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Committee Date:	09/01/2014	Application Number:	2013/07264/PA
Accepted:	26/09/2013	Application Type:	Variation of Condition
Target Date:	26/12/2013		
Ward:	Stechford and Yardley North		

Flaxley Parkway, Stechford Retail Park, Stechford, B33 9AN

Application for a variation of condition no. 8 attached to planning permission 2011/02418/PA to allow no more than 2,500 sqm of the total permitted gross retail floorspace to be used for the sale of food goods, and where the retailer is predominantly selling food, the unit size shall be no less than 1,000 sqm

Applicant: Stechford (Jersey) Ltd  
c/o Agent  
Agent: Savills (UK) Ltd  
Belvedere, 12 Booth Street, Manchester, M2 4AW

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Recommendation

**Approve Subject To A Section 106 Legal Agreement**

1. Proposal

- 1.1 Consent is sought to vary condition 8 attached to planning permission 2011/02418/PA that states “ The retail warehousing shall be used for non-food only except for a maximum of 453 sqm of the total permitted gross retail floor space within the red line boundary which may be used for the sale of non-perishable goods provided this forms part of a wider product range within the applicable unit/s” and replace it with the following “No more than 2,500 sqm of the total permitted gross retail floor space may be used for the sale of food goods, and where the retailer is predominantly selling food, the unit size shall be no less than 1,000sqm. The restriction on the amount of food being sold from the site was originally considered necessary in order to safeguard the vitality and vibrancy of Local Centres within the vicinity and particularly Stechford Neighbourhood Centre.
- 1.2 The applicant states that the re-wording of the condition to enable the use of up to 2500 sqm of floor space for the sale of food will allow the owner of the Retail Park to attract food retailers to the units within the Park, and in turn, provide new facilities for local residents and shoppers within Stechford. It is further stated that it is not the intention for the entire floor space at the Park to be used by one single large format retailer.
- 1.3 It is envisaged that the proposal, utilising the Park in its current configuration would mean that no more than 3 adjacent units could be adapted as a food store.
- 1.4 No external alterations to the buildings or site are proposed.

- 1.5 The applicants have expressed a willingness to enhance the existing pedestrian linkages to Station Road, but no formal scheme for this is included within the submission.
- 1.6 Transport Assessment, Framework Travel Plan and Retail Statements have been submitted in support of the proposals.
- 1.7 An Environmental Impact Screening Assessment Opinion has been undertaken which concludes that a full Environmental Statement is not required.

[Site Location Plan](#)

2 Nature of surroundings

- 2.1 The application site comprises of Stechford Retail Park, which is located off Flaxley Parkway at the Station Road / Iron Lane / Flaxley Road junction. The Retail Park comprises of 11 units (and are currently occupied by Matalan, Home Bargains, Dreams, ScS, Bensons for Beds, Poundworld, Currys, Carpetright, Argos and McDonalds, 1 unit is vacant) and provides 9706 sqm of retail floor space. The retail park is outside of the designated Neighbourhood Centre of Stechford which is located to the south over the railway bridge.

[Site location plan](#)

[Street View](#)

3 Planning history

- 3.1 Various planning history from the 1990's, directly relevant applications:

\* 18-4-1996. E/03052/92/OUT. Retail warehousing, industrial business units, restaurant, car parking, landscaping and highway works Approved, with conditions.

\* 27-11-1997. N/03183/97/RES. Reserved matters in respect of siting of buildings, design, external appearance and access in respect of part of the site under Outline Consent E/03052/92/OUT for construction of retail warehousing, industrial business units, restaurant, car parking, landscaping and highway works and compliance with conditions 7, 9, 11, 12, 13 and 16 attached to Outline Consent No. E/03052/92/OUT - Approved, with conditions.

\* 25 August 2006. C/02609/06/FUL. Part removal of condition 36 attached to approval E/03052/92/OUT (restricting retail warehousing to non-food only) to allow for up to 279sqm of the total permitted retail floorspace to be for food retail (non-perishable)

\* 28-9-2006. C/04265/06/FUL. Erection of two retail warehouse units including mezzanine floors (3505.5sqm / non-food retail)(rebuilding following fire damage). Approved subject to conditions.

\* 31/10/2006. C/05803/06/FUL. Deletion of condition 10 from planning permission C/02609/06/FUL – approved

\* 26/5/2011. 2011/02418/PA - variation of condition 8 attached to 2006/05803/PA to allow up to a maximum of 453sqm of the total permitted gross retail floor space within the red line boundary – approved

\* 2012/08155/PA – variation of condition 8 to planning approval 2011/02418/PA to enable the floor space to be used for the sale of all goods - withdrawn

- 17/10/13. 2013/05928/PA and 2013/07397/PA – application for Lawful Development Certificate for confirmation that the existing floor space at the Retail Park can be used for retail food sales. – refused
- Subsequent appeal was withdrawn.

\* Current appeal lodged against non-determination of application No 2013/03689/PA (for variation of condition 8 attached to 2011/02418/PA to allow 2500 sqm of floor space for food retail sale – the current application is a duplicate of this appealed application)

#### 4 Consultation response/PP

- 4.1 Transportation – awaiting comments but after running a Traffic Model they have informally advised that the proposals could be supported with a financial contribution and/or land swap for planned major road works in and around the gyratory and access into the site. These works are now subject to a Regional Growth Fund bid through the Strategic Economic Plan.
- 4.2 Local residents and businesses, local councillors and the MP were notified. Proposals were advertised in the press and site notice displayed on the Retail Park. One letter of objection received from a local resident who is concerned about the congestion around the gyratory at present and that any proposals to increase the amount of food retail floor space would make matters worse.

#### 5 Policy context

5.1 The following local policies are applicable

- UDP 2005
- Draft Birmingham Development Plan

5.2 The following national policies are applicable

NPPF 2012

#### 6 Planning considerations

##### 6.1 Background

6.2 The applicants originally submitted an application to vary condition 8 of 2011/02418/PA to allow the un-restricted sale of food from across the whole Retail Park. Following concern expressed from both Strategic Planning in terms of retail policy, and Transportation on highway safety grounds, the application was subsequently withdrawn. Following an agreement with Strategy on how to assess the impact of the proposals on the nearby local centres and a willingness by the applicant to accept an upper limit on the retail food sales space sought, a new application was submitted.

- 6.3 The revised retail assessment was more detailed but the methodology used by the agent was questioned by Strategy who still sought further clarification on how assumptions used within the Assessment had been made. In addition to this, Transportation had reservations about how the conclusions reached within the Transport Assessment had been arrived at. The progress of both of these issues has been very protracted, which resulted in the agent submitting a duplicate application (this application) and appealing against non-determination against the original application.
- 6.4 In addition to this the agents had sought legal advice which questioned the validity and lawfulness of the restrictive condition attached to the 2011 approval. This resulted in the submission of a Lawful Development Certificate application for confirmation that all of the floor space within the Retail Park could be used for unrestricted food sales. Their arguments were that the justification for the lawful nature of the use is based on the wording and effect of the relevant condition which seeks to control the retail use of the retail park. They considered that although purporting to control the range of goods that can be sold, it does not provide a lasting control in respect of all uses within Class A1. The crux of the argument was based around the assertion that the condition does not explicitly remove the operation of the Use Classes Order (as required by the accepted standard models of conditions relating to retail use<sup>1</sup>). As a result, the operation of the Use Classes Order remains active and therefore a change to any other purpose within the same Use Class Order does not constitute development as defined.
- 6.5 The agents contended that condition 8 seeks to remove the ability to move freely between A1 retail uses as permitted by the Use Classes Order 1987. They further contended that the wording of the condition is not effective and not enforceable because it makes no specific mention of the Use Classes Order and its use class (A1). They contended that the condition is in-effective therefore and their client (the Retail Park) is lawfully permitted to use the A1 retail units for any purpose within A1 as permitted by the Use Classes Order. They say then, that to use any amount of the retail floor space for food retail (or any other purpose within A1) is not “development” and the certificate of lawfulness would establish this and allow open retail across the whole site.
- 6.6 It is the Local Planning Authority’s view that the purpose of condition 8 is not to withdraw the permitted development rights given within Use Class A1, and that is the reason why no reference was made to it within the wording of the condition. The Legal view offered (by our Counsel) considered that the Use Classes Order is irrelevant in this case. The condition clearly defines that retail warehousing (selling any type of goods) is considered acceptable and appropriate to its location. However, due to its out of centre location, it was considered appropriate to restrict the amount of food retail to 279 sqm (in the first instance under 2006/02609/PA) and then to later increase this amount to 453 sqm. This refusal (the Lawful Development Certificate) was appealed (and was due to be heard at a public inquiry in June 2014 along with the S73 appeal for the variation of condition). Following subsequent appeal decisions and a high court ruling on very similar cases across the nation, the agents withdrew the LDC appeal. The current appeal against non determination will continue (but has been scaled down to a hearing, which is set for 21<sup>st</sup> January 2014) unless approval is granted to the current application.
- 6.7 Policy
- 6.8 The NPPF states the government’s presumption in favour of sustainable development, outlining the 3 dimensions of sustainable development which are

economic, social and environmental. Chapter 1 deals with the economy and reinforces the importance of securing economic growth in order to create jobs and prosperity. Retail policy is contained within chapter 2; this emphasises the importance of promoting town centre environments. When assessing applications for retail outside of town centres, local authorities should require an impact assessment (for development greater than 2500sqm) and where an application fails to satisfy the sequential test or is likely to have a significant adverse impact it should be refused. The UDP at policy 7.27 states where ever possible, proposals for new retail development should be recognised within centres. It further states that the City Council may be prepared to support retail proposals which are not in a centre, provided that the principles of the sequential approach have been followed. The main considerations involved with the determination of the proposals are retail policy and highway safety.

## 6.9 Retail Policy

- 6.10 As part of the continued dialogue and to help the Council better understand the proposals and any subsequent impact, the agent agreed to undertake an extended search for sequential opportunities beyond Stechford Neighbourhood Centre. In order to satisfy the Council that no sequentially preferable sites are available to accommodate the food retail provision the agents looked at the Fox and Goose District Centre, The Swan District Centre, Stechford Neighbourhood Centre, Alum Rock Road District Centre, Meadway District Centre, Ward End Neighbourhood Centre, Pelham Neighbourhood Centre, Glebe Farm Neighbourhood Centre, Lea Village and Yew Tree Neighbourhood Centres. All of these Centres were considered unsuitable by the applicant due to no units being available to accommodate the floor space required due to size (all smaller than 1000 sqm) or no qualitative requirement for any additional large format convenience floor space given the existing large format stores in these centres. Strategy agree with the findings of this exercise and that there are currently no preferable sites and I concur with this view.
- 6.11 In terms of impact, Strategy advise that overall they are not convinced by the agent's methodology or the robustness of their conclusions; their impact analysis remains unclear. The Retail Report refers to local expenditure, turnover and convenience trade diversion from other local Centres and large format food stores within the study area. Three scenarios are given to show that 85%, 75% and 65% (scenario A, B and C) of the reclaimed expenditure is spent at the new store which would equate to £7.65m, £10.45m and £13.25m being diverted from existing centres and stores respectively. The trade draw from any of the main centres and stores within the study area does not exceed 11% (Tesco, Fox and Goose, the trade diversion within scenario C is 10.7% and is the highest figure). The likely worst affected centre would be the Fox and Goose. Stechford (the nearest centre) does not currently have any large format food stores and so in all 3 scenarios there would be a nil impact. It is accepted that 15% is the threshold for significant adverse impact within the retail sector as a whole but this increases to 20% in the convenience goods sector alone. It follows therefore that the worst case scenario of 11% on Tesco at the Fox and Goose (and the 6% Fox and Goose Centre) does not constitute significant adverse impact. Strategy therefore considers it unlikely that there would be an impact reason for refusal and I concur with this view.

## 6.12 Transportation

- 6.13 Access to the Retail Park is off Flaxley Parkway via the Iron Lane junction (the gyratory) which is a traffic signal controlled junction. The roads serving the Retail Park accommodate high volumes of traffic and the Retail Park is a relatively busy

example of a non-food retail park which is busier on a Saturday than other days of the week. The Transport Assessment states that “Food stores tend to generate higher levels of traffic than non-food stores. In this context there is a general proposition that introducing a food operator onto a non-food retail park will increase the level of traffic generated by the park. There are however a number of factors that influence the level of additional traffic which mean that the overall increase in traffic is much less than a food store of a similar size developed in isolation. These factors are:-

- The floor space is already generating traffic as non-food retail floor space
- By locating the food operator on a non-food retail park there is the opportunity for shoppers to very easily link trips between two or more uses on the site.
- Food retail has a much greater propensity to attract pass-by trips particularly in peak periods when there are more vehicles on the network and congested traffic conditions generally on the highway network deter single purpose retail trips which can be made at any time of the week. ”

- 6.14 It is within this context that the agents argue that the overall increase in traffic across the wider network as a result of the proposals would not be significant.
- 6.15 It is accepted that there would be a material change in traffic flow on Flaxley Parkway (the site access) and at the gyratory junction. Their Assessments conclude that there would be little impact on junction operation.
- 6.16 The Assessment makes reference to the City’s junction improvement scheme (currently the subject of another bid for Central Government Funding) at the Iron Lane gyratory and considers that it would offer considerable benefit in the context of traffic flow over the existing junction arrangement. The implementation of the proposed scheme would not alter the operation of the improvement scheme significantly and it would continue to offer benefits.
- 6.17 Full analytical comments are awaited from Transportation but verbally I have been advised that the methodology used within the Transport Assessment is questioned and some of the conclusions are not considered to be correct. The agent has been working with Transportation and the City has run its Transport Model on a worst case scenario to more accurately predict the likely impact upon the surrounding highway network. The results have indicated that, with mitigation, the proposals could be supported.
- 6.18 It has been suggested that a financial contribution of £50,000 towards the major scheme which is now subject to a Regional Growth Fund bid through the Strategic Economic Plan be made together with an agreement that the additional land required could be secured at nil cost or part of a land swap. This amount and land would only be required if the current bid is successful and the proposals are implemented. If however, the bid was unsuccessful, and the proposals were implemented, a smaller figure (£10,000) would be sought to allow the traffic lights around the gyratory to be re-sequenced to relieve congestion and an amount towards improving pedestrian linkages from Stechford Centre with the Retail Park. The agents have confirmed that in their view a financial contribution of £75,000 would be appropriate in the circumstances and that our request was overly complicated. It is their view that the latest major planned highway works bid is unlikely to be successful. The £75,000 could be used for general highway improvements as needed within Stechford and

also used to improve the pedestrian links between the site and Stechford Centre. Should the bid be successful and the major road works be programmed then it is acknowledged that the applicant and the Council will have to negotiate land swaps. It is considered more appropriate that this is undertaken separately from this application. I am inclined to agree with this view and have accepted this sum. I have instructed Legal Services to draw up a S106 legal agreement to secure this figure.

## 7 Conclusion

- 7.1 After considering the proposals very carefully in terms of retail policy and highway safety, I consider that the proposals, which have satisfied the retail tests laid out with the NPPF, are capable of support but only with the securing of a financial contribution towards highway works required as a consequence of the development.

## 8 Recommendation

- 8.1 (i) That consideration of 2013/07264/PA be deferred pending the completion of a Section 106 planning obligation to secure the following:
1. A financial contribution of £75,000 upon implementation (index linked to construction costs from 9<sup>th</sup> January 2014 to the date on which payment is made) towards highway improvements in the Stechford and Yardley North ward.
  2. Payment of a monitoring and administration fee associated with the legal agreement of £2620.
- (ii) In the event that the Section 106 obligation is not completed by 9<sup>th</sup> March 2014, planning permission be refused for the following reason:
1. In the absence of a suitable planning obligation to secure contributions towards the highway improvements, the proposed development conflicts with policies 3.8, 3.10 and 6.20A of the adopted UDP 2005 and the NPPF.
- (iii) That the Director of Legal and Democratic Services be authorised to prepare, seal and complete the planning obligation.
- (iv) That in the event of the planning obligation being completed to the satisfaction of the Local Planning Authority by the 9<sup>th</sup> March 2014, favourable consideration be given to this application, subject to the conditions listed below:

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- 1 Requires the scheme to be in accordance with the listed approved plans
  - 2 Cycleways and pedestrian walkways and crossings to be maintained.
  - 3 Retail units A-J not to be subdivided
  - 4 Requirement for window display within units K and L
  - 5 Changes to or addition to plant and machinery require further consent
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- 6 Restriction of 2,500 sqm (gross) for total food sales within the Retail Park
  - 7 Notices and signs at entrance/exit to be maintained.
  - 8 All loading and unloading of goods to take place within the application site.
  - 9 No open storage
  - 10 No storage, display or sale of goods/vehicles to take place in the open
  - 11 No burning of refuse within the application site.
  - 12 Parking areas to be used for no other purpose
  - 13 No storage of hazardous materials
  - 14 Limits delivery time of goods to or from the site (0730-1930 Mon-Sat)
  - 15 Limits the approval to 3 years (Full)
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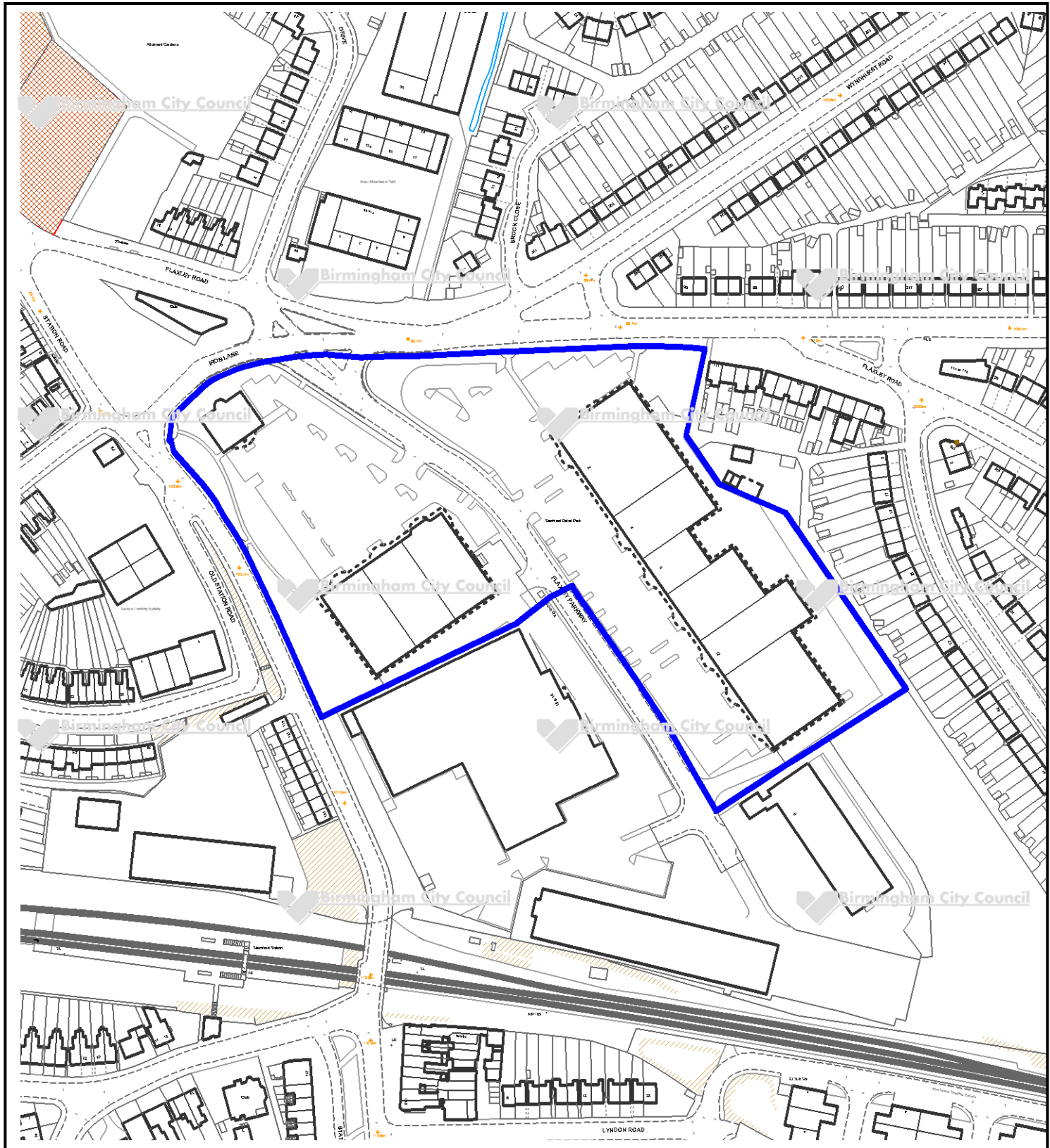
Case Officer: Debbie Farrington



Photo(s)



## Location Plan



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