
Committee Date:	13/06/2013	Application Number:	2012/08409/PA
Accepted:	20/03/2013	Application Type:	Full Planning
Target Date:	19/06/2013		
Ward:	Ladywood		

16-18 Horse Fair, Birmingham, B1 1DB

Change of use from offices (Use Class B1) to 70 no. rooms for student accommodation (Sui Generis)

Applicant: Fordgate Ltd
1 Allsop Place, London, NW1 5LF
Agent: TAL ARC Ltd
7 Golders Park Close, No 2 Basement Level, London, NW11 7QR

Recommendation

Approve Subject To A Section 106 Legal Agreement

1. Proposal

- 1.1. The proposal is for the conversion of an existing 6 storey vacant office building (B1(a)) into 70 student flats (Sui Generis).
- 1.2. In terms of layout, at ground floor level onto Horse Fair would be the main entrance and reception with bicycle storage. A security/ admin office would be above this at first floor level. Due to level changes between Horse Fair and Bow Street and the use of the lower floors by the O2 Academy, the main element of the office building does not begin until the second floor. At second floor level would be a 152 sq m communal lounge and laundry area, with refuse storage and a separate rear access off Bow Street.
- 1.3. From the third to seventh floors, 14 flats would be located on each level, along with a 12.1 sq m communal kitchen area. Each individual student flat would have an en suite bathroom, storage space and a kitchenette. Room sizes would range from 25.6 sq m up to 38 sq m for the five disabled rooms proposed (one on each level). Typical room sizes would be effectively reduced by approximately 3 sq m if detailed plans for noise and vibration mitigation, discussed further, would be carried out. No external works are proposed for the building.
- 1.4. The agent has stated that the building would have a 24 hour concierge service and security personnel on site, provided by a dedicated student accommodation management agency. Residents would also be issued with swipe card access to the building and communal facilities, with student arrival and departures staged over consecutive weeks to minimise disruption. No car parking spaces are proposed, with 60 secure cycle racks, along with a dedicated cycle access door onto Horse Fair, proposed on the ground floor.
- 1.5. A detailed noise and vibration survey has been provided, with additional details supplied during the course of the application following comments from both Regulatory Services and the adjoining O2 Academy. Further supporting information

provided includes a student accommodation market report, a building management plan, traffic management plan and travel plan.

- 1.6. The applicant has offered a sum of £17,500 towards public transport improvements in the City Centre or the City Centre Wayfinding scheme.

2. Site & Surroundings

- 2.1. 16-18 Horse Fair (St James House) is a 6 storey, 1970s office building constructed partly on top of the former Dome nightclub, now the O2 Academy. The building has a regular grid like pattern of fenestration contained within projecting concrete bays, with its main pedestrian access off Horse Fair and a secondary access off Bow Street to the west. Horse Fair itself is part of the A38 and, with Suffolk Street Queensway, is effectively an eight lane highway.
- 2.2. Adjoining and immediately to the south of the application site is the O2 Academy, a live music venue and nightclub with three separate performance rooms. The main access and smoking area of the Academy is immediately beneath the application site. To the north is a multi-storey car park used to store rental cars and to the west, on the opposite side of Bow Street, are the Samaritans offices with residential apartments adjacent to this.

3. Planning History

- 3.1. -None at office building itself, but at adjoining nightclub -23/02/09- 2008/06409/PA- External alterations to include alterations to roof, entrance/escape doors, erection of a full length canopy, landscaping to Irving Street and repairing of Bristol Street under the proposed new canopy- Approved.

4. Consultation/PP Responses

- 4.1. Regulatory Services- Concerned about the proposal as noise and disturbance will create poor amenity for future occupiers which will cause complaints and in turn would have an adverse impact on the operations of the adjacent O2 Academy operations. The noise assessment indicates that the area is severely affected by noise from road traffic and from activities associated with the O2 Academy. Satisfactory mitigation has not been proposed. Historically, complaints have been received from residential occupiers at Bow St, Irving St and Clydesdale Tower about the O2 Academy. The proposal is closer than any of those premises and the impacts on the occupiers would therefore be more disturbing. The number and severity of the complaints would likely require the service of an abatement notice or other regulatory action, which may not necessarily resolve the problems.
- 4.2. Transportation Development- No objections subject to conditions regarding a parking management plan (picking up and dropping off at the beginning/ end of terms), Travelwise affiliation and provision of the secure cycle storage shown.
- 4.3. WM Police- No objections, recommend the scheme is converted incorporating enhanced security standards as set by Police Crime Reduction initiative *Secured by Design*.
- 4.4. WM Fire Service- Details of fire fighting access and fire fighting arrangements required. Water supplies for firefighting should be in accordance with the National Guidance Document on the Provision for Fire Fighting.

- 4.5. Statutory site notices posted, application advertised in press, surrounding occupiers, ward councillors, MP, residents associations and Southside BID notified- One comment received.

-Live Nation, the operators of the adjoining O2 Academy have objected to the proposal. However they have stated that they are in dialogue with the applicant regarding appropriate sound mitigation measures. The O2 has a premises licence until 4am Monday to Thursday and until 6am Friday to Sunday, with the three venues in the O2 having a total capacity of 3,859 and over 335,000 people projected to attend the venue this year alone. Loading and unloading of stage sets, lighting and other equipment regularly generates noise on Bow Street until 12:30am. They share a party wall with the application site, with some parts of the venue located directly beneath the proposed bedrooms, leading to an inevitable transfer of noise and vibration. Licensing activities will be compromised by complaints from neighbouring occupiers, putting the existing and future operation of the venue in jeopardy.

The noise survey submitted by the applicant shows that the noise levels are so extreme in one of the measurements areas that planning permission should normally be refused and recommends upgrading the floor space between the venue and the site above, but does not go into any details and fails to consider the effect such works would have on the operation of the O2. Three elements of caselaw have been cited to illustrate that legitimate concerns of owners and occupiers of existing buildings are matters which the planning authority should take into consideration when determining applications of this nature.

The O2 are further concerned over the impact of the proposal on their entrance/ exit arrangements as the main entrance to the application site would potentially be blocked by people queuing and leaving the O2. The proposed student accommodation would cause traffic management issues in the area, as the O2 often requires temporary suspension of a number of parking spaces on Bow Street. Unauthorised parking in these suspended spaces or outside their rear loading entrance cause events to be cancelled. The appointment system for returning and moving students proposed does not seem feasible as multiple trips may be required for students which could not be carried out in a one hour loading and unloading slot.

Sound consultants acting on behalf of the neighbouring O2 Academy have reviewed the acoustic reports submitted with the application and consider that the reports will be able to mitigate against both traffic noise and external noise created by Academy customers. However, they remain unconvinced about the proposed mitigation measures for structure borne noise, which would still exceed the Council's noise limits for residences adjoining entertainment venues during events. This would most likely lead to complaints from residents.

5. Policy Context

- 5.1. Adopted UDP (2005), draft Birmingham Development Plan (2010), emerging Big City Plan City Centre Masterplan (2010), NPPF, Places for All (2001), Places for Living (2001), Specific needs Residential Uses SPG (2005), Bath Row & Holloway Head Development Framework (2004), Class J- Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013.

6. Planning Considerations

Policy & new legislation

- 6.1. Paragraph 19 of the NPPF places significant weight on economic growth within the planning system, with paragraph 37 supporting a balance of uses within an area which would minimise travel times. Paragraph 32 states that developments should have safe and suitable access for all people. On environmental concerns, the NPPF is unequivocal in its view that local planning authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the proposed use (paragraph 122), with paragraph 123 stating that developments should mitigate and reduce other adverse impacts on health and quality of life, including through the use of conditions.
- 6.2. Within the draft Birmingham Development Plan, policy SP28 refers to student accommodation and states that it will only be considered favourably where the development is well located to educational establishments and local facilities by walking, cycling and public transport and does not have an unacceptable impact on the character of the local area. Policy 3.8 of the adopted UDP highlights that there is a need to recognise the key relationship between environmental quality and levels of economic activity and policy 3.10 states that, 'proposals which would have an adverse effect on the quality of the built environment will not normally be allowed.'
- 6.3. Places for All supports the re-use of good quality existing buildings. Places for Living encourages higher densities in developments, re-use of good quality existing buildings, active frontages and schemes which reflect local context. The Specific needs Residential Uses SPG refers to essential facilities for student accommodation including; space for a single bed, storage, a desk and chair and a heating system. In total the SPG suggests that this should be incorporated in a single bedroom no less than 6.5 sq m.
- 6.4. As of 30th May 2013, Class J of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 came into force. This allows office (B1(a)) uses to be converted to dwellinghouses (use class C3) without the requirement for full planning permission. Exceptions are listed buildings and hazardous substances or military explosives storage areas. Assessment of such applications for Prior Notification can only be on matters concerning:-

- Transport and highway impacts;
- Contamination risks; and
- Flooding risks.

Noise and disturbance from existing uses surrounding the site is not a consideration. Although student residential schemes are *Sui Generis*, the amendment to the Use Classes Order must be given weight by your Committee when considering applications that have a potentially more unacceptable fallback or alternative.

Principle of use

- 6.5. A student residential development such as this is considered appropriate for this location within the City Centre and the full reuse of the building is welcomed. A student needs statement has been submitted by the agent and the application site is considered suitable for access to the City's three main universities via public transport, bicycle or on foot, along with the University College Birmingham (the former College of Food) and the College of Law, both located within the City Centre.

- 6.6. The adjacent live music/nightclub use could have an adverse impact on the amenity of the students. The applicant has provided a detailed noise survey with mitigation measures to counter both air and structure borne noise from the use (discussed further). This combined with the recent government edict to allow office to residential conversions without formal planning consent means that the use is seen as acceptable for the building.

Layout and operation

- 6.7. Internal layouts provided show individual student rooms having a single aspect either onto Horse Fair (to the east), a multi-storey car park to the north or the roof of the O2 Academy to the south. Each outlook is deemed acceptable for a high density City Centre location and the proposal would not have an adverse impact on other residential properties in terms of overlooking. Rooms would be cellular in nature and would have breaks between windows, maintaining the grid like pattern of the external appearance of the building. Room layouts and sizes, combined with the communal lounge, laundry and kitchens on each level, are considered to provide an acceptable living environment in terms of space and facilities for each student occupying a unit.
- 6.8. The proposed layout, combined with the management plan outlining swipecard entry, along with dedicated concierge and security, means that the proposed layout and operation of the scheme would create an acceptable living environment for students.

Transportation

- 6.9. Transportation Development have raised no objections to the proposal subject to conditions regarding implementation of a parking management plan (for picking up and dropping off at the beginning/ end of terms), Travelwise affiliation and provision of the secure cycle storage shown. All conditions are considered to be relevant and appropriate to the development in order to ensure the site is appropriately managed.
- 6.10. The conditions proposed, coupled with the location of the scheme within the City Centre, 500m from New Street railway station and adjacent to a number of bus routes heading towards the south of the City and the University of Birmingham, means that the scheme is considered to be acceptable on highway grounds. The site is located within a highly sustainable location in relation to public transport and the level of secure cycle parking is seen as appropriate for a student residential scheme.

Planning Obligations

- 6.11. The applicants have agreed to make a financial contribution of £17,500 towards either public transport improvements or City Centre Wayfinding. The figures are based the number of student bed spaces and my City Centre Development Planning Officer considers the figures appropriate for the scale of the planned development.

Noise and disturbance

- 6.12. Noise and disturbance from both traffic noise and air and structure borne noise from the adjacent O2 Academy is considered to be the salient issue for the proposal. From the noise survey produced and an additional addendum to consider noise and vibration, the applicant proposes a number of mitigation measures to address noise and disturbance from the surrounding environment. The recommendations of the reports are as follows:-

-Creation of 'rooms within rooms' for individual flats, consisting of a timber floating floor system set on a 100mm thick concrete layer suspended above a 150mm floor

cavity of 75mm mineral wool insulation with a spring system beneath. Walls and ceilings would be independent and built directly from the floating floor structure. Typical room details and sections through have been provided to demonstrate this concept;

- Service pipes suspended using spring hangers to avoid direct coupling of the floating floor to the building structure;

- Secondary glazing giving a total sound insulation performance of 56 dB Rw, also alleviating noise from the building fabric travelling to the inner rooms; and

- Mechanical ventilation.

6.13. Building Regulations have confirmed that the works are technically possible, although they would be implemented at significant expense. As viability is not being questioned in this instance, it should be accepted that the developer is willing to complete these works as per the recommendations.

6.14. Although the works proposed would go some way to addressing both air and structure borne noise from both traffic and the O2 Academy, both Regulatory Services and the Academy's sound consultant note that the levels are above what is normally considered acceptable by Regulatory Services. Therefore and as the applicant is the landlord of the Academy, I consider it reasonable, relevant and necessary to attach conditions in relation to implementation of the works proposed in the noise reports submitted, along with additional noise insulation works within the Academy itself. This will help secure the future of the Academy via appropriate noise and vibration works to both the applicant site and the adjacent noise generating use, minimising the potential risk of noise complaints from future occupiers.

6.15. Members should note that under new Central Government legislation now in force, the applicant could effectively convert the building into residential without any of the mitigation measures proposed as noise and disturbance are not a consideration in the new Prior Notification process. Therefore the proposal, although not ideal, is considered to be the optimal solution for a vacant office building which has the potential to be converted to residential without the need for any of the noise mitigation measures proposed.

Other comments

6.16. WM Fire Service have requested details of fire fighting access and arrangements required. The applicant has stated that the building has a fire hose riser which will enable the Fire Service to reach all internal rooms. The applicant has confirmed that the water supply will be in full compliance with national fire fighting guidelines. The scheme has been reviewed by colleagues in Building Regulations who have confirmed that the proposal is technically possible. Therefore the issues raised by WM Fire Service are considered to have been satisfactorily addressed by the applicant.

6.17. WM Police have recommended that the scheme be implemented along *Secure by Design* principles. The details provided by the applicant regarding the management of the building, with on site security, concierge and swipe card entry, are considered to provide a safe living environment for future occupiers.

7. Conclusion

7.1. The proposed use of the building for student flats would provide a suitable reuse for a vacant office building and, subject to suitable conditions, would not have an adverse impact on existing commercial uses or harm the amenity of future occupiers.

8. Recommendation

- 8.1. Approve subject to conditions and completion of a suitable legal agreement.
- 8.2. 1. That consideration of Application No: 2013/01878/PA be deferred pending the completion of a planning obligation under Section 106 of the Town and Country Planning Act to secure the following:-
- 8.3. i) An index linked contribution of £17,500 towards public realm improvements in the vicinity of the application site, the provision of a work of public art within the vicinity of the application site, or towards the City Centre Interconnect Wayfinding Project, to be paid upon implementation of the planning consent; and
- 8.4. ii) Payment of a monitoring and administration fee associated with the legal agreement subject to a contribution £1,500.
- 8.5. 2. In the absence of the completion of a suitable planning obligation to the satisfaction of the Local Planning Authority on or before the 18th June 2013, planning permission be REFUSED for the following reasons:
- 8.6. i) In the absence of a suitable planning obligation to secure a contribution towards improvements to public transport in the Ladywood Ward, and a contribution towards the City Centre Interconnect Wayfinding Project, the proposed development conflicts with Policy 3.11, 3.13, 6.20A, 7.17, 8.50-8.54 and 15.52 of the Birmingham UDP (2005).
- 8.7. 3. That the Director of Legal and Democratic Services be authorised to prepare, complete and seal the appropriate planning obligation under Section 106 of the Town and Country Planning Act.
- 8.8. 4. That in the event of the planning obligation being completed to the satisfaction of the Local Planning Authority on or before the 18th June 2013, favourable consideration will be given to the application subject to the conditions listed below:

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| 1 | Requires the prior submission of a scheme of noise and vibration insulation works at the adjacent O2 Academy |
| 2 | Requires the prior implementation of noise study findings |
| 3 | Requires the prior submission of a building management plan |
| 4 | Requires the applicants to join Travelwise |
| 5 | Requires the scheme to be in accordance with the traffic management strategy |
| 6 | Use restricted to student accommodation only |
| 7 | Requires the scheme to be in accordance with the listed approved plans |
| 8 | Limits the approval to 3 years (Full) |
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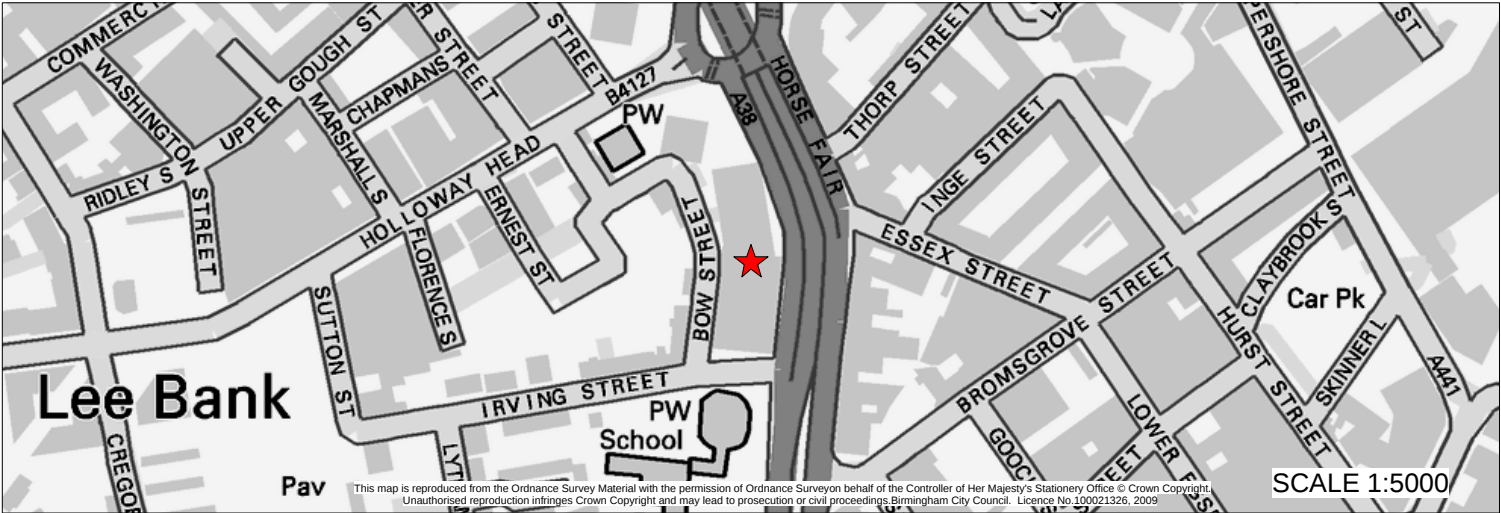
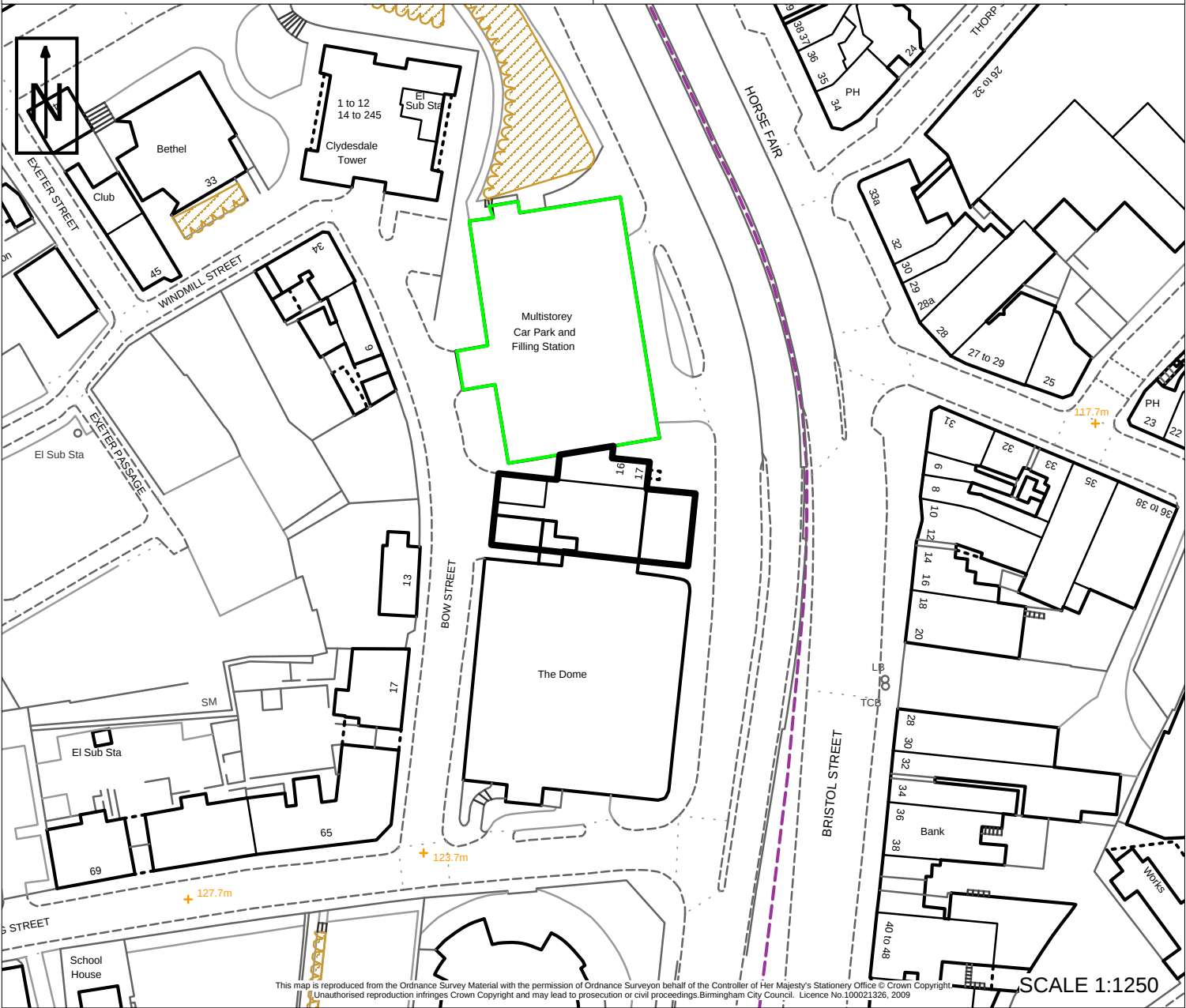
Reason for Approval

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- 1 Birmingham City Council grants Planning Permission subject to the condition(s) listed below (if appropriate). The reason for granting permission is because the development is in accordance with:
Policies 5.7 - 5.40 of the Birmingham Unitary Development Plan 2005; Places for Living (2001), Places for All (2001) and Specific Needs Residential Uses SPG (2005), all of which have been adopted as Supplementary Planning Guidance; and the National Planning Policy Framework.
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Case Officer: Neal Allcock







16-18 Horse Fair
Birmingham
B1 1DB

2012/08409/PA

- Statutory Listed Building
- Locally Listed Buildings
- Conservation Area
- Neighbourhood Offices
- Site Boundary
- Site Location

Development Directorate
1 Lancaster Circus
Queensway
Birmingham B2 2JE.

Date: 25/9/2007

