

Application Number	23/00414/FUL
Site Address	42 Foregate Street, Worcester, WR1 1EE
Description of Development	Mixed-use refurbishment retaining and remodelling Commercial use (Class E) at ground floor with residential flats above at first, second and third floor levels.
Expiry Date	31 st October 2023
Applicant	Foregate Regeneration Ltd
Agent	Mr Nick Carroll
Case Officer	Dale Jones
	dale.jones@worcester.gov.uk
Ward	Cathedral Ward
Reason for Referral to Committee	Councillor "Call In" request.
Web link to application	https://plan.worcester.gov.uk/Planning/Display/23/00414/FUL
Recommendation	The Corporate Director - Planning and Governance recommends that the Planning Committee grants planning permission subject to the conditions set out in section 9 of this report.

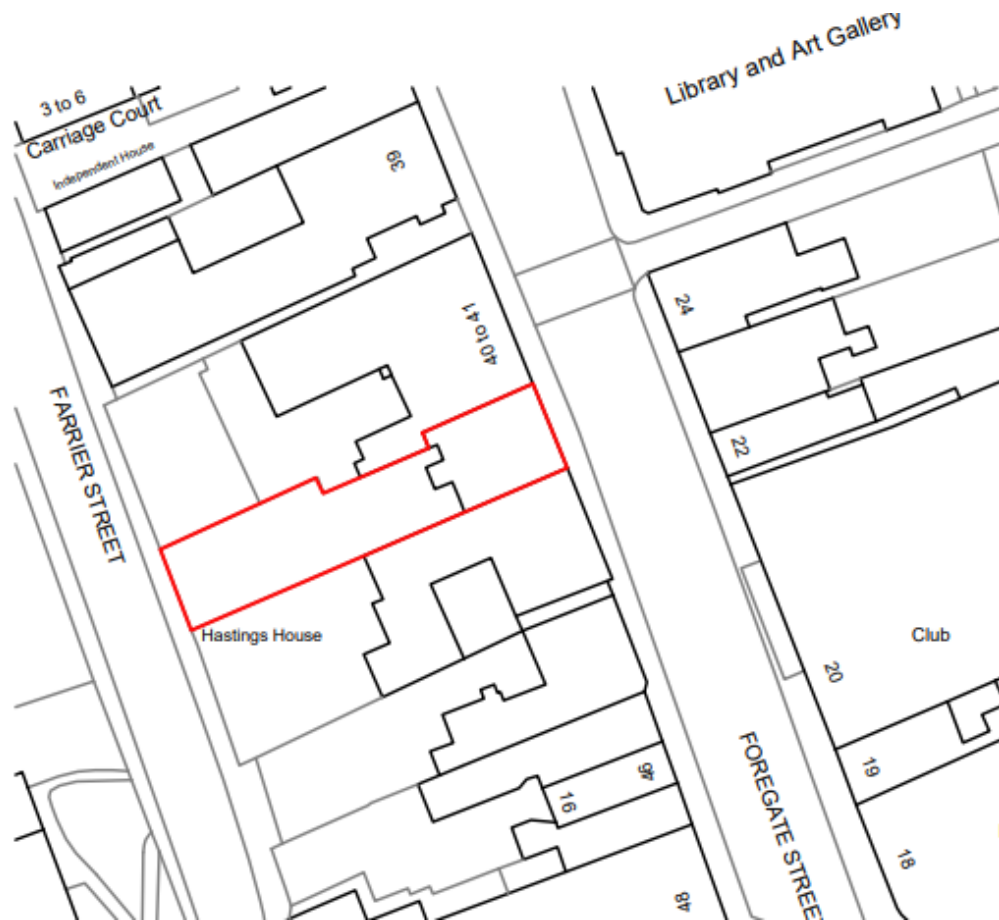
1. Background

- 1.1 The application was registered on 10 August 2023 and was due for a decision on 5 October 2023. An extension of time for the determination of the application has been granted until 31 October 2023.
- 1.2 The application has been referred to the Planning Committee following a "call in" request from Councillor Denham (email correspondence dated 22 August 2023).

2. The site and surrounding area

- 2.1 The application site is in Cathedral ward, and is located on, and to the rear of, the A449, the main entry to the City Centre from the north. The site comprises vacant offices. There are a variety of uses within the surrounding area including commercial, restaurant, retail and residential uses, plus several public houses. The wider area is

generally characterised by similar commercial, retail and residential uses. There are many listed buildings in the immediate vicinity, including Nos.46-33 Foregate Street (except Nos.44 & 36). In contrast, Farrier Street does not have any listed buildings.



Site Location Plan Extract (site outlined in red)

- 2.2 The application site is listed grade II and situated within the Foregate Street and The Tything Conservation Area. It was built as a house in the mid-18th c and has had later additions and alterations. Listed on 22 May 1954, it forms a good group with the Shire Hall, Statue of Queen Victoria, City Museum and Library and Nos.15, 19, 22, 23, 24, 28, Nos.33-46 (consecutive) and No.40, Foregate Street.
- 2.3 The building is four-storey with a rendered and white painted frontage at ground and first levels. The building has a small canopy above the front door with a pillar either side of the door. The front elevation of the building at ground floor level is dominated by a large window, though the fenestration to the upper floors is aligned sash windows with Georgian glazing bars. The building forms a visual focal point of this part of the street scene by virtue of its height standing proud of the neighbouring buildings and its rendered frontage. To the rear of the building, the site is largely laid to hardstanding and used for vehicular parking.

Site Constraints

Air Quality Management Area: St. John's Worcester

Archaeological Sensitive Areas (ASA)
Conservation Area

3. The proposals

- 3.1 This application seeks planning permission for the mixed-use refurbishment of the building, by retaining and remodelling a commercial use (Class E) at ground floor with

residential flats proposed above at first, second and third floor levels. These proposals are effectively an amended version of the previously approved planning application for the main building at 42 Foregate Street (Ref. 21/00470/FUL and 21/00471/LB), which was granted on 15 March 2023.

3.2 As such, this application involves amendments to the extant permission on this site (21/00470/FUL) and the proposed development seeks to remodel the ground floor commercial use and reduce the number of residential flats on the upper floors from 13 to 9 units (net reduction in 4 residential units). In detail, the proposed amendments sought by this latest planning application (and associated listed building application) seek:

- amendments to the ground floor requiring fewer internal modifications.
- an amended ground floor layout and rear external amenity space.
- a new window to the main ground floor front plate glass to enable ventilation/opening etc., in keeping with the window to the left-hand side when viewed from the street.

3.3 These changes are shown on the following submitted drawings: 2024 / P / 03 H Proposed Floor Plans and 2024 / P / 04e Existing and Proposed Elevations. For the purpose of clarity, these modifications have been assessed on their own planning merits, and against the totality of the works that have been previously consented.

3.4 A separate related application for listed building consent is being considered concurrently with this application under application (Ref. 23/00415/LB).

3.5 In accordance with Article 15 (7) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended), full details of the application have been published on the Council's website. As such, Members will have had the opportunity to review the submitted plans and documents to familiarise themselves with the proposals prior to consideration and determination of the application accordingly.

4. Planning Policy

4.1 The Town and Country Planning Act 1990 ('the Act') establishes the legislative framework for consideration of this application. Section 70(2) of the Act requires the decision-maker in determining planning applications/appeals to have regard to the Development Plan, insofar as it is material to the application/appeal, and to any other material consideration. Where the Development Plan is material to the development proposal it must therefore be considered. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the application/appeal to be determined in accordance with the Plan unless material considerations indicate otherwise.

4.2 The National Planning Policy Framework (NPPF - 2023) is also a significant material consideration.

4.3 At paragraph 12 the NPPF confirms that '*The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making.*'

4.4 Paragraph 200 of the NPPF states that "Local Authorities are called to look for opportunities for new development within conservation areas and the setting of heritage assets to enhance or better reveal their significance" and that "Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area" (paragraph 130).

- 4.5 This is further reflected in South Worcestershire Development Plan policies SWDP 6 and SWDP 24 which seek to protect and enhance designated and non-designated heritage assets and guide against development that would cause substantial harm to the significance of any heritage asset and policy SWDP 21 which sets generic design principles for development proposals.
- 4.6 Policy SWDP 21 requires that all development will be expected to be of a high design quality and integrate effectively with its surroundings and that development proposals must complement the character of the area. Furthermore, proposals should respond to surrounding buildings and the distinctive features or qualities that contribute to the visual and heritage interest of the townscape, frontages, streets and landscape quality of the local area and states that the scale, height, and massing of development must be appropriate to the setting of the site and the surrounding landscape character and townscape, including existing urban grain and density.
- 4.7 The Development Plan comprises:
- The South Worcestershire Development Plan (SWDP) which was adopted February 2016, and;
 - The Worcestershire Waste Core Strategy, which was adopted on December 2012.

South Worcestershire Development Plan

- 4.8 The following policies of the SWDP are relevant to the proposal:

SWDP 1 – Overarching Sustainability Principles
SWDP 2 – Development Strategy and Settlement Hierarchy
SWDP 4 – Moving Around South Worcestershire
SWDP 6 – Historic Environment
SWDP 13 – Effective Use of Land
SWDP 15 – Meeting Affordable Housing Needs
SWDP 21 – Design
SWDP 24 – Management of the Historic Environment
SWDP 27 – Renewable and Low Carbon Energy
SWDP 29 – Sustainable Drainage Systems

Supplementary Planning Documents

- 4.9 The following Supplementary Planning Documents are relevant to the application proposals:

- **Design Quality SPD**

The Design Quality SPD was adopted on 5th March 2018 and replaces the previous Supplementary Planning Guidance Note 3: Design (SPG3). Both documents encourage high standards of design for development proposals in accordance with the aims and interests that the NPPF seeks to protect and promote in this regard. The Design Quality SPD is consistent with the planning policies in the SWDP.

Other Material Considerations

- 4.10 The following documents are relevant to the application proposals. Due to their status as evidence or guidance they cannot be given full weight.

Worcestershire's Local Transport Plan (LTP4) 2018 – 2030
Worcestershire County Council Streetscape Design Guide (July 2022)

5. Planning History

- 5.1 There is an extensive planning history to the application site though none of it is considered directly relevant to the current applications. The main building has been in office use since at least 1964, first by an estate agent and more recently by a firm of solicitors.
- 5.2 However, recent planning records pertinent to the current full and listed building consent applications before committee, include the following noted applications as below in bold font:

21/00470/FUL and **21/00471/LB** for the mixed-use refurbishment retaining Commercial use (Class E) with 13 studios, which was approved in March 2023. The current applications relate to modifications to these previously approved and are considered to be the "fall-back" position.

22/00623/FUL, which secured planning permission for the rear of the plot, for the proposed erection of a two-storey building to provide four residential apartments (4 x 1 bed units) alongside associated amenity space, refuse and cycle storage to the rear of 42 Foregate Street Approved under Delegated powers on 10 January 2023.

6. Consultations

- 6.1 Formal public consultation, including display of site notices, has been undertaken in respect of the application. The following comments from statutory and non-statutory consultees and interested third parties have been received in relation to the original and amended proposals and are summarised as follows:

Neighbours and other third-party comments

Initial public comment dated 14 August 2023

- 6.2 Whilst I support the overall scheme as a positive for the building and the area I object to the provision of the outdoor seating area for the ground floor bar in its current position. Immediately adjacent to the outdoor seating area is our "brew house" with 2 large existing windows at ground floor level and 1 window at first floor level. The outdoor seating area is undoubtedly going to create noise, smoke and generally exuberant behaviour. I don't think it is reasonable to expose our occupants to this at such close quarters. A suggested acceptable solution would be to 'hand' the design, so the outdoor seating area is to the south and the bike racks etc to the north. I perfectly accept that in a city centre location there is often (usually) a considerable impingement of one neighbour upon another, and I don't object to this; I do think in this situation there is scope to minimise it.

Follow up public comment dated 31 August 2023

- 6.3 Reference amended plan to ground floor as shown in drawing number 2024 / P / 03H uploaded on 30/8/23, I confirm that this is acceptable, and I have **no objection** to planning permission being granted on this basis.
- 6.4 The following **statutory and non-statutory responses** have been received:
- 6.5 **Worcester City Council Archaeological Officer:** No objections subject to conditions to secure a suitable programme of archaeological work, including a Written Scheme of Investigation (WSI).

6.6 **Worcester City Council Conservation Officer:** No objections, noting (inter alia) that these changes to the consented scheme do not change my previously expressed opinion that this proposal will be Sustaining and Enhancing upon the significance of the heritage asset and will have a positive impact upon the conservation area.

6.7 **Highway Authority:** No objections, subject to the use of planning conditions noting (inter alia) that:

It is noted that there is an extant permission on this site (21/00470/FUL) which is approved with outstanding conditions and the proposed development seeks to remodel the ground floor commercial use and reduce the number of residential flats on the upper floors from 13 to 9.

As before, the site has been accepted as 'parking free' in line with the Streetscape Design Guide and the highly sustainable location is noted. However, whilst the Bike stand area for bikes, shown on the submitted plan is noted, further details are required to ensure compliance with policy and in addition to 9 spaces for the 9 x 1no. bedroom flats, cycle parking for staff for the commercial use, should be provided.

Access to the rear of the site for cycles and bins etc is from Farrier Street and the existing vehicular crossover will need to be permanently closed with the full height kerb re-instated, as there is no vehicular access to either No. 42 Foregate Street or the approved 4 x 1no. bedroom units to the rear via 22/00632/FUL.

6.8 **Worcester Civic Society:** The Civic Society supports the principle of introducing residential uses in town centres on upper floors as a positive approach to town centre management, growth and adaptation. It is welcomed and supported that only minor changes are sought to the elevation of the building, in that cleaning and minor cosmetic repairs are sought. Notwithstanding this, a strong point of contention is had to the size of the proposed apartments.

The applicant cannot dispute the fact the majority of the units do not meet the minimum gross internal floorspace standards as outlined in the Government's 'Technical Housing Standards - nationally described space standards'. These standards do not form part of any adopted development plan policy. The proposals conflict with the DSDS is therefore not a determinative factor, as such, it falls to Officers to consider whether the apartments would be of a sufficient size for future occupiers on a fact and degree basis, considering the more general design and amenity policies in the development plan.

The Civic Society considers that when reasonable items like tables, beds, seats and other domestic paraphernalia are included in these studio apartments, there would be minimal and tight circulation space for residents leading to cramped and oppressive living environments. The inclusion of some outside space for occupiers of the apartments would not overcome the fact that internal living space would be deficient for each residential unit.

We accept that the proposal would bring vacant floorspace back into use and in this sense there would be some limited enhancement to the character and appearance of the Conservation Area. However, it might be possible to opt for a different form of residential development and layout, thereby bringing the building into use, whilst also ensuring acceptable internal living space: the applicant has not presented a viability case and so this remains a possibility. The proposal would boost the supply of dwellings in the area with associated economic and social benefits, although the contribution from a net nine dwellings would not be significant particularly in the context that the evidence indicates that the South Worcestershire authorities can demonstrate more than a five-year supply of deliverable housing sites.

Overall, we find that these material considerations are not of a sufficient magnitude to outweigh the significant harm caused because of the cramped nature of the proposed apartments from an overall internal living space point of view. We conclude that the proposal would fail to accord with the amenity requirements of SWDP Policy 21 [Design] of the adopted SWDP 2016; paragraph 126 of the National Design Guide and paragraph 127(f) of the National Planning Policy Framework.

- 6.9 **Worcester City Council Landscape Officer:** No objections provided (as appears to be the case) there are no works to the roof or roof void, including repairs/renewals etc. If so a bat assessment would be required.
- 6.10 **Conservation Advisory Panel:** Welcome positively. The proposed change to the Foregate Street 'shop window' was welcomed (by the Panel), and in general were the other changes to the scheme. Some comments were made regarding the small size of some of the flats and reference was made to the neighbour comments regarding outside seating.
- 6.11 **West Mercia Police:** There are limited within the Design and Access statement for security, this proposed application is within the heart of Worcester City, safety, and security for all is paramount. Residents of Houses of Multiple Occupation (HMO) do have the right to feel safe and secure in their accommodation, badly designed HMOs are prone to increased levels of crime and disorder, with this in mind I have the follow comments. There is unrestricted access to the rear of the property where there is a shared entry for commercial and residential units, consideration should be given to include fencing and gating to this area, to be operational from both sides, this will reduce the fear of crime for all users and prevent unwanted access to this area which could lead to criminality. The bike area for needs to be suitably secured. Appropriate lighting is required for door sets. There is no mention of mail delivery, facilities should be provided that enable mail to be delivered to safe and secure areas, please note that a tradesperson or timed-release mechanisms are not permitted.

All residential doors should be dual certified for both security, smoke and fire, the doors should meet security standard PAS24:2016 / PAS24:2022 or equivalent.

The property as it is over two floors, a visitor door entry system and access control system that meets the SBD specification as outlined in sections of Secured by Design guides is required.

Existing windows which are to be retained and repaired do require appropriate security. Please see the police preferred specification in the Secured by Design Homes 2022 guide for standards. SbD is a nationally recognised award aimed at achieving a minimum set of standards in crime prevention for the built environment. The scheme has a proven track record in crime prevention and reduction. The principles and standards of the initiative give excellent guidance on crime prevention through the environmental design and on the physical measures.

- 6.12 Members have been given the opportunity to read all representations that have been received in full. At the time of writing this report no other consultation responses have been received. Any additional responses received will be reported to members verbally or in the form of a late paper, subject to the date of receipt.
- 6.13 In assessing the proposal due regard has been given to local resident's comments as material planning considerations. Nevertheless, I am also mindful that decisions should not be made solely on the basis of the number of representations, whether they are for or against a proposal. The Localism Act has not changed this, nor has it changed the

advice that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission unless it is founded on valid planning reasons.

7. Planning Assessment

- 7.1 Policy SWDP1 of the South Worcestershire Development Plan sets out overarching sustainable development principles and these are consistent with the Framework. The various impacts of the development have to be assessed and the benefit and adverse impacts considered, to establish whether what is proposed is sustainable development. Taking the above matters into account, officers consider the main issues raised by the proposal relate to the principle of development and whether the development would be sustainable, having regard to the 3 dimensions of sustainability set out in the Framework: economic, social, and environmental.

The Principle of Development

The extant permission

- 7.2 As noted elsewhere above, planning permission has been granted previously by the planning committee (November 2021 meeting) for this site under application (Refs. **21/00470/FUL** and **21/00471/LB** for the mixed-use refurbishment retaining Commercial use (Class E) with 13 studios, which was approved by decision noticed dated March 2023.
- 7.3 The current applications relate to modifications to these previously approved applications, which are the "fall-back" position. As such, the principle of development for ground floor commercial usage, with residential flats above, has previously been considered acceptable. The current proposals, which seek a reduced quantum of residential units within the building and modified layout are therefore considered to be acceptable in principle, subject to being found acceptable against the range of planning considerations that are explored elsewhere within this report.

Housing land supply position

- 7.4 The current position with respect to housing supply and delivery is an important factor when determining whether policies for the locational strategy and provision of housing (i.e., SWDP2) are to be considered out of date and consequently whether Paragraph 11d of the NPPF (the so called 'tilted balance') is to be engaged in the determination of an application for housing. Footnote 8 to Paragraph 11 of the NPPF is clear that where a Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites, or where the Housing Delivery Test (HDT) indicates that the delivery of housing has been substantially below (less than 75% of) the housing requirement over the previous three years, policies for the provision of housing are to be considered out of date.
- 7.5 Insofar as past delivery is concerned, the latest HDT results for England (April 2021) were published by the MHCLG in January 2022. This sets out a Plan-wide figure for South Worcestershire confirming delivery at 155%; well above the 75% threshold. This means that there are no consequences for decision-taking in South Worcestershire as a result of housing delivery.
- 7.6 As the SWDP is now more than five years old, the NPPF at Paragraph 74 requires the 5YHLS calculation to be based on the output of the Standard Method calculation as opposed to the adopted SWDP annual housing requirement.
- 7.7 The South Worcestershire Councils (SWCs) reviewed their 5 Year Housing Land Supply position for 2022. In the light of recent appeal decisions, the SWCs are using an

individual district approach for the 5 Year Housing Land Supply calculation. In respect of Worcester City, following this the Council is unable to demonstrate a five-year supply of deliverable housing. Worcester City is able to demonstrate 4.4 years supply of housing land.

7.8 The NPPF at paragraph 11d says that for decision-taking Local Planning Authorities should accord with the presumption in favour of sustainable development meaning:

“Approving development proposals that accord with an up-to-date development plan without delay; and where there are no relevant policies or the policies which are most important for determining the application are out of date, granting permission unless:

i. The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”.

7.9 Paragraph 74 requires that LPAs authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement, or against their local housing need where the strategic policies are more than five years old.

7.10 Paragraph 75 confirms that a five-year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan, or in a subsequent annual position statement.

7.11 Worcester City Council cannot currently demonstrate a five-year housing land supply. Consequently, paragraph 11d is engaged and planning permission should be granted unless either of sub-paragraphs i or ii are relevant. This means that the so called ‘tilted balance’ is in effect when weighing the planning balance of the proposal. However, paragraph 12 of the NPPF does state that “The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making.”

7.12 This report sets out in the context of the ‘*tilted balance*’ how any harm and/or benefits have been considered in terms of the three objectives of sustainable development as set out within the Framework.

7.13 The net increase in residential units (if approved) would equate to **nine new units** within the property as a result of these change of use/conversion proposals. The provision of nine additional units of residential accommodation, on previously developed land can be attributed **moderate positive weight** in the planning balance. This report sets out in the context of the ‘*tilted balance*’ how any harms and/or benefits have been considered in terms of the three objectives of sustainable development as set out within the Framework.

7.14 The application site is in a sustainable location within Worcester where local and national policy encourages the use or re-use of vacant or under-utilised urban sites, to secure the optimum viable use of a site. Accordingly, there is no objection to the principle of the proposed development on the site, whilst considering the proposed use of the site for residential purposes.

Design and visual impact

- 7.15 The NPPF confirms that the Government attaches great importance to the design of the built environment, and notes that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.
- 7.16 Paragraph 126 of the NPPF highlights that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve, and that good design is a key aspect of sustainable development, creating better places in which to live and work and helping make development acceptable to communities.
- 7.17 Paragraph 134 of the NPPF states that development that is not well designed should be refused, especially, where it fails to reflect local design policies and government guidance on design taking into account any local design guidance and supplementary planning documents such as design guides and codes. Weight should be given to development which reflects local design policies and guidance and supplementary planning documents such as design guides and codes; and/or outstanding or innovative designs which promote high levels of sustainability or help raise the standard of design more generally in an area so long as they fit in with the overall form and layout of their surroundings.
- 7.18 Policy SWDP 21 – ‘Design’ is relevant and requires all new development to be of a high-quality design which integrates effectively with its surroundings, in terms of form and function, whilst also reinforcing local distinctiveness.
- 7.19 The original appearance of the building has not changed significantly while the proposed development would remove the (internal) non- original stud wall partitions in the building at first floor level and above, thereby returning these floors of the building to their original form and layout (and in doing so, would have a beneficial impact upon the historic character and nature of the listed building). No objections are raised to the proposals from a detailed design perspective, given that the original appearance of the building at these levels has not changed significantly, and the limited external interventions as proposed, which would be confined to:
- amendments to the ground floor requiring fewer internal modifications.
 - an amended ground floor layout and rear external amenity space.
 - a new window to the main ground floor front plate glass to enable ventilation/opening etc., in keeping with the window to the left-hand side when viewed from the street.
- 7.20 In summary, it is considered that the external changes are minimal in scope and would be of an appropriate design and nature to help facilitate the proposed change of use and conversion. As such, the proposed development would adhere with the provisions of policy SWDP21 and with Paragraph 130 of the NPPF and be attributed **limited positive weight** in the planning balance.

Impact on neighbouring amenity and amenity of future occupiers

- 7.21 With regard to the policy context, policy SWDP 21 requires that new development does not have a significant adverse effect on neighbouring amenity. This is consistent with paragraph 130 of the NPPF that requires planning policies and decisions, amongst other matters, to ensure a high standard of amenity for existing and future users of land and buildings. The NPPF requires development to deliver safe and healthy living conditions (para 119) and create places that are safe, inclusive and accessible and which promote

health and well-being, with a high standard of amenity for existing and future users (para 130f). The Design Guide SPD lays out principles to follow to achieve satisfactory amenity within developments.

- 7.22 The 'Effective Use of Land' section in the Government's Planning Practice Guidance (PPG), confirms that consideration is to be given as to whether a proposed development would have an unreasonable impact on the daylight and sunlight levels enjoyed by neighbouring occupiers, setting out that all development should maintain acceptable living standards, although what will be appropriate will depend to some extent on the context. The Guidance cites city centre locations where tall modern buildings predominate as an area where lower daylight levels at some windows may be appropriate if new development is to be in keeping with the general form of its surroundings.
- 7.23 The application site lies adjacent to residential properties located at first floor level and above in the neighbouring and nearby properties along Foregate Street. Policy SWDP 21 requires that new development does not have a significant adverse effect on neighbouring amenity. Whilst the proposed conversion would represent a significant intensification in the use of the site (considering that it has been vacant for three years) and would represent an intensification over the former purely office use of the site, Officers do not consider it to be such that it would result in harm to the occupants of surrounding properties through overlooking, loss of light or noise disturbance. No extensions are proposed, and modern insulation is such that the noise disturbance between buildings (and between the individual units in the building) would not be an issue.
- 7.24 In terms of noise and disturbance, the application site is located in a vibrant part of the city which plays a key role in its night-time economy. There are a number of properties and uses along Foregate Street and Farrier Street which, through their late opening hours, would have a potential impact upon the future residential occupiers of both the frontage building. However, with modern means of noise insulation and ventilation, there need not be a harmful impact upon the amenities of the future occupiers of the site, in this regard.
- 7.25 However, the introduction of the proposed development could give rise to potential noise and disturbance for the occupiers of the surrounding properties during the construction phase because of the movement of construction and related traffic and conversion works. Such disturbance during construction is to be expected though and is not normally a material planning consideration as it would not be permanent. Nevertheless, it is possible to reduce the degree of such intrusion and harm to amenity by requiring a construction environment management plan (CEMP). In setting these controls the impact on the amenity of the neighbours would be reduced to a minimum during the construction period and can reasonably be secured by way of an appropriately worded planning condition in the event of the proposed development being found acceptable. Whilst the temporary adverse impact on residents during the construction phase is recognised, it is considered that these can be suitably mitigated.
- 7.26 Given the intensification in usage, and the Class E floorspace as proposed, the proposal is therefore attributed **limited adverse weight** in the planning balance. It is considered that in the event whereby planning permission could be recommended, then matters of noise and disturbance during the construction period could be controlled using planning conditions.

The internal living environment (quality of the proposed development)

- 7.27 The Nationally Described Space Standards (NDSS) set out the minimum internal floor areas for new build dwellings to ensure that such development provides a sustainable and adequate standard of accommodation and environment for all occupants.

The proposed residential flats would measure:

Unit 1 (1, bed, 1-person) would measure 45sqm against a required 39sqm.

Unit 2 (1, bed studio) would measure 19sqm against a required 37sqm.

Unit 3 (1, bed studio) would measure 18.3sqm against a required 37sqm.

Unit 4 (1, bed studio) would measure 18.1sqm against a required 37sqm.

Unit 5 (1, bed studio) would measure 18.7sqm against a required 37sqm.

Unit 6 (1, bed studio) would measure 19.1sqm against a required 37sqm.

Unit 7 (1, bed studio) would measure 20.6sqm against a required 37sqm.

Unit 8 (1, bed, 1-person) would measure 45sqm against a required 39sqm.

Unit 9 (1, bed, 1-person) would measure 31.5sqm against a required 39sqm.

- 7.28 The above shortfalls against the NDSS can be justified in this instance given the recent planning history of the site in the case of the approved application (Ref. 21/00470/FUL), which granted a total of 13 residential flats, which is a material consideration in this case, particularly as the current proposal as modified proposes only limited layout changes as noted. However, the shortfalls are significant for the shortfalls as identified to be attributed **moderate adverse weight** in the planning balance given the shortfalls as identified in this case.

Impact on Heritage Assets

- 7.29 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("PLBCAA") provides that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 7.30 Section 72(1) of the PLBCAA provides that in the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of (amongst others) the planning Acts, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. The South Lakeland District Council V Secretary of State for the Environment case and the Barnwell Manor case (East Northamptonshire DC v SSCLG) establish that "preserving" in both s.66 and s.72 means "doing no harm".
- 7.31 Policy SWDP 6: Historic Environment states (inter alia) that:
- A. Development proposals should conserve and enhance heritage assets, including assets of potential archaeological interest, subject to the provisions of SWDP 24. Their contribution to the character of the landscape or townscape should be protected in order to sustain the historic quality, sense of place, environmental quality and economic vibrancy of south Worcestershire.
 - B. Development proposals will be supported where they conserve and enhance the significance of heritage assets, including their setting.
- 7.32 Policy SWDP 24: Management of the Historic Environment is also relevant and states that:
- A. Development proposals affecting heritage assets will be considered in accordance

with the Framework, relevant legislation and published national and local guidance.

B. Proposals likely to affect the significance of a heritage asset, including the contribution made by its setting, should be accompanied by a description of its significance in sufficient detail to allow the potential impacts to be adequately assessed. Where there is potential for heritage assets with archaeological interest to be affected, this description should be informed by available evidence, desk-based assessment and, where appropriate, field evaluation to establish the significance of known or potential heritage assets.

C. The sympathetic and creative reuse and adaptation of historic buildings will be encouraged. Such proposals, and other proposals for enabling development that provide a sustainable future for heritage assets identified as at risk, will be considered in accordance with SWDP 24 A.

D. Where a material change to a heritage asset has been agreed, recording and interpretation should be undertaken to document and understand the asset's archaeological, architectural, artistic or historic significance. The scope of the recording should be proportionate to the asset's significance and the impact of the development on the asset. The information and understanding gained should be made publicly available, as a minimum through the relevant Historic Environment Record and where appropriate at the asset itself through on-site interpretation.

7.33 The NPPF defines a "heritage asset" as:

"A building, monument, site place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest". The definition includes both designated heritage assets (of which, Listed Buildings and Conservation Areas are relevant here) and assets identified by the local planning authority (including local listing).

7.34 'Significance' is defined within the NPPF as being: "the value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives from a heritage asset's physical presence, but also from its "setting". The NPPF recognises the effect of an application on the significance of a heritage asset is a material planning consideration. Significance can be harmed or lost through alteration or destruction of the heritage asset, or development within its setting. Any harm or loss should require clear and convincing justification.

7.35 It is one of the core principles of the NPPF that heritage assets should be conserved in a manner appropriate to their significance. Chapter 16 of the NPPF, at paragraph 195, sets out that the local planning authority should identify and assess the particular significance of any heritage asset. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.

7.36 Paragraphs 189-208 set out the framework for decision making in applications relating to heritage assets and this assessment takes account of the relevant considerations in these paragraphs.

7.37 In considering the application of the legislative and policy requirements, the first step is for the decision-maker to consider each of the designated heritage assets which would be affected by the proposed development in turn and assess whether the proposed development would result in any harm to the heritage asset. This has been undertaken by the Council's Conservation Officer, who has identified that the proposal would have a **positive impact** upon the conservation area and would be Sustaining and Enhancing upon the significance of the heritage asset, being the Grade II listed building.

- 7.38 The original appearance of the building has not changed significantly while the proposed development would remove the non- original stud wall partitions in the building at first floor level and above, thereby returning these floors of the building to their original form and layout (and in doing so, would have a beneficial impact upon the historic character and nature of the listed building). Given that the original appearance of the building at these levels has not changed significantly and given that limited changes are proposed as part of this application, this part of the development would preserve the character and appearance of the Foregate Street and The Tything Conservation Area.
- 7.39 The development also proposes repair works to the windows where necessary: done sympathetically, they would also preserve the character and appearance of the Conservation Area, whilst an amended ground floor layout and rear external amenity space and new windows to the main ground floor front plate glass to enable ventilation/opening are proposed, these would be in keeping with the window to the left-hand side when viewed from the street. As such, in light of this assessment, the proposals are therefore attributed **limited positive weight** in the planning balance.

Archaeology

- 7.40 The proposed development area (PDA) has been subject to a trench evaluation which identified Roman evidence (WCM102740). Previous applications have at the site have resulted in a heritage statement produced in 2021 and a currently active WSI for building recording and evaluation (evaluation now complete). The Councils Archaeology Adviser has noted (inter alia) that the applicant has supported their application with the previous heritage statement which is now defunct due to the HER search no longer covering the report. A HER search is active for just 12 months or until the archaeological record has altered, in this instance it is archaeological investigation at 42 Foregate St that have altered the archaeological record. This can easily be dealt with by providing a revised report incorporating a new search or issuing the trench evaluation WSI and report which are currently informed by in date HER searches and provide the up-to-date archaeological record for the site. Currently the scheme is not in accordance with paragraph 194 of the NPPF due to the out-of-date HS, however, this can easily be remedied (by condition). Given the scale of the development, and the possible archaeological potential, the likely impact on the historic environment caused by this development may be offset by the implementation of a conditional programme of archaeological works.
- 7.41 Officers have been advised that in the event where the approval of the application can be recommended, given the scale of the development, and the possible archaeological potential, the likely impact upon the historic environment caused by this development should be offset by the implementation of a conditional programme of archaeological works. As such, no objections are therefore raised subject to the imposition of a planning condition requiring a Written Scheme of investigation (WSI). This is therefore attributed **neutral weight** in the planning balance.

Heritage Conclusion

- 7.42 In heritage terms, the proposed development complies with Policies SWDP6, and SWDP24 of the SWDP), the South Worcestershire Design Supplementary Planning Document (2018), the Planning (Listed Buildings and Conservation Areas) Act (1990) and the NPPF (2023).

Access and Highway Safety

- 7.43 Policy SWDP 1: Overarching Sustainable Development Principles states (inter alia):
- A. When considering development proposals, the Local Authority will take a positive

approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work jointly and proactively with applicants to find solutions that mean proposals can be approved wherever possible and to secure development that improves economic, social and environmental conditions in south Worcestershire.

7.44 SWDP 4: Moving Around South Worcestershire (Part A) states:

Proposals must demonstrate that: the layout of development will minimise demand for travel, they offer genuinely sustainable travel choices, they address road safety, and they are consistent with the delivery of the Worcestershire Transport Plan objectives.

- 7.45 New development should have regard to the design criteria and principles set out in Manual for Streets, Worcestershire County Council's Local Transport Plan, and Worcestershire County Council's Highways Design Guide.' SWDP 21 ix. stipulates that traffic from the proposed development should have safe access and there should be capacity in the road network to accommodate the generated traffic.
- 7.46 Paragraph 111 of the NPPF states that: "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe".
- 7.47 Policy SWDP 4 and the NPPF sets out to reduce the reliance on the private car which in turn tackles climate change and promotes the use of sustainable modes of transport. The NPPF and the requirement of legislation states that the (planning) decisions should be made in accordance with the Development Plan unless material circumstances indicate otherwise.
- 7.48 Flexibility and site circumstances should be considered in the context of Policy SWDP 4 of the Development Plan. Policy SWDP 4 (Part A and B) support a reduction the level of parking provision. This is in keeping with national policy and the aims of Government and managing traffic, climate change and other matters such as air quality and pollution.
- 7.49 In terms of access, it should be noted that access to the rear of the application site for cycles and bins etc is obtained from Farrier Street and the County Council have advised (inter alia) that the existing vehicular crossover will need to be permanently closed up with the full height kerb re-instated, as there is no vehicular access to either No. 42 Foregate Street or the approved 4 x 1no. bedroom units to the rear via application (Ref. 22/00632/FUL).
- 7.50 In terms of fire tender access, it is noted that access by firefighting personal to within 45m of all parts of the residential flats is required in accordance with the fire regulations. Should this not be achievable, a dry rising main should be provided. This would be covered by the Building Regulations.
- 7.51 As with the case of the previously approved application on this same site, the submitted plans indicate a bin storage area sited to the rear of the building. It is not evident that this would provide sufficient waste and recycling storage capacity for 9 residential units though it is noted that refuse collection may be undertaken by a private company and that the capacity of the refuse receptacles may therefore not have to comply with the Council's standards.
- 7.52 County Council colleagues (the Local Highways Authority) have advised that an extant permission on this site (21/00470/FUL) which is approved with outstanding conditions and the proposed development seeks to remodel the ground floor commercial use and reduce the number of residential flats on the upper floors from 13 to 9. As before, the site has been accepted as 'parking free' in line with the Streetscape Design Guide and

the highly sustainable location is noted. However, whilst the Bike stand area for bikes, shown on the submitted plan is noted, although further details are required to ensure compliance with policy and in addition to 9 spaces, which would be required for the 9 x 1no. bedroom flats as proposed, and cycle parking for staff for the commercial use, which should also be provided.

- 7.53 In addition, to support and promote sustainable modes of transport, a Travel Welcome Pack to promote the sustainable travel options is expected, with the site located in easy walking distance of Foregate Street mainline train station as well as multiple local bus routes out of the city centre.
- 7.54 Considering the above, the proposals would be in accordance with Policy SWDP 4 of the Development Plan taking account of the site's context, and it is considered that there would be no material or sustainable reason for refusal in relation to highways movements and the submitted evidence is considered robust. The LHA have fully accepted this position. Accordingly, it is considered that the proposals (if permitted) would not result in conflict or harm to highway safety, in accordance with the provisions of Paragraph 111 of the NPPF and is attributed **neutral weight** in the planning balance.

Biodiversity

- 7.55 Policy SWDP22 requires development to ensure there is no harm to protected species. Further the Framework sets out the requirement for biodiversity net gain which will become statute in November 2023 through the implementation and Royal Assent of the Environment Act 2021.
- 7.56 The proposals currently do not include any provision for biodiversity net gain. It is also not known whether the proposed landscaping would be of sufficient quality to provide a sustainable enhancement. As such appropriately positioned bird and bat boxes would be necessary as a planning condition should planning permission be granted. The proposals are therefore attributed **neutral weight** in the planning balance.

8. Conclusion and planning balance

- 8.1 The Town and Country Planning Act 1990 ('the Act') establishes the legislative framework for consideration of this application. Section 70(2) of the Act requires the decision-maker in determining planning applications/appeals to have regard to the Development Plan, insofar as it is material to the application/appeal, and to any other material consideration. Where the Development Plan is material to the development proposal it must therefore be considered. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the application/appeal to be determined in accordance with the Plan unless material considerations indicate otherwise.
- 8.2 The National Planning Policy Framework (NPPF - 2021) is also a significant material consideration. At paragraph 12 the NPPF confirms that '*The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making.*'
- 8.3 The proposal would boost the supply of housing in the district, where the Council is currently unable to demonstrate a 5-year housing land supply, and it would also provide short term employment in terms of construction work, given that nine new dwellings would be delivered as a result of the change of use and conversion of the existing building, and as such, it is considered that the aforementioned public benefits should be afforded **moderate positive weight**.
- 8.4 The public benefits arising from the scheme are considered sufficient to outweigh the harms that would arise as a result of the identified shortfalls of seven out of the nine

flats as proposed, where measured against the National Described Space Standards, and given the amenity impacts identified.

- 8.5 In heritage terms, the assessment of the proposal has not identified harm to the Conservation Area as a designated Heritage Asset or to any other 'protect areas or assets of particular importance' (as set out in footnote 7, to paragraph 11d) i. of the NPPF), such that there is no clear reason to refuse permission. As such the tilted balance is engaged. The proposals are therefore attributed **limited positive weight** in the planning balance, given the repair works proposed to the windows and openings and given the limited external intervention elsewhere.
- 8.6 In transport terms, the proposals are attributed **neutral weight** in the planning balance. Further details are required regarding access and cycle parking, which are secured by planning condition.
- 8.7 **Moderate adverse weight** is afforded in this planning balance regarding the noted shortfalls against the Nationally Described Space Standards. However, the shortfalls against the NDSS can be justified in this instance given the recent planning history of the site in the case of the approved application (Ref. 21/00470/FUL), which granted a total of 13 residential flats, which is a material consideration in this case, particularly as the current proposal as modified proposes only limited layout changes as noted elsewhere in this report. Furthermore, **limited adverse weight** has been afforded to the intensification in use on the plot.
- 8.8 **To conclude on the planning balance**, it is considered that the identified adverse impacts, namely the failure to achieve compliance with the Nationally Described Space Standards (in terms of unit size) **is outweighed by the acknowledged benefits** of the development, which include inter alia, the provision of nine additional units of residential accommodation (attributed **moderate positive weight**) against known housing need and an acknowledged shortfall in housing numbers in terms of five-year housing land supply, and further improvements in both design and heritage terms (**each having been attributed limited positive weight**). Consequently, the proposed development would adhere with the Development Plan.
- 8.9 On balance, it is considered that the submitted scheme has indicated sufficient detail to warrant approval, subject to the use of planning conditions.
- 8.10 All comments received as part of the consultation process have been acknowledged and consider all material planning issues have been considered in the determination of this application. Having regard to the totality of the policies in the Framework, it is considered that the proposed development is sustainable when looking at its social, economic and environmental credentials in the round. The adverse impacts of the development do not significantly and demonstrably outweigh the benefits.
- 8.11 Overall, it is considered that the proposals constitute an environmentally, socially and economically sustainable form of development that accords with the Framework and the Development Plan as a whole.

9. RECOMMENDATION

- 9.1 It is recommended that the application be **approved subject to the following planning conditions:**
1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To conform with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out and completed in accordance with the following approved plans and associated documents and the specifications and recommendations contained therein, except where otherwise stipulated by conditions attached to this permission:

2024 / P / 04D; 2205 - PP - 02; 2024 / P / 04D; 2024 / P / 03 H; 2024 / P / 04e; 2205 - PP - 02; 2024 / P / 02; 2024 / PP / 01; Design and Access Statement (unnumbered) and Heritage Statement (4th June 2021).

REASON: To ensure compliance with the approved scheme.

3. No superstructure works shall take place until samples and full particulars of all external facing materials to be used in the construction of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.

REASON: To ensure a satisfactory external appearance of the development and that high quality materials and finishes are used, in accordance with Policy SWDP 21 of the South Worcestershire Development Plan (2016).

4. The development hereby approved shall not be occupied until details of refuse storage facilities have been submitted to and approved in writing by the Local Planning Authority.

REASON: To comply with Policy SWDP 33 of the South Worcestershire Development Plan (2016).

5. The Development hereby permitted shall not be occupied until sheltered, secure and accessible cycle parking has been provided with details to be submitted to and approved in writing by the Local Planning Authority. Thereafter the cycle parking shall be kept available for the parking of bicycles only.

REASON: To promote sustainable access and to comply with standards.

6. The Development hereby approved shall not be occupied until the existing vehicular crossing has been permanently closed in accordance with details that shall be submitted to and approved in writing by the Local Planning Authority.

REASON: In the interests of highway safety.

7. The Development hereby approved shall not be occupied until the applicant has submitted to and had approval in writing from the Local Planning Authority a residential Travel Welcome Pack promoting sustainable forms of access to the development. The pack shall be provided to each resident at the point of occupation.

REASON: To reduce vehicle movements and promote sustainable access.

8. (A) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved by

the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:

- 1) The programme and methodology of site investigation and recording.
- 2) The programme for post investigation assessment.
- 3) Provision to be made for analysis of the site investigation and recording.
- 4) Provision to be made for publication and dissemination of the analysis and records of the site investigation.
- 5) Provision to be made for archive deposition of the analysis and records of the site investigation.
- 6) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

(B) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (A) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

REASON: In accordance with the requirements of paragraphs 194 and 205 of the National Planning Policy Framework 2012 (as amended) and SWDP 6 & 24 of the South Worcestershire Development Plan 2016.

9. No occupation of the development hereby permitted shall take place until details of bird and bat boxes for roosting have been submitted to and approved by the Local Planning Authority. The agreed details of the bird and bat boxes shall then be fully implemented prior to occupation and/or first use of the development permitted and retained thereafter.

REASON: To ensure that the development enhances green infrastructure and does not impact on, or harm protected species in accordance with Policy SWDP22 and SWDP25 of the South Worcestershire Development Plan and the aims and objectives of the National Planning Policy Framework 2021, as a material planning consideration.

10. No external lighting shall be installed on site unless details of such lighting, including the intensity of illumination and predicted lighting contours, have been first submitted to, and approved in writing by, the Local Planning Authority prior to first occupation/use of the site. Any external lighting that is installed shall accord with the details so approved and be retained in that form thereafter.

REASON: To satisfactorily protect the character and appearance of the area and the residential amenities of nearby occupiers, in accordance with Policy SDWP21 of the South Worcestershire Development Plan 2016 and the National Planning Policy Framework 2021.

11. No development shall take place until a comprehensive photographic survey has been submitted to and approved in writing by the Local Planning Authority.

REASON: To allow the historical and archaeological interest of the building to be recorded in accordance with policies SWDP6 and SWDP24 of the South Worcestershire Development Plan and the aims and objectives of the National Planning Policy

12. Before the first use/occupation of the development hereby permitted a scheme of noise attenuation shall be submitted to and approved in writing by the local planning authority. The scheme shall include noise mitigation measures as appropriate to minimise the level of noise experienced by the residents of the development from Foregate Street and from the commercial and the other residential units in the property and how the measures shall be installed in the building without harming the historic fabric of the building. The scheme shall be implemented before the first use of the development and shall be retained thereafter.

REASON: To ensure the proposal preserves residential amenity and to prevent unacceptable noise pollution to the detriment of human health and to ensure that the development has an acceptable impact upon the fabric of the listed building, in accordance with policies SWDP6, SDWP24 and SWDP31 of the South Worcestershire Development Plan.

13. The development hereby approved shall not be occupied until a Waste Management and Collection Strategy, setting out how waste will be stored and collected, has been prepared, submitted to, and approved in writing by the Local Planning Authority. The measures shall thereafter be implemented in accordance with the approved Waste Management and Collection Strategy for the lifetime of the development.

REASON: To ensure appropriate waste management facilities are provided to accommodate all waste generated by the development in accordance with Policies SWDP 4 and SWDP 33 of the South Worcestershire Development Plan 2016.

14. The Development hereby approved shall not commence until a Construction Environmental Management Plan (CEMP) has been submitted to and been approved in writing by the Local Planning Authority. This shall include but not be limited to the following: -

- Measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
- Details of site operative parking areas, material storage areas, location of skips and the location of site operatives' facilities (offices, toilets etc);
- The hours that delivery vehicles will be permitted to arrive and depart, and arrangements for unloading and manoeuvring;
- Details of the location of waste storage and methodology for removal of waste;
- Working hours for construction on the site;
- Details of the suppression of noise, vibration and dust.
- Details of scaffolding (inclusive of proposed siting and periods of use)

The measures set out in the approved Plan shall be carried out and complied with in full during the construction of the development hereby approved. Site operatives' parking, material storage, location of skips and the positioning of operatives' facilities shall only take place on the site in locations approved in writing by the Local Planning Authority.

REASON: To ensure the provision of adequate on-site facilities and in the interests of highway safety and the amenity of local residents.

15. The development hereby approved shall not be occupied until details of the commercial operational hours and hours of the outdoor seated area relating to the Class E element has been submitted to and been approved in writing by the Local Planning Authority.

REASON: To ensure the proposal preserves residential amenity and to prevent unacceptable noise pollution to the detriment of human health contrary to policy SWDP31 of the South Worcestershire Development Plan.