

## PLANNING APPLICATION NUMBER: P09/1607

Type of approval sought	Outline Planning Permission
Ward	ST THOMASS
Applicant	Reirse Ryan Limited
Location:	<b>REDHILL WORKS, 200, PROSPECT ROW, DUDLEY, DUDLEY, WEST MIDLANDS, DY2 8SG</b>
Proposal	<b>DEMOLITION OF EXISTING FACTORY AND WATER TOWER FOR AN OUTLINE APPLICATION FOR THE ERECTION ERECTION OF 34 NO. DWELLINGS AND ASSOCIATED CAR PARKING (ACCESS TO BE CONSIDERED)</b>
Recommendation Summary:	<b>APPROVE SUBJECT TO CONDITIONS</b>

### SITE AND SURROUNDINGS

1. The application site comprises the former Redhill Works, associated parking area, a water tower and areas of scrub land to the rear. The factory buildings have recently been demolished and the former built area of the site has been cleared of rubble. Currently the site is secured on its boundaries with temporary fencing.
  
2. The site measures 0.48 hectare and is located 750m south of Dudley Town Centre . To the north of the site are a range of industrial and commercial properties and to the south and east are predominately residential properties, an allotment and Buffery Park.
  
3. To the west of the site is the Dudley Southern By-Pass, separated from the application site by Tetnall Street and a public right of way. The site is situated on the brow of a hill and there are significant change in levels in the north west and western parts of the site, whilst at the south, the site is higher than the adjacent properties at nos. 40 and 41 Prospect Row.

## PROPOSAL

4. The application seeks outline approval for residential development with access only to be considered, all other matters comprising layout, appearance, landscaping and scale are reserved for future approval. Although the application is for access only, the submitted site plan shows the indicative layout for the site comprising 34 no. dwellings.
5. As confirmed by the design and access statement and the indicative layout plan this residential scheme would be for 34 no. houses whilst the previous approval is for 21 no. houses and 24 no. apartments. The apartment element of the approved scheme has been removed and replaced with 13 no. 2 bed houses.
6. The application is accompanied by an indicative site/layout plan, design and access statement, planning statement and a noise report.

## HISTORY

- 7.

<b>APPLICATION No.</b>	<b>PROPOSAL</b>	<b>DECISION</b>	<b>DATE</b>
P06/0599	Outline application for residential development comprising 17 no. bed houses and 24 no. 2 bed flats (siting and access to be considered)	Refused	20/06/06
P07/0260	Outline application for residential development comprising 20 houses and 24 apartments (access and layout to be considered).	Refused  Allowed at Appeal	01/10/07  20/02/08

8. The application P06/0599 was refused due to highway grounds, noise nuisance in relation to the siting of the dwellings, insufficient information re: the former gas holder structure and insufficient evidence submitted re: the loss of employment land.
9. The application P07/0260 was recommended for approval by officers and reported to the 24<sup>th</sup> September 2007 Development Control Committee and was subsequently refused planning permission for the following reasons:
- The principle of the use of the site for residential purposes would prevent the future use of the land to maximise employment opportunities within the Borough. Insufficient evidence has been submitted to overcome this concern, and the proposed development is therefore considered to be unacceptable and contrary to UDP Policy EE2.
  - The lack of an undertaking to make a contribution towards public open space and to ensure the provision of affordable housing on the site is contrary to the requirements of UDP policies DD7, DD8, LR1 and H5 and would result in an increase in the demand on local facilities with no compensation or enhancement,

thus resulting in harm to the wider community around the site, and a lack of a range of sizes and types of housing to meet the needs of the wider community.

10. Following the refusal the application was appealed and the appeal was allowed subject to conditions.

In respect of the principle of development and amenity issues the Inspector stated the following:

- The Council is concerned that the Appellant has not submitted sufficient evidence to demonstrate that the proposed residential redevelopment is justified. However, I note that the Council's Strategic Surveyor considers that the information submitted by the appellant, including a Market Assessment and an Economic Viability Report, reasonably demonstrates the lack of viability implicit in the continued industrial use of the appeal site.
- He is satisfied that the property was marketed for 18 months with 2 local agents with no formal offers received and that negative values would result from the refurbishment or redevelopment of the site. He concludes that the site, location and buildings are poor with little likelihood of the site being redeveloped for employment use as that would not be economically viable. From my assessment of the evidence submitted with the appeal proposal I see no reason to disagree.
- In my opinion, given the poor viability of the appeal site for continued employment use, the proposed residential redevelopment would be of benefit to the local area as it would improve the visual appearance of the site and remove its potential future B2 use which could be incompatible with the adjoining residential uses.
- Furthermore, the Appellant states in the Market Assessment submitted at the application stage that in relation to commercial properties of comparable size to the appeal premises, there was available, throughout the Borough, approximately 1.15 million square feet. This is not disputed by the Council and in my opinion

demonstrates that the proposal would not adversely impact on the quantum, range, location or quality of the Council's allocated employment land supply.

- Accordingly, I consider that the proposal would accord with Policy EE3 of the Dudley Borough Unitary Development Plan (UDP), adopted 2005 but would conflict with Policy EE2 which sets a presumption in favour of B1, B2 and B8 uses within designated Local Employment Areas and seeks to resist all other uses. Nevertheless, I consider that there are material considerations that tell in its favour because the benefits that would accrue from the proposed development would be sufficient to justify a departure from development plan policy.
- Turning to consider any incompatibility of the proposal with adjoining commercial uses, while there is a haulage firm located to north with the potential for vehicular movements throughout the day, I note the Appellant's argument that the proposal would present blank gables to the north and the proposed dwellings would be set back from this boundary.
- In addition, noise attenuation measures could be secured by way of a planning condition and it should be possible under the landscaping details at any subsequent reserved matters stage to provide a green buffer between the proposal and the commercial premises to the north. Consequently I consider that the proposal would not give rise to a use that would conflict with existing uses in the area and would accord with UDP Policy H3.

The appeal was allowed on 20<sup>th</sup> February 2008.

## PUBLIC CONSULTATION

11. The application has been advertised by way of neighbour notification, press notice and site notice. Public consultation time expired 4<sup>th</sup> January 2010. No objections have been received.

## OTHER CONSULTATION

12. Group Engineer (Development) – No objections subject to conditions relating to the provision of the access road, parking and turning areas prior to first occupation, visibility splays, details of proposed levels, the implementation of a Traffic Regulation Order and kerb replacement.

Head of Environmental Health & Trading Standards – No objections subject to conditions relating to land contamination, ground gases and vapours and noise attenuation.

## RELEVANT PLANNING POLICY

13. Dudley Unitary Development Plan
- S2 Creating a More Sustainable Borough
  - S8 Housing
  - DD1 Urban Design
  - DD4 Development in Residential Areas
  - DD5 Development in Industrial Areas
  - DD6 Access and Transport Infrastructure
  - DD7 Planning Obligations
  - DD8 Provision of Open Space, Sport and Recreation Facilities
  - EE2 Local Employment Areas

- AM14 Parking
- H1 New Housing Development
- H3 Housing Assessment Criteria
- H5 Affordable Housing
- H6 Housing Density
- EP7 Noise Pollution
- NC6 Wildlife Species
- UR9 Contaminated Land

14. Supplementary Planning Document

New Housing Development – A Guide to Establishing Urban Context  
Parking Standards and Travel Plans  
Open Space, Sport and Recreation Provision  
Planning Obligations  
Nature Conservation

15. Supplementary Planning Guidance

Planning Guidance Note No. 3 – New Housing Development

16. National Planning Guidance

Planning Policy Statement 1 – Delivering Sustainable Development  
Planning Policy Statement 3 – Housing  
Planning Policy Statement 23 – Planning and Pollution Control

## ASSESSMENT

17. The key issues for consideration in the application are as follows:

- Principle

- Density
- Access/Highways
- Residential Amenity
- Planning Obligations
- Nature Conservation

### Principle

18. The site has a 2008 outline planning approval for 21 no. houses and 24 no. apartments. At that time the Planning Inspector was of the view that the proposal 'would not adversely impact on the quantum, range, location or quality of the Council's allocated employment land supply'. The site also adjoins residential properties on its southern boundary and opposite the entrance to the site in Spring Gardens. Given this, it is considered that the principle of residential has been established with the current planning approval, in accordance with Policy H3 of the adopted UDP (2005).

### Density

19. Although the outline is for access only to the residential site the agents have indicated in their site layout plan, the application forms and design and access statement that the development would consist of 34 no. dwelling houses, a reduction of 10 no. dwellings from the previous approval of 45 no. dwellings. A proposed scheme of 34 no. dwellings would result in a density of 71 dwellings per hectare. The development of semi detached properties in Spring Gardens opposite the application site ranges from 76-85 dwellings per hectare.
20. The properties in the wider locality are characterised by a wide mix of property types from flats to detached/semi detached with long gardens to terraced properties with very small gardens. The variety in house types and in particularly garden sizes ensures that the density in the local area ranges from 25 dph to 152 dph. As such the density of the development would be in accordance with varied context of the area and in compliance with Policy H6 of the adopted UDP (2005).



### Access/Highways

21. The application is for access only and the access is very similar to the one approved by the previous application P07/0260. Providing the visibility splay is increased from 2.4m x 56m to 2.4m x 59m there is no objection subject to conditions relating to the provision of the access road, parking and turning areas prior to first occupation, visibility splays, details of proposed levels, the implementation of a Traffic Regulation Order and kerb replacement.

### Residential Amenity

22. At present nos. 40 and 41 Prospect Row are located next to a large recently cleared commercial/industrial site (the application site). The application site is also very prominent in the street scene due to its siting on the brow of a hill. It is also the case that due to the unrestricted Class B2 use of the site, this could allow for a wide range of general industrial processes to take place, irrespective of control on hours. Whilst the site has recently been cleared and there are no existing industrial operations within the site to cause significant noise disturbance, smell and hours of operation issue, that may not be the case in the future.
23. The cleared site and its redevelopment for residential purposes would improve the visual appearance of the street and eliminate any future non-compatible B2 uses within a site adjoining to and directly opposite residential properties. It is therefore considered that a proposed residential use at this site would improve the residential amenities the occupiers of residential properties in Prospect Row and Spring Gardens currently enjoy.

24. To the north of the site there is a long standing haulage yard and due to the nature of the locality which is commercial to the north and residential to the south and east it is only to be expected that there would be commercial premises near to the site. In the appeal decision the Inspector acknowledged that noise, particularly vehicular movements throughout the day, could be incompatible with residential development and that the layout of the dwellings was important in mitigation against any conflict of the land uses. The indicative site layout plan, with gables facing the commercial premises would therefore be acceptable but it should be noted that the Council would be unlikely to support a reserved matters application which was a deviation from this principle.

#### Planning Obligations

25. The proposed development has a requirement to provide planning obligations to mitigate against the consequential planning loss to the existing community. Should permission be granted a S106 agreement would be required in respect of the following:

##### Offsite contributions

26. The proposed attracts a requirement for a commuted sum to be paid towards the following infrastructure:

- Libraries - £6287.28
- Open Space, Sport & Recreation - £56111.93
- Public Realm - £15719.90
- Transport Infrastructure Improvements - £4352.67
- Nature Conservation - £2300.00
- Management & Monitoring Charge - £1000.00

Total Offsite Contribution equates to £85771.78

27. Due to the current economic circumstances and market conditions of this site the agent has submitted a viability assessment with this application. The Strategic Surveyor has considered this information submitted by the applicants and has carried out his own financial appraisal.

Site investigation reports obtained by the applicant indicate shallow coal seams beneath the site, together with the possibility of contamination of the site from use of oils. Redevelopment of the site would require demolition of the buildings onsite, full site remediation, treatment of Japanese Knotweed and the construction of retaining structure to accommodate new development. The site was also purchased by the applicant at a time when the market was high.

28. Due to the high purchase price together with the extensive abnormal costs identified, build costs and lower projected sales prices the site would only produce a low return. The Strategic Surveyor concludes that the analysis of the viability assessment indicates that the proposed scheme would be able to use lack of financial viability as a reason for mitigation of S106 contributions. It is therefore considered that, in this case, to bring forward the residential redevelopment of this site and taking into account the evidence submitted by the agent and comments made by the Strategic Surveyor that the S106 contributions be waived
29. An additional contribution of £5000 has been requested for the Traffic Regulation Order and agreement to this financial contribution will be set out in the pre committee notes.

#### Nature Conservation

30. The application site has recently been cleared of its commercial/industrial buildings. The proposed change in use of the site from unrestricted B2 general industrial usage to residential with 34 no. dwelling houses and their respective front/rear amenity areas would allow for a more pleasant environment and an opportunity to enhance the areas wildlife potential in compliance with UDP Policy NC6.

31. Futhermore to ensure that the habitat of bats and badgers are protected and possible migatation, bat and badger surveys have been requested and there will be an update at committee in respect of these surveys.

## CONCLUSION

32. The proposed development would bring forward a new residential scheme on a previously developed site thereby supporting the creation of a sustainable form of development and helping to meet the strategic housing requirement for the delivery of housing within the plan period thereby complying with both national and local planning policy. The suitable reuse of this land is in order to promote regeneration and to minimise the amount of Greenfield land being taken for development and the adopted UDP supports this view.
33. The principle of residential use and access of the proposed development are considered to be acceptable. All other matters are reserved for subsequent consideration. With careful design considerations the appearance of this site can be substantially improved, enhancing visual amenity and the street scene, and is in compliance with adopted UDP Policy.

## RECOMMENDATION

34. It is recommended that the application be approved subject to the following conditions:

## REASON FOR APPROVAL

The proposed development would bring forward a new residential scheme on a previously developed site thereby supporting the creation of a sustainable form of development and helping to meet the strategic housing requirement for the delivery of housing within the plan period thereby complying with both national and local planning policy. The suitable

reuse of this land is in order to promote regeneration and to minimise the amount of Greenfield land being taken for development and the adopted UDP supports this view.

The principle of residential use and layout of the proposed development are considered to be acceptable. All other matters are reserved for subsequent consideration. With careful design considerations the appearance of this site can be substantially improved, enhancing visual amenity and the street scene, and is in compliance with adopted UDP Policy.

The decision to grant planning permission has been taken with regard to the policies and the proposals in the adopted Dudley Unitary Development Plan (2005) and to all other relevant material considerations.

The above is intended as a summary of the reasons for the grant of planning permission. For further details on the decision please see the application report.

### **INFORMATIVE**

The access hereby permitted shall be built in accordance with drawing no. 130:20 Rev D and the 1:1250 site location plan. Please note that the layout is for indicative purposes only and is reserved.

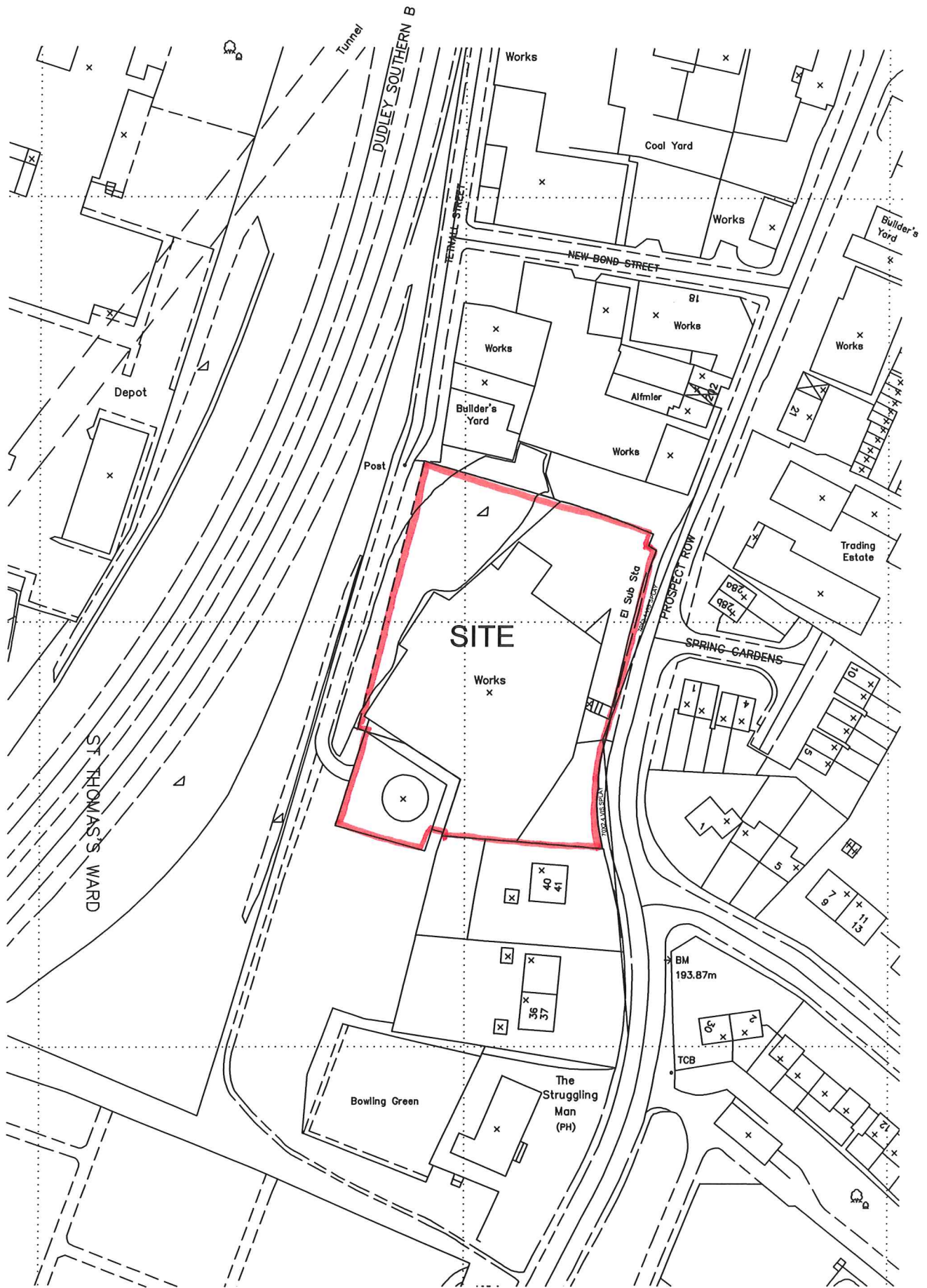
### **NOTE TO APPLICANT**

The grant of planning permission does not confirm the structural integrity of the proposed development. Local Planning Authorities do not have a duty of care to individual landowners when granting application for planning permission and are not liable for loss caused to an adjoining landowner for permitting development. Sections 77 and 78 of the Building Act 1984, provides Local Authorities with powers to take action with respect to dangerous buildings/structures. Therefore, should the development raise concerns in the future with respect to its structural stability there are powers under separate legislation to planning that would enable the situation to be rectified.

Conditions and/or reasons:

1. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
2. Approval of the details of appearance, layout, scale and landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the local planning authority before any development is begun.
3. The reserved matters proposals for this site shall be in general accordance with the design and access statement submitted in support of this outline application.
4. Development shall not begin until a comprehensive written site investigation strategy (in a form to be agreed with the local planning authority), has been submitted to and approved by the local planning authority. Such a strategy shall facilitate the identification of contaminants and permit the risk-based assessment of the development site. Where the investigations identify the presence of contamination, development shall not begin until a scheme to protect the development from the effects of such contamination has been submitted to and approved by the local planning authority. Such a scheme shall: include provisions for validation monitoring & sampling; be implemented before the development is first occupied; and be retained throughout the lifetime of the development.
5. Development shall not begin until a comprehensive written site investigation strategy (in a form to be agreed with the local planning authority), has been submitted to and approved by the local planning authority. Such a strategy shall facilitate the identification of ground gases and vapours that have the potential to pose a risk to human health and the wider environment. Where the investigations identify the presence of ground gases and vapours, development shall not begin until a scheme to protect the development from the effects of such gases and vapours has been submitted to and approved by the local planning authority. Such a scheme shall: include provisions for validation monitoring & sampling; be implemented in accordance with the approved details before the development is first occupied; and be retained throughout the lifetime of the development.
6. Development shall not begin until a scheme for protecting residents in the proposed dwellings from noise from the nearby commercial units and the Dudley Southern By-Pass has been submitted to and approved in writing by the local planning authority. All works which form part of the approved scheme shall be completed before occupation of the permitted dwellings, unless otherwise agreed in writing by the Local Planning Authority.
7. Prior to the commencement of development, details of the types, sizes and locations of the boundary treatments around the site and between the proposed plots shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be carried out in complete accordance with the approved details prior to the occupation of the dwellings hereby approved and thereafter retained for the lifetime of the development unless otherwise agreed in writing with the local planning authority.

8. Prior to the commencement of development, details of the types, colours and textures of the materials to be used on the external surfaces of the buildings hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details.
9. Prior to the commencement of development, details of the landscaping scheme for the site shall be submitted to and approved in writing by the Local Planning Authority. The agreed scheme shall be implemented in accordance with the approved details before the end of the first planting season following initial occupation of the development.
10. The landscaped areas shall be retained in the form shown on the approved plan throughout the life of the development and shall not be used for any other purpose, unless otherwise agreed in writing by the local planning authority.
11. Development shall not begin until details of plans and sections of the lines, widths, levels, gradients and form of construction of access roads, drainage systems and street lighting have been submitted to and approved by the local planning authority. The development shall be built in accordance with the agreed details and maintained for the life of the development.
12. Development shall not begin until a detailed scheme incorporating visibility splays (2.4m x 59m to be provided), means of access, turning areas and parking areas has been submitted and approved in writing by the local planning authority. Prior to first occupation of a dwelling the means of access, visibility splays, turning areas and parking areas shall be provided in accordance with the approved details, and maintained for the life of the development.
13. Prior to commencement of development details of proposed levels of the site which should be related to those of adjoining land and Highways should be submitted to and approved in writing by the LPA. The development shall be built in accordance with the agreed details and maintained for the life of the development.
14. Prior to first occupation a Traffic Regulation Order prohibiting on street parking fronting the development will be implemented.
15. Prior to first occupation, any redundant dropped kerbs providing access into the site, including the existing parking area will be replaced with full height kerbs.
  
16. If protected species are found during any stage of the development all works must stop immediately and Natural England, the project's ecologist and the Council's Nature Conservation Officer must be contacted immediately. Works should not recommence until relevant licences have been obtained and written permission is granted by Natural England and the Council.
17. The development shall not begin until a scheme for the provision of:
  - Transport Infrastructure Improvements
 has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the method, timing and arrangements to comply with the Council's policies for the provision of the infrastructure required in connection with the proposed development.



SCALE 1:1250 -A4

DATE APRIL 05

Drawing No 130:L

ROY SINGLETON ARCHITECT  
SUTTON COLDFIELD B74 4ND  
TEL/FAX 0121 308 1599



SCHEDULE OF ACCOMMODATION

7 3 BED HOUSES AT 69 SQ M  
plots 3,7,10,11,13,16,17.

27 2 BED HOUSES AT 52 SQ M

61 CAR SPACES

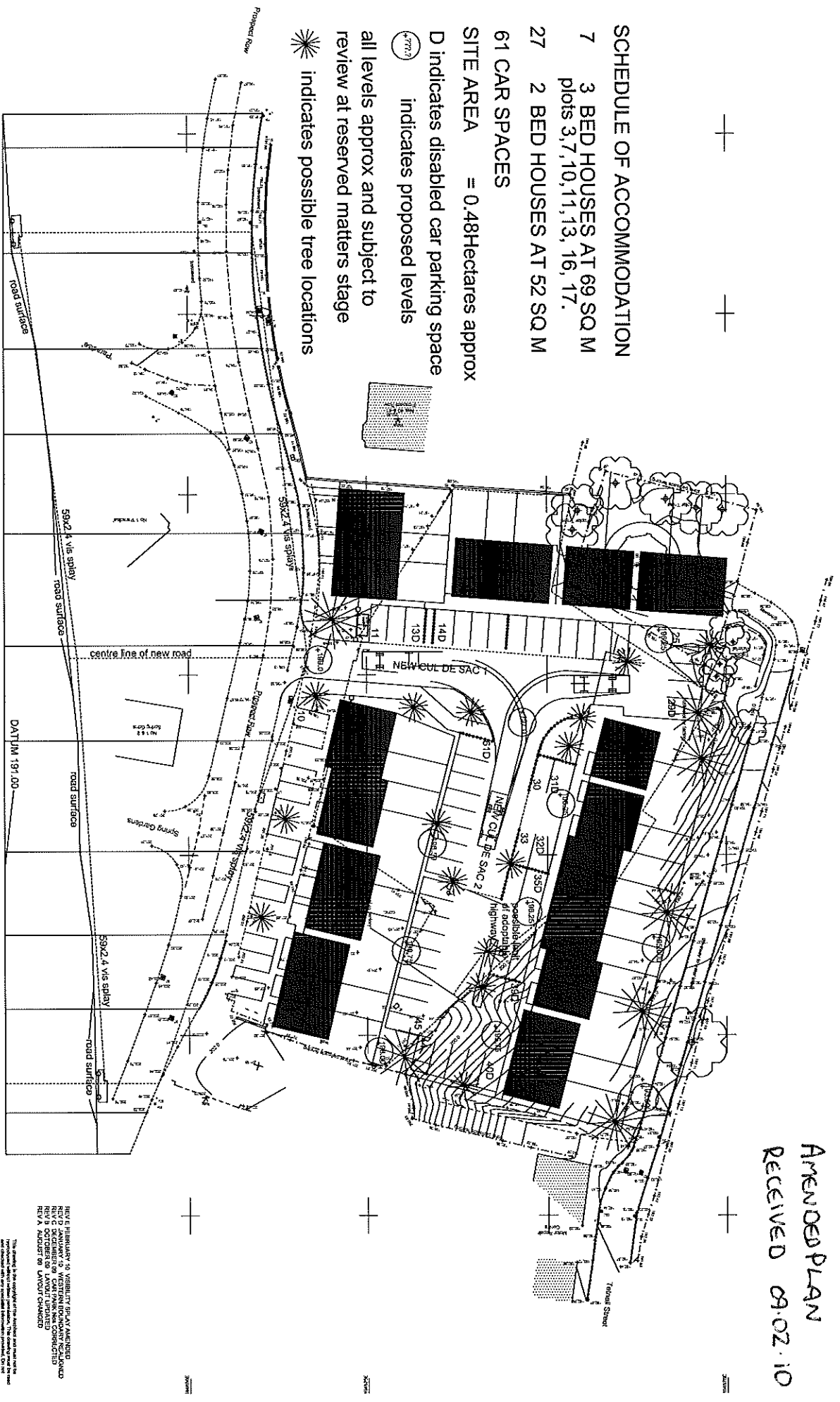
SITE AREA = 0.48Hectares approx

D indicates disabled car parking space

⊙ indicates proposed levels

all levels approx and subject to review at reserved matters stage

⊛ indicates possible tree locations



PLAN WITH SECTION ALONG VISIBILITY SPLAY SHOWING ROAD LEVELS

THIS IS A PRELIMINARY LAYOUT PLAN. THE CLIENTS AND THE ARCHITECTS ACCEPT THAT THE INFORMATION CONTAINED HEREIN IS FOR INFORMATION ONLY AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE CLIENTS AND THE ARCHITECTS ACCEPT THAT THE INFORMATION CONTAINED HEREIN IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE CLIENTS AND THE ARCHITECTS ACCEPT THAT THE INFORMATION CONTAINED HEREIN IS NOT TO BE USED FOR ANY OTHER PURPOSE.

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