

STATEMENT OF CASE

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

December 2023

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1. INTRODUCTION

- 1.1 Evolve Planning is instructed by Midland Properties and Finance (Birmingham) Ltd ('the Appellant') to act on its behalf in respect of an appeal against the refusal of planning application 2022/06737/PA by Birmingham City Council ('the Council').
- 1.2 This Statement of Case is submitted under Section 78 of the Town and Country Planning Act 1990 (as amended).
- 1.3 The application was submitted to the Council on 31st August 2022 relating to the redevelopment of land at 334-340 High Street & 8-22 Harborne Park Road, Harborne, Birmingham, B17 9PU ('the Site').
- 1.4 The application was refused by Planning Officers under delegated powers. The Decision Notice refusing planning permission was issued on 4th July 2023 identifying six reasons for refusal (contained at **Appendix A**). In summary, the reasons for refusal related to design, affordable housing contributions, open space contributions, parking, housing mix and quality of private amenity space.
- 1.5 The refusal of planning application 2022/06737/PA forms the basis for this appeal.
- 1.6 The site covers 0.24ha of land located between Harborne High Street and Harborne Park Road, Harborne, Birmingham, B17 9PU. The site currently includes a 3-storey mixed use building with rear single storey extensions which fronts onto the High Street on its northern boundary. An open undeveloped grassed area fronts onto Harborne Park Road along the site's western boundary which is separated from a service yard by an existing brick wall. Garages form the site's southern boundary.
- 1.7 A full description of the site, surrounding context and relevant planning history is included within Sections 1 and 2 of the draft Statement of Common Ground.
- 1.8 The Planning Officer's delegated report is included at **Appendix B**.
- 1.9 The application originally sought permission for a scheme of 87 apartments. Following comments from the Council during the course of the application the scheme was amended with a reduction to 83 apartments. Having consulted on the amended plans, the Council's decision was then made on the revised scheme.
- 1.10 Though the Council had amended plans which was sufficient to consider the revised scheme (see Table 2 of **Appendix C**), their decision was issued prior to the Appellant having the opportunity to update the wider suite of plans and documents in order to be consistent with the revised scheme.
- 1.11 **Appendix C** sets out the following:

- *Table 1* - List of all plans and documents that formed the original application submission for 87 apartments.
- *Table 2* - Additional plans and documents that were submitted to the Council during the course of the application reflecting the revised scheme and which were considered by the Council in making their decision.
- *Table 3* - List of all plans and documents upon which the Council made their final decision.
- *Table 4* - Additional plans and documents submitted as part of this appeal and which were not previously seen by the Council (i.e. those plans and documents which the Appellant did not have the opportunity to update to be consistent with the revised scheme).

2. APPEAL PROPOSAL

- 2.1 A full planning application was submitted to Birmingham City Council ('the Council') on 31/08/2022 originally for a scheme of 87 apartments across two new development blocks, with the demolition of all existing buildings (application ref: 2022/06737/PA).
- 2.2 Block A fronts the High Street and was originally proposed to be 6 storeys in height with the top storey taking the form of a mansard roof with dormer windows. Block B fronts Harborne Park Road and was originally proposed to be 4 storeys in height with the top storey taking the form of a mansard roof with dormer windows.
- 2.3 The original housing mix proposed a total of 53 x1-bedroom apartments (61%) and 34 x2-bedroom apartments (39%).
- 2.4 The original scheme proposed zero on-site parking, with a maintenance and service access off Harborne Park Road.
- 2.5 The original proposals included communal amenity space to the rear of both Blocks A and B, with each of the ground floor apartments having their own private garden space.
- 2.6 Table 1 of **Appendix C** includes all plans and documents that formed part of the original application submission.
- 2.7 The Council consulted on the original proposals for 87 apartments, following which the provided a number of comments to the Appellant, including:
- Reducing the frontage height of Block A
 - Concerns regarding the views of the gable wall of Block A from the west
 - Comments on the Block A High Street elevation design
 - Reducing the height of the Block B elevation
 - Concerns on zero on-site parking and no disabled parking
 - Reverse the housing mix so there is more 2 beds than 1 beds
- 2.8 The Appellant then made revisions to the scheme to address the Council's comments, this included:
- Reducing the height of Block A with amended elevation design

- Remodelling of the Block A gable end to reduce its visual impact when viewed from the west
- Reducing the elevation height and ridge line of Block B to reflect previously consented scheme, with amended elevations.
- Reduction to a total of 83 apartments.
- Adding 2 disabled parking bays into the courtyard
- Revising the housing mix to provide a majority of 2 bed apartments.

2.9 The Planning Amendments Schedule submitted by the Appellant sets out the Council’s comments and the Appellant’s revisions in more detail. Revised plans and documents were submitted by the Appellant on 07/06/2023 (with updated sections submitted on 26/06/2023) to reflect the amended scheme (see Table 2 of **Appendix C**).

2.10 Upon receipt of the suite of revised plans and documents, the Council then reconsulted on the amended scheme for 83 apartments.

2.11 Following this the Council then made their final decision on 04/07/2023, which was based on the following revised description of development:

“Demolition of existing buildings and construction of 83 residential apartments across two new development blocks, central amenity space including soft landscaping and planting, cycle storage, bin stores, plant store and enabling works.”

2.12 Table 3 of **Appendix C** sets out what the Appellant considers to be the most up to date list of plans and documents that would have formed the basis of the Council’s final decision on the revised scheme for 83 apartments.

2.13 Note that the Council’s decision was issued prior to the Appellant having the opportunity to update several plans and documents to be consistent with the revised scheme, this included the Transport Assessment and Travel Plan, Financial Viability Assessment and Bay Plans. As such the updated versions of these plans and documents have been submitted with this appeal and are listed in Table 4 of **Appendix C**.

2.14 When having regard to *Bernard Wheatcroft Ltd v Secretary of State for the Environment JPL 1982 37* (‘the Wheatcroft principle’), it is considered that the submission of these updated documents and plans through this appeal is acceptable.

- 2.15 This is on the basis that the substance of the application/proposed development is not being altered through the submission of these documents to the appeal and therefore if the appeal were to be granted it would not deprive those who should have been consulted on the changes the opportunity to comment.
- 2.16 The Council had considered and reconsulted on the amended scheme prior to its decision with the refusal being based on that amended scheme. The Appellant is only seeking to bring some of the documentation up to date to be consistent with that amended scheme and is not further amending the scheme through the appeal.
- 2.17 Further details of the appeal proposals are set out in Section 4 of the Statement of Common Ground.

3. PLANNING POLICY

- 3.1 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA), applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 3.2 Material considerations for any proposal include national policy and guidance contained within the National Planning Policy Framework (NPPF) (published 19th December 2023) and the Planning Practice Guidance (PPG), as well as any relevant Supplementary Planning Documents (SPDs) adopted by the Council. In addition, emerging Local Plans represent material considerations in the determination of planning applications, with the weight to be attributed to them commensurate with the stage of their preparation, the extent to which there remains unresolved objections to those relevant parts of the plan, and the degree of consistency of the relevant policies to the Framework (paragraph 48 of the NPPF).
- 3.3 The development plan for Birmingham currently comprises the Birmingham Development Plan (BDP) (adopted 10th January 2017), the Development Management in Birmingham Development Plan Document (DPD) (adopted 7th December 2021), the Birmingham Design Guide Supplementary Planning Document (SPD) (adopted 6th September 2022), Birmingham Parking SPD (adopted November 2021), Shopping and Local Centres Supplementary Planning Guidance (SPG) (adopted March 2012), and the Public Open Space in New Residential Development SPD (July 2007).
- 3.4 Birmingham City Council is currently in the early stages of preparing a new Local Plan for Birmingham which will guide how the city will develop in the future and provide policies to guide decisions on development proposals and planning applications up to 2042. Once adopted, the new Birmingham Local Plan will replace the BDP (2017). An Issues and Options consultation (Reg 18) was undertaken on the emerging Local Plan between October 2022 to December 2022. A revised Local Development Scheme (LDS) was adopted by Cabinet on 14th November 2023 and provides a timetable for the new Birmingham Local Plan. This includes a Preferred Options consultation (Reg 18) in June-July 2024, Publication (Reg 19) consultation in February 2025, submission (Reg 22) in June 2025, examination (Reg 24) in Autumn 2025 and adoption (Reg 26) in Autumn/Winter 2026.
- 3.5 Section 3 of the Statement of Common Ground sets out the relevant policies and guidance to this appeal.

4. HOUSING LAND SUPPLY

Five Year Housing Land Supply Position

- 4.1 In accordance with paragraph 75 of the NPPF, local planning authorities should monitor their deliverable land supply against their housing requirement, as set out in adopted strategic policies.
- 4.2 Paragraph 76 then adds that local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing for decision making purposes if their adopted plan is less than five years old and that adopted plan identified at least a five year supply of specific deliverable sites at the time that its examination concluded.
- 4.3 Paragraph 77 then makes clear that in all other circumstances, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years' worth of housing, or a minimum of four years' worth of housing if the provisions in paragraph 226 of the NPPF apply. The supply should be demonstrated against either the housing requirement set out in adopted strategic policies, or against the local housing need where the strategic policies are more than five years old.
- 4.4 Paragraph 226 of the NPPF is clear that from the date of publication of the NPPF (19th December 2023), for decision-making purposes only, certain local planning authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four year's worth of housing (with a buffer if applicable) against the housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than five years old, instead a minimum of five years set out in paragraph 77 of the Framework. This policy applies to those authorities which have an emerging local plan that has either been submitted for examination which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 stage, including both a policies map and proposed allocations towards meeting housing need.
- 4.5 The Birmingham Development Plan (BDP) was adopted on 10th January 2017 and became more than five years old after 10th January 2022. The Council undertook a Regulation 18 Issues and Options consultation from October to December 2022 which did not include a policies map or proposed housing allocations.
- 4.6 On this basis, as the BDP is more than five years old and the new Local Plan has not reached a Regulation 18 stage including a policies map or proposed housing allocations, the Council is currently required to demonstrate a five years' supply of housing.

- 4.7 Until the new Local Plan is adopted which will replace the BDP, the local housing need for Birmingham (as derived from the Government's Standard Method) must be applied to calculate the five year supply position.
- 4.8 The Council's latest 5-year housing land supply 2023-28 position statement was published in November 2023 and has a base date of 1st April 2023. It states that the Council has a deliverable supply of 29,734 dwellings on identified sites, plus 1,800 dwellings on unidentified (windfall) sites. This totals 31,534 dwellings over the five-year period 2023-2028.
- 4.9 The Council's latest five-year supply position statement (November 2023) sets out a local housing requirement of 7,090 dwellings per annum from January 2022. The Council has achieved a result of 167% against the Housing Delivery Test (HDT) and as such apply a 5% buffer to the five-year housing requirement. This means that the total five-year requirement for 2023-2028 (with a 5% buffer) is 37,223 dwellings (at 7,445 dwellings per annum).
- 4.10 The new NPPF was published on 19th December 2023 after the publication of the Council's latest position statement. The new NPPF removed the requirement to include a 5% buffer (or 10% where appropriate) to the five year housing requirement (with only a 20% buffer applied in circumstances where there has been a significant under delivery of housing as per paragraph 77). Accordingly, whilst the Council states that they can currently demonstrate a 4.24 years supply as confirmed in their November 2023 position statement, taking away the need to apply a 5% buffer in line with the new NPPF results in the Council having a 4.45 years supply.
- 4.11 The Appellant reserves the right to make any further comments on the Council's five-year housing land supply position should there be any changes to the position during the course of the appeal, in particular as a result of an updated local position or further changes to national policy and guidance.

Presumption in Favour of Sustainable Development

- 4.12 Paragraph 11 of the NPPF makes it clear that plans and decisions should apply a presumption in favour of sustainable development. For decision-taking this means:
- c) approving development proposals that accord with an up-to-date development plan without delay; or
 - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

4.13 Footnote 8 of the NPPF is clear that policies are out of date for applications involving the provision of housing in situations where the local planning authority cannot demonstrate a five-year supply (or a four year supply, if applicable, as set out in paragraph 226) of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 77) and does not benefit from the provisions of paragraph 76, or (b) where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years.

4.14 As stated, as of the 1st April 2023 the Council cannot demonstrate a five-year supply of housing land.

4.15 As confirmed by Planning Officers at paragraph 7.8 of their delegated report, in such circumstances the presumption in favour of sustainable development applies in accordance with paragraph 11d of the NPPF. Planning Officers are clear that:

“The consequences of this are that the ‘tilted balance’ will be engaged for decision taking. This means that the assessment shifts from a neutral balance where the consideration is whether the harm outweighs the benefits to a tilted balance, where the harm would have to significantly and demonstrably outweigh the benefits to justify the refusal of residential development.”

4.16 The Appellant agrees with Planning Officers that, given the Council cannot demonstrate a five-year supply of housing land, the tilted balance is engaged with regards to the determination of this application – i.e. permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

4.17 It is the Appellant’s case that any harm derived from the scheme is limited and does not outweigh the benefits, significantly or otherwise, such that planning permission should be granted.

5. THE APPELLANT'S CASE

First Reason for Refusal

- 5.1 The first reason for refusal on the decision notice relates to design. The reason for refusal reads as follows:

“By virtue of its scale, massing and appearance the proposal constitutes a poor design that would materially harm the character and appearance of the street scene and as such would be contrary to Policy PG3 of the Birmingham Development Plan 2017, guidance in Birmingham Design Guide SPD 2022, Policy DM2 of the Development Management in Birmingham DPD 2021 and the National Planning Policy Framework”

- 5.2 When considering Policy PG3 of the BDP, guidance in the Design Guide SPD, Policy DM2 of the DPD and the NPPF, the Appellant will demonstrate that contrary to the view of Planning Officers, the proposals do not materially harm the character and appearance of the area. Rather the proposals represent a high design quality that reinforces a positive sense of place, but in any event, creates a positive sense of place in this locality particularly with regard to the adjacent 7 storey building on High Street which the Council considers is out of kilter with the character and appearance of the area.
- 5.3 Regarding scale, the proposed massing and height of the part 5/part 4 storey Block A (facing High Street) is coherent and suitable given the prevailing pattern of development that exists along this street frontage. This position has regard to the adjacent 7 storey building on the High Street and how the scale of the proposed development would improve the relationship of this adjacent building to its surrounds.
- 5.4 The Appellant considers that an assessment of storey heights, as undertaken by Planning Officers, is an overly simplistic approach when evaluating the merits of scale. An assessment of massing, including consideration of the heights of the proposed block compared with existing built form along the High Street, should be undertaken to understand whether the scale of the proposed development is acceptable. The Appellant's case will set this out and will reveal that the margin of difference between the parties, specifically over what is considered to be an acceptable height, is immaterial on the basis there would be no difference in perception. As such the Appellant will demonstrate that the proposed massing and height is not harmful to the character of the area.
- 5.5 Furthermore, with regards to Block B (facing Harborne Park Road) the Appellant will demonstrate that the proposed height is suitable and unobtrusive having regard to opposing and adjacent built form, specifically an assessment of the relationship between the proposed Block B and opposing residential terraced properties and other adjacent built form.

- 5.6 In response to the Council's claims regarding the over-intensive nature of the proposals, the Appellant will demonstrate that the proposals are compliant with the development plan having regards to its density and making efficient use of land.
- 5.7 On design and appearance, as a result of a considered and iterative design process involving the Council, the Appellant's case will set out how the proposals support the NPPF's objective to create high quality, beautiful and sustainable buildings and in accordance with Policy PG3 of the BDP will reinforce local distinctives with a design that responds to site conditions and the local area context.
- 5.8 It will be explained that the Council's complaint that the development would be harmful to the character and appearance of the wider area fails to take into account the precedent set by existing built form in the locality and the ability of the proposed development to improve the relationship of the adjacent building within the overall pattern of development.
- 5.9 Notwithstanding that Policy DM2 of the DPD relates to amenity, with limited relevance to the assessment of design, the Appellant will demonstrate that the proposals are appropriate to its location through the consideration of adjacent built form and the context of the local area.
- 5.10 The final design which forms the basis of the Council's decision is a culmination of an iterative process of engagement between the Appellant, Planning Officers and the Council's Design Officer, during both pre-application and application stages.
- 5.11 During the pre-application process the scale and massing of the proposal was amended several times following comments received from the Planning Officers. The heights were significantly reduced and massing was altered to ensure the top set back level was not visible from street views.
- 5.12 Through the planning application the Appellant further reduced the intensification of building footprint on the site by removing a residential building within the courtyard. Projecting elements to the rear were also reduced in footprint and scale and therefore further opening up the courtyard space. Pitched roofs replaced flat set backs as a response to the site's context.
- 5.13 Several planning amendments were then made to the submitted scheme which included reducing the heights of both blocks, reconfiguring the ground floor of Block A to dual aspect apartments, adjusting the mix to provide more 2-beds than 1-beds, resulting in a reduction to an 83-apartment scheme. Increased communal gardens were also added along with 2 accessible parking bays.
- 5.14 As set out in Chapter 2 of this Statement, the Appellant has made revisions to the scheme in response to the comments received from the Council. Note that the Council had consulted on these revisions.

Second Reason for Refusal

5.15 The second reason for refusal reads as follows:

“The scheme fails to provide any affordable housing contribution contrary to Policies TP31 and TP45 of the Birmingham Development Plan and the NPPF”.

5.16 The Appellant submitted a Financial Viability Assessment (FVA) undertaken in August 2022 to support the original application for 87 dwellings.

5.17 The FVA found that a policy compliant scheme would be unviable due to the costs of delivering development on this site complicated by costs and values in the locality. Specifically, the original FVA concluded that a scheme providing 35% affordable housing in line with BDP Policy TP31 would be unviable on this site, adding that the mathematical viability outcome is a scheme of 0% affordable housing.

5.18 This approach follows that set out in Policy TP31 of the BDP, which states:

“where the applicant considers that a development proposal cannot provide affordable housing in accordance with the percentages set out above (35%), for example due to abnormal costs or changing economic conditions, the viability of the proposal will be assessed using a viability assessment tool as specified by the City Council. The use of a standard assessment tool will ensure that viability is assessed in a transparent and consistent way. The level of provision will only be revised where viability has been assessed using the specified tool. The different characteristics of developments which look to longer term returns rather than short term ‘market’ gains, such as multiple units of private rented sector housing in a single ownership intended for long term rental, will be taken into account when assessing viability. Costs associated with assessing the viability of a proposal shall be borne by the applicant.”

5.19 The Appellant was aware that the Council had appointed viability advisors Lambert Smith Hampton (LSH) to review the Appellant’s viability case. A draft appraisal with commentary on the inputs was provided to the Appellant by email on 10/10/2022, however the final review of LSH was never completed / findings issued to the Appellant due to the Council considering the overall scheme to be unacceptable and therefore issuing the final decision notice. Note that the Council has agreed to refund the Appellant who agreed to cover the costs for LSH to undertake their assessment.

5.20 Paragraph 7.34 of the Officers Report states that the viability appraisal was not updated for the amended scheme for 83 dwellings, with Officers coming to the view that *“the provision of no affordable is unacceptable and contrary to Policy TP31 of the BDP.”* This conclusion was made

despite Officers having seen the findings of the FVA for the 87 dwelling scheme and in the absence of any assessment undertaken by the Council and that which was made available to the Appellant. Furthermore, following the revisions to the scheme, notably the reduction to 83 dwellings, the Council was aware that the Appellant was in the process of updating the FVA to reflect the amended scheme.

- 5.21 Unfortunately, despite the Appellant asking the Council to advise when it would be suitable to update the FVA, the Council did not respond to this request and did not give the Appellant sufficient opportunity to prepare and submit the updated FVA to reflect the amended scheme and to resolve this matter.
- 5.22 The updated FVA has now been completed by the Appellant to reflect the revised scheme of 83 dwellings and has been submitted to this appeal in response to reason for refusal 2.
- 5.23 Whilst the refusal has been made on grounds of viability, other than the overall conclusion of the original FVA, the Council has had no regard as to what in the Appellant's viability case is specifically deemed unacceptable. The Appellant is unaware of the Council's position with regards to the viability of the revised scheme, however it is hoped that the parties can come to an agreement through the appeal.
- 5.24 Notwithstanding any agreements between the parties on the FVA (to be ironed out through the Statement of Common Ground), the Appellant will demonstrate that a non policy-compliant affordable housing contribution is justified for the proposed development as per the conclusions of the updated FVA such that the proposals are not contrary to Policy TP31 of the BDP, nor the NPPF.
- 5.25 Though Policy TP45 of the BDP is referenced by the Council in reason for refusal 2, such reference appears to be erroneous. That is because it relates to accessibility standards for new development and is plainly not relevant to this matter.

Third Reason for Refusal

- 5.26 The third reason for refusal reads as follows:

“No contribution towards open space provision has been offered which is contrary to the Open Space SPD, Policy TP45 of the BDP and the NPPF.”

- 5.27 Policy TP45 of the BDP refers to accessibility standards for major developments which are likely to generate, either solely or in combination with other related developments, more than 500 person-trips per day. The policy does not require such major developments to provide open space

contributions; rather it states that residential development should demonstrate that it is accessible to a range of local services, which the proposed development is.

- 5.28 Notwithstanding the question as to whether Policy TP45 of the BDP requires contributions to open space from major developments that generate more than 500 person-trips per day, the Appellant will demonstrate that the revised scheme comprising 83 dwellings would in any case not result in more than 500 person-trips per day as required to trigger the application of policy.
- 5.29 Furthermore, building on the findings of the Transport Assessment the Appellant will demonstrate that the proposals are accessible to a range of local services, including open space. Notably the appeal site is within the 1km (15 to 20 minutes walk) of Grove Park, which comprises approximately 8 hectares of open space which includes paths, seating, bins, trees and landscaping features as well as a children's play area. It is also capable of accommodating a range of recreational activities.
- 5.30 The Council's Leisure Services have requested a sum of £187,675 towards the provision of improvements and/or enhancements at Grove Park or other locations within Harborne ward. This is in lieu of on-site provision. Planning Officers at paragraph 7.36 of their delegated report state that the failure to offer any contribution is contrary to Policy TP47 of the BDP and the Open Space SPD.
- 5.31 Policy TP47 of the BDP is not referenced in the reason for refusal. Policy TP47 relates to developer contributions towards the provision of measures to directly mitigate a proposals impact and make it acceptable in planning terms, as well as the provision of physical, social and green infrastructure to meet the needs associated with the development.
- 5.32 Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires that where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal specifying all policies and proposals in the development plan which are relevant to the decision.
- 5.33 The Council did not make the Appellant aware of this request prior to issuing their decision. However, the Appellant would be committed under Section 106 of the Town and Country Planning Act 1990, to enter a Section 106 Agreement with the Council to secure a financial contribution towards off-site POS improvements.
- 5.34 The requested sum of £187,675 reflects the original mix of housing proposed as part of the 87 apartment scheme. The calculation should therefore be updated to reflect the revised 83 apartment scheme which now includes a greater proportion of 2-bedroom apartments (40 x1-beds and 43 x2-beds). The calculation should also take into account the fact that there are 6 existing x2-bedroom maisonettes on the site.

- 5.35 Based on the approach in the Open Space SPD, the Appellant sets out the updated calculation as follows:

People generated from the accommodation = 114 divided by 1000 x 20,000 (2 hectares per thousand population) = 2280sqm of POS generated. 2280sqm-1225sqm (size of a typical junior play area)= 1055sqm. 1055 x £65 (average cost of laying out POS per m2) = £68,575 + the cost of a junior play area £110,000 = Total contribution of £178,575

- 5.36 A total contribution of £178,575 should therefore be provided towards off-site POS improvements from the revised scheme of 83 apartments.
- 5.37 A draft Section 106 agreement would be prepared and submitted as part of the appeal process in accordance with PINS Guidance. On this basis the proposals would be compliant with both Policy TP45 and TP47.

Fourth Reason for Refusal

- 5.38 The reason for refusal states:

“The applicant has failed to demonstrate that there is sufficient off street parking in an area already experiencing high levels of parking demand. It is therefore considered that the inadequate parking proposed would lead to additional parking in nearby roads, to the detriment of pedestrian and highway safety. As such it would be contrary to Policies PG3 and TP44 of the Birmingham Development Plan 2017, policies DM14 and DM15 of the Development Management in Birmingham DPD and the National Planning Policy Framework.”

- 5.39 The application was supported by a Transport Assessment and Travel Plan (June 2022) reflecting the original scheme of 87 dwellings. Following comments received from the Council’s Transportation Department, the Appellant’s transport consultant (ttc) was in the process of preparing a technical note to provide further narrative and evidence surrounding parking information to the Council. However, the Appellant was unable to complete this work prior to the final decision being issued.
- 5.40 The Council’s Transportation Department raised no objection to the proposed development subject to the Appellant undertaking parking surveys and a bond of £25,000 being secured to address any issues arising. The Transportation Department also recommended a number of conditions, which the Appellant takes no issue with.
- 5.41 It is the Appellant’s case that the lack of objection from the Council’s Transportation Department carries significant weight in favour of the proposals.

- 5.42 The Appellant completed a Parking Survey on Tuesday 19th and Wednesday 20th September 2023 and will submit the findings of this Parking Survey to the appeal.
- 5.43 The Parking Survey demonstrates that sufficient on-street parking is available within the locality of the appeal site.
- 5.44 It is the Appellant's case that even if it is found that the parking provision is insufficient, there is no reasonable basis to conclude that there would be any detrimental impact on pedestrian or highway safety.
- 5.45 When assessing the proposals against Policy TP44 the Appellant will demonstrate that the proposals would not adversely impact upon the efficient, effective and safe use of the existing transport network either at all or to an unacceptable degree. This will have regard to the impact from the existing commercial use of the site compared with the proposed residential use.
- 5.46 In line with the findings of the original Transport Assessment, the Appellant will show that the site is well located for access to local facilities, active travel routes and the public transport network. The transport network in the vicinity of the site will be able to accommodate the forecast trip generation of public transport and active travel journeys and is suited to increased use of these modes. It will be demonstrated that residents in this area are not required to own a car to access local services and facilities or generally require a car to travel to work.
- 5.47 The Appellant will demonstrate that low parking provision is acceptable due to the high-quality public transport, walking, cycling facilities available and the site's proximity to key services and amenities within an 800m walking distance. Evidence will be provided having consideration of the future resident, demographic, sustainable credentials and district centre location, to demonstrate that there would not be significant demand for parking. This will also have regard to the operational needs of the development. As such the proposals are in accordance with Policies DM14 and DM15 of the DPD.
- 5.48 The Appellant questions the relevance of Policy PG3 referred to in the reason for refusal, in that the policy relates to place making with no reference to parking provision or an assessment of highway safety.
- 5.49 Under Section 106 of the Town and Country Planning Act 1990, the Appellant is committed to enter into a Section 106 Agreement with the Council to secure the Transportation Department's request for £25,000 to address any future arising issues. A draft agreement will be prepared and submitted as part of the appeal process in accordance with PINS guidance.

- 5.50 The Appellant will submit an addendum to the Transport Assessment (TA) and Travel Plan as part of the appeal (including Parking Survey). This is to reflect the revised scheme of 83 apartments as the Appellant was not given the opportunity to update this through the course of the application.
- 5.51 In any event, the original TA that was submitted as part of the application (and which was consulted upon) considers a worse case scenario in terms of trip rates given it reflects a great number of dwellings – i.e. the original scheme of 87 apartments.

Fifth Reason for Refusal

- 5.52 The fifth reason for refusal relates to housing mix and states that:

“By virtue of the significant number of 1 bed flats the proposed development fails to deliver a good mix of house types. There is an undersupply and evidenced demand in the City for family housing which the scheme fails to deliver and as such the proposal would be contrary to Policy TP30 of the Birmingham Development Plan 2017 and the National Planning Policy Framework 2021.”

- 5.53 The Appellant will demonstrate that, when having regard to Policy TP30 of the BDP as a whole, the proposals have sought to deliver an appropriate mix of housing, with a good mix of apartment types that are above the minimum standards set by NDSS, given the site and its specific context.
- 5.54 Policy TP30 references a list of documents and evidence to take account when considering proposals for new housing. The Appellant considers that this list is not definitive and will demonstrate that regard has been had to the Council’s latest Housing and Economic Development Needs Assessment (HEDNA), current and future demographic profiles, the locality and ability of the site to accommodate a mix of housing and finally market signals and local housing market trends.
- 5.55 The Appellant considers whilst the HEDNA is a relevant material consideration, it forms one of a number of considerations outlined in Policy TP30 when considering housing mix. The HEDNA shows that there is currently a demand for 1- and 2-bedroom properties in this location, however is clear that an allowance can be made for an adjusted mix where a justification exists having regard to site location, the nature of the site and character of the area, and up-to-date evidence of need as well as the existing mix and turnover of properties at the local level.
- 5.56 Furthermore, following the guidance of Policy TP30, the Appellant’s evidence will include an assessment of current and future demographic trends of the local area, along with an assessment of the locality and ability of the site to accommodate the proposed mix of housing – that being 40 x1-bedroom apartments (48%) and 43 x2-bedroom apartments (52%). The Appellant’s evidence will also have regard to market signals and local housing market trends.

- 5.57 Note that the original scheme for 87 apartments proposed a mix of 53 x1-bedroom apartments (61%) and 34 x2-bedroom apartments (39%). The Appellant’s revised this mix to address the Council’s comment that the mix should be reversed so more 2 beds than 1 beds are provided.
- 5.58 An assessment of density will also be included in the Appellant’s case demonstrating that the proposed density is acceptable given the locality of the site and its context.
- 5.59 The Council has agreed that in line with the HEDNA there is a need for private build to rent (BTR) housing in this area.
- 5.60 Therefore, contrary to the position of Planning Officers as set out in paragraphs 7.32 to 7.33 of their report, it will be demonstrated by the Appellant that the proposals do address a housing need and which is appropriate to this location and as such are in accordance with Policy TP30 of the BDP when the policy is considered as a whole.

Sixth Reason for Refusal

- 5.61 The final reason for refusal states the following:

“By virtue of its siting, layout and levels of sunlight received the private amenity space proposed is considered to be of a poor quality that creates an unacceptable living environment for the proposed occupiers and as such the development would be contrary to Policies PG3 and TP27 of the Birmingham Development Plan 2017, Birmingham Design Guide SPD 2022, Policy DM2 of the Development Management in Birmingham DPD 2021 and the National Planning Policy Framework.”

- 5.62 The Appellant undertook extensive pre-application discussions with the Council and at no point during these discussions or through the consideration of the live application, including dialogue over the revisions to the scheme, did the Council raise this matter as an issue.
- 5.63 The Council does accept that the quantity of private amenity space is acceptable (being a total of 613sqm compared to the requirement of 501sqm), however take concern with its quality.
- 5.64 Contrary to Planning Officer’s views in paragraph 7.20 of their report, the Appellant will demonstrate that all private amenity spaces across the site, that being the rear communal open space, private gardens, private roof terraces and a communal roof terrace are of a sufficient quality that accords with the development plan and NPPF.
- 5.65 Specifically, the development proposes high quality amenity space which includes soft planted areas, integration of small trees and wildflower, permeable hardscaped areas with seating and

shaded spaces. The plant, refuse and cycle store are planted with green roofs to encourage biodiversity and help with rainwater run off.

5.66 The Appellant's assessment will consider daylight and sunlight levels for the amenity spaces, as well as considering the useability of the private spaces, attractiveness and consideration of the general environment.

5.67 The Council has provided no evidence to justify the Planning Officer's conclusions that the quality of open space would fall short of the standards required by Policies DM2 and DM10 of the DPD and the Birmingham Design Guide, specifically:

i) Criteria 4 of Policy DM10 of the DPD is relevant but doesn't set out any specific standards; rather, it states that all new residential development must provide sufficient private useable outdoor amenity space appropriate to the scale, function and character of the development.

ii) There are no specific standards set out in Policy DM2 which relates to amenity. It states that in assessing the impact on development, consideration should be given to access to high quality and useable amenity space (criteria d).

iii) The Birmingham Design Guide SPD provides no specific standards with regards to the quality of private amenity space, rather City Note LW-13 sets out minimum outdoor amenity space standards for residential development.

5.68 The Appellant will demonstrate that the proposals are in accordance with BDP Policies PG3 and TP27 in relation to this matter.

The Planning Balance

5.69 The Appellant expects the Council to agree that the presumption in favour of sustainable development and the tilted balance as per paragraph 11d of the NPPF is engaged. For decision-taking this means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This is an important material consideration in this case.

5.70 The provision of 83 apartments (77 net) to assist with the Government's objective to significantly boost the supply of homes in Birmingham is a significant benefit carrying significant weight in favour of the proposals.

5.71 The need for new housing is pressing given the Council's current inability to demonstrate over a five years' worth of deliverable housing land. The proposals are able to deliver 83 new homes whilst making the efficient use of land, on a brownfield site, in a highly sustainable location.

5.72 The proposals will deliver wider economic, social and environmental benefits which will be detailed within the Appellant's evidence, which include in particular:

- Provision of 83 new dwellings (net 77) contributing towards the City's housing land supply and boosting the supply of housing where the Council cannot demonstrate a five year supply of housing;
- Economic benefits in respect of construction and supply-chain logistics as well as increasing local spend contributing to the economic dimension of sustainable development;
- Making efficient use of previously developed land;
- Potential New Homes Bonus;
- Enhancing the vitality and viability of Harborne High Street;
- Promotion of sustainable travel patterns; and
- Biodiversity enhancements.

5.73 The Appellant will attribute weight to these benefits for the purposes of the overall planning balance.

5.74 The Appellant will say that the Council's application of the planning balance at paragraph 7.44 of their report was insufficient. In particular, the Planning Officer failed to take into account the wider benefits of the scheme, appears to have engaged in double counting, and included harm related to the mix of accommodation which, for the reasons set out above, the Appellant will suggest should not have been included.

5.75 The Appellant will demonstrate that, when taking the development plan as a whole, the proposals are acceptable. This includes also having regard to wider policies in relation to matters of principle, internal space standards, amenity impact on adjoining occupiers, ecology and sustainability.

5.76 Furthermore, there were no objections to the proposed development from any statutory consultees. This is a significant material consideration.

- 5.77 Upon the application of the tilted balance, the Appellant's case will demonstrate that there would be no adverse impacts as a result of granting permission, and if there were any adverse impacts these would not significantly and demonstrably outweigh the benefits. It will be for the Council to demonstrate with evidence that the adverse effects of granting planning permission would significantly and demonstrably outweigh the benefits. The appellant will demonstrate that the proposals pass the NPPF paragraph 11d test and that the overall planning balance rests in favour of the appeal being allowed.
- 5.78 Furthermore, in any scenario where the tilted balance would not apply, it is the Appellant's case that even on a normal/flat planning balance, the benefits of the scheme would clearly outweigh any harm.

6. PLANNING CONDITIONS AND OBLIGATIONS

- 6.1 The Appellant will present deeds pursuant to Section 106 of the Town and Country Planning Act 1990 to ensure that financial contributions towards necessary off-site infrastructure can be secured, notably the provision of off-site open space improvements at Grove Park and the implementation of a traffic regulation order (if required).
- 6.2 The Appellant will seek to ensure that any contributions that are sought are restricted to those which are necessary to allow the development to proceed and to comply with CIL Regulations 122 and 123.
- 6.3 The Appellant will enter into early discussions with the Council, in advance of the exchange of Proofs of Evidence to agree a package of Section 106 Contributions.
- 6.4 Note that the Appellant commits to the requirements of the Community Infrastructure Levy (CIL) in line with the Council's adopted CIL charging schedule.
- 6.5 An agreed set of conditions will also be provided to the Inspector before the start of the public inquiry.

7. PROCEDURE AND TOPICS OF DISCUSSION

- 7.1 On the 1st December 2023, the Appellant notified the Planning Inspectorate and Council of their intention to submit an appeal against the Council's refusal of planning application 2022/06737/PA following the inquiry procedure.
- 7.2 It is the Appellant's view that an inquiry would be appropriate in this matter. There are presently six separate reasons for refusal requiring the need for expert witness across several disciplines including design, highways, viability and planning evidence. Those issues include evidence which may be considered complex involving technical data together with evidence best tested through formal questioning by an advocate.
- 7.3 Should both parties have at least 4 witnesses it is estimated that approximately 6 days may be required including a site visit. The application has generated a number of objections including from a local MP, Councillor and Interest Group who it is considered are likely to want to engage with the appeal further indicating that the inquiry procedure is the most appropriate for consideration of this matter.
- 7.4 As mentioned, the Appellant currently considers that the following topics need to be covered:
- Design
 - Highways
 - Viability
 - Planning
- 7.5 Despite the Appellant's request for an inquiry, should the appeal follow the hearing procedure, it is respectfully requested that the Appellant is given the opportunity to further expand on their case (as