

Report to Planning Committee

25 October 2023

Application Reference	DC/23/68540
Application Received	2 August 2023
Application Description	Proposed demolition of existing buildings and erection of 1 No. primary school, 190 No. dwellings, public open space, landscaping and associated works (outline application with all matters reserved).
Application Address	Former Brandhall Golf Course Heron Road Oldbury
Applicant	Sandwell MBC
Ward	Old Warley
Contact Officer	Carl Mercer carl_mercer@sandwell.gov.uk

1 Recommendations

1.1 That outline planning permission is granted subject to the following conditions:

- (i) Reserved matters (full details of access, appearance, landscaping, layout and scale);
- (ii) Time limit of 3 years for submission of reserved matters;
- (iii) Time limit of 2 years for commencement from date of approval of final reserved matters;



- (iv) Compliance with approved plans;
- (v) Submission of a viability assessment to address any requirement for the Council to fund improvements to off-site golf facilities;
- (vi) Contamination;
- (vii) Further surface water drainage detail;
- (viii) Further foul water drainage detail;
- (ix) Further detail of traffic impact at Wolverhampton Road / Queensway junction together with mitigation and implementation of highway improvements;
- (x) Revision of Transport Assessment to include a wider assessment of the impact of residential development on the highway network with mitigation and implementation of any required highway improvements;
- (xi) Revision of Transport Assessment to include further detail of vehicle movements associated with the school and delivery of required road safety measures;
- (xii) Revision of Transport Assessment to include multi-modal trip generation data to inform active and sustainable travel need with mitigation and implementation of any required improvements;
- (xiii) Written scheme of investigation for archaeology;
- (xiv) Ecological Impact Assessment and implementation of mitigation;
- (xv) Revision of Energy and Sustainability Statement;
- (xvi) Revision of Arboricultural Impact Assessment;
- (xvii) Cycle parking;
- (xviii) Further schedule of mitigation regarding air quality;
- (xix) Details of controlled ventilation intakes in respect of air quality;
- (xx) Electric vehicle charging;
- (xxi) Low NOx boilers;
- (xxii) Residential units shall meet the internal ambient noise levels of the relevant British Standard;
- (xxiii) The school shall meet the internal ambient noise levels of the relevant standard;
- (xxiv) Construction environmental management plan (CEMP);
- (xxv) Employment and skills plan;
- (xxvi) Detailed assessment of ground conditions (including drainage and topography) of the land proposed for the school playing field;
- (xxvii) Schedule of playing field maintenance;
- (xxviii) Community use agreement for school sports facilities (or assessment of need for);



- (xxix) Implementation of recommendations of Biodiversity Net Gain Assessment;
- (xxx) Implementation of Travel Plans;
- (xxxii) Indicative access points are not agreed as part of this outline consent;
- (xxxiii) Compliance with recommendations of the Air Quality Assessment;
- (xxxiv) Demolition or construction restricted to 8:00 to 17:30 Monday to Friday and 8:30 to 13:00 hours on Saturdays. There will be no working on Sundays or bank holidays; and
- (xxxv) Provision and retention of parking.

In the event of approval, many of the above conditions would be required to be duplicated on the decision notice for each development site (i.e. Housing Site R1, Housing Site R2, School Site and Open Space).

2 Reasons for Recommendations

- 2.1 The application proposes an appropriate and responsible reuse of Council-owned land which would bring about greater public benefit by the introduction of an enhanced, publicly accessible open space and park, a new primary school and a much-needed mix of new housing, including affordable house types. The potential for any significant impact on the amenity of the local area could be addressed by appropriate mitigation.

3 How does this deliver objectives of the Corporate Plan?

	Best start in life for children and young people
	People live well and age well
	Strong, resilient communities





Quality homes in thriving neighbourhoods – The design of the proposal is acceptable in respect of national and local planning policy.

4 Context

- 4.1 The application is being reported to your Planning Committee as over 200 objections have been received. Additionally, the site is a major development submitted by AECOM on behalf of Sandwell Council and is proposed on Council-owned land.
- 4.2 To assist members with site context, a link to Google Maps is provided below:

[Former Brandhall Golf Course, Oldbury](#)

5 Key Considerations

- 5.1 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.
- 5.2 The material planning considerations which are relevant to this application are:

Government policy (NPPF);

Proposals in the development plan;

Highway considerations - traffic generation, access, and highway safety;

Environmental concerns – air quality and pollution;

Ecology concerns – loss of wildlife, habitats and trees;

Loss of golf course;

Flood risk;



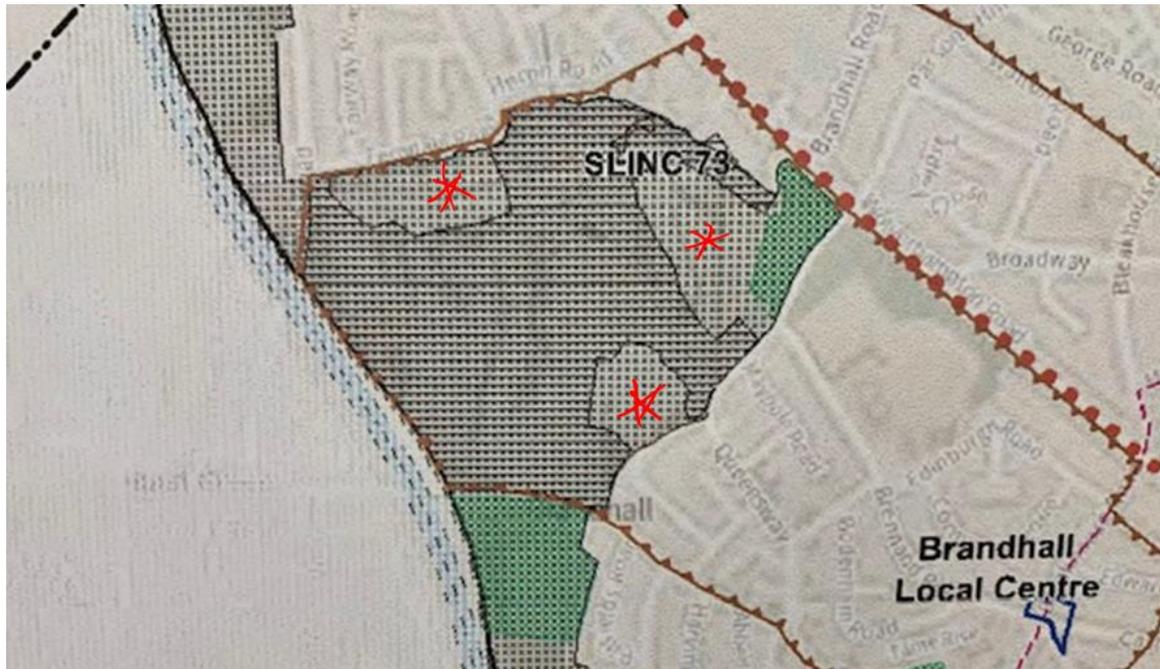
Contamination; and
'Presumption' and the 'tilted balance'.

6. The Application Site

- 6.1 The site is a 37.15ha parcel of predominantly greenfield land located in Oldbury. Greenfield land constitutes previously undeveloped land, as opposed to green belt. The site comprises the former Brandhall Golf Club, Parson's Hill Park to the east and the former clubhouse and car park to the north.
- 6.2 The site is surrounded predominately by residential uses, bound to the north and northeast by housing estates at Ferndale Road and Heron Road. Wolverhampton Road and Brandhall Primary School are to the east, Queensway, Worcester Road and Tame Road to the south with the M5 motorway to the west. Overhead pylons are positioned parallel to the inside of the western boundary of the site.
- 6.3 With some exceptions, including the parcels of land identified as the housing and school development sites, the larger site is designated as a Site of Local Importance for Nature Conservation (SLINC) and the whole site as a Wildlife Corridor in the development plan (refer to Fig 1). The site is designated for semi-natural habitats that facilitate wildlife movement north and south of the former golf course. Following a recommendation by the Local Sites Partnership that the existing SLINC be extended, Cabinet determined in July 2022 to approve the designation of the former golf course site as a SLINC, excluding any land required to deliver the development which is now before Planning Committee. This is discussed further in paragraph 9.3. A large proportion of the site is not designated for any use in the development plan (known as 'white land'). Parson's Hill Park is the only parcel of land within the site which is allocated as community open space.



Fig 1 – The darker areas indicate the SLINC allocation (development sites are marked red)



- 6.4 In total, 569 arboriculture features have been identified across the site. These consist of 347 individual trees, 215 tree groups, two woodlands and five hedges. The proposed development would require the removal of 72 tree features and part of 11 tree features. This would include two tree groups and part of one tree group classed as 'high quality'; 29 individual trees, eight tree groups and five part tree groups classed as 'moderate quality'; 11 individual trees, 12 tree groups, four part tree groups and one part hedge classified as 'low quality' and nine individual trees and one tree group classified as 'very low quality'. No veteran trees would be impacted by the development.
- 6.5 The Environment Agency's planning flood map indicates that the site is predominantly located in Flood Zone 1, with a narrow band of Flood Zone 2 and 3 associated with Brandhall Brook (classified as a main river) running from south to north through the site. There are similar informal tributaries and ditches within the site which discharge into the



Brandhall Brook at the northern end of the former golf course from Wolverhampton Road in the east.

- 6.6 Two Public Rights of Way cross the application site, which are both footpaths. One runs northeast from Queensway to Grafton Road, with the second running southwest from Wolverhampton Road to join this route midway through the application site. This route has recently been closed through Brandhall Court.

7. Planning History

- 7.1 The relevant planning history for the site includes two applications which involve Environmental Impact Assessment (EIA). It is important to note that most developments will have an environmental impact. The primary differences which set certain proposals apart from a typical major development, and would make a proposal EIA development, are the need for the submission of an environmental statement and a longer determination period of 16 weeks (as opposed to 13 weeks).
- 7.2 Even if a proposal is deemed not to be EIA development, the environmental impact must still be assessed, and relevant supporting information regarding matters such as contamination, air, noise, pollution, traffic, wildlife/habitat issues must be taken into account.
- 7.3 As set out in the local planning authority's screening opinion response dated 12 June, the LPA did, and does not, consider the proposal to be EIA development; given the urban context of the application site and the relatively modest development proposed against the context of EIA legislature. As such, an environmental statement would not be required as specialist documentation can provide relevant information to determine the application in respect of these issues. This does not mean that the environmental impact of the development will be taken lightly. Relevant documentation has been submitted for examination by both internal and external consultees and issues raised will be discussed in this report.



7.4 Relevant applications are listed below:

DC/21/65742	Scoping opinion request for a new mixed-use development.	Opinion issued – 06.07.2021
DC/23/68327	Request for a screening opinion in respect of a new primary school, 190 houses and a public car park for the Brandhall Village Development (Former Brandhall Golf Course).	Decision: Not EIA development - 12.06.2023

8. Application Details

Fig 2 – Land Use Parameter Plan



- 8.1 The outline application proposes the demolition of existing buildings, the erection of one, two-form entry primary school, 190 dwellings, public open space, landscaping and associated works with all matters reserved. An application for outline planning permission allows for a decision on the general principles of how a site can be developed. Outline planning permission is granted subject to conditions requiring the subsequent approval of one or more ‘reserved matters’.
- 8.2 Reserved matters are those aspects of a proposed development which an applicant can choose not to submit details of with an outline planning application (i.e. they can be ‘reserved’ for later determination). These matters are access, appearance, landscaping, layout and scale. The applicant intends to leave all such matters to be addressed at a later stage if this initial outline application is approved.
- 8.3 When determining an application for outline consent, the local planning authority must consider legislation set out in The Town and Country Planning (Development Management Procedure) (England) Order 2015. As all matters have been reserved, *‘the application for outline planning permission must state the area or areas where access points to the development proposed will be situated’*. Accordingly, the *Movement Parameter Plan – 04002 Rev D* shows indicative vehicular, pedestrian, cycle and emergency access points.
- 8.4 An outline application mainly concerns whether the principle of development is acceptable. When considering the imposition of conditions, it is crucial to bear in mind that planning permission for the development is granted at outline stage. An application for the approval of reserved matters is, by definition, an application for the approval of details pursuant to the permission. However, matters falling outside the scope of the reserved matters or which are not reserved for subsequent approval cannot be controlled later at the time of a reserved matters application. Conditions are therefore of paramount importance when considering an outline application.



8.5 The key conditions to impose on any grant of outline permission will be:

- i) any conditions that are necessary in respect of the principle of development, for example, a restriction to the number of houses or height of buildings;
- ii) any conditions which are necessary regarding matters for approval at outline stage. For example, if the application includes details of the site access for approval, any condition pertaining to access and highway safety must be imposed on the outline permission;
- iii) any conditions which are necessary to control matters that fall outside of the scope of the reserved matters, such as drainage or contamination; and
- iv) any conditions which are necessary to clarify what should be submitted at reserved matters stage, for example, if the landscaping scheme should include tree planting, or the layout should include car parking spaces.

Consideration of the principle of outline consent involves matters relating to the appropriateness of the development, and hence, the supporting documentation submitted with this application is extensive.

8.6 In addition to the submitted drawings the application is accompanied by the following documentation:

- i) Planning Statement;
- ii) Design and Access Statement;
- iii) Brandhall Village Design Guide;
- iv) Preliminary Ecological Appraisal Report;
- v) Bat Survey Report;
- vi) Flood Risk Assessment;
- vii) Drainage Strategy;
- viii) Air Quality Assessment;
- ix) Statement of Community Involvement;
- x) Arboriculture Impact Assessment;
- xi) Cultural Heritage Desk Based Assessment;
- xii) Transport Assessment;



- xiii) Residential Framework Travel Plan;
- xiv) School Framework Travel Plan;
- xv) Biodiversity Net Gain Assessment;
- xvi) Energy and Sustainability Statement;
- xvii) Noise and Vibration Assessment;
- xviii) Phase 1 Geo-Environmental Assessment and Ground Conditions Technical Note;
- xix) Utilities Assessment Report; and
- xx) Flood Risk Technical Note: Response to Environment Agency.

Fig 3 – Illustrative Masterplan



8.7 It is worthy of note that when the decision notice is issued, be it approval or refusal, only *plans* 'Location Plan – 0100', 'Land Use Parameter Plan – 04001 A' and 'Movement Parameter Plan – 04002' would appear on the decision notice. This is due to the outline nature of the application. Additional content shown on plan is preliminary and further, definitive



detail would be required at reserved matters stage in the event of an approval.

9. Publicity

9.1 The application has been publicised by 996 neighbour notification letters, five site notices and a press notice posted in The Chronicle newspaper. At the time of writing the report over 200 objections have been received to the public consultation. Additionally, the Statement of Community Involvement submitted with the application states that, prior to submission of the planning application, the future of the site had been publicised by the Council over a period of almost four years (see Fig 4).

Fig 4 – Consultation timeline



The Council also launched a consultation webpage which is regularly updated:

https://www.sandwell.gov.uk/info/200237/green_spaces_leisure_and_events/4379/brandhall_village



9.2 Objections

The main material points of objection to the planning application may be summarised as follows:

- i) Impact of the development on air quality/pollution;
- ii) Increase in road traffic from the development and concerns over highway safety;
- iii) Loss of habitat and wildlife;
- iv) Loss of trees;
- v) Loss of golf course;
- vi) Loss of open space – contrary to policy;
- vii) Flood risk;
- viii) Brownfield sites should be considered for development first;
- ix) Historic reasons; and
- x) Strain on local services.

9.3 Non-material objections have also been raised regarding the following:

- i) The Cabinet justification and the decision to bring the site forward for development. The decision to develop the site was taken by the Council in its capacity as landowner and followed a recognised committee process. This decision cannot be reconsidered now by the Council as local planning authority via this planning application, which must be determined with acknowledgement of material planning considerations and development plan policies. The background to this matter is discussed in the submitted Planning Statement and previous Cabinet reports. However, in the interests of completeness, I have briefly addressed these non-material objections below.
- ii) A point has been raised that the development sites are excluded from the SLINC. The entry on the strategic housing land availability assessment (SHLAA), which identifies sites with potential for housing, was based on the SLINC status in 2020 – when the golf course was only partially allocated as a SLINC. A subsequent Ecological Assessment recommended an enlargement of the SLINC to include the entire golf course site, which was the subject of a 20 July 2022 report to Cabinet. Cabinet resolved to exclude



the development sites from the SLINC. The planning application can only be determined in acknowledgment of the Cabinet decision and the matter cannot be revisited under the planning process. It is worthy of note that the designation of land as a SLINC does not make a site sacrosanct. Suitable mitigation can permit development on such sites; and had the development parcels not have been removed from the Brandhall SLINC, development may still have been proposed if appropriate measures to protect biodiversity were put forward with a planning application.

- iii) Concerns have been raised over the consideration given to public feedback from the public consultations. As above, the decision over of the future of the site was decided by Cabinet following a lengthy consultation process, which is discussed in the Planning Statement. It is not within the scope of this report to revisit this decision.
- iv) The impact of the development on house prices has been raised; however, the impact of a development on property prices is not a material planning consideration. On the contrary, there is a subjective argument that the presence of a newly built school, housing and enhancements to existing open space would be positive additions to the local area.
- v) *'The existing school site should be used to rebuild the school'*. However, there is justification as to why the existing site is unsuitable. To build in parallel would not be feasible due to: having to relocate pupils; extremely poor access / egress with one narrow school drive for both pedestrian / cars / delivery vehicles; drop off facilities non-existent; the school has had significant disruption with two closures due to major flooding (June 2023 latest); topography of the site would not enable suitable and improved external spaces to be re-provided if the school were able to be built on the higher plain to address flooding issues; and the extent of main drains that would be required to address current and projected future water runoff levels was viewed as cost prohibitive to any rebuild scheme. These issues were explored in the report to Cabinet in November 2022.



- vi) *‘Alternative sites have not been considered for the development, including Cakemore Playing Fields’.* Cakemore Playing Fields contains several football pitches which contribute to the Council’s sports provision. Furthermore, it is a Fields in Trust site and therefore unsuitable for development. Further justification for parts of the golf course site to come forward for development is explored later in the report, including the borough’s housing need and proximity of the site from the existing school.

With regards to the objections raised above, the comments of consultees will be discussed further below, and the points listed above will be addressed in section 13 (Material Considerations) when the context of the recommendation can be considered in light of consultee responses.

10. Consultee responses

10.1 Planning and Transportation Policy

No objection. In respect of allocations, the SADD policies map designates much of the application site as a SLINC, and the whole of the site as a Wildlife Corridor and an Area of Potential Archaeological Importance. Parson’s Hill Park in the eastern corner is designated as Community Open Space. No development is proposed on this open space. The site does not otherwise have a specific land use allocation. The Transportation Planning team has asked for improved pedestrian links across the site. This will be considered in detail as part of any reserved matters application(s).

10.2 Highways

Residential Element

In principle, Highways do not object to the scale of the proposed residential development, although exact locations of the access points would need to be fully considered at reserved matters stage. The outline Transport Assessment which utilises TRICS data for residential



developments of this size shows that, in general, the peak time traffic generations and proposed distributions would not negatively impact on the surrounding highway network; except at the junction of Wolverhampton Rd /Parsons Hill /Queensway.

- 10.3 The applicant has identified that improvements are required at the Wolverhampton Rd /Parsons Hill /Queensway junction to mitigate the impact of the new residential development in terms of capacity only. To this end, Highways require improvements to ensure that the risk of additional road casualties is not increased at a junction which currently has a notable level of recorded road injuries. Therefore, highway improvements would need to be ensured by condition at outline stage.
- 10.4 Additionally, a condition is required to ensure that a revised Transport Assessment is submitted which explores whether further mitigation would be required elsewhere on the network as a result of the detailed proposals. This is because, whilst these issues may not be insurmountable, the residential accesses are not yet agreed, and hence, traffic distribution patterns have not yet been finalised.

10.5 *Primary school element*

In respect of the school, Highways have concerns regarding the impact of the school on the current network (in terms of safety and capacity). Highways also raise concerns regarding the impact of increased traffic on residential amenity. This concern is exacerbated by a lack of clarity over traffic generation, traffic distribution, parking requirements and school drop off and collection data provided as part of the outline Transport Assessment.

- 10.6 Again, Highways consider these matters are not insurmountable, but the school must provide a sufficient number of off-street parking spaces for the scale of the school proposed. This should be factored into the final design and layout, to ensure sufficient space is reserved on site for any necessary parking provision. Without detailed traffic data being supplied,



Highways are concerned that the proposed vehicular access and highway improvement works on Ferndale Road, shown on the indicative plans provided with the outline application, would have a severe impact on residential amenity.

- 10.7 Highways advise that the site's main access should be considered from Grafton Road, with any off-site safety mitigation measures such as pedestrian crossings, guard railing, parking restrictions, signing and lining to be ensured by condition.
- 10.8 Additional detail regarding the transfer of pupils from the existing primary school would help determine the expected vehicle and pedestrian traffic patterns and should be captured in a revised Transport Assessment by way of condition. The findings of these studies may require additional safety mitigation and pedestrian crossing facilities to be introduced on the surrounding network, which unfortunately cannot be determined at present due to the outline nature of the application. The revised TA should confirm trip rates, vehicle and pedestrian traffic distributions, parking accumulation for staff and visitors and pupil drop off and collection.

10.9 Urban Design

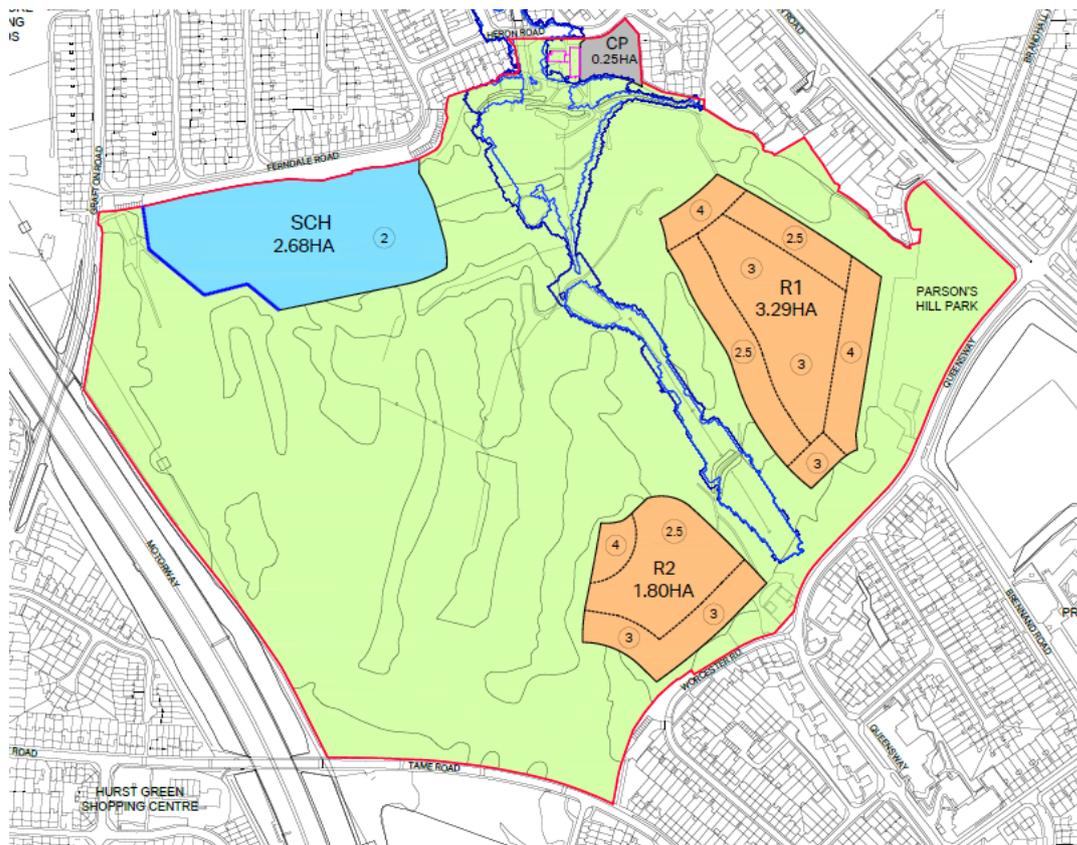
No objection. As demonstrated through the Design and Access Statement and the Brandhall Village Design Guide, there is a commitment to ensure the scheme adheres and responds positively to national and local design guides and criteria. The proposals demonstrate how the individual development parcels would coexist in a positive way to their immediate and surrounding environments. There is a clear and sound design rationale that explains what is expected in terms of street hierarchy, building scale and massing, legibility and the relationship leading through to the green spaces.



10.10 Environment Agency

The EA initially objected to the scheme as the Flood Risk Assessment was unclear regarding the location of the development sites in relation to Flood Zones 3a and 2, as referred to in 4.1.2 of the FRA. This matter has since been clarified in the submitted Flood Risk Technical Note which includes an overlay of the proposed development relative to the EA's flood map for planning. This has allowed a clearer understanding of the vulnerable development area, which would not be within the higher risk zones (see Fig 5). The EA note that it is positive that the site layout as shown within Appendix A of the Flood Risk Technical Note demonstrates the more vulnerable development uses are located to the areas of lowest risk of fluvial flooding. The EA has therefore withdrawn its initial objection to the application.

Fig 5 – Flood Risk Technical Note extract showing the development sites in relation to the flood zones



10.11 Lead local flood authority (Staffordshire County Council)

Staffordshire act as consultant for Sandwell as lead local flood authority. Staffordshire objects on grounds that insufficient detail has been submitted to fully demonstrate that an acceptable drainage strategy is proposed. This detail relates to drainage method, hydraulic calculations, water quality, exceedance, maintenance, surface water construction environment management plan and finished floor levels. However, these details are technical in nature, do not compromise the principle of development at the site and can be ensured by condition.

10.12 Severn Trent

A condition regarding the submission of foul drainage plans is recommended.

10.13 Public Health (Air Quality)

No overall objection. The proposed residential site is categorised as a 'Medium Development', in accordance with the Black Country Air Quality SPD, which uses the DfT threshold criteria for Transport Assessments and Travel Plans (adapted for air quality purposes). Electric vehicle charging, low NOx boilers and inclusion of dust mitigation to be included in a construction environment management plan (CEMP) is required by condition. The officer notes that the Air Quality Assessment concludes that, overall, the local air quality impact of the proposed scheme was not significant. However, given the existing high background levels of fine particulate matter already in this area, the officer requests that further consideration is given to mitigation measures to make the development more sustainable with regards to its impacts on local air quality for existing sensitive receptors once operational, and to demonstrate that proactive measures have been made to support the Council's longer-term priorities to reduce fine particulate matter. Additionally, a further schedule of air quality mitigation measures is required to set out improvements to cycling and walking routes across the site, together



with a new resident's information pack and provision of a 'School Street' on the road/s outside the school to restrict motor vehicle access outside the school.

10.14 **Public Health (Contaminated Land)**

No objection subject to a condition requiring submission of a detailed site investigation. The submitted Technical Note (dated 2021) to support and update information contained within the previous Phase I Geo-Environmental Assessment Report (dated 2015) summarises the findings of the previous document and provides an updated conceptual model. This has identified potential for contamination to pose a moderate/low risk to current and future site users, whilst a moderate/low risk was also considered to be posed by soil gas. Therefore, no significant concerns are raised.

10.15 **Public Health (Noise)**

No objection subject to conditions requiring the proposed residential units to meet the internal ambient noise levels of the relevant British Standard, submission of a noise mitigation scheme for the school to include a 2m high noise barrier on the boundary closest to the M5, submission of a construction environmental management plan (CEMP) to include noise and vibration mitigation and a restriction on construction hours.

10.16 **West Midlands Police**

No objection. General observations regarding Secure By Design principles are raised. Cycle storage and lighting details would be required by condition or as part of reserved matters.



10.17 **Birmingham and Black Country Wildlife Trust**

The Wildlife Trust for Birmingham and the Black Country is a charity uniquely protecting the wildlife of Birmingham, Dudley, Sandwell, Walsall and Wolverhampton. Locally, the trust works to conserve biodiversity, improve the environment and raise awareness and understanding of wildlife issues. Independent assessment of the planning application has been carried out by a Senior Biodiversity and Planning Officer of the trust. The ecology reports are discussed below.

- 10.18 *Brandhall Village Preliminary Ecological Appraisal Report. Rev.A* – The trust notes that the report provides insufficient information to rule out the presence of reptiles on the site. The trust recommends the report requires further justification for ruling out the presence of this group on site. Further consideration is also sought for assessing the potential indirect impacts of the proposed development on the remaining SLINC site and associated habitats. For instance, it is not understood how factors such as increased recreational pressure and antisocial behaviour would impact the SLINC and how they would be mitigated.
- 10.19 *Brandhall Urban Village Bat Survey Report. Rev.A* – The trust states that the bat surveys undertaken so far are insufficient and provide little justification as to why the site has been assessed as having ‘Moderate Suitability’ to support foraging and commuting bats.
- 10.20 *Brandhall Village Biodiversity Net Gain Assessment. Rev. 01* - The report states that the proposal would result in a net loss of 12.44% area units, 5.20% hedgerow units and 0.09% river units. Whilst the report makes recommendations for how the development may instead achieve a net positive in these unit types, the trust can see no evidence from the application documents that these recommendations have been taken on board. Therefore, in the trust’s opinion, the proposal should be considered to represent a significant net loss in overall biodiversity. The trust has also questioned the suitability of the proposed tree sizes as



being too large; however, this issue can be addressed by reassessment of proposed tree types at reserved matters.

10.21 The trust recommends that an Ecological Impact Assessment (EclA) should be submitted '*with the Full Application*'. This can be conditioned as part of any approval. The report would need to assess the value of the habitats and species assemblages present on site, as well as provide full details on what avoidance, mitigation and/or compensation measures would be implemented to ensure any impacts of the development are minimised. This report should be informed by the results of up-to-date Phase 2 ecological surveys, where appropriate.

10.22 **Public Rights of Way**

No objection as no hinderance or diversion to existing paths is proposed.

10.23 **Sport England**

The golf course does not constitute 'playing field' and so Sport England's Playing Pitch Policy and Guidance does not apply. In this case, the relevant policies to consider include paragraph 99 of the NPPF (extract in paragraph 11.6 below). Sport England note that there does not seem to be a strong justification for objecting to the loss of the municipal 18-hole course, though they concur with England Golf that alternative forms of golf provision could have been more rigorously explored. Sport England consider that mitigation to improve the quality of nearby golf facilities should be secured; since whilst it is accepted that there is sufficient quantity of golf courses in Sandwell to meet existing and future demand, there are known qualitative issues that should be addressed as mitigation for the loss. Sport England also require conditions relating to submission of a detailed assessment of ground conditions of the land proposed for the school playing field (including drainage and topography), a schedule of playing field maintenance and a community use agreement for school sports facilities.



10.24 National Grid (gas)

No objection.

10.25 National Grid (electricity)

No objection provided that safe clearances to overhead lines are maintained at all times and a 15m stand-off is observed.

10.26 Natural England

Natural England is the Government's adviser for the natural environment in England. They have not been consulted as there is no statutory requirement for the LPA to do so unless a site is of special scientific interest or otherwise protected (the site is locally protected but not nationally recognised). However, they do offer 'standing advice' to councils and developers, which is appropriate to mention here given the wildlife and habitat concerns raised:

'If the proposal is likely to affect a protected species you can grant planning permission where:

- *a qualified ecologist has carried out an appropriate survey (where needed) at the correct time of year;*
- *there's enough information to assess the impact on protected species;*
- *all appropriate avoidance and mitigation measures have been incorporated into the development and appropriately secured;*
- *any compensation measures are acceptable and can be put in place; and*
- *monitoring and review plans are in place, where appropriate.'*

<https://www.gov.uk/guidance/protected-species-how-to-review-planning-applications#assess-the-information-provided-with-the-planning-application>



10.27 Active Travel England

ATE is a statutory consultee on all planning applications for developments equal to or exceeding 150 housing units, 7,500 m² of floorspace or an area of five hectares. ATE has asked that the application is deferred to allow for further details to be submitted in respect of site access, walking and cycling connectivity and access to further afield. I note ATE's comments, however, site access and layout are indicative and is intended to be left to reserved matters. Travel from the site to the wider area is referred to in the submitted TA and TP, but it is prudent to ensure that the information required by ATE, namely that a multi-modal trip generation analysis of all modes of transport throughout the day, rather than the analysis being confined to peak hour periods, is used in a revised TA to identify active and sustainable travel needs.

10.28 NHS Black Country Integrated Care Board

The ICB has stated that a commuted sum towards healthcare infrastructure should be provided. National guidance distinguishes between the purpose of s106 obligations to mitigate site-specific impacts and Community Infrastructure Levy (CIL) which can be used to address the cumulative impact on infrastructure in an area. In practice, the use of s106 obligations to mitigate site-specific impacts will tend to apply to larger, strategic developments which generate a critical mass of demand for new or improved infrastructure, where there is insufficient existing capacity to accommodate the additional demand. Government guidance recognises that CIL is the most appropriate mechanism for capturing developer contributions from smaller developments.

10.29 Development plan policies and supporting guidance will set out the types and sizes of development from which s106 planning obligations will be sought. Although this was considered as part of the Black Country Plan, the Council's current development plan does not include such policies to enable sums for healthcare infrastructure. As such, CIL provision is still



the appropriate mechanism for obligations under the existing policy framework.

11. National Planning Policy

- 11.1 The National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied. Key paragraphs which are relevant to the application include:
- 11.2 Paragraph 2 of the National Planning Policy Framework states that: *'Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.'*
- 11.3 *'To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay'* (paragraph 60, NPPF).
- 11.4 *'It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education'* (paragraph 95, NPPF).
- 11.5 *To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship...)* (paragraph 93, NPPF).



- 11.6 *Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:*
- a) *an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location;*
 - b) *the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
 - c) *the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use (paragraph 99, NPPF).*
- 11.7 *Planning policies and decisions should ensure that... opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible (paragraph 131, NPPF).*
- 11.8 In regard to the housing element of the development, the Council cannot demonstrate a five-year housing land supply. Therefore, paragraph 11d of the NPPF and the presumption in favour of sustainable development is engaged. It follows that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
- 11.9 Two Public Rights of Way (PRoW) cross the application site. Paragraph 100 of the NPPF seeks to protect and enhance public rights of way and access. The applicant would be required to submit a separate order to modify any PRoW that may require diversion. From the information provided, no diversion appears to be proposed but this would be covered under separate legislation.



12. Local Planning Policy

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

Black Country Core Strategy (BCCS)

CSP2 – Development Outside the Growth Network

CSP3 - Environmental Infrastructure

CSP4 – Place Making

DEL1 – Infrastructure Provision

HOU1 - Delivering Sustainable Housing Growth

HOU2 – Housing Density, Type and Accessibility

HOU3 - Delivering Affordable Housing

HOU5 - Education and Health Care Facilities

EMP5 - Improving Access to the Labour Market

TRAN2 – Managing Transport Impacts of New Developments

TRAN4 - Creating Coherent Networks for Cycling and for Walking

TRAN5 - Influencing the Demand for Travel and Travel Choices

ENV1 - Nature Conservation

ENV2 - Historic Character and Local Distinctiveness

ENV3 – Design Quality

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

ENV6 - Open Space, Sport and Recreation

ENV7 – Renewable Energy

ENV8 – Air Quality

WM5 - Resource Management and New Development

Site Allocations and Delivery Development Plan Document – (SADD)

SAD H2 - Housing Windfalls

SAD H3 – Affordable Housing

SAD EMP 2 - Training and Recruitment

SAD HE 4 - Registered Parks/Gardens and undesignated green spaces

SAD HE 5 - Archaeology & Development Proposals



SAD EOS 1 - The Green Space Hierarchy
SAD EOS 4 - Community Open Space
SAD EOS 5 - Environmental Infrastructure
SAD EOS 7 - Floodlighting, Synthetic Turf Pitches and MUGAs
SAD EOS 9 - Urban Design Principles
SAD DC 6 - Contaminants, Ground Instability, Mining Legacy

12.2 The site is not within a Strategic Centre or a Regeneration Corridor and is located outside of the growth network. Policy CSP2 seeks to secure a limited supply of large-scale development opportunities on surplus land outside of the growth network, as well as enhancement to landscape and nature conservation, and a strong network of green infrastructure and community facilities.

12.3 Ecology - CSP3, ENV1 and SAD EOS5

These policies seek to grow the environmental infrastructure network and enhance nature and wildlife. The applicant has submitted a Green Infrastructure Parameter Plan and Biodiversity Net Gain Assessment which demonstrate that, although some biodiversity is expected to be lost by the proposal, the inclusion of new habitat creation would deliver at least a 10% gain in biodiversity. The national legislative requirement to secure biodiversity net gain as part of development proposals does not come into force until January 2024. Nevertheless, the delivery of biodiversity net gain at the site would contribute towards the aims of policies CSP3, ENV1 and SAD EOS 5, including ensuring that the movement of wildlife within the Wildlife Corridor is not impeded by development.

12.4 The application site, excluding land required to deliver the development, is designated as a SLINC. Policy ENV1 seeks to protect locally designated conservation sites. The submitted Green Infrastructure Parameter Plan shows that much of the biodiversity that would be lost would be within the development parcels and therefore outside of the SLINC designation. Only a small number of trees and vegetation within



the SLINC would require removal to secure site access, and this would be confirmed at reserved matters stage. The planning policy team consider that the strategic benefits of the development, including the creation of new homes, public open space and biodiversity net gain, outweigh the small amount of damage that could impact the SLINC, and that this damage would be fully mitigated. There is therefore considered to be no conflict with policy ENV1. The application is also supported by a Preliminary Ecological Appraisal which concludes that the proposals would not result in adverse effects on locally, nationally or internationally designated ecological sites.

12.5 Design - CSP4, ENV3 and SAD EOS 9

In respect of the design, the development is influenced by the context of the local area and would enhance the attributes the area offers in terms of its local character. With regards to policies ENV3 and SAD EOS 9, the development should comply with the Council's Residential Design Guide 2014 which aims to secure high-design quality and sustainable living environments for new development in the borough. The applicant has submitted a Design and Access Statement and Design Guide which have been deemed to be acceptable by the Council's Urban Design officer.

12.6 Planning gain – DEL1 and DEL2

On and off-site infrastructure provision, for example, improvements to the highway network and electric vehicle charging (EVC) bays, respectively, would be ensured by condition. The proposals are liable for Community Infrastructure Levy (CIL). The base rate for residential development on schemes of 15 dwellings or more is set at £15 per sqm. The proposed school would not attract a charge.



12.7 Housing/education – HOU1, HOU2, HOU3, HOU5, SAD H2 and SAD H3

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. The Council's latest Housing Delivery Test indicates that less than 75% of its housing requirement was delivered in the proceeding period and it cannot demonstrate a five-year housing land supply. As such, this proposal would assist with providing much needed housing in the borough.

12.8 Policy HOU2 relates to housing type and density. The application proposes the development of up to 190 homes on 5.29ha of land, representing a density of 35.9 dwellings per ha, which is above the minimum net density requirement set out in the policy. It should be demonstrated at reserved matters stage that a range of types and sizes of accommodation would be provided.

12.9 In respect of policies HOU3 and SAD H3, the application form states that the proposal would provide up to 190 dwellings, 48 of which would be affordable (25.3%). The application therefore accords with policy HOU3 which requires provision of 25% affordable housing on schemes of 15 dwellings or more. The application has been submitted in outline form with all matters reserved. The size, type and tenure of affordable housing could be required by condition; however, as the site is Council-owned, the Council cannot enter into a section 106 agreement with itself to ensure affordable housing, but this can be ensured as part of any land sale.

12.10 Policy HOU5 sets out the requirements for new school facilities. The proposed school is located outside of a centre; however, it is recognised that the facility would replace Causeway Green Primary School. The proposed location would be appropriate so that the new facility can continue to serve the existing catchment and the residents of the



proposed development. Policy HOU5 and ENV6 encourage new education facilities to maximise provision for community use of sports and other facilities. Conditions can be utilised which require further information to demonstrate how the community would benefit from new sports and other facilities at the proposed school, such as access to facilities at evening and weekends. Alternatively, a need assessment could be submitted to address this.

12.11 The proposed dwellings would be a windfall, subject to SAD H2. The policy allows windfall housing development on unallocated greenfield land under specific circumstances. The proposals accord with the policy as the site is Council-owned and was deemed surplus to requirements following Cabinet approval to close the golf course in May 2020. Additionally, the parameter plans show that the proposed residential development parcels do not include the Community Open Space at Parson's Hill Park.

12.12 **Training and recruitment - EMP5 and SAD EMP 2**

Training and recruitment opportunities should be provided as part of any new development (EMP5 and SAD EMP 2). This can be ensured by condition.

12.13 **Highways/Transportation – TRAN2 and TRAN4**

TRAN2 seeks to manage the transport impacts of new development, and DEL2 seeks to ensure adequate on and off-site infrastructure is secured to serve the development and contribute to the proper planning of the wider area. Highways raise no objection on traffic and accessibility matters subject to their approval of finalised design detail and highway improvements, and therefore it is considered that the proposal accords with the policies. The applicant should look to demonstrate the inclusion of high-quality walking and cycling routes via condition and at reserved matters stage, as required by policy TRAN4.



12.14 Heritage - ENV2, SAD HE4 and SAD HE5

These policies seek to protect heritage and archaeology including heritage features at undesignated green space. The application is supported by a Cultural Heritage Desk Based Assessment that considers the potential impact of the development on both above ground heritage and archaeological remains. The assessment concludes that further assessment of potential impacts upon the archaeological resource within the site should be undertaken in the form of non-intrusive and intrusive archaeological evaluation. It is recommended that a condition is imposed which requires the submission and approval of a Written Scheme of Investigation prior to the commencement of development and that works shall be carried out in accordance with the approved WSI.

12.15 Flood risk - ENV5

Policy ENV5 seeks to reduce flood risk and secure sustainable drainage solutions. The Land Use Parameter Plan shows the proposed residential and school development parcels as being within Flood Zone 1. The band of Flood Zone 2 and 3 that follows Brandhall Brook would be located within the proposed public park, but there would be no development in this area. The applicant has submitted a Flood Risk Assessment and Outline Drainage Strategy. The strategy suggests that SuDS including attenuation basins, green roofs, bioretention, permeable pavements and swales could be appropriate at the site.

12.16 Loss of golf course - ENV6

Policy ENV6 seeks to prevent the loss of sports facilities and clarifies that the loss in quantity of a facility may be acceptable if compensatory gains in quality and/or accessibility which are of greater value can be secured in the local area. Cabinet resolved to close the Council-owned golf course in May 2020. The decision was informed by a Golf Needs



Assessment undertaken by Strategic Leisure Limited in 2019 which determined that, due to the high-level supply of golf courses in Sandwell and the low latent demand for participating in golf, there is an over-supply of golf facilities in the borough. The facility has remained closed since 2020. Whilst not objecting to the loss of the golf course, Sport England are of the view that whilst a 18 hole course may be deemed to be surplus for golf, there is a lack of evidence to consider the potential role of the site to meet other forms of golf, or indeed the needs for other sports, such that they do not consider the Council has demonstrated that paragraph 99(a) has been met. Sport England consider that mitigation to improve the quality of nearby golf facilities would ensure that the test set out in paragraph 99(a) of the NPPF is met.

12.17 The Council's policy team note that there is some conflict with policy ENV6 in that the proposals would not secure compensatory gains in quality and accessibility of golf courses in the local area. However, the Council state that this conflict is outweighed by the evidence of over-supply of golf facilities in Sandwell and the related Cabinet decision which has meant that the facility has not operated as a golf course since 2020. Additionally, significant investment would be required to return it to a playable condition. The proposal would bring about significant benefits in terms of the creation of new public open space, the delivery of up to 190 homes and a replacement school. There is existing alternative golf course provision in proximity to the site within the borough at Warley Woods Golf Course (2km east) and outside the borough at Halesowen Golf Club (3km south west).

12.18 The Council and Sport England disagree over whether the test set out in paragraph 99(a) of the NPPF would be met. The Council's case is based on the course being surplus to requirements and the benefits of the development outweighing the loss of the course. To clarify, in respect of paragraphs 99(b) and (c), the Council present no case that the existing sports facility would be replaced by equivalent provision under (b), and as the proposal is not exclusively for new sports and recreation provision, (c) does not apply. The Council need only demonstrate



compliance with either (a), (b) or (c), and based on Sport England's view could only partially demonstrate compliance with 99(a); as there are known qualitative issues with local golf facilities which the Council has not taken into account. Sport England's stance is supported by England Golf who, whilst not objecting to the loss of the course, do make a case for mitigating the loss of the course through alternative forms of provision which were not pursued by the Council. Sport England state that mitigation to improve the quality of nearby golf facilities should be secured via a suitably worded section 106 agreement.

12.19 The Council state that a requirement to provide funds to nearby golf facilities would make the development unviable. This can only be tested by submission of a viability assessment produced independently of the Council. With any other applicant, if the outcome of a viability assessment states that the delivery of the development would be financially compromised by a requirement to provide unbudgeted funds, it would therefore be unreasonable to hold the applicant to this requirement. Consequently, if a viability argument can be robustly argued the development simply cannot comply with paragraph 99(a) and greater weight should be attached to the argument that the development proposes significant social gains for the area. Alternatively, if the outcome of the assessment states that funding improvements would not make the scheme unviable, the Council would be required to consider and fund the improvement of nearby facilities. Taking the above into account, I recommend that if committee is minded to approve the application it does so subject to a condition requiring the submission of a viability assessment before development is commenced. The condition would be worded in such a way to ensure, in the event that the development is found to be viable, that the Council would be obligated to provide improvements to existing off-site golf facilities.

12.20 **Renewable energy – ENV7**

Policy ENV7 requires developments of 10 dwellings or more to incorporate at least 10% renewable energy generation. The applicant



has submitted a Sustainability Statement which assesses the suitability of different low and zero carbon energy technology at the site. Air Source Heat Pumps and PV Panels are deemed the most likely technology to be installed. Further information will be required by condition to confirm that the requirement to secure at least 10% renewable energy generation onsite will be met.

12.21 **Pollution – ENV8**

Policy ENV8 seeks to protect new residential and school development from poor air quality. The applicant has submitted an Air Quality Statement which concludes that the impact on local air quality is assessed to be not significant. Pollution Control officers have confirmed the requirement for electric vehicle charging points, low NOx boilers and submission of a CEMP to address air quality during construction, by condition. Additional measures, as stated above, can be ensured by condition. The applicant has submitted a Noise and Vibration Statement which concludes that the impact of noise and vibration during the construction phase can be minimised and mitigated, and that the scheme can be designed at reserved matters stage to mitigate noise and vibration impacts following construction.

12.22 In addition to the requirements of the Black Country Air Quality SPD, proposed mitigation measures include:

- Travel planning including mechanisms for discouraged high emission vehicle use and encouraging modal shift;
- Provisions of trees and landscaping features where appropriate; and
- Encouraging links to existing Rights of Way to improve opportunities for walking.



12.23 In respect of WM5 (Resource Management and New Development), a scheme for recycling/disposing of waste resulting from demolition and construction works would be required as part of a CEMP.

12.24 **Loss of open space - SAD EOS 1 and SAD EOS 4**

The proposals seek to create 29.13ha of new public open space including the retention of Parson Hill Park and MUGA pitch. This is supported by policies BCCS ENV6 and SAD EOS4, and paragraph 98 of the NPPF. Paragraph 3.4 of the Council's Green Spaces Strategy (2022-2025) confirms that there is 111.69ha of unrestricted green space in Oldbury. 87% of this space was determined poor or very poor quality in the 2018 green spaces audit. Paragraph 2.8 of the Strategy gives the town's population as 53,285 persons indicating a provision of 2.10ha of unrestricted green space per 1,000 population in Oldbury. This is just above the 2ha target for Community Open Space set out in policy SAD EOS4 but below the 4.42ha monitoring target for accessible open space set out in the supporting text to policies ENV6 and SAD EOS4. The proposed new public open space would increase the town's provision.

12.25 **Sports surfaces – SAD EOS 7**

SAD EOS 7 relates to floodlighting, synthetic turf pitches and MUGAs. Details of these areas would be required as part of a reserved matters application.

12.26 **Contamination - SAD DC 6**

Land contamination issues can be addressed by the imposition of suitably worded conditions requiring further intrusive investigation, reporting of any unpredicted contamination and submission of a validation certificate following any required mitigation.



13. Material Considerations

13.1 National and local planning policy considerations have been referred to above in sections 11 and 12. The following section discusses material considerations raised in objections to the development:

13.2 Environmental concerns – Air quality and pollution

The development is classified as ‘medium’ under the Black Country Air Quality SPD. As such, the Council’s air officer has recommended conditions relevant to the scale of the proposal and has suggested further measures by condition. The development is therefore not expected to contribute considerably to existing air quality issues. Additionally, the submitted Energy and Sustainability Statement concludes that sustainability and carbon savings targets set in national and local policy are achievable for the scheme, and that higher standards may be embraced where feasible at reserved matters stage. As stated above, conditions could ensure requirements under ENV7 are met.

13.3 Highway considerations - Traffic generation, access, and highway safety

The Council as local highway authority, whilst raising concerns, do not object to the application subject to appropriately worded conditions as referred to in the summary of their comments above.

13.4 A high-level mitigation scheme has been developed for the Wolverhampton Road/Queensway/Parsons Hill crossroads junction which includes widening of Queensway to accommodate longer flare length and relocation of the end of the central reserve on Wolverhampton Road. This solution would achieve a better than nil-detriment solution compared to a future scenario without the development scheme to mitigate transport impacts. Again, Highways seek further assurance of the design by way of condition. Additionally,



residential and school Travel Plans have been prepared to discourage travel by private car and encourage travel by sustainable modes including to land uses internal to the site. Further detail also required by condition.

13.5 Ecology concerns – loss of wildlife, habitat and trees

The Preliminary Ecological Appraisal Report identifies:

- need to eradicate Himalayan Cotoneaster in two locations on the site;
- need to retain/replace broadleaved woodland wherever possible to ensure no net loss at this site;
- need to retain bat roosts and foraging routes- especially watercourses and woodland belts and appropriate timing, supervision and compensation measures if roosts cannot be maintained;
- notable bird species have been identified on the site. The loss of broadleaved woodland will result in the displacement of some species, but this is not considered a constraint to the scheme due to the proximity of similar nesting sites;
- no presence of badgers has been found on site -although it is possible that they would visit the site;
- possible that common terrestrial invertebrates occur especially species associated with pedunculate oak; and
- scarce species of fungi have been recorded on the site, and whilst not observed in recent site visits the potential for them to reappear in more favourable conditions exists.

13.6 The report recommends the following mitigation:

- Consideration for enhancements to bio-diversity could include the creation and sympathetic management of retained woodland, grassland and watercourses.



- The provision of bat, birds and invertebrate boxes could further enhance the bio-diversity value of the scheme.
- Use of low intensity artificial lighting directed to avoid the illumination of bat roosting and foraging habitats.
- Undertake the removal of any bird nesting habitats outside the main nesting period (March – August). Alternatively, a bird nesting check should be undertaken, and stand -off maintained until chicks have fledged if an active nest is found.
- A pre-construction survey is required to be undertaken to establish any badger setts prior to the commencement of construction.
- Retention of pedunculate oak and implement measures to enhance the retained habitat for terrestrial invertebrates.
- Mowing regime to benefit scarce funghi species is recommended. If in the development areas, topsoil to be translocated to a nearby receptor site on suitable substrate.

13.7 The Birmingham and Black Country Wildlife Trust's comments are set out in section 10 above. Whilst there are clearly outstanding issues regarding the baseline ecological data and, consequently, the mitigation required, it does not appear that addressing issues regarding wildlife, habitat and ecology is insurmountable. The development could be acceptable with appropriate mitigation, but surveys must be more robustly conducted to determine the extent of said mitigation. I also refer to Natural England's guidance which states that, even when a proposal is likely to affect a protected species, planning permission can be granted where certain measures are taken, and adequate mitigation proposed. It is considered that, despite the requirement for further information, a condition requiring a detailed Ecological Impact Assessment (EclA) and the implementation of its recommended mitigation would be sufficient to establish the outline principle of the development. A full EclA would require further consultation with the



wildlife trust when an application is submitted for discharge of the condition.

13.8 In respect of the Bio-Diversity Net Gain Assessment, BNG delivers measurable improvements for biodiversity by creating or enhancing habitats in association with development. Under the Environment Act 2021, all planning permissions granted in England (with a few exemptions) except for small sites will have to deliver at least 10% biodiversity net gain. The Council proposes to introduce this net gain, prior to the national requirement, for this proposal.

13.9 The assessment quantifies the overall effects of the scheme on the site's bio-diversity value. It assesses the proposed habitat loss, retention and creation delivered by the scheme. All relevant developments are to achieve a minimum 10% net gain in biodiversity units. The assessment shows the development achieves a net loss of 28.15 habitat units (12.44%), 0.45 hedgerow units (5.20%) and 0.01 river units (0.09%). An additional requirement of 50.78 habitat units, 1.32 hedgerow units and 1.02 river units are required to meet the 10% gain requirements. Further habitat mitigation will be required to achieve a net gain of 10%. Overall strategy of 'Avoid, Minimise, Mitigate' as a last resort should be applied, with focus on enhancing habitats where avoidance or minimisation will not be possible.

13.10 Proposals include:

Area Based Habitat (51.22 habitat units):

- plant 50 trees along water course 2;
- creation of 0.04ha mixed scrubland along watercourse 2;
- creation of 3ha broadleaved woodland in the open space area; and
- enhanced 6.50ha of modified grassland.



Hedgerow Habitat (1.53 habitat units):

- enhance 0.31km native hedgerow in poor condition to good condition; and
- enhance 0.20km native hedgerow with trees in Moderate condition to Good condition.

Watercourse Habitats (0.88 Habitat units):

- enhance Watercourse 2a from Moderate to Fairly Good; and
- enhance Watercourse 2b from Fairly Poor condition to Fairly Good Condition.

Enhancements proposed would be incorporated into the open space and would ensure compliance with the 10% Bio-Diversity Net Gain requirements.

13.11 Whilst the wildlife trust can see no evidence of the implementation of the above measures in the submitted plans, they do not object to the proposed measures. In response to the trust's concern, it should be noted that this is an outline application, and detail regarding layout and landscaping is not required at this stage. However, it is appropriate to recommend a condition be included to ensure the implementation of the Bio-Diversity Net Gain measures for the site which could be incorporated into the final site design.

13.12 The Arboricultural Impact Assessment (AIA) suggests it is possible during the detailed design stage to reduce tree related impacts and that further advice of an arboriculturist should be sought. Consideration should be given to the retention of hybrid Black Poplars and the proximity to development. Tree loss can be mitigated with a robust and high-quality scheme of new tree planting which represents an opportunity to increase the quality, impact, diversity and resilience of the local tree stock. The AIA should be updated once detailed design is completed. This can be ensured by condition.



13.13 Loss of golf course and open space

The Council is minded that the loss of the golf course can be justified by the benefits that the scheme would deliver. In response to Sport England's objection, the applicant states that the planning application must be determined in accordance with the development plan unless material consideration indicates otherwise. The consequence being that consideration must first be given to accordance with adopted policy ENV6 of the Black Country Core Strategy which is not as restrictive as paragraph 99 of the NPPF. However, the NPPF must be read as a whole and *Annex 1: Implementation* states that policies in the Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Although the Framework acknowledges that weight should be given to existing policies of the development plan, this is according to their degree of consistency with the Framework; the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given. Accordingly, I attach sufficient weight to the NPPF on this matter and accept that Sport England's concern is justified. Therefore, as already noted above, a viability assessment would be required to satisfy the requirements of the NPPF. Despite the fact I accept that much of the golf course was not strictly publicly accessible, and that the creation of formalised, accessible public open space, enhancements to biodiversity and the creation of new housing and education facilities is considered to be a positive planning gain, I find that compliance with paragraph 99 is not wholly apparent and further justification should be provided by submission of a viability assessment.

13.14 Brownfield First

The 'Brownfield First' approach, as raised by objectors, was included in 'The Vision' for the Black Country Core Strategy: *'Ensuring that previously developed land, particularly where vacant, derelict or underused, is prioritised for development over greenfield sites'*. However, 'Brownfield First' is not a planning policy. Furthermore, the



BCCS is now some 12 years old and, as explained above, the Council cannot demonstrate a five-year housing land supply. Whilst it is preferable for brownfield sites to be developed, this is not always possible due to factors such as contamination, viability and a shortage of suitable sites. Indeed, the NPPF notably refers to the reuse of 'suitable' brownfield sites. Furthermore, the proposed school site is within the catchment of the existing school and a suitable, Council-owned site is not available in the immediate area.

13.15 Historic reasons

The heritage status of the site is acknowledged by its allocation in the development plan. Further investigation of its value can be obtained by a condition requiring additional archaeological investigation.

13.16 Flood risk

Whilst Staffordshire object to the proposal, the content relates to technical detail, not to the principle of development on the site. Therefore, the required detail can be ensured by condition for when further layout details are known. The condition can be tailored to be specific to Staffordshire's requirements and development would not be allowed to commence unless they are satisfied with this further detail.

13.17 Moving to the strategic management of flooding and the principle of development in relation to the flood risk associated with the site, the Environment Agency has no objection to the proposal. The housing and school sites are not within Flood Zones 2 or 3 – which would be the cause for the greatest concern. The Drainage Strategy includes appropriate surface water drainage arrangements to manage and contain the site's surface water for rainfall events with allowances for climate change. The Strategy includes SuDs in the form of landscaped attenuation basins and other features including green roofs, bioretention, permeable pavements, and swales may be incorporated into the development parcels to provide attenuation closer to source. As the



Environment Agency has no objection and Staffordshire raise only technical concerns which are not insurmountable subject to further detail, flooding is not considered to be a significant enough concern to refuse the principle of the development at outline stage.

13.18 Contamination

As stated above, the Council's contamination officer raises no significant concerns. The submitted Geo-Environmental Assessment considers ground conditions, especially in relation to the potential for any ground contamination. Risk from contamination is considered low.

13.19 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.

13.20 Other matters – impact on local services

The strain of the development on local services has been raised by several objectors. There is no evidence before me that the introduction of 190 dwellings would put significant strain on public services and facilities in the area. Whilst this number of dwellings may seem considerable, when considering that the Council's latest Housing Delivery Test indicates that less than 75% of its housing requirement was delivered in the proceeding period, it is clear there has not been a proliferation of new build housing within the borough which may be said to affect services. Furthermore, the proposed housing sites are liable for CIL contribution. The money from this fund goes towards improving



community facilities and infrastructure to help provide services to new and existing residents.

13.21 Consultation with the Secretary of State

Due to the Council's involvement as both landowner and applicant, I have considered the possible requirement to consult the SoS. For certain types of development, local planning authorities are required to consult the Secretary of State before granting planning permission. The circumstances where this is required are set out in the Town and Country Planning (Consultation) (England) Direction 2021.

13.22 The circumstances require a major development to involve:

- i) Green Belt – the land is not Green Belt;
- ii) development outside centres – this applies to retail, leisure or office use;
- iii) World Heritage Sites – the land is not a WHS;
- iv) playing field development – golf courses are not defined as a 'playing fields';
- v) flood risk area development – the development sites are not within Flood Zones 2 or 3 and the Council has not been notified that the areas within Flood Zone 1 have critical drainage problems; or
- vi) commemorative object development – the development does not propose the full or part demolition of a statue, monument, memorial or plaque.

13.23 As the development would not meet any of the above criteria, there is no requirement to consult the SoS before the decision notice is issued, should committee resolve to approve the application.

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.

Conflict with development plan policies will always be a negative impact. If the policies are up-to-date, that negative impact will be given greater weight. However, if they are out-of-date, the weight given to the negative impact 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 The proposal would result in the loss of a golf course facility and, as no compensatory gains in provision are proposed, would result in some conflict with policy ENV6 and the NPPF. However, the evidence of over-supply in the borough, the proximity of alternative facilities, in addition to the benefits of the scheme, carry considerable weight. Improvements to existing facilities could be ensured if the development is found to be unviable. However, based on the information currently available to me, the recommendation before committee is to approve the application subject to a condition requiring the submission of such an assessment.
- 14.3 I note the matters raised regarding ecological concerns; however, the matter is one of balance, and if appropriate mitigation could be provided, then a development may proceed. However, further work should be conducted, and an Ecological Impact Assessment submitted by condition. What is positive is that a large proportion of high/medium quality trees would be retained, and the open space enhanced to the benefit of the public.
- 14.4 With regards to the impact of the development on residential amenity, there is little evidence before me that the impact would be sufficient to warrant refusal of the application. Additionally, Highways raise no overall objection to the development in respect of an increase in traffic, access or highway safety.



14.5 The Council's development plan policies relating to the supply and distribution of housing are out-of-date and the presumption in favour of sustainable development in the NPPF is engaged due to its inability to meet its housing land supply. Notwithstanding this fact, policy SAD H3 allows for windfall residential development on unallocated greenfield land that is Council-owned and surplus to requirements. Policy conflict in relation to the principle of residential development, which cannot be addressed by condition, is not identified and the application of policy SAD H3 means that the principle of the residential development element of the proposal would be considered acceptable in planning policy terms even if the Council could demonstrate a five-year land housing land supply.

14.6 It is therefore considered that, given the land constraints which exist in the borough, the development proposes an appropriate and responsible reuse of land which would bring about greater public benefit by the introduction of a new primary school, enhanced publicly accessible open space and an opportunity for a mix of new housing, including affordable house types. In my opinion, the planning balance in respect of the benefits of the development outweigh the harm and the application should be approved subject to submission of a viability assessment and appropriately worded conditions.

15. Alternative Options

15.1 Refusal of the application is an option if there are material planning reasons for doing so. Given that consultees raise no significant objection to the proposal, it is considered that refusal of the application would not be warranted; especially as the development would aspire to the Council's Corporate Plan and Vision 2030 in providing quality housing, education facilities and open space.



16. Implications

Resources:	None.
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:	New housing, school and open space.
Social Value	Opportunities for education, recreation and employment during the build.
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

Site Plan

Context Plan

Location Plan – 01001

Land Use Parameter Plan – 04001 A

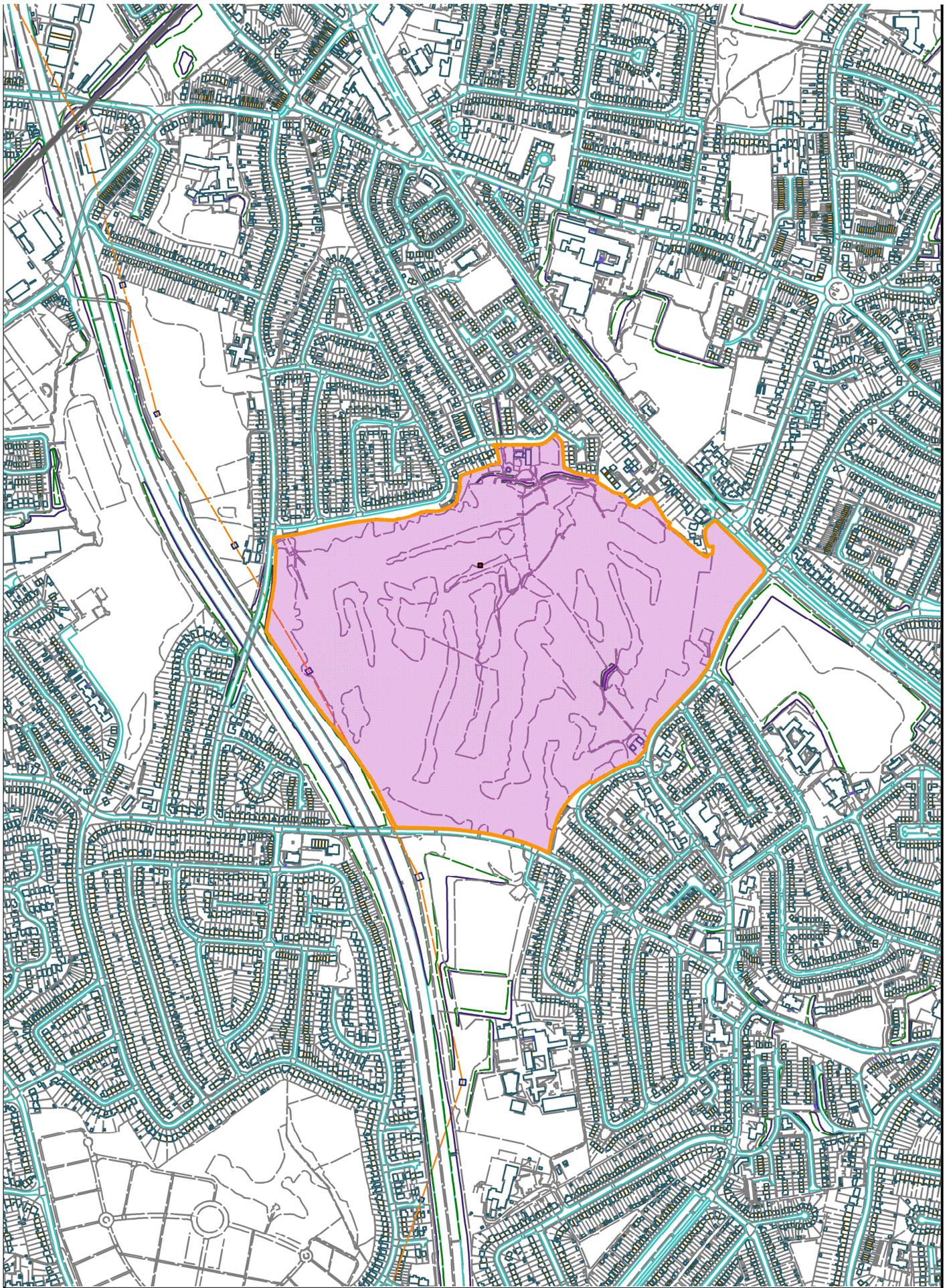
Movement Parameter Plan – 04002 D

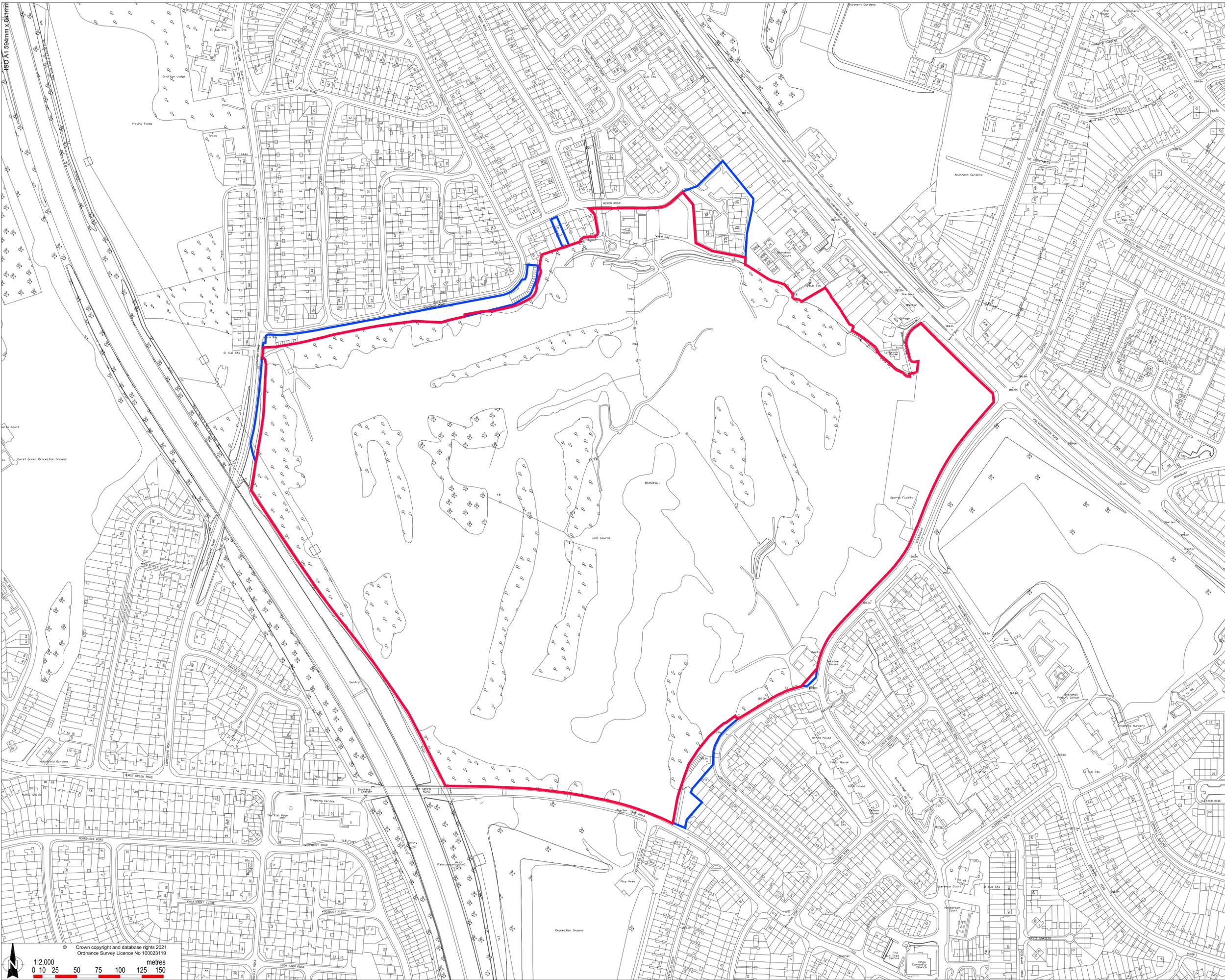
Green Infrastructure Plan – 04003 D

Proposed Illustrative Masterplan – 1

Cabinet Report Nov 22







ISO A1 594mm x 841mm

- Planning Application Boundary
37.15Ha
- Sandwell Council Owned Land

For Planning

DRAWN:	JG	CHECKED:	NB
VERIFIED:	LW	DATE:	17/03/23

I/R	DATE	DESCRIPTION

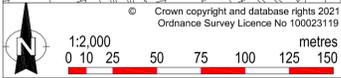
Location Plan

60653817

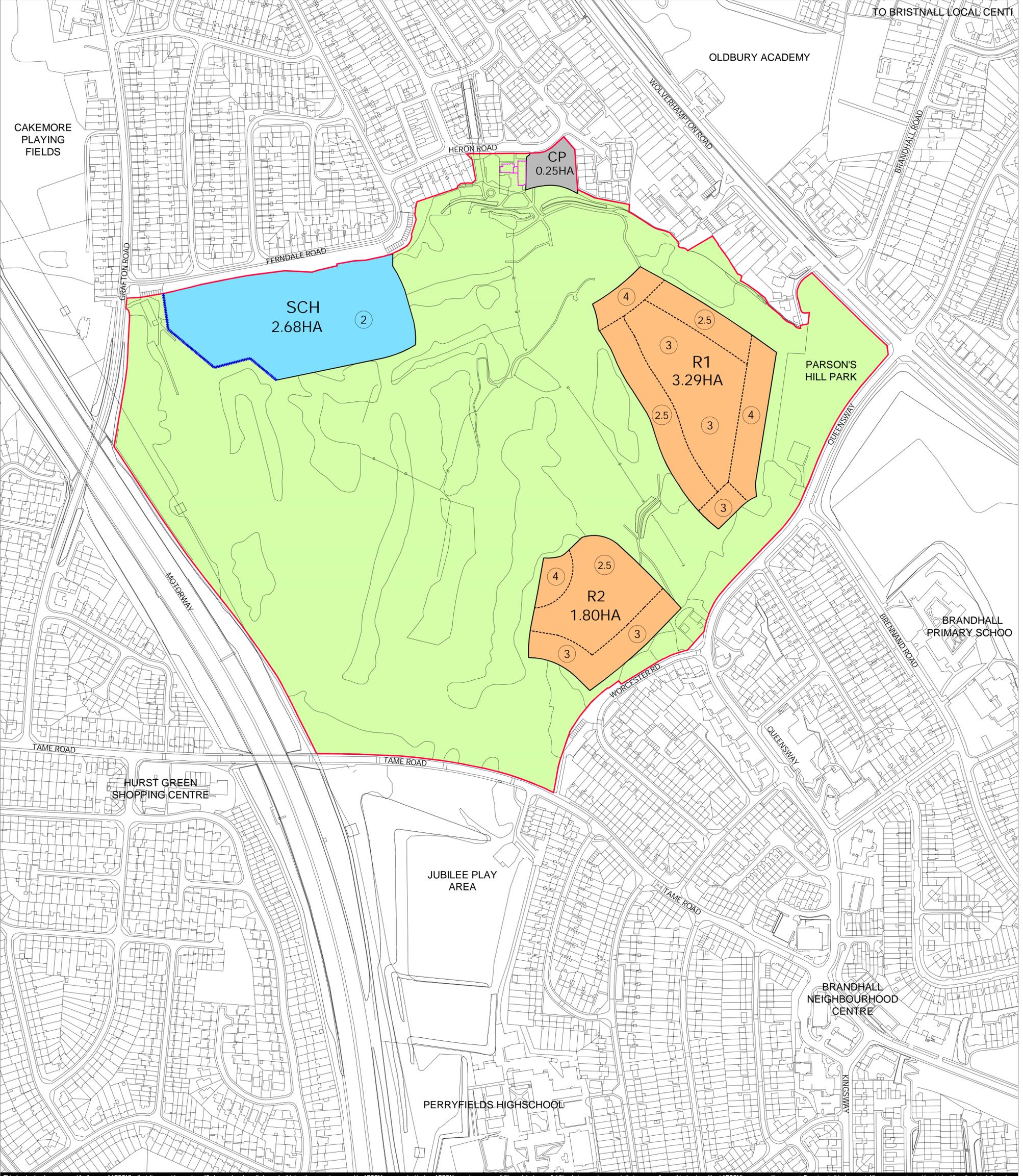
01001

1:2000 @ A1

16/03/23



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AECOM
 1 New York Street
 MANCHESTER, M1 4HD
 +44 (0) 161 601 1700 tel
 +44 (0) 161 601 1799 fax
 www.aecom.com

PROJECT:
 BRANDHALL VILLAGE

CLIENT:
 SANDWELL MBC

SHEET NUMBER:
 04001

PROJECT NUMBER:
 60653817

SCALE:
 1:2,000@A1

DATE CREATED:
 16 / 03 / 2023

KEY

- Planning application boundary (37.15Ha)
- Proposed residential development parcels (5.09Ha)
- Proposed primary school development parcel (2.68Ha)
- Proposed public park plus development infrastructure including access, utilities & drainage (29.13Ha)
- Existing car park area retained (0.25Ha)
- Former golf club house to be demolished (circa 410sqm)
- Proposed maximum building storey height
- Potential location of acoustic barrier

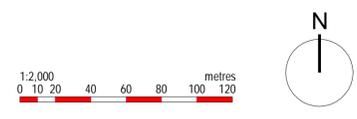
CHECKING/VERIFICATION

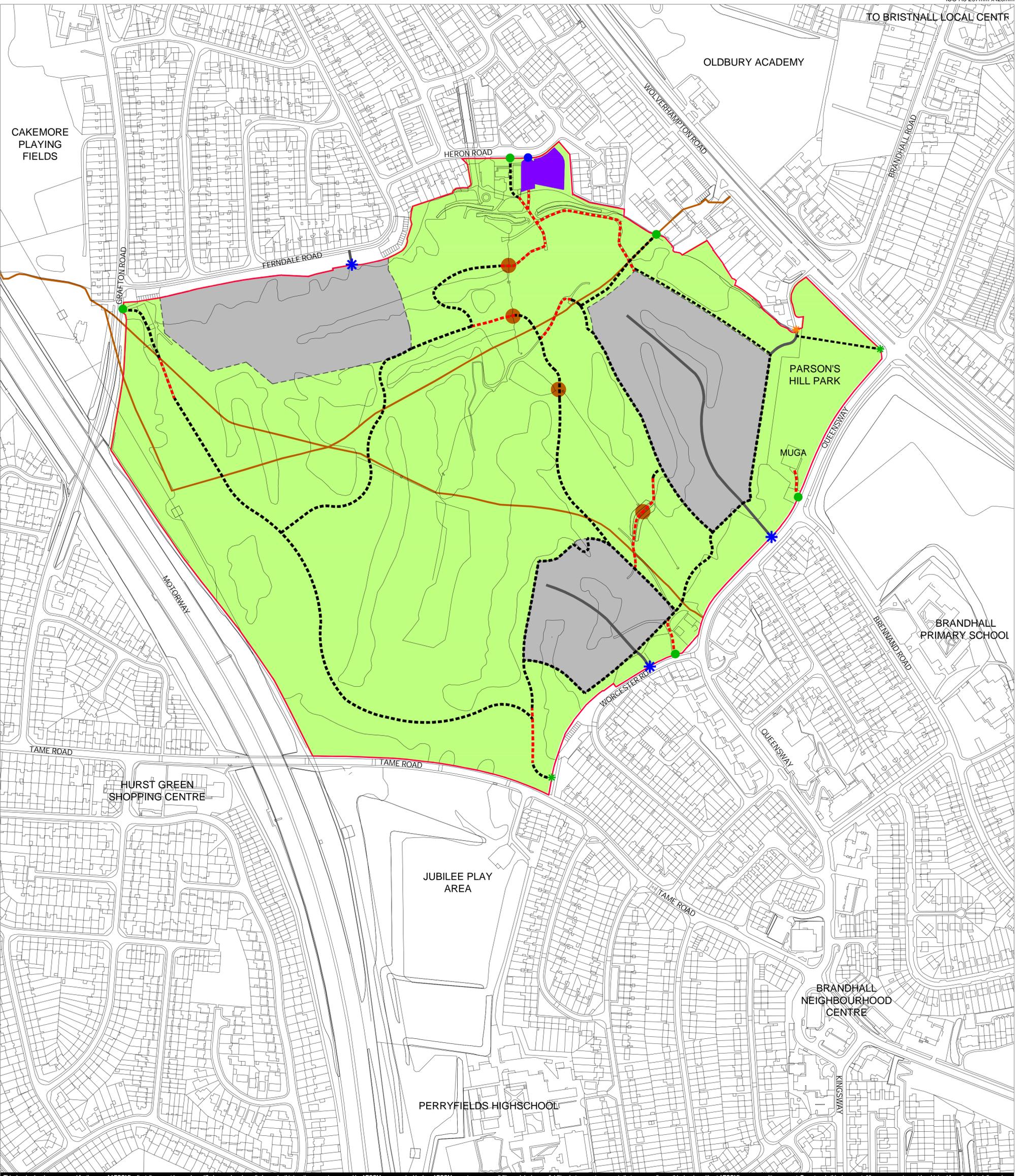
DRAWN:	JG	CHECKED:	LW
VERIFIED:	RG	DATE:	24/04/2023

ISSUE/REVISION

A	DATE	DESCRIPTION
A	24/04/23	Amended Storey Heights
I/R	DATE	DESCRIPTION

SHEET TITLE:
 LAND USE PARAMETER PLAN





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 MANCHESTER, M1 4HD
 +44 (0) 161 601 1700 tel
 +44 (0) 161 601 1799 fax
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PROJECT:
BRANDHALL VILLAGE

CLIENT:
SANDWELL MBC

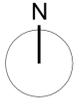
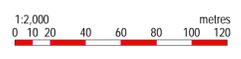
SHEET NUMBER:
 04002

PROJECT NUMBER:
 60653817

SCALE:
 1:2,000@A1

DATE CREATED:
 16 / 03 / 2023

- KEY**
- Planning application boundary
 - Proposed public park (including access & infrastructure)
 - Proposed development parcel
 - Existing Public Right of Way (PROW)
 - Existing foot/cycleway route
 - Potential foot/cycleway route (to be confirmed at detailed design)
 - Potential primary vehicular route (to be confirmed at detailed design)
 - Existing pedestrian access
 - ✱ Potential pedestrian & cycle access (indicative)
 - Existing vehicular access points
 - ✱ Potential vehicular access points (indicative)
 - Pedestrian / cycle bridge
 - ✱ Potential emergency access point (indicative)
 - Existing car park to be retained



CHECKING/VERIFICATION

DRAWN:	JG	CHECKED:	LW
VERIFIED:	RG	DATE:	14/06/2023

ISSUE/REVISION

D	DATE	DESCRIPTION
D	14/06/23	Path updated
C	24/05/23	Paths updated
B	10/05/23	Updated routes for drainage
A	25/04/23	Updated routes & CP
I/R	DATE	DESCRIPTION

SHEET TITLE:
MOVEMENT PARAMETER PLAN



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AECOM
 1 New York Street
 MANCHESTER, M1 4HD
 +44 (0) 161 601 1700 tel
 +44 (0) 161 601 1799 fax
 www.aecom.com

PROJECT:
 BRANDHALL VILLAGE

CLIENT:
 SANDWELL MBC

SHEET NUMBER:
 04003

PROJECT NUMBER:
 60653817

SCALE:
 1:2,000@A1

DATE CREATED:
 16 / 03 / 2023

KEY

- Planning application boundary
- Existing drainage ponds
- Proposed drainage ponds (indicative)
- Proposed public park (plus development infrastructure)
- Existing trees to be protected & retained
- Existing trees to be removed within development parcels
- Potential existing trees to be removed to accommodate development access & infrastructure (to be confirmed at detailed design stage)
- Potential areas for replacement tree planting
- ★ Veteran Trees to be protected & retained
- ✱ Existing MUGA
- Existing watercourses
- Foot/cycleway routes (to be confirmed at detailed design)
- Proposed development parcel
- Existing car park area

1:2,000 metres
 0 10 20 40 60 80 100 120

N

CHECKING/VERIFICATION

DRAWN:	JG	CHECKED:	LW
VERIFIED:	RG	DATE:	14/06/2023

ISSUE/REVISION

I/R	DATE	DESCRIPTION
D	14/06/23	Retained trees added
C	24/05/23	Ponds and paths updated
B	10/05/23	Ponds and paths updated
A	25/04/23	Drawing updated

SHEET TITLE:
 GREEN INFRASTRUCTURE PARAMETER PLAN



Heron Road

Wolverhampton Road

Ferndale Road

Primary School

Brandhall Park

Brandhall Brook

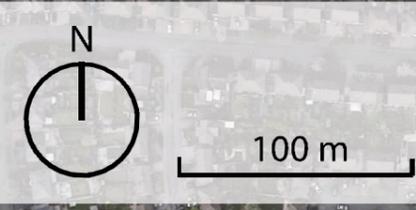
M5

Tame Road

Worcester Rd

Queensway

Queensway



AECOM

Date 27/06/2023
Title Illustrative Masterplan

Report to Cabinet

16th November 2022

Subject:	Brandhall – Options, referral of decision back to Cabinet following Budget and Corporate Management Scrutiny Board.
Cabinet Member:	Councillor Hughes - Cabinet Member for Regeneration & Growth
Director:	Tony McGovern, Director Regeneration & Growth
Key Decision:	Yes
Contact Officer:	Tammy Stokes tammy_stokes@sandwell.gov.uk Sue Moore sue_moore@sandwell.gov.uk

1 Recommendations

- 1.1 That Cabinet reconsider, and confirm or amend, the decision of the 20th July 2022 made in relation to Brandhall – Options.

2 Reasons for Recommendations

- 2.1 In accordance with the Council’s Scrutiny Procedure Rules, the Budget and Corporate Management Scrutiny Board at their meeting on the 8th August 2022, referenced the decision in relation to the Brandhall - Options back to Cabinet for reconsideration. Cabinet are required to consider amending the original decision or not, before adopting a final decision.



- 2.2 On Monday, 25 July 2022, the Council received a 'call-in' notification from Councillor Fenton, Chair of the Safer Neighbourhoods and Active Communities Scrutiny Board.
- 2.3 The Budget and Corporate Management Scrutiny Board met on 8th August 2022 and considered the 'call-in' notice as submitted by Councillor Fenton. A number of stakeholders were invited to attend including the relevant Cabinet Members and the Friends of Brandhall Greenspaces Action Group. A Response to Call-In Report was prepared for the Scrutiny Board and this is appended at Appendix A to this report.
- 2.4 Following consideration of the above report, questions from Scrutiny Members being asked of the Cabinet Member for Regeneration and Growth and technical officers, and debate the Scrutiny Board voted unanimously and resolved to recommend the following to Cabinet:

The Budget and Corporate Management Scrutiny Board recognises a number of conflicting issues in relation to the Brandhall site, however, does not believe that these are insurmountable. The Board, has however, determined that the decision of Cabinet be referred back for reconsideration. The Board concluded that the information utilised by Cabinet in reaching its decision may have been incomplete in that:

1. The Strategic Housing Land Availability Assessment (SHLAA) for the site was omitted from the report; and Cabinet may wish to satisfy itself that the correct process and methodology was followed in relation to the comparable assessment of the site;
2. There is insufficient information contained in the report to confirm that alternative site options for the delivery of a new school have been fully explored, for example Cakemore playing fields does not appear to have been considered;
3. There is insufficient explanation given with regard to how the public consultation results, particularly with regard to residents' views. have been evaluated and weighted in reaching the decision.

In addition to the findings and recommendations of the Board, Cabinet are requested to note that a report on the financial analysis for the site will be considered at a future meeting of the Budget and Corporate Management Scrutiny Board.



3 How does this deliver objectives of the Corporate Plan?

	<p>Strong resilient communities</p> <p>Objective B9 within the Corporate Plan (2021 – 2025) is: We will provide enough good school places that offer families choice and confidence that their children can experience high quality education and achieve good outcomes.</p> <p>Whilst the provision of a new school on Brandhall will not increase pupil places it will create a high quality educational facility that will support high quality education and better outcomes for children.</p>
	<p>Quality homes in thriving neighbourhoods</p> <p>Objective H1 within the Corporate Plan (2021-2025) is: We will deliver much needed new homes across the borough, especially affordable homes, on our own land and other viable sites in order to help meet the demand for affordable housing in our communities</p> <p>Options 3 and 4 would deliver new housing including a minimum 25% affordable.</p>
	<p>A strong and inclusive economy</p>
	<p>A connected and accessible Sandwell</p>

4 Context and Key Issues

4.1 Background

4.2 As set out in Section 2 above, Budget and Corporate Management Scrutiny Board has recommended that Cabinet reconsider its decision made on 20th July 2022. The Board concluded that the information utilised by Cabinet in reaching its decision may have been incomplete in that;



1. The SHLAA for the site was omitted from the report and Cabinet may wish to satisfy itself that the correct process and methodology was followed in relation to the comparable assessment of the site;
2. There is insufficient information contained in the report to confirm that alternative site options for the delivery of a new school have been fully explored, for example Cakemore playing fields does not appear to have been considered;
3. There is insufficient explanation given with regard to how the public consultation results, particularly with regard to residents' views. have been evaluated and weighted in reaching the decision.

4.3 This report considers each of the three points above in turn.

Issue 1: The SHLAA for the site was omitted from the report and Cabinet may wish to satisfy itself that the correct process and methodology was followed in relation to the comparable assessment of the site

4.4 The Strategic Housing Land Availability Assessment (SHLAA) was not included with the report of 20th July 2022 as it was not considered material to the decision before Cabinet. There are two reasons for this. These are discussed in detail below; but, in short, they are that:

- 1) The preparation of the SHLAA is one of the many processes carried out by the Council, in performing its statutory role as Local Planning Authority. The SHLAA's sole purpose is to provide evidence to support the preparation of the statutory Local Plan. It is not, in itself, part of the Local Plan, and it is not taken into account when considering applications for planning permission.
- 2) When taking the decision on 20th July 2022, the Cabinet was acting, on behalf of the Council, as land owner. It should be stressed that the decision:



- is not an exercise of any statutory function of the Local Planning Authority;
- does not constitute a Planning Consent;
- does not result in the site being allocated in the statutory Local Plan.

4.5 The SHLAA is a broad overview of the sites, and broad locations within the borough, which have the *potential* to be developed for new housing. This is in order to provide a complete audit of available land, in accordance with paragraph 010 of the National Planning Policy Guidance (NPPG). The sites and broad locations are assessed to determine if they are suitable, available and achievable.

4.6 The result is a document that identifies the future supply of land for housing development including whether a 5-year supply is available or not. It is an important source of evidence to inform plan-making. The document lists all of the sites that are considered suitable, available and achievable and along with those sites that are no longer considered suitable or available. The document lists:

- all sites that are considered suitable, available and achievable;
- all sites that are no longer suitable or available.

4.7 The SHLAA document contains a single line entry relating to the former golf course. The information included in the appendices to the July Cabinet report constitutes a significantly more detailed assessment of the site than that which underpins the inclusion of sites in the SHLAA. The current SHLAA is included in full at Appendix B.

4.8 The National Planning Policy Framework (the NPPF) states in Section 68 that *“Strategic policy-making authorities should have a clear understanding of the land available in their area through the preparation of a strategic housing land availability assessment. From this, planning policies should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability.”*



4.9 The NPPF therefore sees the role of the SHLAA as a technical document which:

- provides an indication of the future supply of land that is suitable, available and achievable for housing;
- provides an indication of the housing capacity of those sites at local authority level;
- is an exercise to determine the quantity and suitability of land potentially available for housing development;
- is not a site allocations exercise;
- has the purpose of providing a robust indication of aggregate housing capacity at local authority level.

4.10 This is set out in NPPG para 001 which states *“the assessment does not in itself determine whether a site should be allocated for development. It is the role of the assessment to provide information on the range of sites which are available to meet the local authority’s (or, where relevant, elected Mayor or combined authority) requirements, but it is for the development plan itself to determine which of those sites are the most suitable to meet those requirements”*.

4.11 The SHLAA is used to inform the development of planning policies which should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability. The SHLAA itself is not adopted planning policy of the Council. Also, the presence of a site in the SHLAA neither infers that it will be allocated in the Local Plan, nor that it would receive planning permission. It is however, a key piece of evidence that supports the preparation of the Local Plan.

4.12 The NPPF does not set out a standard methodology to be used before sites are added to the SHLAA. However, guidance is provided via the Government’s website:

<https://www.gov.uk/guidance/housing-and-economic-land-availability-assessment#what-is-the-purpose-of-the-assessment-of-land-availability>.

4.13 The SHLAA is also not a process for comparing sites against each other. It is a qualitative assessment to identify all sites and broad locations,



regardless of the identified housing need – this is in order to provide a complete audit of available land (NPPG para 010). There is no scoring or ranking involved. All sites are considered against the SHLAA criteria, independently of each other, in order to determine if a site is included or not. To be included in the SHLAA a site must be considered ‘Suitable’, ‘Available’ and ‘Achievable’.

4.14 The NPPG states that assessments of sites should be proportionate, and, where possible, build on existing information (para 004). It continues to advise that SHLAAs should:

- identify sites and broad locations with potential for development;
- assess their development potential;
- assess their suitability for development and likelihood of development coming forward (i.e. availability and achievability - para 001).

It stresses that when carrying out a desktop review, local authorities need to be proactive in identifying as wide a range of sites and broad locations for development as possible. It continues that an important part of the desktop review is to identify sites and their constraints, rather than simply to rule out sites outright which are known to have constraints. When considering the types of sites that should be reviewed, para 011 lists potential sources including land in the local authority’s ownership; and other public-sector land that is surplus, or likely to become surplus.

4.15 In Sandwell, the basis for the assessments is a checklist of factors that influence whether or not a site meets the three SHLAA criteria of being suitable, available and achievable. However, the checklist itself is not a requirement of national policy or guidance. Assessments for sites that have a capacity of less than 10 homes (para 4.11 SHLAA methodology) have not been undertaken, as they are out of scope of the methodology.

4.16 Furthermore, sites in existing development plans, or with planning permission, have not had an assessment as they can generally be considered suitable and available for housing. The reason for this is that the principle for residential development has already been established and approved by a Planning Inspector or the Local Planning Authority (NPPG para 018).



4.17 Where information is available that demonstrates a change in circumstances in those allocated sites, this will be reflected in the SHLAA. This was the case with a significant number of occupied employment sites allocated for housing in the Site Allocations & Delivery Plan (the SAD). Through evidence gathering for the Black Country Plan (BCP), letters were sent to these landowners to understand their future aspirations for their site. Where the landowner advised that they no longer wanted their site to be a housing development, and/or that they had invested in the site for other uses (i.e. employment), these sites were then considered to be no longer suitable/developable, as the landowner is no longer a 'willing landowner'. These sites, therefore, were removed from the current housing land supply, and were placed in the no longer suitable/developable table in the SHLAA (NPPF Annex 2 Glossary).

4.18 Should Cabinet decide that the Brandhall site should not include any form of housing development, then this would mean that there would no longer be a 'willing landowner'; and, therefore, it would not be suitable, available and achievable for housing any longer. This would be reflected in the SHLAA by removing it from the current housing supply table and placing it in the no longer suitable/developable table, as per the above mentioned occupied employment sites.

4.19 The SHLAA is updated on an annual basis to reflect any changes, such as:

- whether construction has started on site,
- to remove sites where construction has completed or planning permission has expired,
- where it is considered that there is no reasonable prospect of an application coming forward for the use allocated in the plan.

It also advises on timelines for when development is estimated to begin and finish, and this is fed into the SHLAA trajectory.

4.20 As per the NPPG, para 004, the assessment can be based on, or build on, existing information sources. In order to understand whether the



Brandhall site met the SHLAA suitability, availability and achievability criteria, existing information gathered was used to inform the 27th May 2020 report to Cabinet, as this largely covered the matters in the checklist, with any remaining issues being addressed through an informal desk-top assessment.

4.21 A summary using the checklist provides the following:

Suitability:

The Site:

- Will re-use land that is a mix of greenfield/previously developed land (pdl) with <50% pdl
- Is accessible – within 800m to a Local Centre; 2000m to a District Centre; 5000m to a Town Centre/within 2000m of a super store, 600m of a primary school and 1000m of a GP surgery/within one of the following 600m of a bus showcase route, or 800m of a railway station, 400m of a metro stop, proposed metro stop/ located 30 minutes public transport from hospital, secondary school, areas of employment, major retail centre, leisure centre
- Location is partially covered by a SLINC* but mitigation is possible
- Access already exists
- Is unaffected by infrastructural limitations
- Is affected by ground conditions - but not to a significant extent
- Includes a small area in Flood Zone 3 – but this does not affect development potential
- Is not affected by hazardous risk or contamination pollution issue
- Is affected by road noise/unneighbourly uses/power lines to a lesser extent.

When all of the above is taken into account the site is considered “*suitable*” for housing development.

Availability:

The Site:



- Is not considered to have insurmountable constraints
- Is controlled by a public authority
- Site could be available within the next 5 years
- Only has one owner
- Is constrained by a legal matter but this is capable of resolution
- Has been subject to an internal consultation

When all of the above is taken into account the site is considered “**available**” for housing development

Achievability:

The Site:

- Uses adjacent to the site are likely to have a marked positive affect on the marketability of the site
- The economic viability of the existing use of the site makes developing of the site for housing a desirable option
- Allows no clear judgement to be made regarding the economic viability of alternative use, compared to re-use for housing
- In terms of attractiveness of site location has a marked positive effect on developing and marketing of the site for housing
- Market demand is strong, in this location, for the proposed type of housing development
- Preparation costs are judged to be average/expected
- Has Funding or investment available to address an identified constraint to development
- Has no information available on the phasing of development
- Development is unlikely to be constrained or delayed by the number of developers on site
- Will have the necessary infrastructure in place to permit development of the site

When all of the above is taken into account the development of the site for housing is considered to be “**achievable**”.



* Site of Local Importance for Nature Conservation. The entry on SHLAA was based on the SLINC status in 2020 i.e. prior to the Ecological Assessment that recommended the larger SLINC that was covered by the 20th July report to Cabinet.

- 4.23 The site, having been assessed as being suitable, available and achievable, the next step in the methodology is to identify the development potential of the site. This information, together with all the other sites identified as suitable, available, achievable, is then used to produce an indicative trajectory. This sets out how much housing can be provided and to what timescale i.e. within years 1-5 (as part of the 5-year supply); years 6-10; and 11 years and beyond.
- 4.24 During Autumn 2020, a Black Country SHLAA stakeholder workshop was held with around 50 attendees from the development industry. Attendees were invited to join a Black County SHLAA Stakeholder Panel which included house builders, consultants, WMCA, Homes England and Black Country Consortium Ltd. A meeting of the Panel took place on 24 February 2021, to discuss and provide comments on the draft 2020 SHLAA reports/tables of sites; and to feed into the final published reports. No suggested amendments were received.
- 4.25 The NPPG advises that where the conclusions of the trajectory are that the identified sites are insufficient to meet the local need, then authorities will need to revisit their assessment to ensure that the development potential of particular sites make the most efficient use of land.
- 4.26 The SHLAA must be publicly available and can be used to demonstrate whether there is a 5-year housing land supply when preparing Local plans; and in planning decision taking.
- 4.27 The presence of the former golf course at Brandhall on the list of sites in Sandwell's SHLAA merely provides an indication that, in broad strategic terms, the site is suitable for residential development. Also, when considering the known planning constraints (as at Summer 2020) it has a notional capacity of 560 units, again based on those same constraints. As stated previously, however, the SHLAA is not part of the Local Plan, nor does it have any status as a planning policy document. It follows that the site's inclusion in the SHLAA does not constitute a Local Plan allocation,



nor does it have any bearing when considering the planning merits of the site when determining whether planning permission should be granted.

- 4.28 Once it had been established that the site is suitable for residential development, its inclusion in the SHLAA provides an evidential basis for the site to be considered for allocation in a future Local Plan review. It was also included in the draft Black Country Plan (BCP), that was consulted on in 2021.
- 4.29 Since Cabinet considered the Brandhall site at its meeting on 20th July 2022, the Association of Black Country Authorities has decided not to proceed with the BCP; and that the four local authorities will now prepare individual Local Plans instead.
- 4.30 It should be noted, however, that the draft and un-adopted status of the BCP, at that time, means that it would not have carried any weight in any consideration of the Brandhall site through a planning application. It was not a matter therefore, that Cabinet had to take into account when reaching its decision.
- 4.31 In fact, whatever decision Cabinet takes on how to proceed, ultimately, will have to be taken into consideration in the forthcoming preparation of Sandwell's new Local Plan. It will also be reflected in subsequent updates of the SHLAA - either by listing the site in the current housing supply (if housing development is still proposed); or by stating the site is no longer suitable/developable for housing (if housing development is not proposed).
- 4.32 At a special meeting of the Budget and Corporate Scrutiny Management Board held on 8th August 2022, a representative of the Brandhall Green Space Action Group (BGSAG) made reference to a published site assessment for a site at Water Lane, West Bromwich. The representative claimed that this assessment template, when applied to Brandhall, would include several 'red' RAG ratings - the inference being that an assessment of the Brandhall site, carried out in this form, would result in the site not being included in the SHLAA.



4.33 The assessment that the BGSAG representative referred to, however, is a BCP site assessment proforma. The BCP site assessment process existed to help inform the preparation of the Plan. That process was completely separate to the SHLAA, and was also independent of it. The BCP site assessment process was applied only to those sites submitted through the 'Call for Sites', which included:

- those that were not already allocated in existing Plans;
- those not included in existing SHLAAs;
- all of the Green Belt parcels that the Green Belt Review considered had the potential for release (noting that the Brandhall site is not part of the Green Belt).

This is in accordance with the BCP Site Selection Methodology, para 2.4: <https://blackcountryplan.dudley.gov.uk/t2/p4/t2p4/>

4.34 To put this into context, the draft BCP included 46 sites in Sandwell, of which, only 5 were taken through the site assessment process. The remainder are existing allocations or sites that have been added to the SHLAA since the current Site Allocations & Delivery Plan was adopted in 2012. Across the Black Country as a whole, 280 sites were included in the draft BCP of which, only 73 were taken through the site assessment process. Of the 280 total, there were 35 new sites (including the Brandhall site) proposed for allocation, as a result of their inclusion in the respective Local Authority SHLAAs; and which were not subject to a BCP site assessment.

4.34 As the former golf course site was already included on Sandwell's SHLAA list, it was not taken through the BCP site assessment process, prior to the 2021 Draft Plan consultation. This was consistent with the approach taken by all four Black Country authorities and the BCP Site Assessment Methodology. If such an assessment had been done, however, it would have been based on much of the same information available to Cabinet when reaching its decision on 20th July 2022. It is considered that this would **not** have resulted in the site being RAG rated as 'red', thus leading to a recommendation that the site be taken forward for proposed allocation in the BCP. The more recent survey information, in particular that relating to ecology, would have required a partial review of that assessment, but it is considered that this would not have changed the result, materially.



- 4.35 In summary, the SHLAA is a technical document intended to provide no more than a broad indication of a site's potential for development. It is worth repeating that the SHLAA is not part of the process for determining planning applications; and (beyond its role as evidence to support the preparation of the Local Plan) nor is it part of any other planning decision making process. Furthermore, there is no requirement for any landowner (including the Council when acting in this capacity) to have regard to the SHLAA when coming to a decision whether or not to seek planning permission to develop the site. The Cabinet was acting in its capacity as landowner, on behalf of the Council, when coming to its decision at the meeting on 20th July 2022.
- 4.36 That decision was not a planning consent, nor did it allocate the site for housing in the Local Plan. This could only occur through the Council's formal and statutory discharge of its functions as Local Planning Authority, which is laid down in legislation, and in supporting regulations and guidance. The SHLAA is part of the process for discharging these functions, but as stated previously, the site's inclusion in the SHLAA does not in itself infer that it would be allocated for housing, or that a planning consent would be granted.
- 4.37 Furthermore, the information provided to Cabinet on 20th July was both broader in scope, and greater in depth than that which informs the SHLAA. As such, Cabinet was recommended to consider the approach to the site based on more robust, and more recent, evidence than that which underpins the SHLAA.
- 4.38 For the reasons set out in paragraphs 4.29 to 4.31, the SHLAA is not considered to be material to the decision that Cabinet reached on 20th July 2022.
- 4.39 The SHLAA is updated annually in order to ensure that it is based on the most up-to-date information. The next annual update will reflect whatever decision Cabinet makes in relation to the future of the former Brandhall Golf Course site.



4.40 Any future planning application for the site that is submitted (as a result of the Cabinet's decision) will be independently considered by Planning Committee. It will be judged against the planning merits of the application, which will include the provisions of the adopted Local Plan at the time of the application. Until such time as a new Local Plan is adopted, this remains a combination of the Black Country Core Strategy (2011) and Sandwell Site Allocations & Delivery DPD (2012), neither of which include the Brandhall site as a residential allocation.

4.41 Issue 2: There is insufficient information contained in the report to confirm that alternative site options for the delivery of a new school have been fully explored, for example Cakemore playing fields does not appear to have been considered.

4.42 Cakemore Playing Fields is located off Grafton Road, to the north of the Brandhall Site. It is approximately 5.87 hectare in area.

4.43 The Playing Fields are not designated in the Local Plan as Community Open Space, but the site is used for football (including changing facilities), and other sports, and is managed by the Council's Parks service. The site is a designated as a wildlife corridor, and, in the Green Space audit, is rated as High Quality/High Value.

4.44 The draft Playing Pitch Strategy (yet to be adopted formally by Cabinet) identifies the playing fields as two mini (7-a-side) football pitches; two youth (9-a-side) pitches; and two mini (5-a-side) pitches. The draft strategy includes the following recommendations for the Cakemore Playing Fields site

- to protect the existing supply of pitches,
- to enhance the site through improving quality and management,
- to provide new facilities.

4.45 There are also some initial proposals, put forward by Oldbury United FC, to provide further pitches and improve the existing pitches on site. The existing youth pitches are 'overplayed' by four match equivalent sessions per week; and, at peak time, the mini-pitches are played to capacity. This



demonstrates the high demand for the playing fields at Cakemore Playing Fields, which means that any loss of pitches would have to be re-provided, in accordance with Sport England requirements. Re-provision of playing pitches would create an additional budget pressure and further monies would have to be identified. There is also a deed, between the Council and the National Playing Fields Association, covering a large proportion of the site. This requires the site to be retained as playing pitches, unless the Council secures express consent for alternative uses.

4.46 With regards to ground conditions, historically, the site was occupied by a large marl pit, which was subsequently infilled with unknown materials. More recently, in the early twentieth century, it was the site of a large clay pit associated with the former Cakemore Brick Works and Colliery – again, it would have been infilled with unknown materials.

4.47 A high-pressure gas main traverses the site, north to south, following the alignment of the Motorway. The nature of this gas main is such that any planning applications which fall within its proximity (within the inner, middle and outer consultation zones) requires consultation with the Health and Safety Executive. Also, any development within the consultation zones would be subject to objections from the HSE. This very much limits the area that would be suitable for development, particularly given a primary school would be regarded as a sensitive use by the HSE.

4.48 In 2000, a planning application (Ref DD/00/36881) was approved allowing the construction of passive vent trenches to the rear of properties in Grafton Road. This was due to historic landfill. A plan illustrating the area of landfill (red boundary ref LF0076) is attached at Appendix C; and shows the extent of the site impacted by landfill, as well as the location of the vent trench.

4.49 There is also an electricity pylon on the site that further reduces the developable area; and is also within the area impacted by landfill.



- 4.50 It is high likely, therefore, that the ground conditions and site constraints of Cakemore Playing Fields would be very challenging; and any redevelopment proposals would require extensive and expensive ground remediation measures to render it suitable for built development. This would explain why the site has not been considered for re-development previously.
- 4.51 Apart from the land on Ashes Road, and a site on Grafton Road, (both of which were deemed too small for a new school) no other site in Council ownership has been identified for the relocation of Causeway Green Primary School.
- 4.52 Issue 3: There is insufficient explanation given with regard to how the public consultation results, particularly with regard to residents' views, have been evaluated and weighted in reaching the decision**
- 4.53 Initially, public consultation on the future of the Brandhall site was held between 7th November and 19th December 2019. The Cabinet considered the consultation results at its meeting on 27th May 2020 (minute 36/20 refers), and went on to authorise the development of a masterplan for the site.
- 4.54 The options presented to consultees in 2019 comprised differing arrangements of residential parcels, a school and open space. The main differentiator between the options was the size of the open space provided, which ranged from 4.5 hectares in Option 1, 6 hectares in Option 2, and 8.5 hectares in Option 3. Most respondents stated that they preferred the option with the largest park and fewest houses:
- Option 1: 40 respondents (7.9%)
 - Option 2: 40 respondents (7.9%)
 - Option 3: 428 respondents (84.3%)
- 4.55 On 27th May 2020 (minute 36/20 refers), in accordance with Cabinet's delegation, work progressed to gather the information required to inform a masterplan, based around the spatial principles of Option 3.
- 4.56 As part of the masterplan development process, further public consultation was held in November 2021. The public consultation was



advertised by letter drop, press releases, SMBC e-newsletters, and social media posts. A consultation webpage was also published, to allow consultees to access consultation material and feedback on-line, if desired. Copies of the consultation material were also deposited at Brandhall Library from 1st November; and, following a suggestion by a ward member, the information was deposited at Bleakhouse Library and Langley Library from 17th November.

- 4.57 In addition, a virtual consultation room went live on 8th November - this provided a 360-degree virtualisation of a traditional consultation event, providing all the material available at the in-person events. An in-person public consultation event was held on Tuesday 16th November, which included an early-afternoon session (12:00 to 15:30), and an afternoon/evening session (16:30 to 20:00). A broad range of methods of engagement were used to ensure consultees were given sufficient opportunity to comment on the proposals.
- 4.58 A feedback form (hard copy and electronic) was used to collate the consultation responses, and where comments were provided outside of this process, for example directly by email or letter, they were collated and included in the Consultation Outcome Report.
- 4.59 In total, 487 consultation responses were received. Of these, 436 online feedback form submissions were received, 51 hard copy feedback forms at Brandhall Library, and 10 free-form consultation response were received via email or letter.
- 4.60 The outcomes of the public consultation were set out within the Cabinet report of 20th July 2022, at paragraphs 4.35 to 4.39, and the full Brandhall Village Consultation Outcomes Report (April 2022) was included at Appendix C.
- 4.61 The Consultation Outcomes Report included the responses to each question in the feedback form. Some of the key responses included in the Consultation Outcomes Report are reproduced below (this should be read in conjunction with the Consultation Outcomes Report);
- Do you share the aspirations set out within the vision for Brandhall Village (473 respondents) – 73% No, 20% Yes, 9% Not sure.



- Do you support our proposals for a new publicly accessible park? (458 respondents) – 40% Strongly Support, 14% Support, 12% Neutral, 5% Oppose, 29% Strongly Oppose.
- Do you agree with the proposals to build new homes within Brandhall Village, including a minimum of 25% affordable? (470 respondents) – 83% No, 6% Not Sure, 12% Yes.

4.62 A summary of some of the key themes which emerged from the consultation responses was provided in the Cabinet report of 20th July 2022 and are as follows:

- Some respondents were opposed to any kind of development being built on site, whether this be housing or other constructed development. This included a large number of concerns regarding climate and ecological impacts on flora and fauna through the removal of green space. In addition, there were concerns regarding the potential historical importance of the site. Some respondents called for the site to be made more accessible and preserved as a green space.
- While there were comments that opposed any development of the Site, there was support from many respondents for the inclusion of community facilities within the proposals (including community hub / local park / community café / sports facilities).
- There was some support for the proposed Brandhall Village Vision, although some felt that this should be separate to the development and that plans for the site contradict some of the visions themes.
- Some respondents noted that while they were against the building of houses, they would support proposals to build a new school, although it was mentioned by some that this was less preferable to developing and upgrading existing schools in their original location.
- Many comments were received that opposed the building of homes on the site. Some of the key themes relating to this include wanting to preserve the green space; building houses on the site would remove their access to green space due to the lack of alternative green open space; and that it would put pressure on local services.
- While there were many comments opposing the development of housing on the site, there was some support for housing that was affordable. Other comments related to support for proposals that included sustainable development options, with the consensus being that if housing is to be built, it should be sustainable.



- Some respondents who live on the outskirts of the site had concerns that their privacy would be reduced and also that their property values would reduce through the potential visual impact and loss of views.
- Some respondents called for the site to have less development and a greater proportion of open green space.
- Some respondents preferred the option for higher density housing in a smaller area, in order to preserve more of the green space. Others indicated a preference for lower density housing.
- Many comments indicated that developing the green space could impact on mental and physical wellbeing and have the potential to increase anti-social behaviour.
- Another major theme that emerged from the data was respondents concerns for how the proposed development would impact flooding and drainage issues associated with the Site.
- Other key transport related themes included concerns regarding increased traffic, parking requirements, potential for increase in road accidents and associated traffic pollution.

4.63 In response to the consultation outcomes two steps were taken, as follows:

- 1) Given the extent of concern raised at the public consultation, officers paused the development of the masterplan and prepared an 'Options' report for Cabinet to enable Cabinet Members to consider the preferred option for the Brandhall Site, which included a 'do-nothing' option.
- 2) Additional technical work was commissioned, in order to give more confidence in the deliverability of the options; and to provide more certainty to members across some of the key themes that were raised during the consultation.

4.64 In making their decision, Cabinet had full access to all the public consultation outcomes through the Brandhall Village Consultation Outcomes Report.

4.65 Cabinet were required to weigh the views of residents and consultees (as set out in the report) against the technical considerations and the



strategic needs of the Borough in order to determine the preferred option.

4.66 The strategic needs of the Borough included the following:

- the need to replace Causeway Green Primary School, given its current condition (para 4.13 to 4.22 of the 20th July 2022 Cabinet Report refers);
- the strategic housing needs of the Borough (para 4.23 to 4.29 of the 20th July 2022 Cabinet Report refers); and
- the open space needs of the Borough in relation to creating a publicly accessible park (para 4.30 to 4.34 of the 20th July 2022 Cabinet Report refers).

4.67 In this context, the ‘Gunning Principles’, which set out principles in relation to consultation, are relevant. They were coined by Stephen Sedley QC in a 1985 court case, relating to consultation on a school closure (R v London Borough of Brent ex parte Gunning). Sedley defined that a consultation is only legitimate when these four principles are met:

1. Proposals are still at a formative stage

A final decision has not yet been made, or predetermined, by the decision makers.

2. There is sufficient information to give ‘intelligent consideration’

The information provided must relate to the consultation and must be available, accessible, and easily interpretable for consultees to provide an informed response.

3. There is adequate time for consideration and response

There must be sufficient opportunity for consultees to participate in the consultation. There is no set timeframe for consultation,¹ despite the widely accepted twelve-week consultation period, as the length of time given for consultee to respond can vary depending on the subject and extent of impact of the consultation.

4. ‘Conscientious consideration’ must be given to the consultation responses before a decision is made

Decision-makers should be able to provide evidence that they took consultation responses into account.



4.68 Conscientious consideration is relevant as it requires Cabinet to demonstrate that the consultation outcomes were taken in to account in informing their decision.

4.69 Given the information contained in the 20th July 2022 Cabinet Report; the introductory comments made by the Cabinet Member for Regeneration and Growth at that Cabinet meeting (relevant extract in italics below); and the fact that the consultation report was summarised (and included in full as an appendix) within the report, it is considered that Cabinet had all the relevant information required to enable Cabinet Members to give ‘conscientious consideration’ to the matter, as part of the decision making process.

“As mentioned, the options have been put together following public consultation held in November 2021, which showed little public support for the proposals to develop a school and new homes on the site. There were just under 500 responses to the public consultation, and the results of each question are included in the consultation outcome report in your papers.

The Cabinet has a very difficult decision to make today, as we need to balance a number of considerations.

The consultation report demonstrates that public support for any built development on the site is limited, and the large majority of residents responding to the public consultation are keen to see the site retained in its entirety for open space and nature conservation. It is Cabinet’s role today to consider the options for the site, whilst taking in to account the outcomes of the consultation, the technical considerations, and the wider strategic objectives of the Council as set out in the Councils Corporate Plan.”

4.70 The preferred option determined by Cabinet on 20th July 2022, Option 3, provides for just under 70% of the site to be retained as a public park; with the remainder of the site being developed for a replacement school and circa 190 new homes. Option 3 therefore enables the site to contribute to the strategic needs of the Borough, whilst also retaining



and protecting a significant proportion of the site as green-space, through the creation of a new public park.

5 Alternative Options

- 5.1 In accordance with Scrutiny Procedure Rules, Cabinet must consider whether to amend its original decision before confirming a final decision.

6 Implications

Resources:	The resource implications were set out in the 20 th July 2022 Cabinet report. There are no additional resource implications resulting from the additional information within this report.
Legal and Governance:	Legal implications were set out in the 20 th July 2022 Cabinet report. There is a requirement for Cabinet to take in to account consultation responses within their decision-making process.
Risk:	Risk matters were set out in the 20 th July 2022 Cabinet report. There are no additional risks as a result of the information set out in this report. Judicial Review of any decision of Cabinet could be pursued if the grounds for Judicial Review are met.
Equality:	Equality implications were set out in the 20 th July 2022 Cabinet report. There are no additional equality implications arising as part of this report.
Health and Wellbeing:	The health and wellbeing implications of the proposals were set out in the 20 th July 2022 Cabinet report. There are no additional equality implications arising as part of this report.
Social Value	The social value considerations relating to the proposals were set out in the 20 th July 2022 Cabinet report.



	There are no additional social value implications arising as part of this report.
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7. Appendices

Appendix A: Response to Call-In report

Appendix B: Strategic Housing Land Availability Assessment

Appendix C: Cakemore Playing Fields Area of Landfill

8. Background Papers

Cabinet report 20th July 2022

Cabinet report 27th May 2020

