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RIGHTS OF LIGHT REPORT

Portman Road
Reading

6th February 2018

The background of the cover features a low-angle, upward-looking photograph of a modern building's facade. The building has a complex, geometric design with a mix of grey metallic panels and reddish-brown horizontal slats. The sky above is blue with scattered white clouds. A large, dark grey, angular shape overlaps the right side of the image, serving as a backdrop for the title text.

MAXIMISING DEVELOPMENT POTENTIAL MINIMISING RISK.

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1. Introduction

This practice (eb7 Ltd) has been instructed to report upon the rights of light impact of the scheme proposal at Portman Road, Reading. This report is based upon the latest DHA Architects proposals for the site.

A right of light is a private legal easement which, whilst similar in its assessment, is wholly separate to the planning considerations of Daylight and Sunlight. As a private right the conclusions of this report should be considered client confidential and not disclosed to third parties (including the Local Authority or any affected neighbours).

In reporting upon the results of the technical analysis undertaken we have provided guidance as to our understanding of the present legal position. Independent legal advice should be sought in advance of relying on any statement of law contained herein.

Drawings showing our understanding of the proposal can be found at appendix 1.

2. Guidance

A right of light is an easement generally acquired by 20 years long enjoyment of light through a defined aperture. Therefore, in the absence of deeds or other agreements to the contrary, a window over 20 years of age will enjoy a protected right of light. Where a property enjoys such a right they are generally enforceable by the freeholder although leaseholders may in some circumstances, dictated by the terms of their lease, be able to bring an action to prevent a rights of light 'injury' or 'actionable nuisance'.

Where a property enjoys a right of light it is entitled to receive the quantum of illuminance which is regarded as 'sufficient for the ordinary notions of mankind'. The point at which a rights of light injury may occur is dependent upon the circumstances of each case however, as a guideline, the '50/50' rule is commonly adopted. This rule of thumb states that if 50% of a room can see 0.2% of the sky at desk height (the working plane) the room will be adequately lit. Therefore if a proposal reduces the light to neighbouring properties to below this 50/50 level an actionable nuisance may have occurred. Where a rights of light injury occurs the affected party may bring an action to prevent this nuisance therefore seeking an injunction from the courts. A prohibitory injunction may be sought to prevent development that will cause such an injury whilst, in the event that a structure has already been constructed, a mandatory injunction may be sought to force demolition of such a structure.

The principles set out in *Shelfer v. City of London Electric Lighting Company* (1895) state that damages may be awarded in lieu of an injunction if the injury is small, is capable of being estimated in financial terms, can be adequately compensated by monetary compensation and to grant an injunction would be oppressive. The case of *Regan v Paul Properties Ltd* (2006) has restated however that an injunction is the principle remedy and that compensation is only likely to be appropriate in exceptional circumstances.

Despite the potential injunction risk, where rights of light injury occurs a neighbour may be willing to release their rights for monetary compensation rather than pursuing the matter at court. It should be recognised that a party is under no obligation to negotiate such a release and may choose to pursue legal action.

Where negotiations are entered into compensation payments may be valued by one of two principle methods. Based on the area of light loss to an affected property an amenity based 'book value' can be deduced. Recent decisions have however also looked at the developer's profit on that part of a scheme causing an injury allocating a percentage of this to the affected neighbour to reflect the hypothetical bargaining position. In the case of *Tamare (Vincent Square) Ltd v Fairpoint Properties (Vincent Square) Ltd* (2007) up to 1/3rd of this developer's profit was considered reasonable as a compensation payment and clearly there may be significant sums involved. Finally the judge in *Tamare* stated that such a settlement must 'feel right' and therefore there may be some element of professional judgement in balancing the amenity 'book value' against the developer's profit calculation.

The case of *HKRUK II (CHC) Ltd v Heaney* (2010) has confirmed the injunction risk where developers proceed with knowledge of adverse effects upon neighbouring properties whether in residential or commercial use. Finally the decision in *Coventry v Lawrence* [2014] has recently underlined the potential discretion of the courts to award damages in lieu of injunction and may represent a softening of the potential for rights of light issues to be used to exert a ransom position over the neighbours.

Transferred Rights of Light

It is possible for new buildings to 'inherit' Rights of Light from previously existing buildings on the same site. The extent to which a newly developed building may 'inherit' rights of light from the building it replaces depends largely on the nature and extent of coincidence between the old and new apertures. Generally speaking, and not clearly defined by case law, we would expect that a new façade, of similar orientation to the old, and within about 1 metre of the previous position, would inherit a right.

Rights of Light, The modern Law (Bickford-Smith *et al*, 2015) explains;

"Where the dominant building undergoes alterations, so that windows enjoying rights to light are replaced by new windows, whether the right to light is lost depends on a number of matters. The general principle is that alterations to windows will not destroy the right to light enjoyed by them, provided there is enough coincidence between at least part of the old and the new apertures. The right to light, however, will not extend to those portions of new apertures opened in the dominant building which do not coincide with the apertures which previously enjoyed a right to light, nor, obviously, to wholly new apertures...Where the new operations coincide partially with the old ones, the claimant is entitled to have his prescriptive rights protected. It is thought that in such cases damages may be awarded for the whole loss to the building, on the basis that the obstruction of the new lights inevitably involves obstruction of the old."

3. Assumptions

Existence of Rights

We have assumed that, where properties appear to be older than 20 years, they have acquired and have the benefit from prescriptive rights of light. We recommend that a Report on Title be undertaken to identify if there are any legal covenants or agreements which override this assumed position.

Modelling and analysis

We have not been able to gain access internally to any of the surrounding properties. Details of the internal layouts and floor level heights have been assumed from the external appearance of the building, and the locations of windows. Unless known or otherwise appropriate the depths of rooms have been assumed at 4.27m for residential properties and 6m for commercial properties, or half the building depth if this is less than these dimensions.

Both room size and use may have an effect upon the rights of light position and therefore should additional information be available at a future date, for example access to the neighbouring property, we would advise that our report is updated to incorporate this additional information.

Valuation of injuries

When valuing the diminution in value of a property, that has received an actionable injury to its right of light, we have applied some assumptions. These include the property's investment market yield and the value attributed to natural light within the rental value. Based on initial research we have assumed that the value of light within the rental value is £5 per square foot and an appropriate investment yield to be 6%, however local agency advice could be taken to inform these assumptions.

4. Sources of Information

Cloud10

Portman Road Reading ROL 16-01-2018.dwg
Received 17/01/2018

DHA Architects

Portman Way Site WIP for Light Study.skp
Received 23/01/2018

EB7

Site Photographs
Ordnance Survey

5. The Site and Proposal

The application site which extends to almost 3ha is bordered to the north by Portman Road and Portman Way to the south. To the east of the site are residential properties. To the west is the main access road into the wider Battle Hospital site. It provides access to the wider Battle Hospital site, including the Tesco Extra superstore and petrol filling station to the west and the Kings Oak residential development to the south.

The proposal is for 215 dwellings with associated access, parking, landscaping and open space provision, following the demolition of existing buildings.

The following properties were considered within our assessment as those with potential to see an impact to their light:

- 20 – 25 Barnwood Close
- 38 – 42 Valentia Road
- 8 – 15 Portman Road
- 2 – 7 Portman Way
- Radcot House

With the exception of 20 – 25 Barnwood Close, the buildings near the proposal have been in situ for less than 20 years and therefore have not acquired prescriptive rights to light:

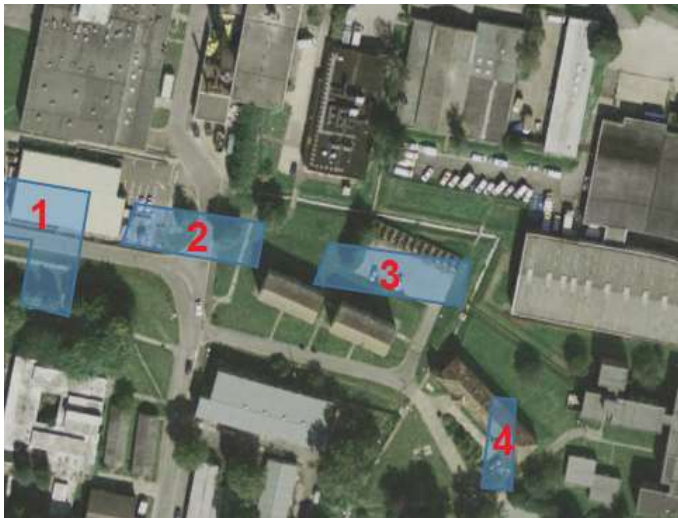
- 38 – 42 Valentia Road
- 8 – 15 Portman Road
- 2 – 7 Portman Way
- Radcot House

Site photos and historical aerial imagery have illustrated that it is unlikely that the neighbours could argue transferred rights as the building lines are different. We have therefore not completed a detailed overlay study but as shown in the images below, 38 – 42 Valentia Road (numbered 4) does show that there is some degree of overlap between the historic and current buildings. The elevation itself is however of a markedly different orientation, such that we consider it would be difficult for the neighbour to argue any transferred rights. Nonetheless, if commercially viable, it would be prudent to tie this remote risk off within an insurance policy.

If insurance cover is sought for this residual risk, we would suggest insurers are approached at an early stage to establish what terms are available.

2004 Historic aerial

2017 aerial



6. Results

In the absence of legal agreements to the contrary we have assumed that the neighbouring properties may enjoy rights of light by prescription due to being over 20 years of age.

20 – 25 Barnwood Close

This parade of terraced residential properties is situated to the east of the site. They appear to be older than 20 years in age and we therefore assume that they benefit from rights of light by prescription.

Based on our assumed room layouts all rooms within these properties will remain well above the 50% 'well-lit' threshold with the proposal in place. As such we do not consider there to be any material rights of light injury to these neighbours.

7. Conclusions

We have undertaken a detailed study of the rights of light impact of the proposed DHA Architects development at Portman Road, Reading.

The proposal is within close proximity to a number of buildings, however the majority of the neighbouring properties are less than 20 years in age and are therefore not old enough to benefit from rights of light by prescription. In addition, we do not consider it likely that the neighbours would be able to prove transferred rights. It would however be prudent to explore the possibility of insuring the remote risk that the neighbours at 38 – 42 Valentia Road may look to prove rights by transfer.

Our analysis has shown that the neighbours at 20 – 25 Barnwood Close will not receive

any actionable impact with the proposal in place. We therefore do not consider a mitigation strategy is necessary in dealing with rights of light based on the information available to us at present.

I trust that the above proves as useful. Do not hesitate to contact us should you have any questions.



Appendix 1

Drawings of the existing, proposed and surrounding buildings

Sources of information

Cloud 10
Portman Road Reading ROL 16-01-2018.
dwg
Received 17/01/2018

DHA Architects Ltd
Portman Way Site WIP for Light Study.skp
Received 01/02/2018

16-361-007C Preliminary levels.pdf
Received 02/02/2018

EB7 Ltd
Site Photographs
Ordnance Survey

Key:

- Existing
- Proposed

NORTH



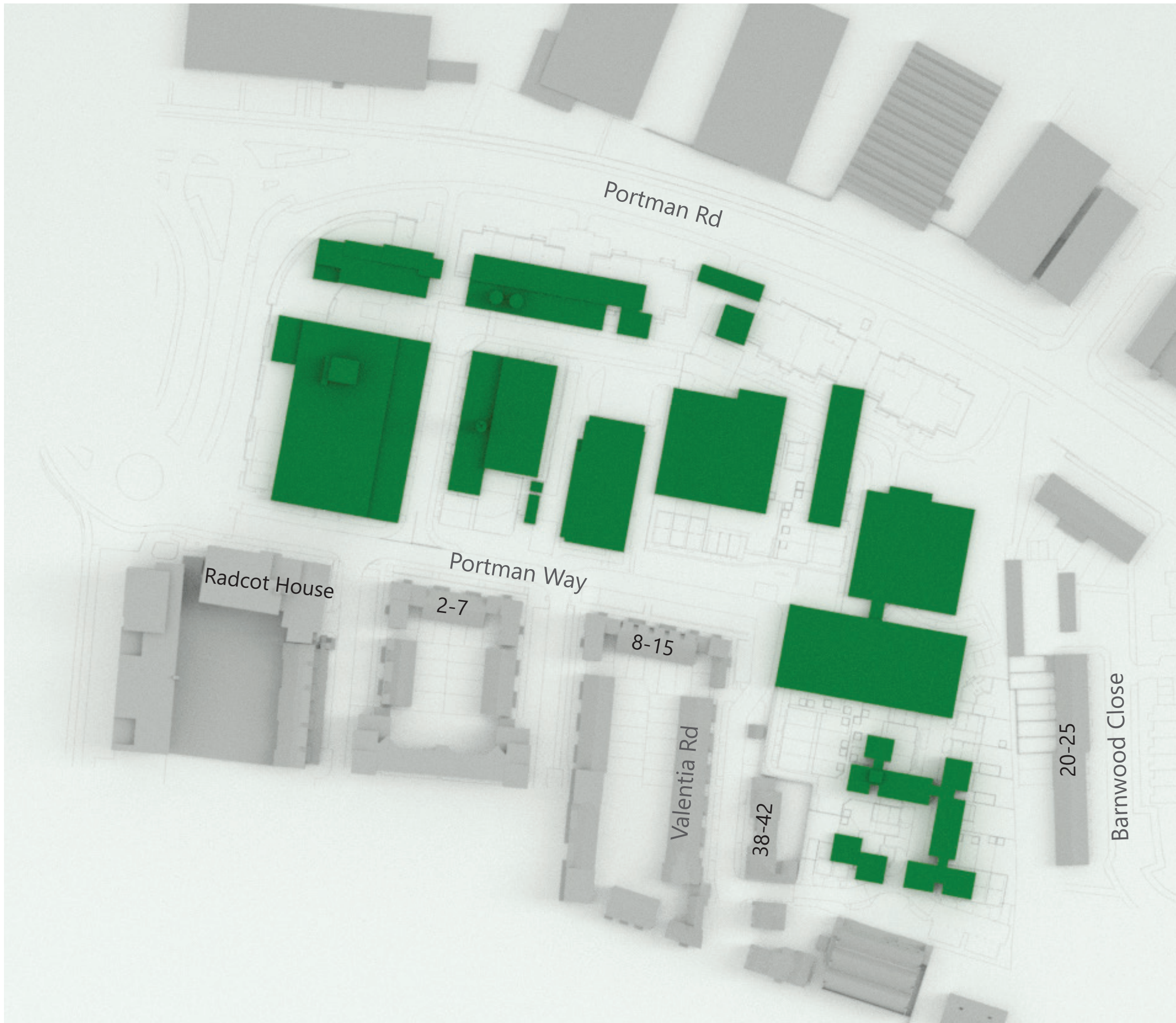
Project Portman Road
Reading
RG30

Title Existing Condition
Plan View

Drawn	JC	Checked	--
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Date	07/02/2018	Rel no.	02
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Drawing no.	3007-DS01
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Sources of information

Cloud 10
Portman Road Reading ROL 16-01-2018.
dwg
Received 17/01/2018

DHA Architects Ltd
Portman Way Site WIP for Light Study.skp
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16-361-007C Preliminary levels.pdf
Received 02/02/2018

EB7 Ltd
Site Photographs
Ordnance Survey

Key:

	Existing
	Proposed

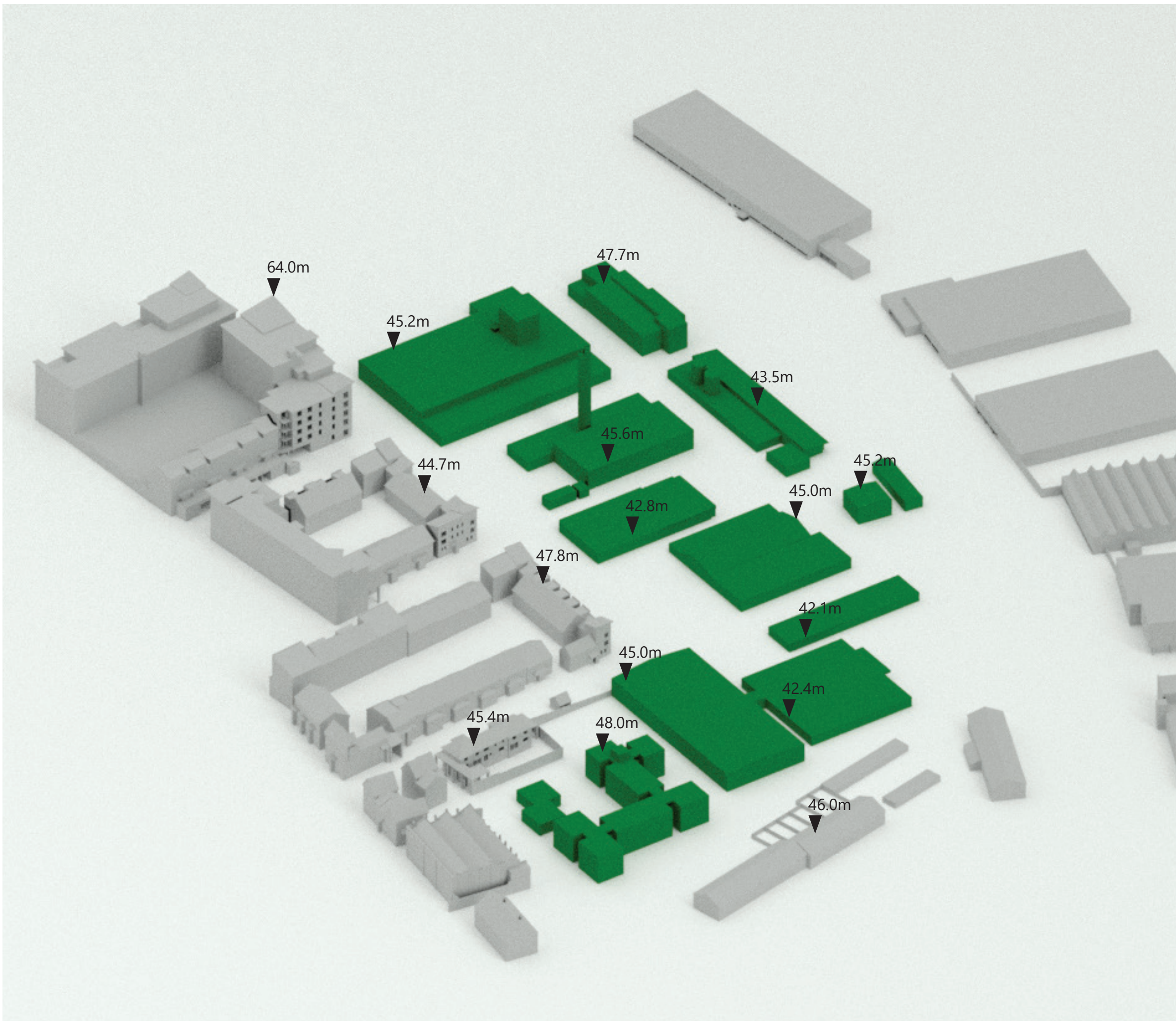
Notes:
All heights and dimensions are in AOD

Project	Portman Road Reading RG30		
Title	Existing Condition 3D View		

Drawn	JC	Checked	--
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Date	07/02/2018	Rel no.	02
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Drawing no.	3007-DS02
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Sources of information

Cloud 10
Portman Road Reading ROL 16-01-2018.
dwg
Received 17/01/2018

DHA Architects Ltd
Portman Way Site WIP for Light Study.skp
Received 01/02/2018

16-361-007C Preliminary levels.pdf
Received 02/02/2018

EB7 Ltd
Site Photographs
Ordnance Survey

Key:

Existing

Proposed

NORTH



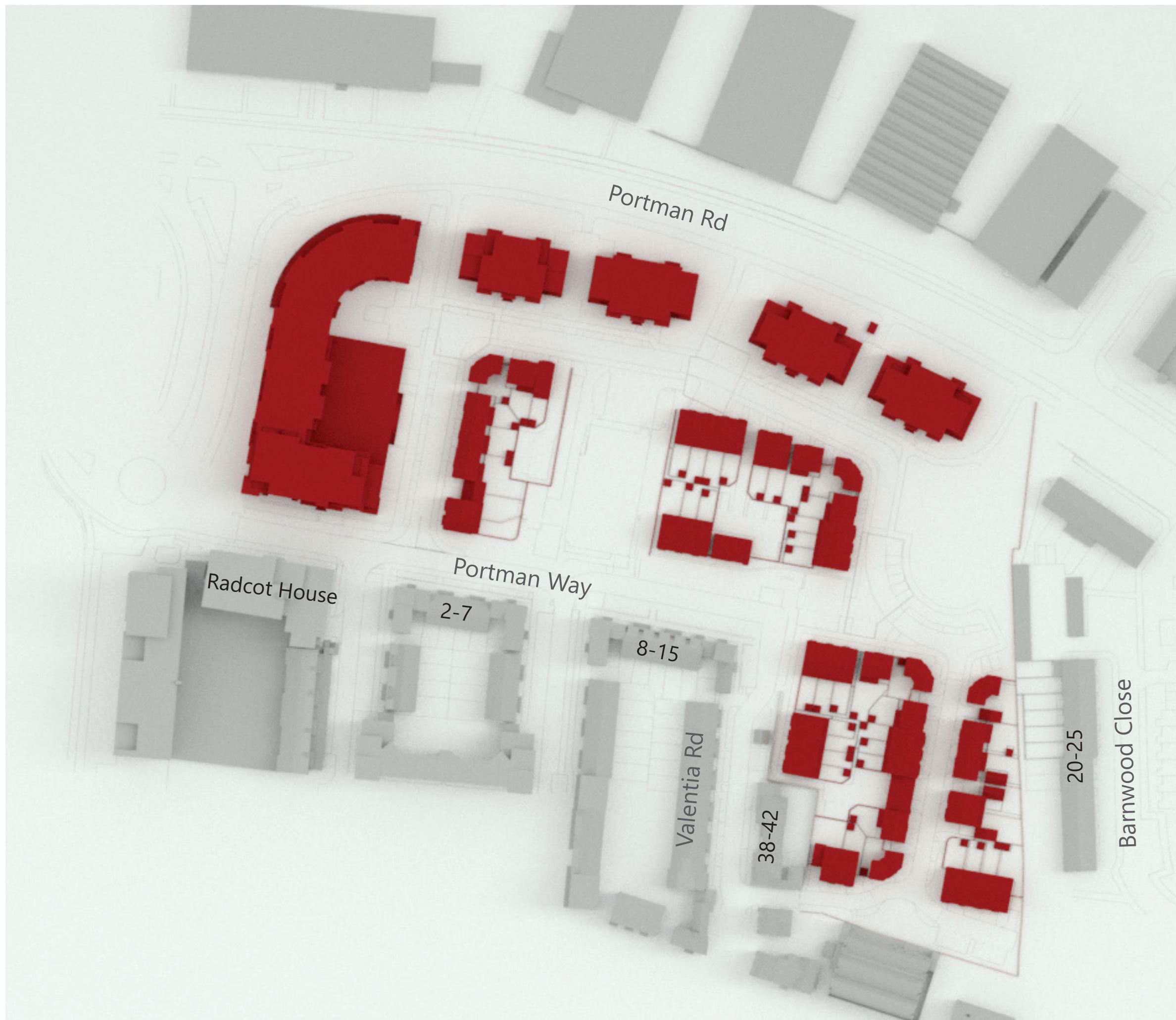
Project Portman Road
Reading
RG30

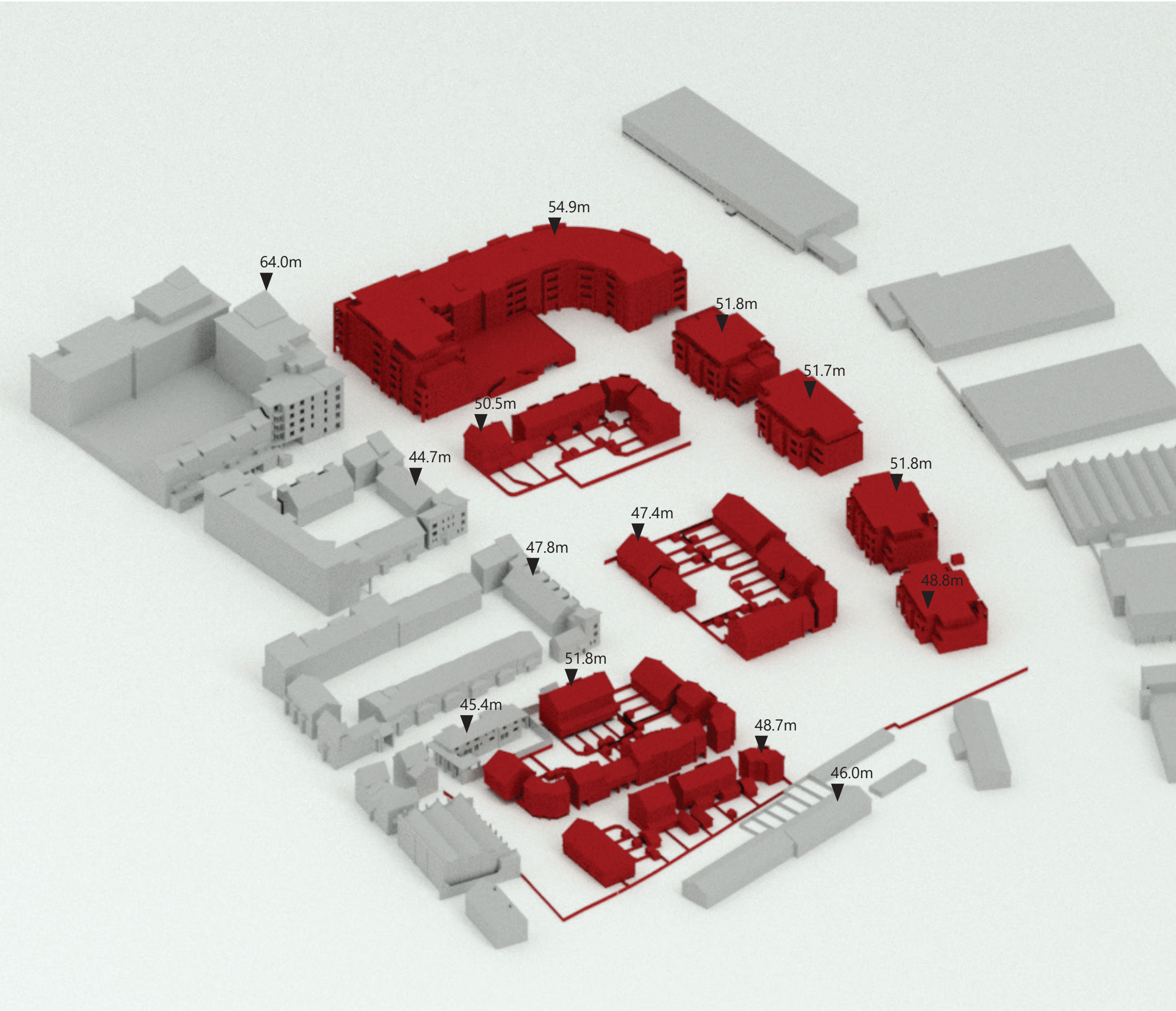
Title Proposed Development
Plan View

Drawn JC Checked --

Date 07/02/2018 Rel no. 02

Drawing no. 3007-DS03





Sources of information

Cloud 10
Portman Road Reading ROL 16-01-2018.
dwg
Received 17/01/2018

DHA Architects Ltd
Portman Way Site WIP for Light Study.skp
Received 01/02/2018

16-361-007C Preliminary levels.pdf
Received 02/02/2018

EB7 Ltd
Site Photographs
Ordnance Survey

Key:

- Existing
- Proposed

Notes:
All heights and dimensions are in AOD

Project	Portman Road Reading RG30		
Title	Proposed Development 3D View		

Drawn	JC	Checked	--
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Date	07/02/2018	Rel no.	02
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Drawing no.	3007-DS04
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