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Committee Date:	22/07/2021	Application Number:	2021/02972/PA
Accepted:	07/04/2021	Application Type:	Minor Material Amendment
Target Date:	30/07/2021		
Ward:	Sutton Walmley & Minworth		

Peddimore, Land north of Minworth, east of A38 and west of Wiggins Hill Road, Sutton Coldfield, Birmingham, B76

Section 73 application to vary conditions 3, 17, 19, 20, 21, 22, 34 and 35 attached to planning permission 2019/00108/PA to relocate Peddimore Brook vehicular crossing, re-align northern boundary of Development Zone 1A, incorporate minor changes to the internal spine road and structural landscaping (including paths), reposition pumping station, reduce plateau levels of Development Zones 1A, 1B and 2, rationalise quantum of maximum floorspace and increase maximum building heights at Development Zone 1A and variation of conditions 5, 7, 8, 9, 14, 24, 25 and 37 to reflect approved non-material amendments and agreed discharge conditions details pursuant to 2019/00108/PA.

Recommendation

**Approve Subject to a Section 106 Legal Agreement**

1. Proposal

- 1.1 The application proposes a number of amendments to the 2019 hybrid planning permission by virtue of the variation of condition 3 (Approved plans), 17 (Work to be in accordance with FRA), 19 (Realignment of Peddimore Brook), 20 (Earthworks and Levels as detailed on plans), 21 (Surface Water Management as shown on plans), 22 (Foul Drainage as shown on plans), 34 (Limits maximum gross floorspace of units) and 35 (Limits the whole of zone 2 and min of 5.09 ha of zone 1 to B1c/B2) to;

Full permission

- Relocate the vehicular crossing over the diverted Peddimore Brook which serves Development Zone 1A
- Make minor modifications to the spine road (relocating a path, pedestrian crossing and repositioning the nearby pumping station)
- Make minor modifications to the strategic landscaping including the realignment of permissive paths; and
- Reduce the approved plateau levels of Development Zones 1A, 1B and 2 (within approved parameters)

Outline permission

- Extend the northern boundary for DZ1a (to the north west resulting in a 0.42 hectare gain)
- Increase of the maximum floorspace figure under Condition 34; and
- Increase the height parameters for DZ1A from 23.5m to 24.8m



Figure 1: Illustrative masterplan 2021

In addition, the application also seeks to amend conditions to reflect approved non-material amendments, conditions and obligations that have been approved/provided/complied with since the original determination date, 2<sup>nd</sup> September 2019. As such conditions 5 (Archaeology), 7 (Requires stopping up of Peddimore Lane and provision of access), 8 (Stopping up of Wishaw Lane ), 9 (Requires PROW stopping up), 14 (Requires submission details of bird/bat boxes), 24 (Requires gatehouse materials), 25 (Requires green/brown roof details for gatehouse) and 37 (Trigger points for M42 J9 and M6 J5) are also sought to be varied.

- 1.2 The application has been supported by a Planning Statement, Design and Access Statement Addendum, Heritage Addendum, Transport Assessment Addendum, Addendum to Flood Risk Assessment, Sustainable Drainage Statement and Water Framework Directive, Landscape and Green Infrastructure Strategy, Statement of Community Engagement, Framework Ecological Mitigation Strategy Clarification Note and External Lighting Assessment Report Addendum. An ES supplement has also been submitted and this includes chapters on Air Quality, Noise and Vibration, Landscape and Visual, Built Heritage, Socio-Economics and Human Health and Cumulative Effects.
- 1.3 An overview presentation of this and two reserved matters applications for DZ1A was presented to Members February 4th 2021.
- 1.4 The application is made as a joint application with Birmingham Property Services.
- 1.5 [Link to Documents](#)
- 2.0 Site & Surroundings
- 2.1 The application site is 65.13 hectares and is currently arable fields. It lies on the north east edge of Birmingham and is enclosed by the A38 on the west, housing at

Minworth and the Birmingham and Fazeley Canal to the south, Wiggins Hill Road to the east and Peddimore Hall and Barns and agricultural fields to the north. On the opposite side of the A38 is the land allocated as Langley Sustainable Urban Extension. There are 8 Grade II listed buildings, 1 Scheduled Ancient Monument (SAM) and 3 local non-designated heritage assets in the immediate area surrounding the site.

## 2.2 [Site location](#)

## 3.0 [Planning History](#)

- 3.1 2nd September 2019 - 2019/00108/PA - Hybrid planning application comprising: Outline application with all matters reserved for an employment park comprising B1b, B1c, B2 and/or B8 uses, including ancillary offices (B1a), gatehouses and security facilities, service yards and HGV parking, plant, vehicular and cycle parking, landscaping, pedestrian and cycle infrastructure, green and blue infrastructure, ancillary business and community facilities (D1/D2/B1a/A3/Sui Generis) including a multi-purpose hub building and associated development. Full planning application for a new roundabout access from the A38, construction access and compound area, internal spine road, site gatehouse, primary substation and tower, engineering operations including foul pumping station, acoustic fencing, earthworks (including creation of development plot plateaus), pedestrian and cycle infrastructure and structural landscaping including drainage infrastructure and development platform within Peddimore Brook corridor for ancillary business and community facilities. Approved with conditions and S106 Agreement.



Figure 2: Approved infrastructure plan

- 3.2 2021/04566/PA – Reserved matters application for access, landscaping, appearance, layout and scale for erection of storage and distribution centre (B8) including ancillary offices and welfare facilities and all associated works following hybrid planning permission 2021/02972/PA. Currently being assessed.
- 3.3 2021/04579/PA – Application for the discharge of Condition Nos: 35, 40, 41, 44, 45, 47, 48, 49, 54, 55 and 56 attached to approval 2021/02972/PA (Plot DZ1A Unit B only). Currently being assessed.

#### 4.0 Consultation/PP Responses

- 4.1 Canal and River Trust – No concerns.
- 4.2 EA – No objection.
- 4.3 Historic England – No objection.
- 4.3 Highways England – No objection.
- 4.4 LLFA – No objection.
- 4.5 Natural England – No comments.
- 4.6 Regulatory Services – No objection.
- 4.7 Transportation Development – No objection subject to financial bond within S106.
- 4.8 West Midlands Fire – List building regulation requirements.
- 4.9 West Midlands Police – No objections.
- 4.10 Local Residents' Associations, neighbours, Ward Cllrs and MP were notified. Site and Press notices including EIA were also displayed. 1 letter of objection received raising concerns on the basis of;
  - The adverse impact of the proposed buildings in relation to noise, light pollution and car parking. Concerned that the surrounding lanes will become a car park and existing access/highway movements will become dangerous.

#### 5.0 Policy Context

- 5.1 Birmingham Development Plan (BDP) 2017, Birmingham Unitary Development Plan (UDP) 2005 saved policies Emerging Development Management DPD, Peddimore SPD 2019, Langley SPD 2019, Nature Conservation SPD 1997, Places for All SPG 2001, Archaeology Strategy SPG 2004, Access for People with Disabilities SPD 2006, Lighting Places SPD 2008, Car Parking Guidelines SPD 2012 and National Planning Policy Framework (NPPF) 2019.

#### 6.0 Planning Considerations

- 6.1 Section 73 of the Town and Country Planning Act 1990 enables an applicant to apply to amend or remove conditions attached to an extant planning permission. It is mainly intended to allow flexibility in the planning system by allowing conditions to a planning permission to be changed without risking the entirety of the consented scheme. The original development description cannot be altered, the principle of the development is established, and it is the specific changes sought by the proposed condition variation can be considered only.
- 6.2 The changes sought to the full permission are namely;
  - Relocation of the vehicular crossing over the diverted Peddimore Brook which serves Development Zone 1A
  - Minor modifications to the spine road (relocating a path, pedestrian crossing and repositioning the nearby pumping station)
  - Minor modifications to the strategic landscaping including the realignment of permissive paths; and

- Reducing the approved plateau levels of Development Zones 1A, 1B and 2

These changes are not considered to be significant and no new issues are identified. Subject to safeguarding conditions as previously no objections are raised to this element of the proposal.

- 6.3 In addition, details required by conditions 5 (Archaeology), 7 (Requires stopping up of Peddimore Lane and provision of access), 8 (Stopping up of Wishaw Lane ), 9 (Requires PROW stopping up), 14 (Requires submission details of bird/bat boxes), 24 (Requires gatehouse materials), 25 (Requires green/brown roof details for gatehouse) and 37 (Trigger points for M42 J9 and M6 J5) have been submitted and agreed/complied with since the decision was issued. These conditions are therefore to be amended to secure/reflect these previously agreed details and no objections are raised to this element of the proposal either.
- 6.4 Conditions 1 and 32, as time restrictive conditions, are also amended to reflect the original consent.
- 6.5 Therefore, the principle issues for consideration are the changes to the outline consent and the impact of these in relation to matters of visual appearance (including heritage) and highways.

#### Visual appearance

- 6.6 Since hybrid permission 2019/00108/PA was approved the applicants have been in discussion with a potential end user for part of DZ1A and due to their building requirements an increase of 1.2m on the max height parameters for buildings within DZ1A and the north and northwest movement of the boundary zone is sought. The height parameters elsewhere would remain as previously approved and the specific design detail of future plots would still need to be submitted as reserved matters detail to comply with the necessary conditions (including the reserved matters design guide and plot landscaping requirements).
- 6.5 The original application's heritage assessments concluded that the proposed scheme would have a harmful impact on the significance of both designated and non-designated heritage assets due to the change in setting as a result of the loss of the surrounding rural landscape. However, the level of harm was considered less than substantial in NPPF terms and accordingly, the harm was considered in the planning balance, to be out weighted by the significant public, social and economic benefits of the scheme.
- 6.6 Notwithstanding this given the changes now proposed, the impact on cultural and heritage assets has been reviewed and a Heritage Assessment Addendum (HAA) and ES Addendum provided. The HAA has compared visual impacts from the approved hybrid application against those of the proposed changes. It concludes that due to the distance and the limited change in height there would be no discernible increase in the impact upon the heritage assets. The development would still result in some harm to significance; but this would be no higher than the previously approved scheme.
- 6.7 My Conservation Officer and Historic England have reviewed the supporting information and do not disagree with its conclusions. The economic, social and environmental benefits of the scheme remain as before. There is therefore no reason to reach a different conclusion to that done so in respect of 2019/00108/PA. As such the public benefits are considered to outweigh any harm to heritage and the application remains in line with policy in this respect.

- 6.8 Therefore, given all of the above I consider the proposed alterations would have an acceptable visual impact consistent with the original decision and that subject to retention of the safeguarding conditions the proposal would be acceptable and accord with policy in this respect.

#### Highways

- 6.9 When the original application was considered end occupiers were unknown. The Transport Assessment and Environmental Statement submitted in support of the application therefore used generic trip rates reflecting a typical range of single floor industrial uses to understand potential highway network impacts and consequently, Condition 34 was attached to limit gross internal floorspace to ensure any highway impacts could be mitigated with proportionate S106 contributions in accordance with the Infrastructure Delivery Plan (IDP). As such condition 34 read;

“The maximum gross (internal) floorspace of the industrial units approved through reserved matters applications shall not exceed 247,716sqm (GIA). Of the total floorspace no more than 159,000sqm (GIA) is to be B1c or B2 use as defined in the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument amending, revoking and/or re-enacting that Order with or without modification).”

- 6.10 Discussions are now at an advanced stage with a potential operator for part of DZ1A who require a B8 industrial building with 3 mezzanine floors. However, such a building would take up the majority of the floorspace permitted by condition 34. Therefore, in order to enable the delivery of subsequent phases a modification to increase the floorspace permitted by this condition is proposed as follows;

“The maximum gross (internal) floorspace approved through reserved matters applications shall not exceed 386,809sqm (GIA) comprising up to 228,751sqm (GIA) of ground floor industrial warehousing, ancillary offices, gatehouses and/or the multipurpose hub building and up to 158,058sqm of mezzanine floorspace (GIA) for Use Class B8 provided within a single warehouse. Of the total industrial warehousing ground floorspace no more than 145,788sqm (GIA) is to be B1c or B2 use as defined in the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument amending, revoking and/or re-enacting that Order with or without modification).”

- 6.11 The Transport Assessment and Environmental Statement submitted in support have therefore been revised utilising the proposed end user specific requirements alongside an updated illustrative masterplan and this has essentially enabled generated trip rates to be redefined when compared to the assumptions used to assess application 2019/00108/PA.
- 6.12 The updated information has been considered by Transportation Development. In principle they accept that the generic trip rates used to assess the original application were onerous now a specific B8 operator is known, that, in principle, mezzanine floors generate lower order trip rates than ground floor space and that sensitivity tests on junction modelling show that the proposed floorspace increase would have a negligible impact. Notwithstanding this however, Transportation Development do not consider the 50% discount on trip generation used within the TAA has been fully justified.
- 6.13 Subsequently, the applicant has accepted the need to provide a ‘financial bond’, in addition to the previously agreed package of contributions, which would be held and used to mitigate against any unforeseen adverse highway impacts should the increased B8 floorspace provision exceed the discounted assumptions. This would

be secured by an additional clause to the previous S106 by virtue of a Deed of Variation.

- 6.14 As such, additional information has been submitted. Transportation Development accept the information provided sufficiently justifies a methodology for determining a proportional bond payment, based on mitigating a potential increase in trips of 9.6%. However, there is disagreement regarding
- the starting point for calculating the Bond payment.
  - The need to consider multi-modal impacts as well as highway impacts; and
  - What the mitigation may look like (whilst acknowledging that the final transport interventions through Monitor and Manage will be determined through recommendations of the Green Travel District to BCC).
- 6.15 However, all interested parties are committed to reaching a successful outcome and negotiations on the above matters continue with the understanding that your Committee will be updated in advance of being asked to make a decision on the application.
- 6.16 Therefore subject to satisfactory agreement being reached on these outstanding matters, and Members being updated, I consider that the financial bond (in addition to the highway mitigation previously secured) would be consistent with the “Monitor and Manage” approach agreed in relation to the original consent and would safeguard the delivery of future phases of Peddimore and the Langley SUE development. I am also satisfied that the ‘bond’ would be necessary, directly related to, fair and proportionate and therefore in accordance with NPPF and CIL Regulations. Consequently, I consider the proposed variation of Condition 34 would be acceptable and accord with local and national planning policy.

## 7 Conclusion

- 7.1 The application seeks amendments to the originally approved hybrid planning permission for Peddimore and has been supported by additional information including an ES Addendum. The changes proposed would not result in any greater harm than previously considered and mitigated against in the planning balance. Safeguarding conditions remain as would the S106 (updated as necessary) with an additional clause to secure a financial bond. Therefore, subject to the signing of a Deed of Variation (with the additional clause) the application should be approved as it would accord with local and national planning policies.

## 8 Recommendation

- 8.1 That planning application 2021/02972/PA should be approved subject to the prior completion of a Deed of Variation to include any previously agreed details and an additional clause to secure the following;
- a) A financial contribution of £TBC. The contribution will be held as a bond and used on highways mitigation if monitoring demonstrates that B8 warehouse units with mezzanine floorspace generate trip rates greater than:
    - Morning peak hour 284 vehicles two-way
    - Evening peak hour 214 vehicles two-way.On a sliding scale up to a potential 9.6% increase in trips.
  - b) Payment of a monitoring and administration fee associated with the legal agreement of £1,500.

- 8.2 In the absence of a suitable planning obligation agreement being completed to the satisfaction of the Local Planning Authority on or before 27th August 2021, or such later date as may be authorised by officers under delegated powers, the planning permission be refused for the following reason:
- i) In the absence of a legal agreement to secure a financial contribution towards highway junction improvements, public transport, walking and cycling and the Green Travel District and the annual monitoring of the traffic impact until the complete occupation of the site the proposal conflicts with Policies PG3, GA6, TP38, TP39, TP40, TP41 and TP44 of the Birmingham Development Plan and the National Planning Policy Framework.
  - ii) In the absence of a legal agreement to secure an offsite contribution towards the provision landscaping within Wishaw Lane Playing Fields the proposal will have a significant adverse visual impact and as such conflicts with Policies PG3 and GA6 of the Birmingham Development Plan and the National Planning Policy Framework.
  - iii) In the absence of a legal agreement to secure a commitment for the provision of the permissive path around the site the proposal conflicts with Policies PG3 and GA6 of the Birmingham Development Plan and the National Planning Policy Framework.
  - iv) In the absence of a legal agreement to secure a commitment for off-site mitigation of the impact of the development on farmland birds the proposal conflicts with Policies TP8, TP28 and GA6 of the Birmingham Development Plan and the National Planning Policy Framework.
  - v) In the absence of a legal agreement to secure the provision of diverted Public Rights of Way the proposal conflicts with Policies PG3 and GA6 of the Birmingham Development Plan and the National Planning Policy Framework.
- 8.3 That the City Solicitor be authorised to prepare, seal and complete the planning obligation.
- 8.4 That in the event of the planning obligation being completed to the satisfaction of the Local Planning Authority on or before 27<sup>th</sup> August 2021, favourable consideration be given to this application subject to the conditions listed below.

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- 1 Full Planning Permission:
  - 2 Requirement to enter into a legal agreement.
  - 3 Requires the scheme to be in accordance with the listed approved plans.
  - 4 Limit construction and earthwork hours to 07:00 to 19:00 Mon to Fri and 08:00 to 13:00 Sat, except highway works.
  - 5 Archaeology written scheme of investigation.
  - 6 Employment minimum of 60 person weeks per £1m for new entrants.
  - 7 Requires stopping up order for Peddimore Lane and provision of access.
  - 8 Requires stopping up of Wishaw Lane.
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- 9 Requires PROW stopping up.
  - 10 A38 access to be provided prior to any above ground work on site.
  - 11 A38 access and bridge to be provided prior to occupation.
  - 12 Bunds and strategic landscaping to be commenced within the first planting season following commencement and completed within the first planting season following first occupation.
  - 13 Work to be carried out in accordance with ecology surveys and reports.
  - 14 Requires the prior submission of details of bird/bat boxes.
  - 15 Requirements within pre-defined tree protection areas
  - 16 Requires tree pruning protection
  - 17 Work to be in accordance with FRA.
  - 18 Drainage method statement for Peddimore Brook works.
  - 19 Realignment of Peddimore Brook.
  - 20 Earthworks and levels to be as detail on plans.
  - 21 Surface water management scheme as shown on plans.
  - 22 Foul drainage scheme as shown on plans.
  - 23 Requires the prior submission of unexpected contamination details if found on a phased basis
  - 24 Requires the submission of details of materials for gatehouse.
  - 25 Requires the submission of details of green/brown roofs for gatehouse.
  - 26 Requires the submission of detail of materials for pumping stations etc.
  - 27 Spine road lighting as per details.
  - 28 Public art.
  - 29 Internal spine road to be completed prior to first occupation of industrial unit.
  - 30 Closure of temporary accesses on completion of the roundabout.
  - 31 Landscape management in accordance with 20 landscape management plan.
  - 32 Outline planning permission: Time limit for Reserved Matters - all reserved matters to be within 10 years.
  - 33 Requires completion of S106 prior to work on plots.
  - 34 Limits the maximum gross floorspace of the units.
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- 35 Limits the use of whole of zone 2 and minimum of 5.09ha of zone 1 to to B1c/ B2.
  - 36 Requires the submission of reserved matter details following an outline approval.
  - 37 Requires trigger points for works to M42 J9 and M6 J5.
  - 38 Requires works to M42 J9 and M6 J5 to be in accordance with details and timetable.
  - 39 Requires further traffic surveys for B1b uses.
  - 40 Requires updated sustainability and carbon reduction targets with each RM application.
  - 41 Requires the prior submission of a construction ecological mitigation plan on a phased basis.
  - 42 Requires the submission of a scheme for ecological/ biodiversity/ enhancement measures on a phased basis.
  - 43 Requires further ecology surveys if a two year period lapses between work and application.
  - 44 Foul and surface water drainage details for plots to be submitted.
  - 45 Ground conditions details for plots to be submitted.
  - 46 Requires the prior submission of unexpected contamination details if found on a phased basis
  - 47 Requires the submission of a lighting scheme in a phased manner.
  - 48 Requires noise impact assessment for plots
  - 49 Requires the prior submission of level details.
  - 50 Reserved matters submissions to comply with submitted parameters plan.
  - 51 Reserved matters submissions to comply with submitted RMDG.
  - 52 Limits construction hours 07:00 to 19:00 Monday to Friday; 08:00 to 13:00 on Saturday; and no working on Sundays or Bank Holidays.
  - 53 Minimum of 60 person weeks per £1m for new entrants.
  - 54 Car parking for plots (inc 10% EV).
  - 55 HGV parking details.
  - 56 Cycle parking/ storage.
  - 57 Requires the submission of a commercial travel plan.
  - 58 Bus stops on site.
  - 59 Details of stack, vent or extract system to be submitted.
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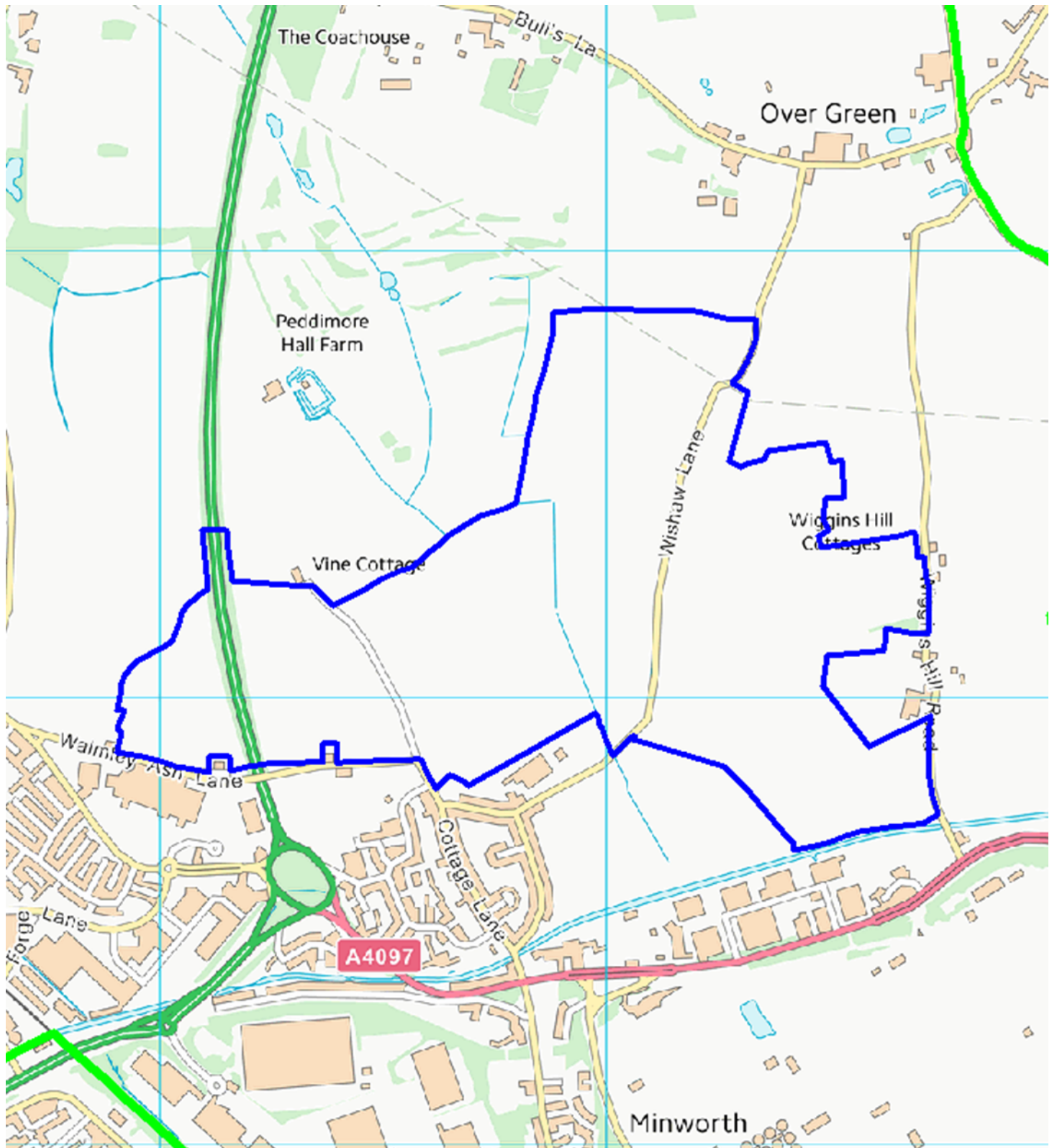
Case Officer: Joanne Todd

**Photo(s)**



Figure 3: Google ariel photo of site

## Location Plan



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