

Report to Planning Committee

4 September 2024

Application reference	DC/24/69248
Application address	Land Adjacent 76 Brades Road, Oldbury
Application description	Proposed residential development (outline application with all matters reserved).
Application received	25 March 2024
Ward	Oldbury
Contact officer	Carl Mercer carl_mercer@sandwell.gov.uk

1 Recommendations

That planning permission is granted subject the approval of Council and to the following conditions relating to:

- i) Submission of a reserved matters application;
- ii) Indicative plan is non-binding;
- iii) Contamination;
- iv) Drainage;
- v) Noise;
- vi) Ecology survey;
- vii) Cycle storage;
- viii) Waste storage;
- ix) Lighting;
- x) Construction environmental management plan (CEMP);
- xi) Restriction of construction hours;

- xii) Removal of permitted development rights; and
- xiii) Retention of parking.

2 Reasons for Recommendations

- 2.1 The proposal raises no significant concerns from a policy, design or highway perspective and would deliver housing in a sustainable location.

3 How does this deliver objectives of the Council Plan?

Living in Sandwell	Increasing housing opportunities and options for residents.
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4 Context

- 4.1 The application is being reported to your Planning Committee because the site is part of a Local Employment Land allocation in the development plan. As such, the proposal would be a departure from the development plan and requires the further approval of Council, should Planning Committee resolve to approve.
- 4.2 To assist members with site context, a link to Google Maps is provided below:

[Land adjacent 76 Brades Road, Oldbury](#)

5 Key Considerations

- 5.1 The site is allocated in the development plan as Local Employment Land.
- 5.2 Material planning considerations (MPCs) are matters that can and should be taken into account when making planning decisions. By law, planning decisions should be made in accordance with the development plan unless MPCs indicate otherwise. This means that if enough MPCs

weigh in favour of a development, it should be approved even if it conflicts with a local planning policy.

5.3 The material planning considerations which are relevant to this application are:

- Government policy (NPPF)
- Proposals in the development plan
- Amenity concerns – overlooking/loss of privacy, loss of light and/or outlook and overshadowing
- Design concerns - density of and overdevelopment
- Highways considerations - access, parking and servicing
- Ecology and wildlife
- Planning balance and presumption

6. The Application Site

6.1 The application site is situated on the west side of Brades Road, Oldbury. The area is historically industrial, with piecemeal development of residential development evident. The character of the area is therefore mixed but predominantly residential.

6.2 The site is bounded to the north by a pair of semi-detached dwellings, to the west by the canal and to the south by a parcel of vacant land which appears to have been most recently used for open storage.

7. Planning History

7.1 An application for residential development was submitted in 2021 but was refused as too many dwellings were proposed relative to the site area.

7.2 Relevant planning applications are as follows:

DC/21/66095	Proposed 6 No. dwellings (Outline application all matters reserved).	Refused - 03.11.2021
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8. Application Details

- 8.1 The applicant seeks outline planning permission for residential development. While the description of development does not specify the number of units, four dwellings are shown on the submitted site plan.
- 8.2 The application is for outline permission only with all matters reserved. In this instance the assessment of the application concerns the principle of residential development and acceptability of the indicative access.

9. Publicity

- 9.1 The application has been publicised by nine neighbour notification letters and by site and press notice. One representation has been received which has highlighted the potential presence of badgers at the site. Non-material objections have been raised regarding an unauthorised use on the adjacent site which is subject to enforcement action. Wildlife concerns will be addressed in under paragraph 13 (Material considerations).

10. Consultee responses

10.1 Planning Policy

Objection due to the proximity of a high-pressure gas pipeline and non-conformity with the employment allocation.

10.2 Highways

Comments made relate to compliance with the council's design guidance. As the proposal is for outline permission, all such items would be considered at reserved matters stage. No objection is raised to the indicative access point which is the primary concern of this outline application.

10.3 Pollution Control (Contaminated Land)

No objection subject to relevant condition.

10.4 Pollution Control (Noise)

No objection subject to noise assessment, construction environmental management plan (CEMP) and construction hours reserved by condition.

10.5 Pollution Control (Air)

No objection subject to submission of a CEMP.

10.6 Canal and River Trust

Issues raised regarding the impact of the proposal on the structural integrity and ecology of the canal. The structural issue relates to the proposed drainage which is beyond the scope of this application. However, both issues can be managed by appropriately worded conditions requiring drainage detail and an ecology survey.

10.7 The Health and Safety Executive

As the site is within proximity of a high-pressure gas pipeline which runs beneath the canal towpath, the HSE have been consulted. Whilst the HSE maintain their concern regarding the proximity of the pipeline to the development site, they do not wish to pursue the matter further.

11. National Planning Policy Framework (NPPF)

11.1 The NPPF sets out government's planning policies for England and how these are expected to be applied.

11.2 The framework refers to development adding to the overall quality of the area by achieving high quality design, achieving good architecture and

layouts. Whilst design items have not been dealt with at this outline stage, the density and indicative layout would broadly be acceptable.

11.3 The framework promotes sustainable transport options for development proposals and states that developments should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. As the indicative access raises no significant concerns, the proposal is considered to be compliant with the framework in this respect.

11.4 'Presumption' and the 'titled balance' are discussed in greater detail under paragraph 14.

12. Development Plan Policy

12.1 The following policies of the council's development plan are relevant:

Black Country Core Strategy (BCCS)

CSP4 – Place Making

DEL1 – Infrastructure Provision

DEL2 - Managing the Balance Between Employment Land and Housing

HOU1 - Delivering Sustainable Housing Growth

HOU2 – Housing Density, Type and Accessibility

EMP3 - Local Quality Employment Areas

TRAN4 - Creating Coherent Networks for Cycling and for Walking

ENV1 - Nature Conservation

ENV3 – Design Quality

ENV4 - Canals

ENV5 – Flood Risk, Sustainable Drainage Systems / Urban Heat Island

Site Allocations and Delivery Development Plan Document – (SADD)

SAD H2 - Housing Windfalls

SAD EOS 9 - Urban Design Principles

SAD DC 3 - New Developments & Hazardous Substances

SAD DC 6 - Contaminants, Ground Instability, Mining Legacy

- 12.2 CSP4, HOU1, ENV3 and SAD EOS9 refer to well-designed schemes that provide quality living environments. The principle for the number of dwellings proposed is considered to be acceptable with no significant concerns being raised, pending further detail at reserved matters.
- 12.3 In respect of DEL1, infrastructure provision would be ensured by condition and as part of any reserved matters application. The proposal is CIL liable. DEL2 discusses the competing land demands of employment land and housing. In this instance, the area of employment land which would be lost to housing would be modest and the land has been out of use for many years. Furthermore, the appropriateness of employment uses at this location is questionable, given the proximity of existing housing and a canal bridge which narrows the road on a blind bend. Introducing vehicle movements associated with employment uses at this location would therefore not be ideal. I acknowledge that EMP3 promotes employment allocations being safeguarded for appropriate uses, however, I consider the loss of the site to housing to be justified as stated above.
- 12.4 Whilst land is identified and allocated in the development plan, to meet the borough's sustainable housing growth under policy HOU1 additional housing capacity will also be sought elsewhere through planning permissions on suitable sites. As such, this proposal would assist with providing much needed housing within the borough.
- 12.5 The proposal meets the requirements of policy HOU2 as the development has the potential to contribute to the range of types and sizes of accommodation which would be accessible by sustainable transport to residential services.

- 12.6 Highways raise no objection to the traffic generation attributed to this development (TRAN2).
- 12.7 Whilst detail is limited, sufficient amenity space is provided to allow for cycle parking provision (TRAN4).
- 12.8 I note the proximity of a wildlife corridor, as designated in the development plan, and the existing onsite ecology. However, the site is not subject to any specific protection and a condition requiring an ecology survey and mitigation plan would satisfy the requirements of ENV1.
- 12.9 With regards to the proximity of the canal, no concerns are raised regarding design and/or the impact on the visual appearance of the canal. Matters such as drainage and ecology can be managed by condition.
- 12.10 Drainage can be addressed by the submission of further information and a compliance by condition (ENV5).
- 12.11 The proposed dwellings would be a windfall, subject to SAD H2. The proposal meets the requirement of the policy as it is previously developed land and, whilst in conflict with other development plan policies, is suitable for residential development for reasons I have stated above.
- 12.12 With regard to SAD DC 3, given the residential uses evident in the immediate area, the modest number of houses proposed and the lack of objection from the HSE, I am of the opinion that there is no significant risk posed to future residents due to the proximity of the gas pipeline.

13. Material Considerations

- 13.1 National and local planning policy considerations have been referred to above in Sections 11 and 12. With regards to the other material considerations, these are highlighted below:

13.2 Amenity concerns – overlooking/loss of privacy, loss of light and/or outlook and overshadowing

These details will largely be considered as part of any reserved matters application. However, there is no suggestion from the indicative plans submitted that any significant impact on residential amenity would occur as a result of the development.

13.3 Design concerns - density of and overdevelopment

Again, design matters would largely be dealt with under reserved matters, but the proposed density appears to be acceptable for the site.

13.4 Highways considerations - access, parking and servicing

Indicative access is acceptable. All other items would be addressed at reserved matters stage.

13.5 Ecology and wildlife

With regards to the concerns raised by the residents and the CRT, given the proximity of the wildlife corridor there is sufficient grounds to request further information regarding this matter by condition. The applicant should otherwise accord with the provisions of the Wildlife and Countryside Act 1981.

13.3 Presumption and the ‘tilted balance’

The ‘tilted balance’ is similar to the normal planning balance, but it is only engaged in exceptional circumstances. As the council has less than a five-year housing land supply, relevant local policies are out-of-date. In the most basic sense, the tilted balance is a version of the planning balance that is already tilted in an applicant’s favour. If the tilted balance applies, planning permission should normally be granted unless the

negative impacts 'significantly and demonstrably' outweigh the positive impacts.

14. Conclusion and planning balance

14.1 All decisions on planning applications should be based on an objective balancing exercise. This is known as applying the "planning balance". It is established by law that planning applications should be refused if they conflict with the development plan unless material considerations indicate otherwise. This essentially means that the positive impacts of a development should be balanced against its negative impacts.

14.2 Conflict with development plan policies will always carry significant weight. If the policies are up-to-date, that negative impact will be given greater weight. However, in respect of housing proposals, if policies are out-of-date, the weight given to the conflict with development plan policies will be seriously reduced. No matter what the negative impacts are, if a proposal manages to secure sufficient positive impacts (of sufficient weight) to tilt the planning balance in its favour, planning permission should be granted.

14.2 On balance, whilst the proposal would not accord with several development plan policies, the merits of providing housing in this location with limited impact on residential amenity, highway safety and canal infrastructure would outweigh the negative effects of non-compliance with policy. Furthermore, despite the application being a departure from the development plan, other material considerations outweigh the allocation and there are no other significant material considerations which warrant refusal that could not be managed by appropriately worded conditions.

15 Alternative Options

15.1 Refusal of the application is an option if there are material planning reasons for doing so. In my opinion the proposal is compliant with

relevant polices and there are no material considerations that would justify refusal.

16 Implications

Resources:	When a planning application is refused the applicant has a right of appeal to the Planning Inspectorate, and they can make a claim for costs against the council.
Legal and Governance:	This application is submitted under the Town and Country Planning Act 1990.
Risk:	None.
Equality:	There are no equality issues arising from this proposal and therefore an equality impact assessment has not been carried out.
Health and Wellbeing:	None.
Social Value	None.
Climate Change	Sandwell Council supports the transition to a low carbon future, in a way that takes full account of the need to adapt to and mitigate climate change. Proposals that help to shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure, will be welcomed.

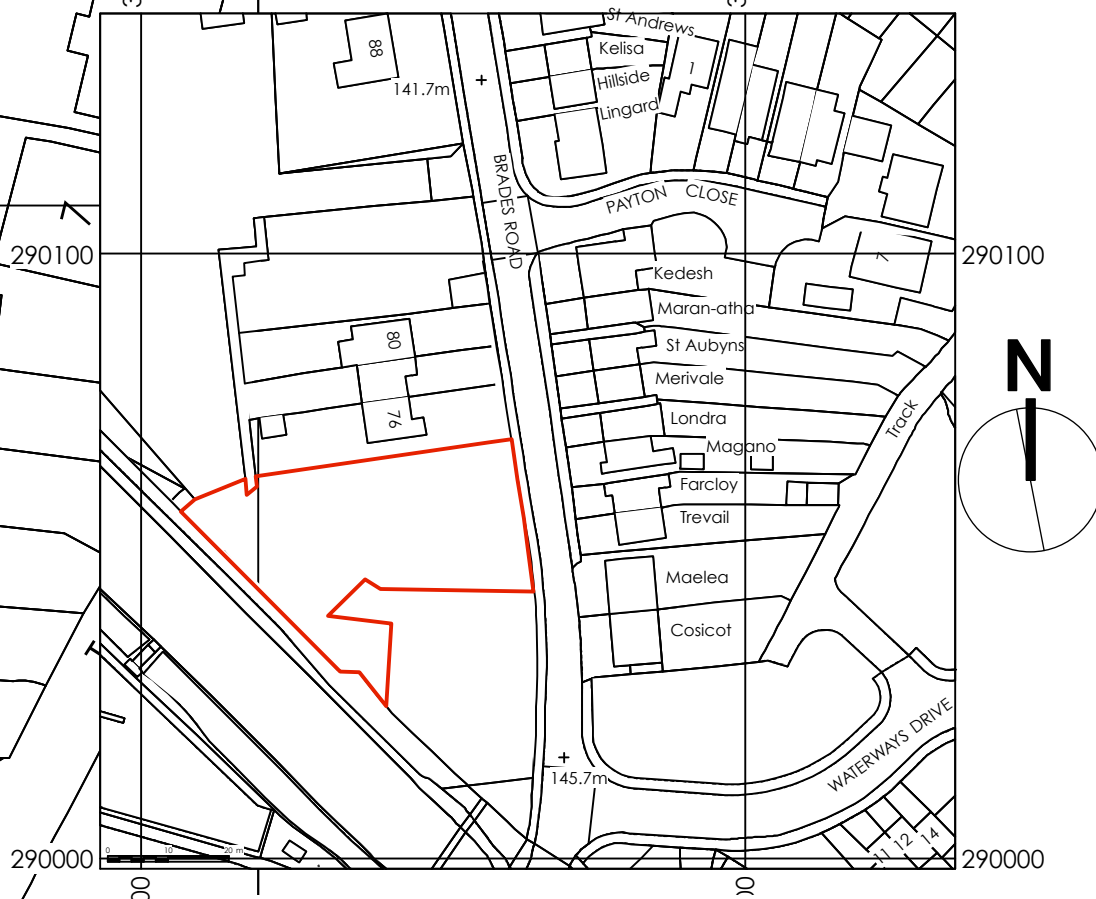
17. Appendices

17.1 Plans for consideration

Context plan
2043-PL-02A



indicative site plan 1:500@A3
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proposed location plan 1:1250@A3
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Indicative site layout & location plan

Land south of 76 Brades Road
 Oldbury
 B69 2EP

1:500 & 1:1250 @ A3
 Dwrng No. 2043 - PL - 02 Rev A

DC/24/69248

List of Conditions

- i) The development hereby permitted shall not be commenced until details of the reserved matters have been submitted to and approved by the local planning authority. The reserved matters are access, appearance, landscaping, layout and scale.
- ii) In the case of any reserved matters application for approval shall be made not later than the expiration of three years beginning with the date of this permission.
- iii) The development hereby permitted shall be begun not later than whichever is the later of the following dates:-
 - (a) the expiration of two years from the final approval of the reserved matters or,
 - (b) in the case of approval on different dates, the final approval of the last such matter to be approved.
- iv) The implemented development must conform with the terms of and the plans accompanying the application for permission and must remain in conformity with such terms and plans, save as may be otherwise required by (an of) the following condition(s), or approved amendments(s).
- v) The submitted indicative sketch layout does not form part of the submission and no approval, even in principle, is hereby conveyed with this permission.
- vi) Before the development is commenced a desktop study will be undertaken to assess the risk of the potential for on-site contamination. If the desktop study identifies potential contamination, a further detailed site investigation will be carried out to establish the degree and nature of the contamination and its potential to pollute the environment or cause harm to human health. Where necessary,



details of remediation measures shall be provided. Details of the desktop study, site investigation and remediation measures shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. All works must conform to Land Contamination Risk Management (LCRM) 2020 (EA, 2020) methods and protocols and be carried out by a competent person: (<https://www.gov.uk/government/publications/land-contamination-risk-management-lcrm>). In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken, and where remediation is necessary a remediation scheme must be prepared and shall be submitted to and approved in writing by the local planning authority. Where remediation works have been carried out in pursuance with the preceding conditions, a post remediation report shall be submitted to and approved in writing by the local planning authority before the development is first occupied. The post remediation verification report should detail the remedial works undertaken and demonstrate their compliance. The report should be produced in accordance with Land Contamination Risk Management (LCRM) 2020 (EA, 2020).

- vii) Before the development is commenced details of drainage works (including SuDS) for the disposal of both surface water and foul sewage shall be submitted to and approved in writing by the local planning authority. The approved drainage works shall be implemented before the development is first occupied or brought into use and thereafter retained.
- viii) Before the development is brought into use a comprehensive noise impact assessment shall be carried out by a suitably qualified noise consultant and shall be submitted to and approved in writing by the local planning authority, to quantify the impact of noise from existing commercial operations and traffic and shall include mitigation measures. The report shall consider whether sound levels meet the indoor ambient noise levels for dwelling set out in table 4 of BS



8233:2014 and also the lamax inside threshold value of 45dB given in the WHO Night Noise Guidelines for Europe. If a glazing/ventilation scheme is to form part of any proposed mitigation, then the report should also include a full and marked up set of plans showing the glazing/ventilation specifications for each façade. The approved mitigation measures shall be carried out before the development is brought into use and thereafter retained as such.

- ix) Before the development is commenced a Phase 1 Habitat Survey of the site shall be carried out and a report shall be submitted to and approved in writing by the local planning authority. The development shall commence in accordance with the recommendations of the approved survey.
- x) Before the development is brought into use details of secure cycle parking within the development shall be submitted to and approved in writing by the local planning authority. The approved secure cycle parking shall be implemented before the development is first occupied or brought into use and thereafter retained.
- xi) Before the development is brought into use details of waste storage to serve the development shall be submitted to and approved in writing by the local planning authority. The approved waste storage shall be implemented before the development is first occupied or brought into use and thereafter retained.
- xii) Before the development is brought into use an external lighting scheme to shall be submitted to and approved in writing by the local planning authority. The approved lighting scheme shall be implemented before the development is first occupied or brought into use and shall be thereafter retained.
- xiii) Before the development is commenced, including any works of demolition or site preparation, a construction environmental management plan shall be submitted to and approved in writing by the local planning authority. The statement shall provide for: the parking of



vehicles of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; the erection and maintenance of security hoarding; wheel washing facilities; measures to control the emission of dust and dirt during demolition and construction; a scheme for recycling/disposing of waste resulting from demolition and construction works. The approved construction method statement shall be adhered to throughout the construction period for the development.

- xiv) Demolition or construction works shall take place only between 08:00 and 18:00 Monday to Friday, 08:00 and 14:00 on Saturdays and shall not take place at any time on Sundays or on bank or public holidays. This restriction also applies to deliveries to the site.
- xv) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that order with or without modification), no enlargements or extensions to the dwelling(s) shall be carried out without the express written consent of the local planning authority.
- xvi) The development shall not be occupied or brought into use until the space shown on the submitted plan for the parking and manoeuvring of vehicles has been provided. When provided the space for the parking and manoeuvring of vehicles shall be thereafter retained.

