
Committee Date:	15/10/2015	Application Number:	2015/00061/PA
Accepted:	11/09/2015	Application Type:	Full Planning
Target Date:	06/11/2015		
Ward:	Selly Oak		

Selly Oak Park, Selly Oak, Birmingham, B29 6SS

Restoration works to part of Lapal canal along the north side of Selly Oak park, comprising clearance of debris/soil, repair of canal walls, clearance of vegetation and improvements to the canal path.

Applicant: Lapal Canal Trust
18 St Georges Close, Birmingham, B15 3TP
Agent:

Recommendation

Approve Subject To Conditions

1. Proposal
 - 1.1. This application is for works which form part of a wider proposal (by the applicant) for the restoration of a section of the Dudley no. 2 (Lapal) canal along the north side of Selly Oak Park, to the west of Harborne Lane.
 - 1.2. The scheme currently for consideration is a significantly reduced proposal from that originally submitted in terms of both the size of the area covered and the works to be undertaken.
 - 1.3. When the application was originally submitted, the proposals covered a significant stretch of the canal, running the full length of the park from Harborne Lane (at the east end) and extending westwards along the rear boundaries of properties on Reservoir Road (to the north) up to the rear gardens of houses on Corisande Road (at the west end).
 - 1.4. The original submission also proposed extensive works, including references within the supporting information to potential residential moorings, a new turning loop, gates to prohibit access to the north side of the canal, a 'marina' and jetty to serve the adjacent scouts hut, and the creation of a pathway to the south.
 - 1.5. The site is now restricted to a relatively small area immediately adjacent to Harborne Lane, extending northwards only as far as an existing pedestrian bridge over the canal (from between nos. 183/187 Harborne Lane onto the park) – approximately 115m length by some 9–18m width.
 - 1.6. The revised submission limits the proposal to works comprising:
 - Clearance of debris/soil;
 - Repair of canal walls;

- Clearance of vegetation and improvements to the canal path.

1.7. The application submission was supported by the following documents: Planning Statement, Design and Access Statement, Statement of Community Involvement, Land Contamination Report, Tree Survey and Arboriculture Statement, Archaeological Statement; Flood Risk Assessment, Ecological Appraisals/Ecology Management Plan and Site Master Plan

1.8. [Link to Documents](#)

2. Site & Surroundings

2.1. The application site comprises an area of land at the east end of Selly Oak Park adjacent to Harborne Lane, close to the new roundabout at the southern end of the Birmingham Battery site. The site is set significantly below the road, which becomes a bridge at this point. Immediately adjacent, to the east of the site, a concrete 'tunnel' runs beneath this bridge, to accommodate a potential water course.

2.2. To the south is a scout hut and associated parking, with houses beyond on Gibbins Road. To the north are properties fronting Harborne Lane. These are predominantly residential, with a former nursing home converted to student accommodation at no. 187.

2.3. To the west and south-west is Selly Oak Park. The line of the original canal runs along the northern boundary of this, with residential properties backing onto it at this point. The Gardens of houses on Corisande Road abut the park at its western boundary.

2.4. The site sits at the edge of Selly Oak centre, to the west of the Birmingham Battery site/proposed Life Sciences campus. As such, there are a mix of commercial uses to the east, but with residential properties fronting Harborne Lane to the north-east.

2.5. The approximate line of the original canal is still visible here, with a towpath running along its northern edge at the Harborne Bridge end. The towpath moves to the south side across an original bridge beyond the north-west boundary of the application site. The area is overgrown and the canal partially filled with soil, silt and rubbish, with some (rain) water in the bottom.

[Site Location](#)

3. Planning History

Adjacent site

3.1. 28th November 2013. PA No. 2013/02178/PA. Outline planning application for mixed use development comprising of life sciences campus (Use Classes B1a, B1b, B1c), supermarket (Use Class A1), non-food retail units (Use Class A1), financial and professional units (Use Class A2), cafe and restaurant units (Use Class A3), drinking establishments (Use Class A4), hot food take-away (Use Class A5), leisure (Use Class D2), student accommodation (Sui Generis), petrol filling station (Sui Generis), a linear open space walkway 'greenway', vehicular Access to the site, car parking (including multi storey car parking), landscaping, retaining walls, and associated works including demolition of existing buildings. Matters Reserved: Scale, Layout,

Appearance, Landscaping, pedestrian and cycle Access, and vehicular Access within the site – approved.

4. Consultation/PP Responses

Consultations

- 4.1. Environmental Protection Unit – no objection. Applicant will need to comply with EPU construction policy, particularly in relation to control of noise/air pollution. A condition should be attached to deal with any unexpected contamination.
- 4.2. Local Services - No objection in principle. Details concerning how work will be undertaken and management need to be agreed with the owner of the park and canal (BCC). Request the imposition of a condition regarding the future operating model for the canal to be agreed with BCC prior to any works. Works will need to be implemented and supervised through the City's Landscape Practice Group.
- 4.3. Have some concerns about the piecemeal nature of some of the restoration work to the canal wall by volunteers - liability in terms of ongoing maintenance/health and safety. Consider wall should be repaired, then covered up to protect it from the elements. Would not allow any further excavation of the wall unless it was part of a complete scheme to resurrect this part of the canal.
- 4.4. Local Lead Flood Authority - comfortable with the proposed works being carried out within Area 1 (the amended scheme), providing this does not involve any re-watering of this section of the canal at this stage.
- 4.5. Severn Trent – no comments or objections.
- 4.6. Canal and River Trust – no comments received.
- 4.7. Inland Waterways Association – no comments received.
- 4.8. Environment Agency – no objections in principle.
 - Analytical sampling results show no hazardous contamination present. The accumulated material will be removed and canal base/side liners restored to make an impervious system, thereby breaking any potential links with surrounding 'Controlled Water' receptors.
 - Recommendations in the submitted Ecological Appraisal/Management Plan and Water Vole Survey should be followed. A Management Plan is also required for non-native invasive species.
 - Request imposition of a condition to ensure that the landscape is managed in to protect its ecological value.
 - A licence may be required from the EA if any water needs to be extracted from any inland water or underground strata or if eventually link to the Worcester and Birmingham Canal.

Public Participation

Responses on Original Submission

- 4.9. Adjacent occupiers, Councillors, M.P. and residents association notified. Site and press notices posted.
- 4.10. Letter received from Steve McCabe M.P. requesting that the concerns of one of his constituents be registered with regard to introduction of a gate to the North side of the canal to restrict access and flood risk.
- 4.11. Comments received from Councillor McCarthy. Application was discussed at Selly Ward Committee. Feeling of meeting was generally supportive, but some concerns raised:
- Residents from Reservoir would wish to be able to use the new route (towpath currently on opposite side);
 - Potential flood risk. The weir/tunnel/culvert to the Bourn Brook is blocked and cannot be relied upon to provide overflow drainage. Needs to be resolved as canal is above houses on Reservoir Road; (Ward Committee support these concerns in particular);
 - Believe there is a badger sett within overgrown area adjacent to canal;
 - Permanent moorings inappropriate;
 - Consultation inadequate.
- 4.12. 15 additional objections, as follows:
- Turning loop is a pointless construction as no horse drawn barges now and pedestrian can use a walkway to cross to the south side. There was no such feature originally.
 - Loop appears to occupy land forming part of 187 Harborne Lane's curtilage (documents submitted evidencing ownership). This land already benefits from planning permission – proposal affects its implementation. Loss of privacy/amenity to no. 187's residents and impact on traffic flow/parking available here;
 - Potential flooding particularly if no direct connection to another canal or overflow. Applicant does not explain how this will be managed;
 - Queries received regarding current flood risk requirements for submission of information to the Environment Agency, impacts of the proposals on flood risk elsewhere, and disposal of surface water/drainage systems. Submitted information is inaccurate/out-of-date for Environment Agency's requirements (maps show area is at high risk of flooding). Will the applicant have funds for compensation claims if adjacent houses become uninsurable?
 - Submission contains mis-information. Applicant's reference to a drain is incorrect – just a soak-away not connected to any drainage system. Trees/undergrowth to be removed currently aid water dispersal;
 - Already flooding problems in gardens of properties on Reservoir Road, particularly since work carried out to put in new roundabout and bridge. Request

consideration be given to putting a canal in to solve this problem if plans do not go ahead;

- Lack of public consultation. Request for public meeting;
- Will become a stagnant pond full of rubbish. Used as a dumping ground if not looked after. Potential serious environmental issue;
- Unfortunate that will not link with other canals. Developers at Battery site do not plan to link into Birmingham and Worcester Canal;
- Concern that homeowners would be responsible for maintenance of landscaping along boundary to ensure no risk to canal users;
- Query whether funding has been secured and financial stability of the applicant;
- Concerns regarding the track record of the Trust with regards to management and communication with residents. Previous restoration works have resulted in tree removals, impacts on habitat, destroyed drainage systems, resulted in vandalism/litter and exposure of 200 year old wall to the elements. Query the purpose of the works before a link can be achieved;
- Impact on local wildlife, trees and environment. Loss of green space/amenity to community. Impact on outlook through clearance works;
- Query whether any moorings would be 'policed' by the Trust. Concern regarding implications of moorings to r/o properties on Reservoir Road. Overlooking of gardens from barges. Reduced security and privacy for adjacent residents. Increased noise. Adequate moorings exist elsewhere;
- Proposed restricted access to north side of canal – residents of Reservoir road would not be able to use the towpath at the r/o their properties to access the park new Battery development.
- Impact on property values and insurance costs;
- Lack of clarity/consistency in submission in regard to which elements of scheme are being applied for/potentially approved (including residential moorings);
- Recommendation that application should concentrate on just first phase of proposals, which should be completed to a high standard. Would allow use by scouts and potentially attract funding for later works. Other works are premature;
- Potential canal bank collapse. Landscape works in adjacent gardens could contribute to this;
- Scheme serves no purpose/is ill-thoughtout, just antagonises local residents.

4.13. Canal and River Trust – no comments received.

4.14. Inland Waterways Association – support the application.

4.15. Community Partnership for Selly Oak and the Friends of Selly Oak Park – strongly support the proposed reinstatement of the canal, which will hopefully link into the

sectioned canal across the Battery site and enhance the park with potential for fishing and boating. Will also tidy up this neglected area of land.

4.16. 8 further letters of support:

- Proposal will encourage the Sainsbury's development to construct the link from the Birmingham and Worcester Canal;
- Will help benefit the development/improvement of the Selly Oak business area. Increased visitors would result in increased trade;
- Area is rapidly being developed by the QE, University and commercial interests. This will help preserve some 'breathing space'. Will enhance ecology of the area;
- Would bring together the local community and boat enthusiasts in general;

Responses on Amended Submission

4.17. 5 further responses received.

4.18. 3 responses in support, subject to:

- Protection of private property;
- Minimum noise disturbance during works (a short construction period is preferred);
- No environmental pollution to nearby area;
- Concerned that 'clearance' should mean removal from the site (problems in the past with dredged mud being piled up against fences, creating a security risk).

Proposed work is considered timely, given the opportunity of rubble removal to the Battery Park site.

4.19. 2 objections received, as follows:

- Resubmitted FRA is inaccurate, out-of-date and provides insufficient information on drainage/flood control works;
- The applicant has a history of undertaking works with no regard for residents' concerns or the local environment, and has failed to manage/maintain areas once work completed. No indication of who will be liable for this large area of unfenced water when works complete;
- The applicant has already carried out unauthorised works (removing drainage pipes and weirs), potentially disturbing bat roost;
- Amended submission is unclear (the works described are not reflected on the plan);
- Proposal is to let excavations fill with water after work complete, but existing brick dam at park bridge has been damaged (by the applicant) and so water flows beyond this point (previously an overflow pipe came into use in times of

extreme weather conditions). Canal will fill up with nowhere to go. Now potential increased problem of storm water from adjacent Battery site;

- If application is approved, the work should be closely monitored to ensure it is carried out in a safe manner and appropriate responsibility taken.

5. Policy Context

- 5.1. UDP; Draft BDP; Wider Selly Oak SPD; Archaeology Strategy SPD; Nature Conservation Strategy SPG, NPPF.

6. Planning Considerations

Background

- 6.1. The Lapal Canal/former Dudley No.2 canal originally ran from the Worcester and Birmingham Canal in Selly Oak, under Woodgate Valley to Halesowen. It was infilled in the 1950's and much of it laid out as public open space forming a linear open space walkway ('the Castle Walkway'), with two key sections going into private ownership - including the section across the Birmingham Battery site.
- 6.2. The Lapal Trust was established in 1990 to promote the potential restoration of the canal for navigation, to restore it from Selly Oak to Halesowen. The Trust proposes a phased restoration, with this planning application relating to a small section of the canal within Selly Oak Park on the west side of Harborne Lane. This is intended to eventually link to the section of canal being restored/protected on the Birmingham Battery site and to the Worcester and Birmingham Canal.
- 6.3. The works on the Birmingham Battery site (approved under P.A. no. 2013/02178/PA) propose a canal route for the Lapal Canal, running from the Worcester and Birmingham Canal across the Battery site to the tunnel beneath Harborne Lane. The works include formation of the canal section in part of the route underneath the supermarket, with the rest of the route safeguarded from development so that, should funding become available in the future, the remaining works could still take place and a new canal be opened. The protected route will be planted with grass and have a towpath running alongside its northern edge, operating as a pedestrian and cycle route.
- 6.4. The current proposal – in its amended form – is for clearance works to the section of the canal on the east side of Selly Oak Park, adjacent to Harborne Bridge, opposite the Battery site across Harborne Lane. This application originally proposed more significant works on a longer stretch of the canal, but the additional elements have been abandoned in the short term due to a lack of information (particularly in respect of drainage implications and uncertainty about the exact line of the original canal) and the concerns of local residents. Works proposed are now restricted to just the clearance of debris/soil from this section of the canal, repair of canal walls, clearance of vegetation and improvements to the canal path.

Policy

- 6.5. The UDP, at paragraph 3.47, supports an integrated and linked network of open space throughout the city including formal parks etc. The linking element is provided by linear open spaces ensuring a range of recreational facilities accessible to all.

Paragraph 3.48 states that complementing and forming part of linear open space is a system of interlinked walkways often using canals and rivers. The completion and extension of this network will continue to be a priority.... Paragraph 3.49 states that the importance of the canal systems (which also form part of the linear open space network) will continue to be recognised. Paragraphs 3.34-3.36 set out policies supporting the existing canal network and improvements to it.

- 6.6. Para 20.16A states that new development in Selly Oak “should assist with the future reinstatement of the canal”.
- 6.7. The draft BDP, at Policy TP7, supports the city’s green infrastructure network including canals. Policy GA9 states that Selly Oak and South Edgbaston will be promoted for major regeneration and this will include improvements to the natural environment, completion of key missing links in the City’s linear open space network and improvements to the canal network including assistance for the restoration of the Lapal Canal.
- 6.8. The Wider Selly Oak SPD supports “the enhancement and protection of the existing unique assets, such as the canals ... areas of ecological value and archaeological remains”.
- 6.9. Paragraph 131 of the NPPF advises that in determining planning applications, local planning authorities should take account of: the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and the desirability of new development making a positive contribution to local character and distinctiveness.
- 6.10. Paragraph 139 refers to non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments, advising that they should be considered subject to the policies for designated heritage assets.

Principle

- 6.11. The proposed reinstatement of the canal is consistent with policies contained within the UDP, draft BDP, and Wider Selly Oak SPD and, as such is considered acceptable in principle.
- 6.12. Your Conservation Officer has considered the potential impact of the works on the historic canal. He advises that this is a site of archaeological interest and an important part of Birmingham’s industrial heritage. As such, in determining this application the Local Planning Authority must be satisfied that any works undertaken will not damage the surviving archaeology nor will they undermine the structural integrity of the surviving walls through removal of now compacted soil, which may be supporting them. He would also wish to be satisfied, through condition if necessary, that all the works proposed are supported and in-line with current canal restoration best practice undertaken by the Canal and River Trust.
- 6.13. Your Conservation Officer also considers that a written scheme of investigation for the archaeological works should be required in addition to a method statement for the proposed (clearance & repair) works and confirmation in the form of a report from a conservation accredited structural engineer/surveyor that the re-exposure of the canal walls and features will not harm their structural integrity.

Drainage

- 6.14. The applicant has had ongoing discussions with both the Environment Agency and the City Council's Drainage Division. Significant concerns were raised locally about the adequacy/accuracy of the application submission with regards to drainage/flooding issues.
- 6.15. The necessary information was not available to satisfy the concerns of all parties regarding the implications of the Trust's wider proposals for water management and flooding in the local area. As a result, the proposal has been substantially reduced to now involve only minor works on just a small portion of the original site. The limited nature of these works and the area in which they are located is such that they have prompted no objections from either the Environment Agency or the City's Drainage Team, who are comfortable that this phase of works can be dealt with in isolation, with no adverse impacts.
- 6.16. The Environment Agency notes that water levels in the restored canal would be maintained by naturally intercepting surface water run-off from the park, but advises that if any water needs to be extracted from any inland water or underground strata then a licence may be required from the EA and identifies that a licence may also be required if eventually there is a link to the Worcester and Birmingham Canal.
- 6.17. My Drainage colleagues have confirmed that they have no objection providing that the canal is not filled at this time. The applicant has confirmed that there is no proposal to do this and a condition is recommended to prohibit it.
- 6.18. Residents have expressed concerns that the cleared section of canal will naturally fill with water and become a flood risk and safety concern. However, this would be no different to the current situation, where some water already accumulates within what remains of the original canal.

Trees, Landscape and Ecology

- 6.19. Your Landscape Officer has raised no objection in principle, subject to conditions in respect of landscaping, earthworks, boundaries and levels. In addition your Ecologist requests the imposition of a condition to ensure that the landscape within the site is managed in such a way to protect its ecological value, including the wetland/restored canal section.
- 6.20. The site falls within an identified Wildlife corridor and forms part of a linear route. An Ecological Appraisal/Management Plan and Water Vole Survey were submitted in support of the application. Your Ecologist confirms that this covers the points required to minimise environmental impact during the renovation of the canal line and recommends that a condition should be imposed that the recommendations it contains be implemented. A Management Plan is also required for non-native invasive species. The footbridge beyond the north-west boundary of the site has been identified as a bat roost and this is reflected in the Management Plan, which recommends that a full bat survey should be undertaken of the bridge prior to any repair works and acknowledges that a license may be required. A condition is also recommended to require this survey work to be carried out.
- 6.21. The aforementioned conditions are considered appropriate and are reflected in the Officer recommendation. The imposition of a condition requiring a landscape management plan should also address local residents' concerns in this respect.

Contamination

- 6.22. The submitted Land Contamination Statement includes analytical sampling results which show that no hazardous contamination is present. The accumulated material would be removed and canal base/side liners restored to make an impervious system, thereby breaking any potential links with surrounding 'Controlled Water' receptors such as the underlying Principal Aquifer.

Other Issues

- 6.23. A number of the original local concerns have been addressed through the significant amendments to the submission/site area. These include issues in respect of the proposed moorings, restricted access to the north side of the canal and turning loop.
- 6.24. Land ownership issues have also been resolved through the amended site boundary.
- 6.25. There are ongoing concerns regarding the lack of clarity in the submission in terms of what is being considered at this time and the need for monitoring whilst the work is undertaken.
- 6.26. The amended submission is accompanied only by a site plan, which identifies the area to which the proposed works (identified in the development description) would be carried out. Previous submissions have included a 'Master Plan', detailing the Trust's aspirations for the future. A condition is recommended to clarify that this drawing does not form part of the consideration of the application.
- 6.27. As mentioned above, your Conservation Officer has recommended a requirement for monitoring of the work to be undertaken, because of the heritage value of the site and a condition is recommended to secure this.
- 6.28. Other issues, such as the impact on property values and the applicant's track record/relationship with residents are not material planning considerations. The limited nature of the works now proposed is such that there would be no anticipated impact on existing levels of security. Noise during construction would be controlled through the Environmental Protection Unit's Construction Policy requirements.
- 6.29. The park and canal are in the ownership of the City Council. My Local Services colleagues have raised no objection in principle to the works, but express concern that details will need to be agreed with them regarding how the works will be undertaken and managed – there will be a requirement for supervision by the City's Landscape Practice Group. I consider that agreement of these details would be appropriately dealt with by Local Services (as land owner) outside of the planning process. Similarly, I do not consider that it is necessary at this stage to impose a condition regarding the future operation of the canal.

7. Conclusion

- 7.1. The proposed re-instatement of the canal accords with policy and, as such, is considered acceptable in principle. In addition, I am satisfied that, subject to the aforementioned safeguarding conditions, the proposed works could appropriately be undertaken without harm to the heritage asset, landscape/ecological value of the site or adverse impact on local residents or drainage issues in the vicinity of the site.

8. Recommendation

8.1. Approve, subject to conditions.

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- 1 Requires the prior submission of an additional bat survey
 - 2 Requires the Implementation of the Ecological Management Plan
 - 3 Requires the prior submission of a method statement for the removal of invasive weeds
 - 4 Requires the prior submission of a landscape management plan
 - 5 Requires the submission of unexpected contamination details if found
 - 6 Requires the prior submission of hard and/or soft landscape details
 - 7 Requires the prior submission of hard surfacing materials
 - 8 Requires the prior submission of earthworks details
 - 9 Requires the prior submission of boundary treatment details
 - 10 Requires the prior submission of level details
 - 11 Requires the prior submission of a programme of archaeological work
 - 12 No approval given to indicative 'master plan'
 - 13 Requires the scheme to be in accordance with the listed approved plans
 - 14 Limits the approval to 3 years (Full)
-

Case Officer: Alison Powell

Photo(s)

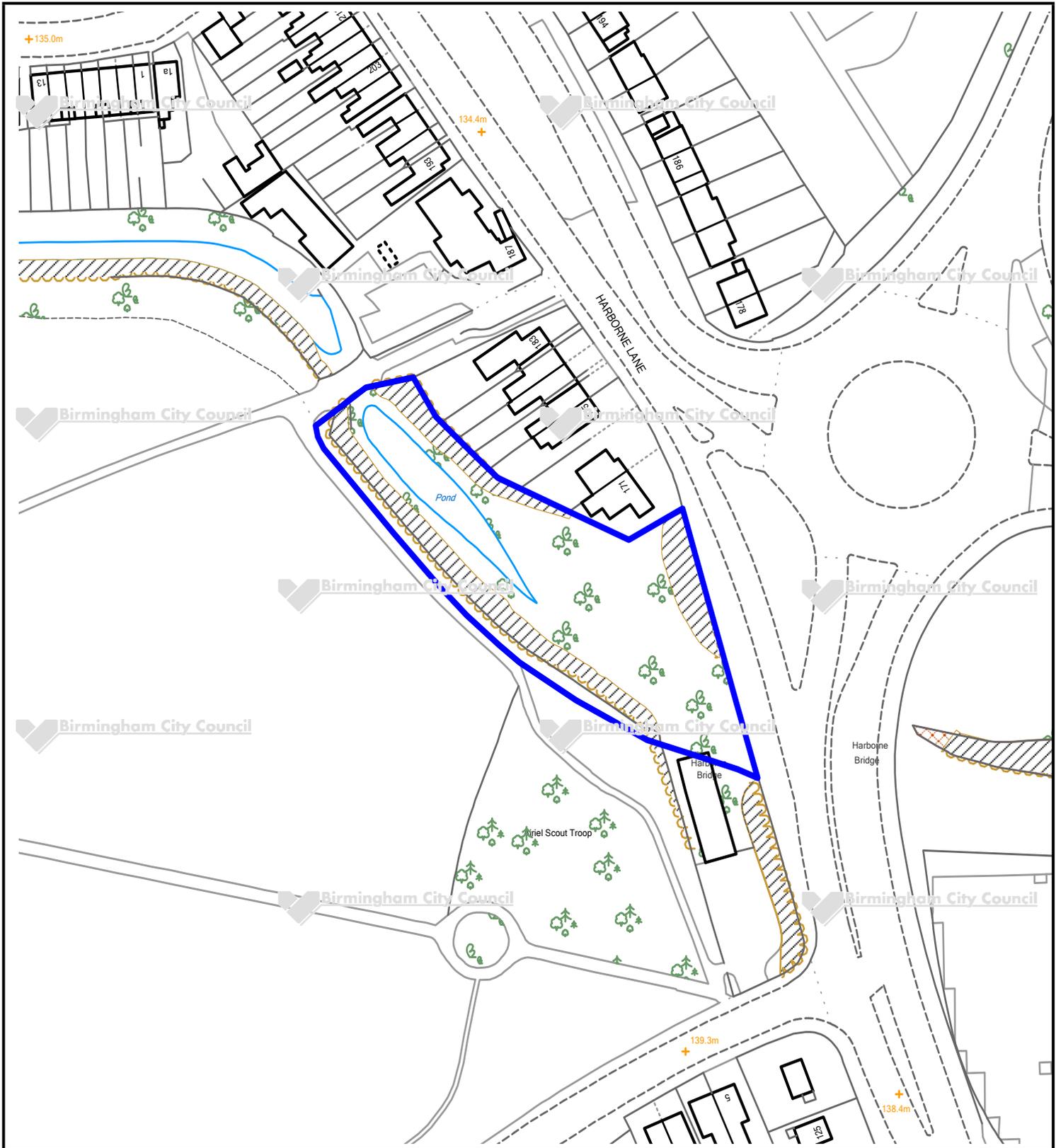


View from site towards Harborne Lane



View of site from Harborne Lane

Location Plan



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