. Unless the Draft NDP, or the Draft

⁸ R. (Lochailort Investments Limited) v. Mendip District Council [2020] EWCA Civ 1259, Lewison LJ, paras 6, 31 and 33, 2nd October 2020.

⁹ NPPF para 13.

NDP as modified, contributes to sustainable development, it cannot proceed to a referendum. This condition relates to the making of the Plan as a whole. It does not require that each policy in it must contribute to sustainable development. It does require me to consider whether constraints might prevent sustainable development and, if they might, whether the evidence justifies them. That involves consideration of site-specific constraints, both existing and those proposed in the Draft NDP. The total effect of the constraints introduced by the Draft NDP when read with existing constraints should not prevent the achievement of sustainable development.

General conformity with the development plan's strategic policies

22. The third basic condition means that I must consider whether the Draft NDP as a whole is in general conformity with the strategic policies contained in the development plan for the area of the authority. The development plan is Birmingham Development Plan 2031 (January 2017).

23. The adjective '*general*' allows a degree of (but by no means unlimited) flexibility and requires the exercise of planning judgement. The draft NDP "*need not slavishly adopt every detail*".¹⁰ This condition only applies to strategic policies - there is no conformity requirement in respect of non-strategic policies in the development plan or in respect of other local authority documents (such as Supplementary Planning Documents and Supplementary Planning Guidance) that do not form part of the development plan, although such documents may be relevant to other matters. In assessing general conformity and whether a policy is strategic, I have borne in mind helpful PPG advice.¹¹ I have also borne in mind the relevant part of the judgment in R. (Swan Quay LLP) v. Swale District Council.¹²

EU obligations

24. The fourth basic condition requires me to consider whether the Draft NDP breaches, or is otherwise incompatible with, EU obligations. I have in particular considered the following, together with the UK statutory instruments implementing them in England: the Strategic Environmental Assessment Directive (2001/42/EC); the Environmental Impact Assessment Directive (2011/92/EU); the Habitats Directive (92/43/EEC); the Wild Birds Directive (2009/147/EC); the Waste Framework Directive (2008/98/EC); the Air Quality Directive (2008/50/EC); the Water Framework Directive (2000/60/EC); and the General Data Protection Regulation (2016/679/EU). I have also considered the judgment of the European Court of

¹⁰ Wiltshire Council v. Cooper Estates Strategic Land Ltd [2019] EWCA Civ 840, para 3.

¹¹ Paras 074 to 077 of the section on neighbourhood planning.

¹² [2017] EWHC 420 (Admin), para 29, Dove J, 27th January 2017.

Justice in People Over Wind v Coillte Teoranta.¹³ I have born in mind that proportionality is a concept of and underlies EU law and must be wary of requirements that would be disproportionate to the Draft NDP.

25. I am satisfied that no issue arises in respect of equality under general principles of EU law or any EU equality directive.

Conservation of Habitats and Species Regulations

26. I am satisfied that the making of the NDP would not be incompatible with the prescribed basic condition and that it is not necessary to consider the matter further in this report.

Human Rights

27. The planning law of England and Wales in general complies with the Convention. This matter can be dealt with briefly in advance of further consideration of the contents of the Draft NDP. I have considered whether anything in the Draft NDP would cause a breach of any Convention right. In particular, I have considered the Convention's Articles 6(1), 8 and 14 and its First Protocol Article 1. This last-mentioned article reinforces the common-law principle that private property rights should not be removed without proper justification, and I have borne that in mind. Apart from that, nothing in my examination of the Draft NDP has required further consideration of human rights.

7. The nature of the area

28. In considering the contents of the Draft NDP I must consider the nature of the neighbourhood area. This is complex and unique. Its gist is adequately described in the Draft NDP. The area contains 144 listed buildings, a designated conservation area (which it is intended to expand) and non-designated heritage assets both in the Conservation Area (*e.g.*, part of the Farmers Bridge lock flight) and outside it. These have a considerable impact on the nature of the area as a whole.

8. The contents of the Draft NDP

Page 21

29. Map 1 is the second map and should be renumbered Map 2.

Recommended modification 1

Page 21, Map

Replace "Map 1" with "Map 2".

¹³ Case C-323/17, 12th April 2018.

30. Policy 1(a): New development and conserving industrial and built heritage in the Creative District begins “*In order to conserve and enhance the creative industries and the character of the Creative District, development proposals in the Creative District shown in Map 1 should be commercial in nature (e.g. Use Class B, E, F or Sui Generis)*”. As BCC has pointed out in its regulation 16 response, *sui generis* is not a use class. It is a very broad term that includes the uses expressly excluded from use classes by the Town and Country Planning (Use Classes) Order 1987 article 3(6). These are: use (a) as a theatre, (b) as an amusement arcade or centre, or a funfair, (c) as a launderette, (d) for the sale of fuel for motor vehicles, (e) for the sale or display for sale of motor vehicles, (f) for a taxi business or business for the hire of motor vehicles, (g) as a scrapyards, or a yard for the storage or distribution of minerals or the breaking of motor vehicles, (h) for any work registrable under the Alkali, etc. Works Regulation Act 1906, (i) as a hostel (j) as a waste disposal installation for the incineration, chemical treatment (as defined in Annex I to Directive 2008/98/EC under heading D9) or landfill of hazardous waste as defined (in relation to England) in regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005 ..., (k) as a retail warehouse club being a retail club where goods are sold, or displayed for sale, only to persons who are members of that club, (l) as a night-club, (m) as a casino, (n) as a betting office, (o) as a pay day loan shop, (p) as a public house, wine bar, or drinking establishment, (q) as a drinking establishment with expanded food provision, (r) as a hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises, (s) as a venue for live music performance, (t) a cinema, (u) a concert hall, (v) a bingo hall, and (x) a dance hall. It also includes matters excluded from specific use classes, mixed uses, and a wide range of other matters such as caravan and camping sites, airports, heliports, mines and quarries. By no means all of those uses would support the function of the Jewellery Quarter.

31. I have no doubt that policy 1(a) was not intended to extend to all these *sui generis* uses and needs to be modified. The modification should reflect the supporting text.

Recommended modification 2

Page 21, Policy 1(a)

Replace “(e.g. Use Class B, E, F or Sui Generis)” with “ (e.g., Use Class B, E, F or a sui generis use that maintains the character of the area)”.

32. Regarding the words “in all cases Use Class C shall not constitute the largest use by gross internal floor area”, BCC has explained that it never achieves this and that the best it has achieved is 67% residential and that site has a problem. In the circumstances the words just quoted would prevent sustainable development.

Recommended modification 3

Page 21, Policy 1(a)

Replace “Use Class C shall not constitute the largest use by gross internal floor area” with “new development should be predominantly commercial unless and to the extent it is shown that this is not viable”.

Page 22

33. The second indent in the second column contains a spelling mistake.

Recommended modification 4

Page 22, column 2, 2nd indent

Replace “historicly” with “historically”.

Pages 32 and 33

34. These pages contain policy and supporting text in respect of conserving non-designated heritage assets outside the Conservation Area. Policy 2(c) lists non-designated heritage assets and provides that they should be conserved in any future development proposals. As a restriction on development, this must be justified by sufficient evidence that the properties concerned are both indeed non-designated heritage assets and, keeping basic condition (a) in the forefront of my mind, that a stronger policy that that provided for non-designated heritage assets in the NPPF paragraph 201 is required. Since the policy to some extent departs from the NPPF clear reasons are required for it.¹⁴ Doing this involves considering each building (including each building within a block) separately. I took great care over this spending time on all six sites on each of my site visits. My recommendations are based upon the evidence with which I was provided and my views of the exterior of the premises concerned. Some of the buildings concerned were in a poor state. I had no evidence and no reason to suspect that NPPF paragraph 196¹⁵ applied to any of them.

35. Policy 2(c)(i) relates to 6 to 11 Mott Street, a mid-19th century terrace, originally houses and believed to date from about 1830-1849 and as such to be rare survivors of the earliest phase of the area’s development. I am satisfied that these are non-designated heritage assets, but not satisfied that a policy that goes beyond NPPF paragraph 201 would be justified.

36. Policy 2(c)(ii) relates to 89 to 91 Constitution Hill, a mid-20th century two-storey factory in the Moderne–style. This was built for Edmonds Shopfitters about 1947-1955. I have

¹⁴ Paragraph 18 and footnote 8 above.

¹⁵ “Where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision.”

no doubt that this is a non-designated heritage asset and am satisfied that this exceptional building of its type merits the additional protection of policy 2(c).

37. Policy 2(c)(iii) relates to the former Hampton public house 15-17 Great Hampton Row, an early 19th century public house. It was previously known as the Minerva Vaults and was built about 1825. As a rare survivor from the earliest phase of the area's development, it is a non-designated heritage asset. It has however been altered greatly and is in a poor state. I am not satisfied that a policy that goes beyond NPPF paragraph 201 would be justified.

38. Policy 2(c)(iv) relates to 30 Smith Street and 123 Hockley Street, a 1950's concrete framed factory with tiled elevations, a photograph of which is at page 31 of the draft NDP. A policy that goes beyond NPPF paragraph 201 is not justified in this case. On balance and bearing in mind the expert opinion of BCC's Conservation Officer, it is a non-designated heritage asset.

39. Policy 2(c)(v) relates to the block formed by Harford Street, Barr Street and Great Hampton Row. This block is proposed to be added to the Conservation Area. Part of this block the Great Hampton Works, 170-174, Great Hampton Row is, a listed building.¹⁶ As such, it cannot be an undesignated heritage asset and should not be covered by policy 2(c). One part of the block satisfied me that it was an undesignated heritage asset that merited the extra protection of policy 2(c). This was the ochre 21-25 Barr Street, part of which has impressive detailed Romanesque ornamentation in terracotta. I was also impressed by some historic (possibly original) leaded windows. The other buildings are probably non-designated heritage assets, but I am not satisfied that a policy that goes beyond NPPF paragraph 201 is justified in respect of them.

40. Policy 2(c)(vi) relates to the block bounded by Lionel Street, Old Snow Hill, Water Street and the viaduct. This block is proposed to be added to the Conservation Area. It contains buildings of different merit. I am satisfied that the following, each of which is mentioned in the relevant recently published fully revised Pevsner Guide¹⁷ are of sufficient merit to justify the additional protection of policy 2(c):

- 86 Old Snow Hill, a cubic neo-Georgian prominent building by noted Birmingham-based cinema architects Harry Weedon & Partners in 1952-3, incorporating part of the structure of a music hall (the New Star Theatre of Varieties) of 1885-6 by W. J. Ballard. It was first an hotel, then the Central Birmingham YMCA and then accommodation for homeless persons. It is now residential accommodation known as 'The Snow Hill' apart from an East African restaurant on part to the ground floor. This name is prominently displayed in a Broadway font (1920s art deco) in two places on its front façade. This

¹⁶ List Entry Number: 1391275.

¹⁷ Birmingham and the Black Country (Pevsner Architectural Guides: Buildings of England), Andy Foster, Nikolaus Pevsner, Alexandra Wedgwood, Yale University Press, 2022.

exceptional building has considerable architectural merit and substantial importance to local history.

- 86B Old Snow Hill ‘Queen's Chambers’, built in 1902-3 to a design by architects J. H. Hawkes & Son. I was particularly impressed by the fenestration on the second floor of the façade.
- 86a Old Snow Hill, an Italian Renaissance building on the corner of Old Snow Hill and Water Street built in 1892 to a design by local architects Dempster and Heaton. At one time it was a bank. Later it was solicitors’ offices. The ornamentation, symmetry and balance impressed me.¹⁸

41. As far as the other buildings in this block are concerned, I am not satisfied that they merit the additional protected of policy 2(c). Including them in the policy would be contrary to basic condition (a) as explained in the Lochailort Investments judgment. They may however be identified as non-designated heritage assets in the text of the NDP.

42. I note the support for an article 4 direction in the event of a threat of demolition on page 33 and BCC’s concern arising from experience. The extension of the Conservation Areas will reduce the need for this. Fuller details of non-designated heritage assets than I was able to obtain in the relatively short period of my examination are likely to help where such a direction is considered appropriate. Relevant bodies may wish to consider establishing a list of non-designated heritage assets with such fuller details.

43. Nothing in this report should be read as a determination that any building (other than a designated heritage asset) is not a non-designated heritage asset. My recommendation below relates solely to which buildings should receive the enhanced protection of policy 2(c) or other mention in the draft NDP.

44. Map 2 is the third map and should be renumbered Map 3.

Recommended modification 5

Pages 32 Map 2

Amend this map so that it is renumbered Map 3 and only (i) 89 to 91 Constitution Hill (ii) 21-25 Barr Street and (iii) 86, 86B and 86a Old Snow Hill are shown as “Building outside the Conservation Area”.

Page 33, column 1

Replace “and they are identified in Policy 2(c)” with “some of which identified in Policy 2(c)” .5

¹⁸ Part of this building is on the left side of the photograph on page 17 of Appendix A Design in the Jewellery Quarter.

Page 33 column 2

Replace “these buildings and features a degree of protection by identifying them as non-designated heritage assets in Map 8 and listed in Policy 2(c)” with “some of these buildings and features a degree of additional protection”.

Page 33 text

Add at the end of the text:

“In addition to the non-designated heritage assets for which policy 2(c) provides special protection, there are many other non-designated assets in the area, including (outside the present boundaries of the Conservation Area: 6 to 11 Mott Street; the former Hampton public house 15-17 Great Hampton Row; the 1950’s concrete framed factory with tiled elevations at 30 Smith Street and 123 Hockley Street; the other non-designated buildings in the block formed by Harford Street, Barr Street and Great Hampton Row; and the other pre-1940 buildings in the block bounded by Lionel Street, Old Snow Hill, Water Street and the viaduct. These are protected by national and local policy.”

Page 33 policy 2(c)

Replace the whole policy with:

“POLICY 2(c): Conserving non-designated heritage assets outside the Conservation Area
Certain non-designated heritage assets outside the Conservation Area are indicated on Map 3 and are listed below. These contribute positively to the Neighbourhood Plan area and should be conserved in any future development proposals.

- i. 89 to 91 Constitution Hill;
- ii. 21-25 Barr Street;
- iii 86 Old Snow Hill;
- vi. 86B Old Snow Hill; and
- vii 86a Old Snow Hill.”

Page 34

45. On 7 December 2021 Birmingham City Council adopted the Development Management in Birmingham DPD.¹⁹ It then became part of Birmingham’s Local Plan. The first sentence second paragraph of policy 2(d) needs updating.

¹⁹

Recommended modification 6

Page 34, policy 2(d)

Replace “the requirement of the draft ‘Development Management in Birmingham’ (2019) document, that “the Gross Internal floor area and Storage area of all dwellings shall meet the nationally described space standard as a minimum” with “the requirement of the Development Management in Birmingham DPD that “All residential development will be required to meet the minimum Nationally Described Space Standards”.”

Page 38

46. Policy 2(g) ends “Mitigation measures should be in place before the development is completed”. BCC considers that the trigger should be ‘occupied’ or ‘first used’. I agree. It is occupation that necessitates the measures, not completion.

Recommended modification 7

Page 38, policy 2(g)

Replace “completed” with “occupied”.

Page 39

47. The first paragraph on this page is inaccurate. The Town and Country Planning (Development Management Procedure) (England) Order 2015 defines major development as follows (unless the context otherwise requires):

“major development” means development involving any one or more of the following—

- (a) the winning and working of minerals or the use of land for mineral-working deposits;*
- (b) waste development;*
- (c) the provision of dwellinghouses where—*
 - (i) the number of dwellinghouses to be provided is 10 or more; or*
 - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);*
- (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or*
- (e) development carried out on a site having an area of 1 hectare or more;”*

48. While some simplification is acceptable, the total omission of something as important as dwelling houses could easily mislead readers.

Recommended modification 8

Page 39, 1st paragraph

Replace the whole paragraph with:

“Major Development is defined by the Town and Country Planning (Development Management Procedure) (England) Order 2015. It includes the provision of 10 or more dwellinghouses, the provision of a building or buildings where the floor space is 1,000 square metres or more or on a site having an area of 1 hectare or more.”

Page 40

49. There is no evidence to show either that the allocation of 50% of the commercial space proposed to creative industry businesses is realistic or that 35% affordable commercial space is realistic. BCC with its expertise and experience does not consider that either is. The policy should be less demanding.

Recommended modification 9

Page 40, policy 2(h)

Replace “50% of the commercial space proposed should be allocated to creative industry businesses” with “a proportion of the commercial space proposed should be allocated to creative industry businesses; the proximity of which to the Creative District should be a consideration”.

Replace “in line with Birmingham City Council’s equivalent proportion and rate for residential Major Development [which at the time of publication of this plan translates to 35% of commercial space available at 80% of the market rate]” with “; the proportion of which is linked to the extent of discount against market rates and which is to be agreed with the Local Planning Authority”.

Page 43

50. BCC has explained that “cells” are now called “segments”.

Recommended modification 10

Page 43, 2nd column

Replace “The Birmingham Transport Plan splits the city centre into cells” with “The Birmingham Transport Plan splits the city centre into segments”.

Page 44

51. The map on this page (shown as Map 2) is the fourth map and should be renumbered Map 4.

Recommended modification 11

Page 44

Replace “Map 2” with “Map 4”.

Page 46

52. The map on this page (shown as Map 3) is the fifth map and should be renumbered Map 5.

Recommended modification 12

Page 46

Replace “Map 3” with “Map 5”.

Page 48

53. Policy 3(b) begins with the same words as policy 3(a) “*Development proposals along the Key Routes shown in Map 2 and listed below should add to the variety of uses in the vicinity and should incorporate active frontages at ground floor level*”. However, it is headed “*Improving permeability by creating new high-quality public routes*” and lists the ten historic routes mentioned on page 47. The first sentence is clearly an error. The qualifying body has explained that it should have read, “*Development proposals including, or having a significant impact on, any part of the following sites as shown in Map 5 should include new high-quality public routes. Where possible, these should be to adoptable standards:*” To the extent that this reflects the supporting text, I do not consider that further consultation is necessary to correct the error. The first sentence is adequately covered by the supporting text. However there is no mention of “to adoptable standards” in that text (unlike in policy 4(c)(i)), so the matter could not be corrected without further consultation.

54. BCC has expressed concern about this policy, stating, “*Some of the new public routes will be difficult /Impossible to achieve because they rely on the use of privately owned land recently developed and in the case of Newhall Hill to Sloane St there is a huge difference in levels between the two roads.*”. I share this concern. The erection of new and no doubt expensive buildings along some of the routes makes their demolition to facilitate new routes within the plan period highly unlikely. I have not seen any evidence that addresses the practicality of the proposal and determining which routes are practicable is not realistic in a

neighbourhood plan examination. I am therefore recommending a simplified policy which allows the aspiration to be maintained without being impracticable.

Recommended modification 13

Page 48, policy 3(b)

Replace the policy with:

“Where practicable and subject to viability, development proposals including, or having a significant impact on, any part of the following sites as shown in Map 5 should include new high-quality public routes.”

Page 50

55. The map on this page (shown as Map 4) is the sixth map and should be renumbered Map 6.

Recommended modification 14

Page 50

Replace “Map 4” with “Map 6”.

Pages 53

56. The first paragraph contains a spelling mistake. The maps on this page (shown as Map 5) are the seventh map and should be renumbered Map 7 with a consequential alteration to policy 3(f).

Recommended modification 15

Page 53, 1st paragraph

Replace “historicly” with “historically”.

Page 53

Replace “Map 5” with “Map 7”.

Page 54

57. Approximately 0.7 km of the Birmingham and Fazeley Canal (1789), including 9 of the Farmer’s Bridge flight of 13 locks, is in the neighbourhood plan area. This is a most important part of the national canal network.

58. In addition to the canal the draft NDP deals with two former canal arms, almost all of which have been filled in. The route of one of these, wholly within the Neighbourhood Plan

area leads north-westwards from a point approximately 100 metres southwest of Newhall Street, crossing Charlotte Street and George Street. The route of the other leaves the canal outside the NDP area near Farmer’s Bridge top lock and follows an irregular roughly eastwards direction. A neighbourhood plan cannot contain policy in respect of land outside its area.

59. In its comments BCC says in respect of the former canal arms *“We don’t think it is feasible to make provision on sites even if they come forward for development for lost canal arms. It will just not be viable for former canal arms to be reinstated as an extension to the canal system. It might be to indicate the location of the former canal arm in the landscaping of proposed development but that is about as much as could be realistically achieved.”* There is no evidence that shows reinstatement of the whole or part of the canal arms is realistic. It would involve demolition of new and no doubt expensive property. The arm that leaves the Birmingham and Fazeley Canal within the draft NDP very quickly reaches a modern substantial building. The other arm leaves the Canal to the south of the NDP area - a policy to re-open it as an extension to the canal cannot be within this NDP. Nor is there any evidence that there would be any benefit from this that would be commensurate to the considerable expense involved. Despite support from the Canal and Rivers Trust,²⁰ I do not consider that reinstatement is realistic.

Recommended modification 16

Page 54, Policy 3(f)(ii)

Replace the whole of (ii) “ii. Making provision in respect of the sites of lost canal arms shown on Map 7 for:

- i) To the extent practicable, providing publicly-accessible routes along the route of these arms; and/or
- ii) Indicating the location of the former canal arm in the landscaping of proposed development.

Page 55

60. The map on this page (shown as Map 6) is the eighth map and should be renumbered Map 8.

Recommended modification 17

Page 55

Replace “Map 6” with “Map 8”.

²⁰ Letter of 14th September 2022 2nd page.

Page 58

61. Policy 4(b)(i) states, “*The building lines on street frontages are to be maintained and respected.*” BCC considers that this should be more nuanced since some existing lines are inconsistent with the historic environment and need rectifying. This is more in keeping with the overall approach of the draft NDP and I do not believe that preventing reinstatement was intended.

Recommended modification 18

Page 58

Replace Policy 4(b)(i) with “Historic building lines on street frontages are to be maintained and respected, and where they have been lost they should be reinstated where appropriate.”

Page 63 policy 4(e)

62. The third line contains an error.

Recommended modification 19

Page 63, policy 4(e), third line

Replace “in order secure” with “in order to secure”.

Page 63 policy 4(f)

63. The second line of the policy contains a spelling mistake.

Recommended modification 20

Page 63, policy 4(f)

Replace “historicly” with “historically”.

Page 65

64. As mentioned above Map 5 should be Map 7.

Recommended modification 21

Page 65 policy 4(g)

Replace “Map 5” with “Map 7”.

Page 68

65. The map on this page (shown as Map 8) is the tenth map and should be renumbered Map 10.

Recommended modification 22

Page 68 policy 4(g)

Replace “Map 8” with “Map 10”.

Page 72

66. The Development Management in Birmingham DPD is part of Birmingham’s Local Plan and should be added to the related documents in table 1.

Recommended modification 23

Pages 72, Table 1

Add as a final row to the table in column 1 “The Development Management in Birmingham DPD” and in column 2 “Part of Birmingham’s Local Plan”.

Appendix A Design in the Jewellery Quarter 2022-2032

Page 51

67. This is titled “Early 19th century to late 19th century”. Its reference back to the previous century requires modification.

Recommended modification 24

Appendix A page 51

Replace “Other amenities, including major transport infrastructure was introduced” with “Other amenities, including major transport infrastructure had previously been introduced”.

9. Updating

68. It may be that certain passages in the draft NDP need updating. Nothing in this report should deter appropriate updating prior to the referendum in respect of incontrovertible issues of primary fact. Nor should anything in it deter the addition of an expression of thanks to those involved.

10. The Referendum Area

69. I have considered whether the referendum area should be extended beyond the designated plan area. However, I can see no sufficient reason to extend the area and therefore recommend that the referendum area be limited to the neighbourhood area.

11. Summary of Main Findings

70. I commend the Draft NDP for being clear, intelligible and well written, and for the great effort that has gone into its creation. It has struck the right balance between readability to a lay person and the use of technical words that ensure precision and readability.

71. I recommend that the Draft NDP be modified in the terms specified in Appendix A to this report to meet basic conditions and to correct errors. I am satisfied with all parts of the Draft NDP to which I am not recommending modifications.

72. With those modifications the Draft NDP will meet all the basic conditions and human rights obligations. Specifically:

- Having regard to national policies and advice contained in guidance issued by the Secretary of State, it will be appropriate to make the NDP;
- The making of the NDP will contribute to the achievement of sustainable development;
- The making of the NDP will be in general conformity with the strategic policies contained in the development plan for the neighbourhood area;
- The making of the NDP will not breach, and will not otherwise be incompatible with, EU obligations;
- The making of the NDP will not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017; and
- The modified Draft NDP will in all respects fully compatible with Convention rights contained in the Human Rights Act 1998.

73. I recommend that the modified NDP proceed to a referendum, the referendum area being the area of the Draft NDP.

Timothy Jones, Barrister, FCI Arb,
Independent Examiner,
No 5 Chambers

13th February 2023.

Appendix A: Recommended Modifications

Recommended modification 1

Page 21, Map

Replace “Map 1” with “ Map 2”.

Recommended modification 2

Page 21, Policy 1(a)

Replace “(e.g. Use Class B, E, F or Sui Generis)” with “ (e.g., Use Class B, E, F or a sui generis use that maintains the character of the area)”.

Recommended modification 3

Page 21, Policy 1(a)

Replace “Use Class C shall not constitute the largest use by gross internal floor area” with “new development should be predominantly commercial unless and to the extent it is shown that this is not viable”.

Recommended modification 4

Page 22, column 2, 2nd indent

Replace “historicly” with “historically”.

Recommended modification 5

Pages 32 Map 2

Amend this map so that it is renumbered Map 3 and only (i) 89 to 91 Constitution Hill (ii) 21-25 Barr Street and (iii) 86, 86B and 86a Old Snow Hill are shown as “Building outside the Conservation Area”.

Page 33, column 1

Replace “and they are identified in Policy 2(c)” with “some of which identified in Policy 2(c)”.

Page 33 column 2

Replace “these buildings and features a degree of protection by identifying them as non-designated heritage assets in Map 8 and listed in Policy 2(c)” with “some of these buildings and features a degree of additional protection”.

Page 33 text

Add at the end of the text:

“In addition to the non-designated heritage assets for which policy 2(c) provides special protection, there are many other non-designated assets in the area, including (outside the present boundaries of the Conservation Area: 6 to 11 Mott Street; the former Hampton public house 15-17 Great Hampton Row; the 1950’s concrete framed factory with tiled elevations at 30 Smith Street and 123 Hockley Street; the other non-designated buildings in the block formed by Harford Street, Barr Street and Great Hampton Row; and the other pre-1940 buildings in the block bounded by Lionel Street, Old Snow Hill, Water Street and the viaduct. These are protected by national and local policy.”

Page 33 policy 2(c)

Replace the whole policy with:

“POLICY 2(c): Conserving non-designated heritage assets outside the Conservation Area

Certain non-designated heritage assets outside the Conservation Area are indicated on Map 2 and are listed below. These contribute positively to the Neighbourhood Plan area and should be conserved in any future development proposals.

- i. 89 to 91 Constitution Hill;
- ii. 21-25 Barr Street;
- iii 86 Old Snow Hill;
- vi. 86B Old Snow Hill; and
- vii 86a Old Snow Hill.”

Recommended modification 6

Page 34, policy 2(d)

Replace “the requirement of the draft ‘Development Management in Birmingham’ (2019) document, that “the Gross Internal floor area and Storage area of all dwellings shall meet the nationally described space standard as a minimum” with “the requirement of the Development Management in Birmingham DPD that “All residential development will be required to meet the minimum Nationally Described Space Standards”.”

Recommended modification 7

Page 38, policy 2(g)

Replace “completion” with “occupied”.

Recommended modification 8

Page 39, 1st paragraph

Replace the whole paragraph with:

“Major Development is defined by the Town and Country Planning (Development Management Procedure) (England) Order 2015. It includes the provision of 10 or more dwellinghouses, the provision of a building or buildings where the floor space is 1,000 square metres or more or on a site having an area of 1 hectare or more.”

Recommended modification 9

Page 40, policy 2(h)

Replace “50% of the commercial space proposed should be allocated to creative industry businesses” with “a proportion of the commercial space proposed should be allocated to creative industry businesses; the proximity of which to the Creative District should be a consideration”.

Replace “in line with Birmingham City Council’s equivalent proportion and rate for residential Major Development [which at the time of publication of this plan translates to 35% of commercial space available at 80% of the market rate]” with “; the proportion of which is linked to the extent of discount against market rates and which is to be agreed with the Local Planning Authority”.

Recommended modification 10

Page 43, 2nd column

Replace “The Birmingham Transport Plan splits the city centre into cells” with “The Birmingham Transport Plan splits the city centre into segments”.

Recommended modification 11

Page 44

Replace “Map 2” with “Map 4”.

Recommended modification 12

Page 46

Replace “Map 3” with “Map 5”.

Recommended modification 13

Page 48, policy 3(b)

Replace the policy with:

“Where practicable and subject to viability, development proposals including, or having a significant impact on, any part of the following sites as shown in Map 5 should include new high-quality public routes.”

Recommended modification 14

Page 50

Replace “Map 4” with “Map 6”.

Recommended modification 15

Page 53, 1st paragraph

Replace “historicly” with “historically”.

Page 53

Replace “Map 5” with “Map 7”.

Recommended modification 16

Page 54, Policy 3(f)(ii)

Replace the whole of (ii) “ii. Making provision in respect of the sites of lost canal arms shown on Map 7 for:

- i) To the extent practicable, providing publicly-accessible routes along the route of these arms; and/or
- ii) Indicating the location of the former canal arm in the landscaping of proposed development.”

Recommended modification 17

Page 55

Replace “Map 6” with “Map 8”.

Recommended modification 18

Page 58

Replace Policy 4(b)(i) with “Historic building lines on street frontages are to be maintained and respected, and where they have been lost they should be reinstated where appropriate.”

Recommended modification 19

Page 63, policy 4(e), third line

Replace “in order secure” with “in order to secure”.

Recommended modification 20

Page 63, policy 4(f)

Replace “historicly” with “historically”.

Recommended modification 21

Page 65 policy 4(g)

Replace “Map 5” with “Map 7”.

Recommended modification 22

Page 68 policy 4(g)

Replace “Map 8” with “Map 10”.

Recommended modification 23

Pages 72, Table 1

Add as a final row to the table in column 1 “The Development Management in Birmingham DPD” and in column 2 “Part of Birmingham’s Local Plan”.

Recommended modification 24

Appendix A Design in the Jewellery Quarter, page 51

Replace “Other amenities, including major transport infrastructure was introduced” with “Other amenities, including major transport infrastructure had previously been introduced”.

Appendix B: Abbreviations

The following abbreviations are used in this report:

BCC	Birmingham City Council
Convention	European Convention on Human Rights
DPD	Development Plan Document
Draft NDP	Submission draft of the Jewellery Quarter Neighbourhood Plan 2022-2032
EU	European Union
General Regulations	Neighbourhood Planning (General) Regulations 2012 (as amended)
JQDT	The Jewellery Quarter Development Trust
NDP	Neighbourhood Development Plan
NPPF	National Planning Policy Framework (2021)
para	paragraph
PCPA	Planning and Compulsory Purchase Act 2004 (as amended)
PPG	national Planning Practice Guidance
s	section
Sch	Schedule
TCPA	Town and Country Planning Act 1990 (as amended)

Where I use the verb '*include*', I am not using it to mean '*comprise*'. The words that follow are not necessarily exclusive.