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Committee Date:	16/10/2014	Application Number:	2014/01972/PA
Accepted:	24/03/2014	Application Type:	Variation of Condition
Target Date:	23/06/2014		
Ward:	Moseley and Kings Heath		

Meteor Building, St Mary's Row, Moseley, Birmingham, B13 9EG

Variation of Condition 7 to read "There shall be no more than two deliveries or collections to the commercial premises between the hours of 06:30 and 08:00 and between 19:00 and 22:00 on Mondays to Saturdays and 09:00 to 10:00 on Sundays and Public Holidays. No other deliveries or collections to the commercial premises shall take place outside the hours of 08:00 to 19:00 on Mondays to Saturdays and 10:00 to 18:00 on Sundays and Public Holidays". Condition 8 to allow a maximum net sales area of 1,159 square metres. Condition 22 to allow the replacement of approved drawings and removal of condition 40 to allow the occupation of the retail store prior to the medical centre being completed.

Applicant: CDP Ltd  
c/o The Agent  
Agent: Corstorphine and Wright  
Brook Hall, Brook Street, Warwick, CV34 4BL

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Recommendation

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

1. Proposal

1.1. Planning permission was granted on 6 May 2011 for the demolition of the existing car dealership buildings and its redevelopment to provide a mixed use scheme comprising a medical practice/surgery, retail food store and 14 sheltered residential apartments, together with a new access, car parking and landscaping works. The permission was subject to a Section 106 agreement that secured:

- a contribution of £68,000 to be paid prior to implementation available for 5 years from full occupation of the building for highway studies / works that may arise from traffic issues relating to use of the store / development;
- a contribution of £25,000 to be paid prior to implementation towards public realm / promotional and marketing campaigns / community safety initiatives within Moseley Village;
- a local employment and training obligation; and,
- payment of a monitoring and administration fee of £1,500 associated with the legal agreement.

The financial contributions sought through this agreement have been met in full and development has commenced under the 2011 consent.

1.2 As the economic climate has suffered since the grant of planning permission and the previous owner of the site (Tesco Stores Limited) recently sold the site, the delivery of this development has been stalled and subsequently negotiations relating to the delivery and occupation of the development have been ongoing. The proposed occupier for the food store is now Marks and Spencer who have requested amendments to a number of the conditions to suit their operation. Planning permission is now sought for the variation and/or deletion of a number of conditions attached to the 2009 consent.

1.3 Permission is sought to amend:

Condition 7: *“There shall be no more than two deliveries or collections to the commercial premises between the hours of 07:00 and 08:00 and between 19:00 and 22:00 on Mondays to Saturdays and 09:00 to 10:00 on Sundays and Public Holidays. No other deliveries or collections to the commercial premises shall take place outside the hours of 08:00 to 19:00 on Mondays to Saturdays and 10:00 to 16:00 on Sundays and Public Holidays”*

To:

*“There shall be no more than two deliveries or collections to the commercial premises between the hours of **06:30** and 08:00 and between 19:00 and 22:00 on Mondays to Saturdays and 09:00 to 10:00 on Sundays and Public Holidays. No other deliveries or collections to the commercial premises shall take place outside the hours of 08:00 to 19:00 on Mondays to Saturdays and 10:00 to **18:00** on Sundays and Public Holidays.”*

Condition 8: *“The maximum gross (internal) retail floor space shall not exceed 1,159 square metres”*

To:

1.2. *“The maximum **net sales** floor space shall not exceed 1,159 square metres”.*

1.3. The 2011 consent was supported by a retail impact assessment that clearly identified and assessed the development as having a total sales area of 1,159sq.m and the gross external floor space of 2,007sq.m. This however translated into a condition which stated *“The maximum gross (internal) retail floor space shall not exceed 1,159 square metres”*. Whilst this is in accordance with the assessment, the condition now requires varying to ensure that it is precise in its wording and as such is now proposed to state *“The maximum **net sales** floor space shall not exceed 1,159 square metres”*. This condition is only a variation in wording and does not alter the floor space as previously approved.

and

Condition 22: *“The development hereby approved shall be implemented in accordance with the details submitted with the application and shown on drawing numbers 293A01 08; 09; 30 Rev E; 31 Rev F; 32 Rev F; 33 Rev D; 34 Rev A; 36; 37; 38 Rev D; 39 Rev B; 40 Rev A; 41 and 3373/15 rev B (‘the approved plans’)”*

To:

*“The development hereby approved shall be implemented in accordance with the details submitted with the application and shown on drawing numbers **14031-2000-D**,*

**14031-6001, 14031-301, 14031-302, 14031-303 14031-6001, 14031-2003 Rev A, 14031-2015 Rev A, 14031-2016 Rev A, 14031-2020 Rev A, 14031-2021 Rev A, 14031-2022 Rev A, 14031-2023 Rev A, 14031-2029 Rev A, 14031-2030 Rev A, and 14031-2031 Rev A (‘the approved plans’).**”

- 1.4 Permission is also sought to delete condition 40 which states: “The retail store hereby approved shall not be occupied until the medical centre has been completed and is ready for occupation.”
- 1.5 The changes proposed under conditions 7, 8 and 40 have been outlined above. However, the changes to the plans proposed under the amendment to condition 22 would entail the following:
- Lobby has been added to ground floor retail unit to corner of Oxford Road and St Mary’s Row.
  - Retail store entrance has been relocated.
  - Car park layout and location of accessible spaces has been revised.
  - Second means of escape from residential has been omitted from Ground floor.
  - Retail space has been sub-divided.
  - Additional means of escape stair has been added to retail unit.
  - Retail plant well increased in size.
  - Location of unloading to retail unit relocated.
  - Additional entrance indicated to second retail unit on St Mary’s Row.
  - Retail refuse area added to rear car park.
  - Trolley bay locations added to rear car park
  - Rear car park revised to ensure delivery vehicles can turn.
- 1.6 The plans to be changed under condition 22 have been amended during this application due to concerns raised by Transportation. No other changes are proposed to the scheme from that previously approved under references 2009/05931/PA, 2012/00883/PA and 2014/03074/PA.
- 1.7 Site area: 0.59ha.

[Proposed Site Plan](#)

[Proposed Ground Floor Plan](#)

[Proposed Upper Floor Plan](#)

[Proposed Elevations](#)

## 2. Site & Surroundings

- 2.1. This is a prominent corner site at the edge of Moseley Village shopping centre located at the junction of St. Mary’s Row and Oxford Road. The buildings have been demolished but did formerly comprise a tall two-storey building set back from the road, facing the corner and surrounded by a single storey showroom and offices. There were taller workshop buildings towards the rear of the site behind the gardens in Oxford Road.
- 2.2. The site occupies a position in an area of transitional character. The main Victorian shopping area to the west is characterised by two, three and some four storey

narrow fronted terraced buildings with shops at ground floor and residential above. Directly east of the site is a group of 1930's terraced shops completed in mock Tudor style and set back from the road with parking in front. Diagonally opposite the site is St. Mary's Church (Grade II listed) occupying an elevated position. East of this is an area of vacant land straddling the railway that was previously used as open car storage. Further east along St. Mary's Row opposite the site are large detached houses set back behind a wide verge and mature hedge. Immediately south there are detached Victorian and early 1900's houses and Moseley Baptist Church (grade II listed) opposite in Oxford Road.

- 2.3. The site is adjacent to the boundary of Moseley Conservation Area, the boundary taking in properties west of the railway and north of St. Mary's Row. The site is within the Moseley Neighbourhood Centre as identified in the adopted Shopping and Local Centres SPD.

[Site Location Map](#)

[Street View](#)

### 3. Planning History

- 3.1. 11 October 2004. 2003/07757/PA. Demolish garage buildings and construct a new food retail store with 24 residential properties built over with proposed access and car parking. Refused for reasons for design, highway issues and residential amenity.
- 3.2. 1 August 2005. 2005/03178/PA. Demolish garage buildings and construct a new food retail store with 24 residential properties built over with proposed access and car parking. Refused on the grounds of design, highway issues and residential amenity.
- 3.3. 16 February 2009. 2008/06141/PA. Demolition of existing dealership/buildings and redevelopment to provide a mixed use development comprising a medical practice/surgery, retail convenience food store and 19 sheltered residential apartments together with 103 parking spaces, a new access and associated landscaping. Withdrawn.
- 3.4. 6 May 2011. 2009/05931/PA. Demolition of existing dealership/buildings and redevelopment to provide a mixed use development comprising a medical practice/surgery, retail food store and 14 sheltered residential apartments together with a new access, car parking and associated landscaping. Approved subject to conditions and a Section 106 Agreement.
- 3.5. 1 March 2012. 2012/00883/PA. Non material amendment attached to planning approval 2009/05931/PA, for the redevelopment of the above site, to provide a mixed use scheme comprising a medical practice/surgery, retail food store and 14 apartments, together with a new access, car parking and landscaping works. The amendments included changes to the retail element including a reduced plant area, staircases amended to be DDA compliant, roof height lowered and floor to floor height amended. The medical centre was also amended to include changes to the proposed roof pitches and a change in the external material from render to an external cladding system.
- 3.6. 29 January 2013. 2012/03445/PA. Application withdrawn by applicant for the removal of condition 24 (restricting residential accommodation to occupation by people of pensionable age) attached to previous planning application

2009/05931/PA to allow demolition of existing car dealership buildings and its redevelopment to provide a mixed use scheme comprising a medical practice / surgery, retail food store and 14 residential apartments, together with a new access, car parking and landscaping works.

- 3.7. 29 July 2014. 2014/03074/PA. Planning permission granted for the variation of condition 39 attached to approved application 2009/05931/PA to allow additional time for highway works to be completed.

#### 4. Consultation/PP Responses

- 4.1. Local residents, Ward Councillors, Residents Associations and MP notified. Site and press notice posted. 2 letters of support and 15 letters of objection received including those from former Councillor Hendricks, Moseley Forum and the Moseley Society. The objections received are based on the following grounds:

- Proposed delivery times – particularly those relating to Sundays and bank holidays.
- Reneging on the mixed use development that was approved due to the potential loss of the medical centre.
- Traffic congestion and road safety.
- Insufficient car parking.
- Change in village character due to the proposed development.
- Adverse effect on the Conservation Area and protected trees.
- Human Rights Act – the right to peaceful enjoyment of home and land.
- The medical centre should be delivered as part of scheme.
- Building such a dense mixed use development will fundamentally and negatively change the area.

- 4.2. Transportation – No objection to amended plans.

- 4.3. Regulatory Services – Recommend a one year temporary permission due to potential for noise at 1 Oxford Road during noise sensitive hours.

#### 5. Policy Context

- 5.1. Birmingham UDP, NPPF, NPPG, Draft Birmingham Development Plan, Moseley SPD, Shopping and Local Centres SPD.

- 5.2. Additionally, the site is adjacent to Moseley Conservation Area; near Oxford Road Baptist Church and Church of St. Mary's (both Grade II listed) and several archaeological sites. The site is also within 50m of the Alcester Road Railway Embankment SLINC and Vauxhall to Longbridge Railway Wildlife Corridor; and 10m of Tree Preservation Order 97.

#### 6. Planning Considerations

- 6.1. Planning permission was previously granted for a mixed use development in accordance with the Development Plan and other material considerations. Planning permission is now sought under Section 73 of the Act for the variation of conditions 7, 8 and 22 relating to delivery hours, plans and net sales area and the deletion of condition 40 restricting occupation of the retail store prior to the completion of the medical centre. The previous planning permission remains extant as work has started on site and therefore implementation of the consent has occurred. An application to vary or delete a condition made under Section 73 of the 1990 Town

and Country Planning Act (as amended) would result in the issuing of a new planning permission for the development as a whole.

- 6.2. The delivery of the site has been delayed since planning permission was granted due to a number of factors including the economic climate, protracted negotiations with proposed occupiers and that the site has recently been sold by its previous owners (Tesco Stores Limited). As such, demolition has occurred and the new site owners would like to proceed with the development.
- 6.3. The proposed occupier of the retail store is now Marks and Spencer who have a differing delivery and trading pattern to that of the previous site owner and occupier (Tesco Stores Limited). As such, a variation of delivery hours is sought. Condition 7 currently states *“There shall be no more than two deliveries or collections to the commercial premises between the hours of 07:00 and 08:00 and between 19:00 and 22:00 on Mondays to Saturdays and 09:00 to 10:00 on Sundays and Public Holidays. No other deliveries or collections to the commercial premises shall take place outside the hours of 08:00 to 19:00 on Mondays to Saturdays and 10:00 to 16:00 on Sundays and Public Holidays”*. Consent is sought to vary the condition to state *“There shall be no more than two deliveries or collections to the commercial premises between the hours of **06:30** and 08:00 and between 19:00 and 22:00 on Mondays to Saturdays and 09:00 to 10:00 on Sundays and Public Holidays. No other deliveries or collections to the commercial premises shall take place outside the hours of 08:00 to 19:00 on Mondays to Saturdays and 10:00 to **18:00** on Sundays and Public Holidays.”*
- 6.4. The 2011 consent grants opening times for the retail store of 0800-2200 hours on Mondays to Saturdays and 1000-1800 hours on Sundays and Public Holidays. The proposed change to Sunday and Public Holiday delivery hours brings the delivery times into alignment with the proposed opening hours and as such, I do not consider that any increase in noise to the detriment of residential amenity would occur. With regards to the proposed changes to delivery times on Monday to Saturdays, the only change sought is the 6.30am rather than 7am start. Regulatory Services have requested a one year temporary approval to enable monitoring of the noise in relation to 1 Oxford Road. I do not consider however, that this would be acceptable in this instance given the minor changes sought and that the delivery times would still correspond to the opening hours of the store apart from the morning slot. This would still however remain as no more than two deliveries during the time slot even with an extra half an hour in which to make the deliveries. On this basis, I consider the proposed variation of condition 7 to be acceptable.
- 6.5. With regard to condition 8, the 2011 consent was supported by a retail impact assessment that clearly identified, assessed and was accepted by your Committee as the development having a total sales area of 1,159sq.m and the gross external floor space of 2,007sq.m. This however translated into a condition which stated *“The maximum gross (internal) retail floor space shall not exceed 1,159 square metres”*. Whilst this is in accordance with the assessment, the condition now requires varying to ensure that it is precise in its wording and as such is now proposed to state *“The maximum **net sales** floor space shall not exceed 1,159 square metres”*. As this condition is only a variation in wording and does not alter the floor space as previously approved, the site is in centre and that the proposal falls under the threshold by which an impact assessment would be required; I consider that the proposed variation is acceptable.
- 6.6. With regard to condition 22, this listed the approved plans under which the development was required to be undertaken in accordance with. Following

negotiations with both Marks and Spencer and other potential occupiers, amendments to the plans are now sought and as such, the variation of condition 22. The amendments proposed to the scheme are as follows:

- Lobby has been added to ground floor retail unit to corner of Oxford Road and St Mary's Row.
- Retail store entrance has been relocated.
- Car park layout and location of accessible spaces has been revised.
- Second means of escape from residential has been omitted from Ground floor.
- Retail space has been sub-divided.
- Additional means of escape stair has been added to retail unit.
- Retail plant well increased in size.
- Location of unloading to retail unit relocated.
- Additional entrance indicated to second retail unit on St Mary's Row.
- Retail refuse area added to rear car park.
- Trolley bay locations added to rear car park
- Rear car park revised to ensure delivery vehicles can turn.

6.7. The plans submitted originally sought to reduce the number of car parking spaces proposed on site however, Transportation advised that this would not be acceptable in this location and amended plans were subsequently submitted. Transportation have raised no objections to the amended plans and I have no objections to the minor modifications now proposed including the changes to the proposed retail store including its sub-division, new lobby and revised store entrance location. A revised amended plan condition is outlined below.

6.8. Finally, the applicant seeks to delete condition 40 which states "The retail store hereby approved shall not be occupied until the medical centre has been completed and is ready for occupation." The applicant has advised as part of this application that they have been involved in protracted negotiations with both the NHS and the local doctor's surgery since purchasing the site (as had Tesco before them) regarding the occupational requirements. Since planning permission was granted in 2011, the NHS has seen various internal changes, which has resulted in delays in their agreement to lease the approved Medical centre building. As such and until the NHS is clear on demand and floor space requirements, they are unable to commit to occupying the building at this time.

6.9. I note the objections received in relation to the deletion of this condition. It is not the applicant's intention at this time to remove the medical centre from the scheme, only to remove the restriction preventing occupation of the retail store before completion of the medical centre. The condition, at present, has significantly delayed the delivery of this 'in centre' site and will continue to prevent its delivery until such a time as the NHS and doctor's surgery can commit to occupation. The notification regarding the new medical centre on the Wake Green Road Surgery website states: *"We remain in discussion with the developer to explore possibilities as to how new premises could fit with their proposals for the site (which includes retail and residential elements). We do not currently have any commitment/legal hold/obligation to the new development."*

6.10. As such, and given the planning system requirement to enable sustainable development and not apply conditions that restrict growth and delivery, I consider the deletion of the condition to be acceptable.

- 6.11. I note the objections received from local residents that relate primarily to whether planning permission should be granted for the development as a whole again due to insufficient car parking, HGV's accessing the site, access points, increase in traffic, pollution and noise along with changing the character of the area from residential. All of these issues were identified and covered through the issuing of planning permission for the development back in 2011. Whilst this Section 73 application would result in the issuing of a new planning permission for the development, the assessment cannot go back to the principle of the development. Also, implementation of the 2011 consent has occurred and the Section 106 monies paid.
- 6.12. A Deed of Variation to the 2011 consent and subsequent earlier 2014 Section 73 permission remains as requirement, despite monies having been paid on implementation, due to the ongoing local employment and training obligations and the requirement for payment of a monitoring and administration fee of £1,500 associated with the legal agreement.

## 7. Conclusion

- 7.1. The proposal continues to meet retail policy objectives and criteria set out in the Birmingham UDP and the NPPF, and continues to provide the opportunity to make a significant contribution to the regeneration of Moseley. The site has lain vacant for several years and its reuse is to be encouraged.

## 8. Recommendation

- 8.1. That consideration of application no. 2014/01972/PA is deferred pending the completion of a Deed of Variation to the original consent 2009/05931/PA to secure:
- a local employment and training obligation; and,
  - payment of a monitoring and administration fee of £1,500 associated with the legal agreement.
- 8.2 That the Director of Legal and Democratic Services be authorised to prepare, seal and complete the appropriate agreement.
- 8.3 That in the event of the above Deed of Variation legal agreement not being completed to the satisfaction of the Local Planning Authority, on or before 27 November 2014, planning permission be refused for the following reasons:
- a) In the absence of any suitable planning obligation to secure :
- a local employment and training obligation; and,
  - payment of a monitoring and administration fee of £1,500 associated with the legal agreement, in association with the wider site redevelopment approved under 2009/05931/PA the proposed development conflicts with paragraphs 8.50-8.54 of the Birmingham UDP 2005.
- 8.4 That in the event of the above Deed of Variation legal agreement being completed to the satisfaction of the Local Planning Authority on or before 27 November 2014, favourable consideration would be given to application 2014/01972/PA subject to the conditions listed below.

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- 1 Access Ramp Details
- 2 Remediation Strategy
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- 3 Requires the prior submission of a contaminated land verification report
  - 4 Limits the hours of use to 0800 to 2200 on Mondays to Saturdays, and 1000 to 1800 on Sundays and Public Holidays.
  - 5 Access to Car Park
  - 6 Limits delivery time of goods to or from the site to no more than two deliveries or collections to the commercial premises between the hours of 06:30 and 08:00 and between 19:00 and 22:00 on Mondays to Saturdays and 09:00 to 10:00 on Sundays and Public Holidays. No other deliveries or collections to the commercial premises shall take place outside the hours of 08:00 to 19:00 on Mondays to Saturdays and 10:00 to 18:00 on Sundays and Public Holidays.
  - 7 Limits the maximum net sales floorspace of the unit
  - 8 Prevents storage except in authorised area
  - 9 Drainage Details
  - 10 Decommissioning of Redundant Tanks and Pipework
  - 11 Bat Survey Implementation
  - 12 Scheme of Noise Insulation
  - 13 Noise Insulation to St Mary's Row
  - 14 Requires the prior submission of a goods delivery strategy
  - 15 Cumulative Noise from Plant and Machinery
  - 16 Communal Satellite Dish
  - 17 Landscape Details
  - 18 Boundary Treatment
  - 19 Requires the prior submission of a lighting scheme
  - 20 Materials
  - 21 Requires the scheme to be in accordance with the listed approved plans
  - 22 CCTV
  - 23 Sets a minimum age of residents
  - 24 Protects retained trees from removal
  - 25 Requires the implementation of tree protection
  - 26 Requires the prior submission of an arboricultural method statement
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- 27 Requires tree replacement within 2 years post development
  - 28 Air Quality Assessment
  - 29 Details of car parking, servicing strategy and delivery vehicle management
  - 30 Construction Vehicle Routing
  - 31 Travel Plan
  - 32 Travelwise
  - 33 Delivery and Service Area
  - 34 Construction of Vehicle Parking
  - 35 Access and Egress
  - 36 Cycle Storage
  - 37 Requires the prior submission and completion of works for the S278/TRO Agreement
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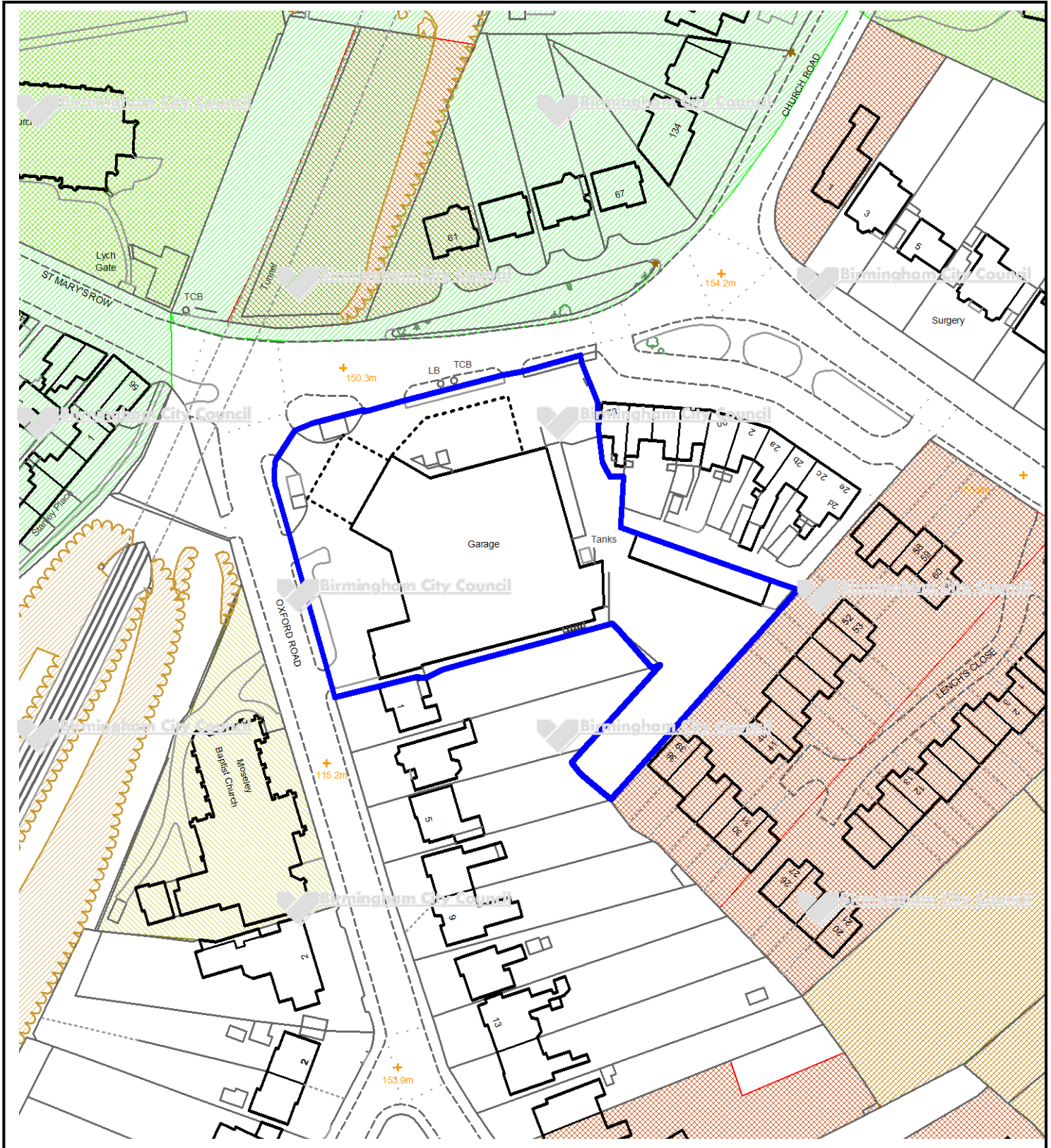
Case Officer: Pam Brennan

**Photo(s)**



View from St Mary's Row

# Location Plan



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