

Sandwell Local Plan: Regulation 19 Consultation

Land at Park Lane West, Tipton

Document prepared by Fisher German on behalf
of South Staffordshire Water PLC



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1. Introduction

1.1 These representations are submitted by Fisher German on behalf of South Staffordshire Water in respect of their land interests at Park Lane West, Tipton (Figure 1 below).

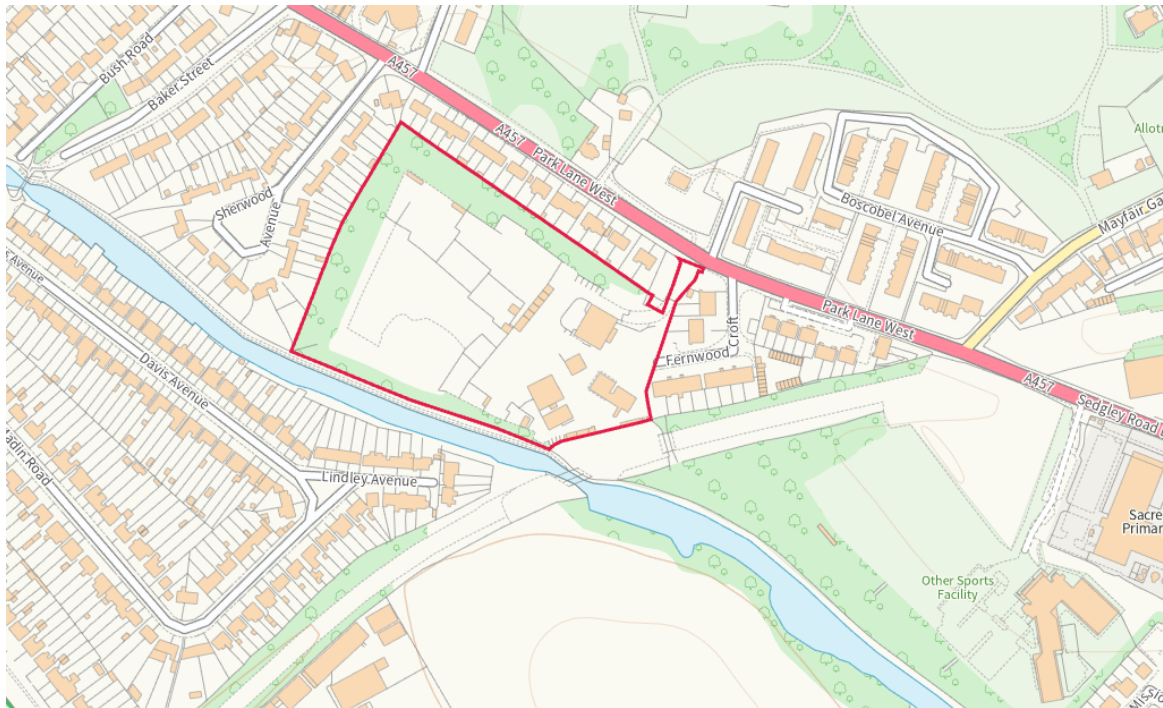


Figure 1: Site Location Plan

- 1.2 The site benefits from an allocation for 77 dwellings within the extant Sandwell Site Allocations and Delivery DPD (SAD) which was adopted in December 2012, which itself carried over a former Sandwell Unitary Development Plan allocation from 2004.
- 1.3 The site however remains an operational part of South Staffordshire Water’s estate, albeit is located within an area which is itself predominantly residential in nature, with the site itself largely enclosed by existing residential properties to the east, north and west, and south beyond the canal which forms the site’s southern boundary.
- 1.4 The site is well related to existing services and facilities, including schools, community centre, employment, Victoria Park, etc. The site is also well related to existing and developing public transport, with existing bus stops served by the regular 230 service between Sedgley and Dudley and the 42 service to Tipton available adjacent to the site on Park Lane West. The site is also very well related to a proposed stop on the Wednesbury to Brierley Hill Extension of the West Midlands Metro tram service (Sedgley Road stop).

2. Representations

Policy SDS1 – Spatial Strategy for Sandwell

- 2.1 The aims of Policy SDS1 is broadly supported, however we believe an element of flexibility should be included to ensure that land is not unduly restricted from serving a more useful purpose. As detailed in our response to Policy SEC4 – Other Employment Sites, we have concerns that the Plan may not be adequately flexible in relation to lower quality and constrained employment sites. Part 1b of Policy SDS1 states that “*decisions on planning proposals... maintain the ongoing provision of around 1,221ha of allocated employment land*”. This statement is internally inconsistent with Policy SEC4 which acknowledges that much of the designated employment land designated as lower quality Other Employment Sites are constrained and could be better used to deliver another form of development. Policy SDS1 therefore requires amendment in wording to ensure that the release of employment sites designated as Other Employment Sites under Policy SEC4 is not in conflict with Policy SDS1 which provides the overarching strategic principles of development in Sandwell. Our view is this can be achieved with a slight amendment to Part 1b, to state:

Maintain the ongoing provision of around 1,221 ha of allocated employment land, save for where this land is no longer appropriate for employment uses in accordance with other policies in this Plan.

- 2.2 Without this change, we find that there is an irreconcilable conflict between the statement of SDS1 and the approach to SEC4, thus the Plan is not sound as is not effective. This modification can however be delivered through Main Modifications without undue harm to the overall strategic function on Policy SDS1.

Policy SDS3 – Regeneration in Sandwell

- 2.3 Policy SDS3 provides high level guidance in respect of the various proposed regeneration areas in Sandwell. Parts 3-7 of the policy provide high level guidance for each of the designated areas. Part 8 provides general guidance to all areas. The policy puts emphasis on the provision of high quality employment. We have no objection to this aim but would stress that not all areas will be suitable to deliver this, and thus even within designated regeneration areas due regard will need to be had for the specifics of individual sites, including their context. We however support the acknowledgement that regeneration areas can make a positive contribution to residential and employment needs, and that the policy is of a high enough level to allow flexibility in what is delivered.

Policy SEC1 – Providing for Economic Growth and Jobs

- 2.4 Part 1 of Policy SEC1 states “*the Sandwell Local Plan will seek to maintain the existing provision of around 1,221 hectares of employment land across the borough*”. As per previous comments, this paragraph is in conflict with other policies of the Local Plan which are far more permissive of poor quality employment uses being transferred to non-employment uses. As per our recommended change to policy SDS1, we believe this can be rectified through a relevantly simply main modification to the policy, as per the below.

The Sandwell Local Plan will generally seek to maintain the existing provision of around 1,221 hectares of employment land across the borough, save for where this land is no longer appropriate for employment uses in accordance with other policies in this Plan.

Policy SEC4 – Other Employment Sites

- 2.5 Policy SEC4 provides a framework for the development of employment areas that are not either Strategic Employment Areas or Local Employment Areas on the policies map but comprise land that is or was last used in employment use. On such sites, employment redevelopment is supported in principle, and housing or other non-ancillary, non-industrial uses are supported subject to criteria. We support the overall aim of the policy, but have concerns in respect of its operation, particularly criteria a-f within Part 2 of the policy (the clause which enables non-commercial uses).
- 2.6 Paragraph 123 of the NPPF states that “*Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or ‘brownfield’ land*”.
- 2.7 Paragraph 124 of the NPPF states planning policies should “*give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs*” and “*promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively*”.
- 2.8 Paragraph 126 of the Framework is clear “*Planning policies and decisions need to reflect changes in the demand for land*”.

2.9 Whilst we understand the policies aims, we consider the policy framework submitted to be unreasonably restrictive when having regard for our client's land interests. Whilst our comments relate solely to our client's land interests, logically they may be relevant for other land under the same designation, as confirmed by the Council's evidence (discussed below).

2.10 For ease of reference, we provide comments against each criteria in turn.

a) if the site is vacant, that it has been marketed for employment use for a period of at least 12 months, including by site notice and through the internet or as may be agreed by the local planning authority;

2.11 This criterion is considered to be overtly restrictive and not commensurate with criterion b, discussed below. If a site suddenly vacates, then the policy essentially enforces a period of 12 months where the site will sit vacant whilst marketing is undertaken. During this time there could be issues of anti-social behaviour and crime, liability for site upkeep and security, potential harm to structures through neglect and the potential for ecology to become present, causing issues for redevelopment down the line due to protected species establishing on the site or through BNG.

2.12 It is also not clear why a vacant site would need to go through a period of enforced marketing, whereas a not-vacant site only needs demonstrate that occupiers have found alternative premises, without any need for a marketing exercise.

2.13 Paragraph 8.37 of the reasoned justification confirms that these sites by definition tend to be "*less marketable*" and often "*within residential areas*". Enforcing the marketing of less marketable sites for employment uses within residential areas is clearly not appropriate and importantly not justified, effective or consistent with National Policy (namely the paragraphs provided above).

2.14 If a 12-month marketing exercise is to be enforced, there needs to be greater flexibility in the policy to enable this requirement to be absolved if supported by site specific evidence and context. For example, our client's land interests are so contained by existing residential uses, this would negate much employment uses on the grounds of amenity, or place unreasonable conditions on future employment uses that would make the site simply unattractive to many potential occupiers. For example, restrictions of hours of operating, noise generation, etc.

2.15 Whilst our view is a 12-month marketing for sites under this category is not supported, if it is deemed to be acceptable, then the criterion should instead be amended to allow the flexibility as

set out below:

a) if the site is vacant, that it has either

- 1) been marketed for employment use for a period of at least 12 months, including by site notice and through the internet or as may be agreed by the local planning authority; or
- 2) evidence has been provided by the landowner to demonstrate why the site is no longer suitable for employment uses, having regard for:
 - a. Improvements in residential amenity, street scene or regeneration
 - b. Market conditions and demands
 - c. Access
 - d. The benefits of an alternative use

b) if the site is occupied or part-occupied, that successful engagement has been undertaken with the occupiers to secure their relocation;

2.16 Again, concern is raised in relation to this policy, not least in that it may stray beyond the remit of planning. Clearly if tenants are in situ, they are protected by the law in respect of their rights with regard to their tenancy agreement, and this would be beyond the realm of planning rules. However, in the scenario where an agreeable rent cannot be agreed for extension for example, it would clearly be inappropriate for the landowner to not be able to actively develop the site for useful uses. Following the logic of the policy, if an occupier was to become insolvent for example, then the policy restricts any ability to advance matters on the site until a relocation that cannot occur occurs, or until the site vacates, by which point there will be a 12 month period of enforced marketing as per criteria a. This approach cannot be consistent with the NPPF which expects useful use of land, particularly available brownfield land, and also understands as per paragraph 126 that planning policies should appreciate the demand for land is constantly fluctuating and thus policies have to be able to be responsive to allow the market to deliver - not be unduly and incommensurately restricted from bringing forward active, useful development on available sites. Whilst there is an appreciation that the Council needs policies in place to ensure a healthy supply of employment land, particularly given localised employment needs in the region, the Council has policies to protect the more important employment sites, and the policy itself by definition accepts that non-employment development on these sites is in principle supportable.

2.17 The policy is also unclear on the circumstances relating to part occupation. If part of a site is sublet, then that should preclude the remainder of the site being advanced for other uses, so long as that area is not unduly impacted (in accordance with criteria C).

C) if the site forms part of a larger area occupied or last occupied for employment, that residential or any other use will not be adversely affected by the continuing operation of employment uses in the remainder of the area;

2.18 No objection, but as per our comments above the policy must be cognisant of the impacts of existing residential uses on the potential uses of Other Employment Sites and the prospects of their successful redevelopment for employment uses. It cannot be assumed because one employment use has existed successfully alongside residential uses, that this will definitively apply for other employment uses, even in the same Class. For example, our client's land interests nearest residential are used for open storage, but even another open storage operator may lead to increased impact on amenity due to intensity and hours of operation, types of vehicles using the site, etc. If residential properties are located close to the site, and this will impact potential employment generating uses on the site, there needs to be avenues to enable better neighbour uses to come forward, without the need for a marketing exercise which itself may be doomed to fail, due to realistic uses of a given site being intrinsically limited by its context and relationship with the neighbouring residential uses.

D) the site could be brought forward for housing in a comprehensive manner and would not lead to piecemeal development;

2.19 Whilst we have no objection to the presumed aim of this policy, we believe an amendment is required to ensure the policy will be effective and justified. We would argue that the policy could be improved via the inclusion of the word harmful before piecemeal development, to ensure the policy retains flexibility. For example, in a scenario where there is to be a parcel disposal of a site, due to tenancy issues of a phased withdrawal of operations of a current site operator for example, there may be scenarios where part of a site comes available before the rest of the site. We assert, in accordance with the aforementioned paragraphs of the NPPF, that it is sound to enable a phased redevelopment of the site, to expedite the useful delivery of housing or other uses, rather than essentially enforcing a site to sit part vacant for a period of time. Clearly in such a circumstance regard would need to be had for amenity, access, and other related issues, but in principle a site being redeveloped in phases is not inherently harmful and actually likely to be beneficial in the scenario as set out above, due to the expediting of beneficial development. As alluded to in the policy, the provision of a coherent masterplan for the site which could be delivered in phases, and control in respect of matters such as affordable housing triggers and delivery. This could enable what in theory could be considered piecemeal development, to occur in an acceptable way, and there should be scope within the policy to allow applicants and the Council to explore how this could

be delivered in a beneficial manner.

E) Residential development would not adversely affect the ongoing operation of existing or proposed employment uses on the site or nearby; and

- 2.20 See comments in respect of Criterion C. Ultimately we fully agree that there needs to be an understanding as to the nature of a site's relationship with its neighbours, whether the neighbours be noise generating or susceptible to noise generation, but the policy needs to be more clear that where a site is intrinsically constrained by sensitive neighbouring uses, this will be used in consideration of a redevelopment proposal without a forced and wasteful marketing exercise.

F) the site is suitable for housing or other non-ancillary non-employment uses in accordance with local or national policies relating to these uses.

- 2.21 No comments and agreed.

Park Lane West

- 2.22 Our client's land currently benefits from a residential allocation for 77 dwellings. It is within a predominantly residential area and subject to our client vacating the site, our view is residential or good neighbour employment uses should be acceptable in principle, as the site is within the urban area. Had our client's land simply be identified within the urban area, our client would be free to pursue either, subject to meeting any necessary tests related to either, access, flooding, ecology, etc. There is a demonstrable need for both employment and residential land in the HMA, and our view is on that basis both could reasonably be pursued.
- 2.23 The site is assessed under the Black Country Employment Area Review (BEAR) 2021, which concluded that the site was one of the worst scoring sites in review, scoring a 0 against all assessed criteria. Putting it in the bottom 22 sites of the 680 assessed, compared with an average score of 23.6 and a maximum score of 41. The assessment confirmed only that the site was in current employment use, and this seems to have formed the basis of its designation.
- 2.24 As already set out, the site is within an entirely residential area, benefits from good connectivity, particularly having regard for the Metro extension, meaning it will be highly sustainable. Residential redevelopment of the site would therefore in our view be entirely acceptable and should not be arbitrarily restricted, should the current use no longer be required.

- 2.25 Having regard for its low employment scoring, our view is it would be better if the site was not designated as a “Other Employment Area”, instead simply being identified within the urban area only. This would decouple the site from the aforementioned policy. Within such locations, the remaining policies of the Local Plan would apply, but the site could be advanced in a range of appropriate uses subject to satisfying the policies and requirements of the Development Plan and NPPF as a whole. It cannot be sound, as it cannot be justified, that the evidence so clearly highlights the site has not scored highly in respect of the employment criteria of the BEAR assessment, that there should be any predisposition that employment is the de facto continued use of the site. Whilst the Policy makes allowances to change from employment to other uses, these are still unduly restrictive and not commensurate to the site’s scoring which essentially indicates that the site has no material benefit for retained employment use.
- 2.26 Given the evidence does not support the designation as an Other Employment Site, it should instead be identified as a site within the urban area and for which redevelopment for any appropriate uses should be approved without the need for marketing or other restrictive criteria. This change would allow the flexibility and active use of land as endorsed by the Framework.