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Committee Date:	03/10/2013	Application Number:	2013/05479/PA
Accepted:	07/08/2013	Application Type:	Existing Lawful Development
Target Date:	02/10/2013		
Ward:	Soho		

21 Factory Road, Hockley, Birmingham, B18 5JJ

Application for a Lawful Development Certificate for an existing use as a place of worship (Use Class D1) in excess of 10 years

Applicant: Vaishali Buddhist Centre  
21 Factory Road, Hockley, Birmingham, B18 5JJ  
Agent: MDA  
20 Fagley Terrace, Bradford, West Yorkshire, BD2 3LU

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Recommendation

**Refuse**

1. Proposal

- 1.1. This application seeks a Certificate of Lawful Use for an Existing Development (CLUED) in respect of the use of part of the first floor as a place of worship (Use Class D1). The application is submitted under Section 191 of the Town and Country Planning Act 1990 as amended by Section 10 of the Planning and Compensation Act 1991.
- 1.2. The application seeks approval of the certificate on the grounds that the use has continued for more than 10 years before the date of the application.
- 1.3. A supporting statement has been submitted with the application which makes the following points :
- The premises were purchased on 18<sup>th</sup> June 2002, and although no planning application was submitted for change of use the first use took place on 10<sup>th</sup> July 2002 and has done so continuously.
  - The site has been subject to a number of applications where previous consultations have not highlighted any major objections from local residents or ward councillors.
  - The current hours of operation are stated to be 10.30 hours to 19.30 hours Mondays to Sundays.
  - The centre continues to operate and has done beyond 10 years
- 1.4. The existing first floor plan shows an existing meditation room and a community room with associated office, store and lobby at the front of the building with access taken via a staircase to the ground floor front door onto Factory Road and also the offices at the side and rear of the building at first floor. The existing ground floor layout plan also includes the canteen area, kitchen and offices on the ground floor. The applicant states that the ground floor factory area is not included and has not

been used as part of the organisation's activity. Notwithstanding this, the site layout plan includes a red line around the entirety of the premises.

1.5. A number of supporting documents have been included with the application including :

- An invoice from Wheadon and Co Solicitors dated 18th June 2002 relating to completion of the purchase of premises at Factory Road at 10 June 2002, a copy of land registry title number WM764586 dated 27 September 2006, a note of a meeting dated 10<sup>th</sup> July 2002, a meeting agenda dated 14<sup>th</sup> July 2002, a note dated 25<sup>th</sup> August 2002 relating to a general body meeting at that date,
- Meeting agendas dated 6<sup>th</sup> April 2003, 4<sup>th</sup> May 2003, 8<sup>th</sup> June 2003.
- A letter dated 10<sup>th</sup> August 2004 setting out the agenda for a meeting dated 15<sup>th</sup> August 2004, a letter dated 31<sup>st</sup> August 2004 regarding an election on 2<sup>nd</sup> July 2004, a note of minutes of a meeting dated 15<sup>th</sup> August 2004, a note relating to a meeting on 19<sup>th</sup> September 2004, a newsletter dated November 2004, a letter relating to a service on 6<sup>th</sup> December 2004,
- A letter relating to an Executive meeting on 2<sup>nd</sup> January 2005, a note of minutes of a meeting on 2<sup>nd</sup> January 2005, a letter relating to an executive meeting dated 5<sup>th</sup> February 2005, a letter dated 5<sup>th</sup> February 2005 relating to a General Body Meeting on 13<sup>th</sup> February 2005, a paper containing photographs and text some of which are dated 24<sup>th</sup> April 2005, letters dated 19<sup>th</sup> March 2005, 1<sup>st</sup> and 7<sup>th</sup> April 2005 relating to an event on 24<sup>th</sup> April 2005, a letter dated 13<sup>th</sup> April 2005 relating to an event on 24<sup>th</sup> April 2005, a letter from Chief Superintendent Jordan dated 24<sup>th</sup> April 2005, a letter in relation to an executive meeting on 1<sup>st</sup> May 2005, an invitation to an event on 5<sup>th</sup> June 2005, a letter dated 28<sup>th</sup> May 2005 in relation to an event on 5<sup>th</sup> June 2005, a letter of notification for an AGM on 26<sup>th</sup> June 2005, a letter of results of an AGM on 26<sup>th</sup> June 2005, a letter dated 21<sup>st</sup> July 2005, an advertisement for a day trip on 31<sup>st</sup> July 2005, a letter relating to an event on 4<sup>th</sup> September 2005, an advertisement for an event on 23<sup>rd</sup> October 2005,
- Insurance documents dated 1<sup>st</sup> August, 2<sup>nd</sup> and 8<sup>th</sup> November 2006, letters relating to executive meetings dated 12<sup>th</sup> February 2006 and 2<sup>nd</sup> April 2006, letter related to event on 28<sup>th</sup> May 2006, letter related to event dated 10<sup>th</sup> September 2006,
- Insurance invoice dated 11<sup>th</sup> July 2007, letters relating to an executive meetings dated 7<sup>th</sup> January 2007, 4<sup>th</sup> February 2007, letter relating to an event on 19<sup>th</sup> February 2007, letter dated 14<sup>th</sup> March 2007 relating to a General Body meeting on 1<sup>st</sup> April 2007, letters dated 13 March relating to event on 14<sup>th</sup> April 2007, a letter dated 18<sup>th</sup> April 2007 relating to an event on 29<sup>th</sup> April 2007, advertisements for an events on 20<sup>th</sup> May 2007, 26<sup>th</sup> May 2007, a letter relating to an event on 2<sup>nd</sup> June 2007, a letter dated 18<sup>th</sup> July 2007 relating to an AGM on 15<sup>th</sup> July 2007, advertisement for a day trip dated 27<sup>th</sup> August 2007, a note of forthcoming meeting dates between August 2007- July 2008
- A letter dated 3<sup>rd</sup> May 2008 in relation to an event on 11<sup>th</sup> May 2008, letter dated 19<sup>th</sup> August 2008 relating to an executive meeting dated 24<sup>th</sup> August 2008, advertisement for a day trip dated 2<sup>nd</sup> August 2008
- Insurance certificate for period 5<sup>th</sup> August 2009 to 4<sup>th</sup> August 2010 dated 17<sup>th</sup> July 2009, letter dated 14<sup>th</sup> March 2009 relating to executive meeting on 22<sup>nd</sup> March 2009, letter dated 24<sup>th</sup> April 2009 relating to event on 3<sup>rd</sup> May 2009, advertisement for event on 3<sup>rd</sup> May 2009,

- Fire certificate dated November 2010-2011, insurance certificate dated 23<sup>rd</sup> July 2010 for period 5<sup>th</sup> August 2010 to 4<sup>th</sup> August 2011, letter dated 7<sup>th</sup> September 2010 relating to executive meeting on 7<sup>th</sup> September 2010, advertisement of event on 20<sup>th</sup> June 2010, letter dated 30<sup>th</sup> September relating to executive meeting on 5<sup>th</sup> October 2010, advertisement for event on 14<sup>th</sup> October 2010, letter dated 28<sup>th</sup> November 2010 relating to event on 12<sup>th</sup> December 2010
- Energy bill dated 20<sup>th</sup> December 2011, Water bill dated 27<sup>th</sup> October 2011, letter from insurers dated 16<sup>th</sup> September 2011, Fire Certificate for period November 2011 to November 2012, advertisement for day trip on 24<sup>th</sup> July 2011, letters relating to executive meeting on 2<sup>nd</sup> August 2011 and 18<sup>th</sup> December 2011, advertisements of events on 5<sup>th</sup> June and 23<sup>rd</sup> October 2011
- Energy bills dated 24<sup>th</sup> February 2012, 11<sup>th</sup> June 2012 and 24<sup>th</sup> August 2012, letter from insurer dated 27<sup>th</sup> February 2012, water bills dated 4<sup>th</sup> May 2012 and 2<sup>nd</sup> November 2012, Invoice from Birmingham City Council dated 18<sup>th</sup> May 2012, letter from insurer dated 9<sup>th</sup> August 2012, Fire Certificate for period December 2012 to December 2013, bank statement dated 21<sup>st</sup> December 2012
- Letter from insurer dated 15<sup>th</sup> January 2013, energy bill dated 19<sup>th</sup> March 2013, bank statements dated 22<sup>nd</sup> January 2013, 22<sup>nd</sup> February 2013, and 22<sup>nd</sup> March 2013
- An undated newspaper article, an undated agenda,

1.6 In addition, the applicant has submitted a statement of support through the public consultation process (see below). This statement makes the following points :

- The organisation had two small centres at Booth Street and Hampton Road which were sold to set up this larger centre for their community's needs.
- 21 Factory Road was occupied since June 2002 and they have held their religious and community functions since then.
- The enforcement notice was brought about by disgruntled ex-Committee members who did not accept the democratic process of our organisation.
- The following activities were undertaken pre-enforcement : Functions, prayers, meditation classes, Buddhist blessing for marriage ceremony, Buddhist blessing for new born, prayers for deceased and sick, Education/lectures, day to day use of the kitchen & day centre/drop in centre, providing books and newspapers for visitors, providing food and tea for visitors, use by Probation Service for ex-offenders to complete community service, office for the organisation, management and security of the building including health and safety and paying bills/insurance.
- Post enforcement, since 13 December 2011 we have had to stop all public functions so we now hire an external public room. We do still carry out the following duties from the premises : meetings, use as an office for the organisation, management and security of the building including health and safety and paying bills/insurance, provide kitchen facilities.
- With the massive cuts in local government finance it makes sense to retain the centre as the 10 year rule has been predominantly satisfied.
- Refusal would mean the loss of health benefits provided by Yoga and meditation, which can help reduce blood pressure and prevent heart attacks, loss of jobs as they anticipate some creation/retention of jobs for life learning courses/yoga tutors, admin and caretaking posts. This facility is important as a local drop-in centre for the community. Vacancy of the building will lead to its use for drug abuse, vandalism and fire.

[Existing Ground Floor Plan](#)

[Existing First Floor Plan](#)

[Location Plan](#)

## 2. Site & Surroundings

- 2.1. The site is a former industrial works that has been subject to unauthorised use as a Place of Worship/Meditation by the applicant and has also been subject to use of part of the premises for car repairs and related activities (see planning history). There are terraced residential houses and a public house on the opposite side of Factory Road and The Hive Industrial centre adjoins the site to the south east. A vacant former waste recycling site is located to the west.

[Location map](#)

[Street view](#)

## 3. Planning History

### Planning application history – 21 Factory Road

- 3.1. 05/06/2004 - 2004/01739/PA – Change of use to a multi use/community and part residential centre to include youth centre, educational facilities, crèche, library, gymnasium, meditation centre, halls, café and kitchen, shrine, day centre for OAP's an 19 bedsits. Car parking for 129 cars. Demolition of part of existing building – Refused for the following reason :

Due to a lack of required information the application is fundamentally lacking sufficient information to allow for a full assessment to be made. As a consequence, and subject to the provisions of regulation 4 (Directions of the Local Planning Authority) of the 1988 Town & Country Planning Applications Regulations the application is considered as incomplete and refused on that basis.

- 3.2. 06/12/2005 - 2005/03567/PA – Change of use from factory (Use Class B2) to multi-function community centre (Use Class D1) for Buddhist related activities including function room (400 people), shrine, residential accommodation (5 units), museum, library, asylum seeker accommodation (15 units), youth centre, gymnasium and other activities. Demolition of part of the building to create car parking (129 spaces), new access onto Factory Road and associated landscaping – withdrawn, invalid application.
- 3.3. 22/12/2005 - 2005/06682/PA –Change of use from factory (B2 use) to a multifunction community centre (D1 use) for Buddhist related activities including :- function room (community hall) for 426 people, shrine, residential accommodation (14 units), museum, asylum seekers accommodation (14 units) youth centre, library, meditation centre, skill workshop, citizen advice, adult education/conference facility, mother and toddler group, medical rooms, OAP's day centre, creche, cafe, shop , workshop, ancillary offices & kitchen. Demolition of part of building to create car parking (129 spaces) & new access/exit points onto Factory Road. Refused for the following reason : Information relating to the application has been requested under Regulation 4 of the Town and Country Planning (Applications) Regulation 1988 and

the Town and Country Planning (General Development Procedures) Order 1995. The information requested has not been received. The Local Planning Authority is therefore unable to make a proper assessment of the planning application.

- 3.4. 13/05/2010 - 2009/02087/PA – Continued temporary use of part of 1<sup>st</sup> floor as a meditation centre – Refused for the following reason : The site is considered to represent 'good urban' industrial land and the proposal would result in the loss of this employment land to a non-industrial use. It has not been demonstrated that this loss is justified on the basis of active marketing of the site for a reasonable period, or that the premises are no longer commercially viable. The proposal is therefore contrary to policies 3.8, 3.10, 4.31 and 12.6 of the adopted Birmingham UDP (2005) and guidance contained within the City Council's 'Loss of Industrial Land to Alternative Uses' SPD (2006), which seeks to maintain the supply of good industrial land throughout the City.
- 3.5. 31/08/2011 - 2011/03617/PA – Use of part of 1<sup>st</sup> floor as a meditation centre – Refused for the following reason : The site is considered to represent 'good urban' industrial land and the proposal would result in the loss of this employment land to a non-industrial use. Insufficient information has been submitted to demonstrate that this loss is justified on the basis of active marketing of the site for a reasonable period, or that the premises are no longer commercially viable. The proposal is therefore contrary to policies 3.8, 3.10, 4.31 and 12.6 of the adopted Birmingham UDP (2005), policy SP12 of the Draft Core Strategy and guidance contained within the City Council's 'Loss of Industrial Land to Alternative Uses' SPD (2006), which seeks to maintain the supply of good industrial land throughout the City.

#### Planning application history - Unit 4 Hive Development Centre and 21 Factory Road

- 3.6. 17/03/2011 - 2010/06759/PA - Change of use of unit 4 Hive Development Centre to a car breakers business with parts storage, sales, car repairs and servicing. Change of use of part of 21 Factory Road to allow for the storage of cars and car parts; sales, car repairs and servicing. Ancillary parking for unit 4 to be provided at part of 21 Factory Road area of site – Approved subject to conditions.

#### Enforcement History

- 3.7. 2008/0029/ENF – Change of use of part of the premises for prayer meetings and meditation and associated activities – Enforcement notice served on 25<sup>th</sup> June 2010, taking effect on 30<sup>th</sup> July 2010, requiring the ceasing of the use of the premises for prayer meetings and meditation and associated activities. The period of compliance is 2 months from the date the notice became effective (ie by 30<sup>th</sup> September 2010).
- 3.8. On 15<sup>th</sup> May 2012, the Council wrote to the owner advising that the Council understands that the premises was no longer used on a regular basis for the above-mentioned unauthorised activities and therefore the Council did not intend to pursue further action at this time, however the enforcement notice remained valid and the Council may revive it if unauthorised activities are re-started.

#### 4. Consultation/PP Responses

- 4.1. Ward members and neighbouring occupiers/businesses notified. Two representations received objecting to the application, however it is apparent that one of these objectors has misunderstood the application, as their representations

appear to relate to vehicle breaking/vehicle repairs use elsewhere in the building rather than a place of worship use. The grounds of objections are as follows :

- Adverse parking problems. There are already issues with existing scrap yards, salvage yards, and vehicle repairs with the associated stream of breakdown vehicles. The demand for parking for worshippers makes this worse.
- The vehicle breaking causes noise, traffic congestion, burning etc which are not appropriate in a residential street. This representation also refers to a petition being submitted.

4.2. A petition of objection containing 20 signatures has been received, though there are no grounds of objection included within the petition. This would seem to relate to the objections raised regarding the vehicle breaking/vehicle repairs use.

4.3. 15 letters of support have been received (including a letter from the applicant in support of their own application – these representations have been set out in the summary of the application in section 1). The grounds of support are as follows :

- The property was vacant, unwanted and an eyesore and has been restored by the community for its use. This helps the local community and economy.
- The use is in keeping with the changing character of the area.
- The centre provided great community events. The Council's help to fund a grant to improve and support the centre would help build a better facility.

## 5. Policy Context

5.1. Adopted UDP 2005, Draft Birmingham Development Plan, Loss of Industrial Land to Alternative Uses SPD, Places for Worship SPD.

## 6. Planning Considerations

6.1. There has been extensive planning history relating to the use of part of 21 Factory Road on the first floor as a Place of Worship for this Buddhist organisation. Planning consent has been refused on three separate occasions in the past (in 2005, 2010 and 2011). The use of the site as a Place of Worship conflicts with the Council's employment land policies in the UDP and the Loss of Industrial Land to alternative uses SPD and has therefore been refused on these grounds.

6.2. Notwithstanding the representations received both in support and in objection to this application, and the supporting case presented by the applicant, as this is an application for a certificate of lawfulness the merits of the use in planning terms are not for consideration in this application. This application solely seeks a determination as to whether or not the use is lawful by virtue of having taken place for more than 10 years commencing with the date of the application.

6.3. The applicant's evidence sets out that the use commenced in June 2002 following their purchase of the premises. It is accepted that the use had not commenced prior to this date, though the commencement of the use is not sufficiently evidenced in this application. For instance, no sworn statements have been submitted that establish the date of commencement.

- 6.4. There are other issues with the submitted evidence including that the application relates to more floorspace within the building than is understood to have been used for the Place of Worship, and that the submitted evidence is not sufficiently precise as it does not demonstrate (for instance through the submission of sworn statements) each of the activities that have taken place in each part of the building, and the days and times they took place, to demonstrate that the use of the premises shown on the plans has continued for more than 10 years. Given these issues, in my opinion the evidence is not sufficiently precise to grant a certificate.
- 6.5. Notwithstanding this judgement, there are more fundamental issues with this application that prevent the issuing of a certificate. An enforcement notice was served in 2010 and remains valid. The terms of the notice require the cessation of the use. This effectively means that at the time of serving the notice, the use had not taken place continuously for more than 10 years, and the serving of the notice "stops the clock" in relation to the 10 year rule.
- 6.6. The Council interviewed the applicant under caution on 4<sup>th</sup> January 2012, when the applicants advised that they were no longer using the building for public prayer meetings and other public functions. It was on this basis that the enforcement case was closed, however the Council made it clear in a letter to the applicant that the notice remains valid and could be revived if the use re-started in the future.
- 6.7. The applicant's statement with the application is that they no longer use the building for public events, but do use it for meetings of the organisation and office activities in association with the running of the organisation. The cessation of the principal activities of a Place of Worship (the congregational events of worship, public meetings, celebrations and other events) therefore contradicts their overarching case that the use as a Place of Worship has continued for more than 10 years.
- 6.8. Section 191(2) of the Town and Country Planning Act 1990 (as amended) states that existing uses are lawful if "(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force". As there is a valid enforcement notice dated 25 June 2010 which requires the cessation of "the use of the premises for prayer meetings and meditation and associated activities" the use being applied for cannot be lawful, and the Local Planning Authority, as a matter of law, is prohibited from issuing a lawful development certificate.
- 6.9. As such, the only decision available to the Local Planning Authority is to refuse the application since approval of the application would be unlawful.

## 7. Conclusion

- 7.1. The application cannot be approved due to the existence of a valid enforcement notice for the cessation of the use regardless of whether or not additional evidence could be submitted.

## 8. Recommendation

- 8.1. Refuse the application for the reason set out below.

Reason for Refusal

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- 1 Section 191(2) of the Town and Country Planning Act 1990 (as amended) states that existing uses are lawful if a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. As there is a valid enforcement notice dated 25 June 2010 which requires the cessation of "the use of the premises for prayer meetings and meditation and associated activities" the use being applied for cannot be lawful, and the Local Planning Authority, as a matter of law, is prohibited from issuing a lawful development certificate.
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Case Officer: Stuart Morgans

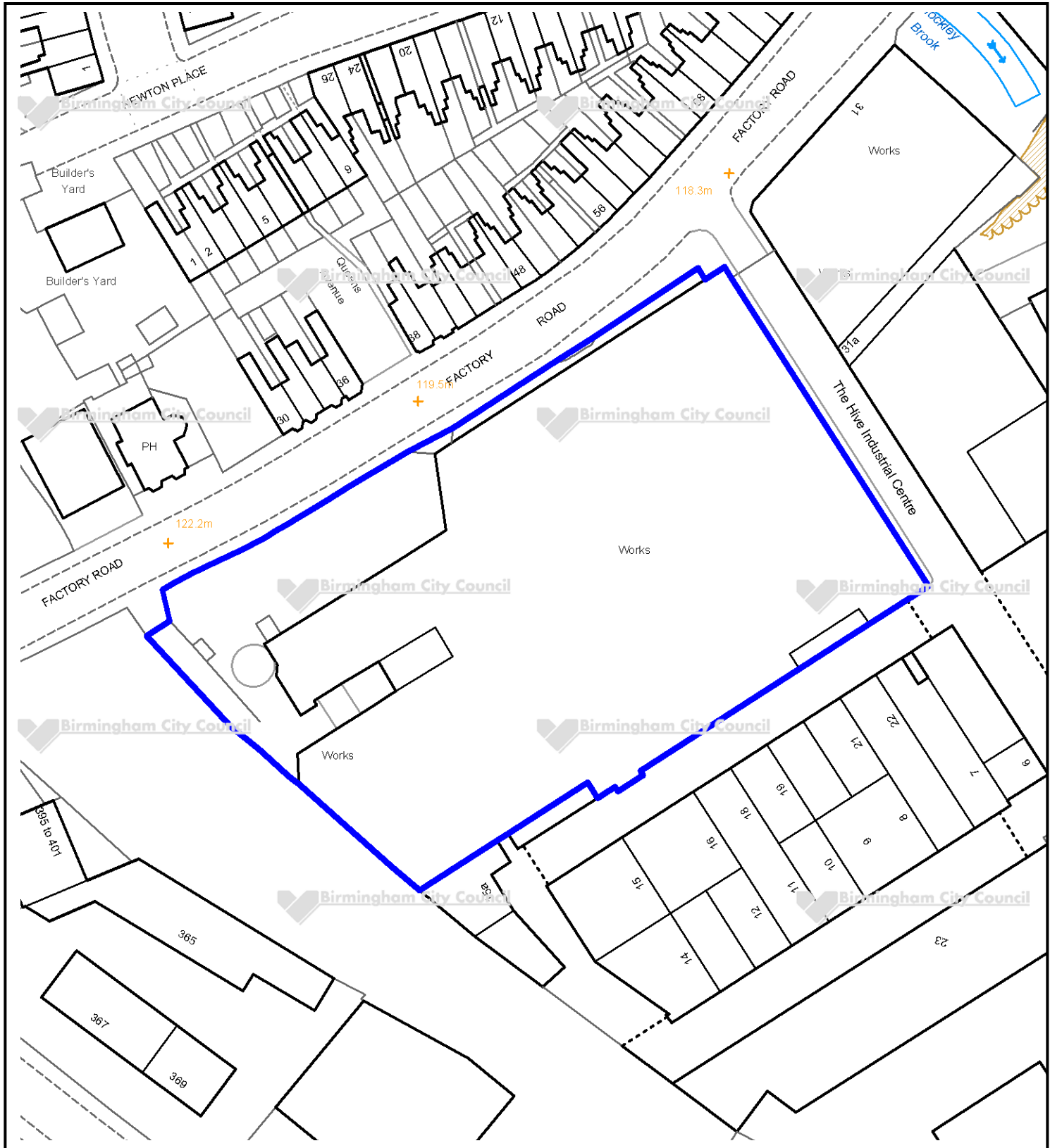


**Photo(s)**



**Figure 1: Front Elevation**

# Location Plan



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