# Appeal Decision

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| **Appeal Reference:** | 2016/A0033. |
| **Appeal by:** | Fold Housing Association. |
| **Appeal against:** | The conditional grant of full planning permission. |
| **Proposed Development:** | Demolition of existing buildings and proposed comprehensive mixed-use development comprising 244 no. Social and private/affordable residential units (with access from Black's Road), with associated public open space/linear park. Non-residential element to include community centre and class B business units (class B1b/B1c/B2 uses) with associated paring and access from Finaghy Road North: appeal against conditions relating to the sequencing of the residential and non-residential elements. |
| **Location:** | Former Visteon Factory, Blacks Road, Belfast. |
| **Planning Authority:** | Belfast City Council. |
| **Application Reference:** | Z/2013/1434/F. |
| **Procedure:** | Hearing on 13 December 2016. |
| **Decision by:** | Commissioner Mark Watson, dated 8 March 2017. |

## Decision

1. The appeal is allowed. Conditions 5 and 6 of permission Z/2013/1434/F are deleted and conditions 2 and 4 of the same permission are amended as set out in the decision below.

## Reasons

2. The main issues in this appeal are whether or not:
   - the removal of the relevant conditions would prejudice the comprehensive and mixed use development of the appeal site; and
   - the conditions are necessary.

3. Full planning permission was granted on the site on 8 January 2016 for the appeal development under reference Z/2013/1434/F. The relevant conditions subject of this appeal were nos. 4, 5 and 6 on the decision notice, which read:

   *'In accordance with the Phasing Plan agreed under Condition 3 and on the occupation of the first residential unit, the Council shall be notified, and no later than three years from that date the Business Unit shown as Block C and the Community Centre, and associated infrastructure, both marked on stamped approved drawing no. 2E, dated 28.08.2015 shall be completed and a report submitted to the Council to verify this'.*

*'In accordance with the Phasing Plan agreed under Condition 3 and on the occupation of the 122nd residential unit the Council shall be notified, and no later than three years from that date the Business Unit shown as Block B, and its associated infrastructure, both marked on stamped approved drawing no. 2E, dated 28.08.2015 shall be completed and a report submitted to the Council to verify this'.*

*'In accordance with the Phasing Plan agreed under Condition 3 and on the occupation of the final residential unit the Council shall be notified, and no later than three years from that date the Business Unit shown as Block A, and its associated infrastructure, both marked on stamped approved drawing no. 2E, dated 28.08.2015 shall be completed and a report submitted to the Council to verify this'.*

The reason given for each of the three conditions was '*to ensure the retention of accessible employment opportunity at the site and to ensure community benefit is secured in the interests of sustainable development*'.

4. The Belfast Metropolitan Area Plan 2015 (BMAP) operates as the local development plan for the area the site lies in. In it the site is shown as whiteland, i.e. not being zoned for any particular purpose. There are no particular policies or proposals within BMAP that are material to the appeal before me. There is no conflict or change in policy direction between the provisions of the Strategic Planning Policy Statement for Northern Ireland *'Planning for Sustainable Development'* and Planning Policy Statement 4 – Planning and Economic Development (PPS4). PPS4 remains the applicable policy context to consider the appeal under.

5. The site has a history of industrial / employment use, having previously accommodated the former Ford / Visteon factory. The buildings have since been demolished, though its footprint remains evident, as is the hardstanding that surrounded the building for car parking and circulation space. Policy PED7 of PPS4, as clarified on 1 September 2011, states that on unzoned land a development proposal that would result in the loss of an existing Class B2, B3 or B4 use, or land last used for these purposes, to other uses will only be permitted where it is demonstrated that one of several instances are met. The Council stated that it granted planning permission for the development on the basis that the development met criterion (b) of PED7; that the proposal is a specific mixed-use regeneration initiative which contains a significant element of economic development use and may also include residential or community use, and which will bring substantial community benefits that outweigh the loss of land for economic development use. The decision to grant planning permission took account of the previous permission on the site for a mix of housing and employment uses and followed detailed negotiations with the Appellant on the proportion of economic development use within the scheme, as well as the level and quality of floorspace provision the business units would provide. Although Objectors had considered that there was insufficient employment land within the mixed use scheme as had been granted permission, they nonetheless considered it important to retain that level to facilitate local job creation.

6. The Appellant stated that the appeal relates only to the stated conditions and does not seek to revisit the principle of development. The Appellant considered that the

conditions were unnecessary and in fact acted against the Council's stated intention of securing employment uses on that part of the site. The Appellant did not seek to remove the use from this portion of the appeal site, only the requirement to erect buildings for that use. They stated that this requirement to erect specific buildings was a deterrent to potential users for several reasons.

7. A key question is whether removal of the conditions, leaving the relevant portion of the site for employment use, but without the specific buildings erected, would still meet the policy test for a specific mixed use regeneration initiative. When asked this question I was given no specific response by the Council, but rather that it considered that further reports from the Appellant would be required to justify removal of the conditions. The Council and Objectors considered that the erection of the buildings would ensure the provision of sustainable local jobs. I consider this particular point later in the decision.

8. The sum difference between what the Appellant seeks and the permission as was granted is the requirement at certain points in time during construction of the housing element, to erect the 3 buildings for employment uses on the relevant portion of the appeal site. The removal of the conditions would not alter or diminish the proportion of employment land within the overall development. The Appellant stated that in the event of a successful appeal, it would still remediate the entire site and leave the area set aside for employment use serviced and ready for development. The requirements of the permission to remediate the appeal site remain unaffected by this appeal. I have been given no reason to doubt the Appellant's intention, but in any event, to do otherwise would potentially harm the marketability of the site itself, not to mention the viability of any adjacent new dwellings that would be constructed as part of the overall approval. The other benefits to the community, such as the community centre and associated infrastructure would also remain unaffected by the removal of the appeal conditions.

9. In the event the conditions were to be removed as the Appellant seeks, the overall scheme for the site would still provide the same amount of land for economic development use, tied to the same Use Classes that were set down in the original permission. Despite the removal of the requirement to erect the three buildings, the development would remain a specific mixed use regeneration initiative. I am therefore not persuaded that removal of the conditions would in principle render the overall development non-compliant with criterion (b) of Policy PED7, or the policy read as a whole. The Appellant also argued that the development would meet criteria (d) and (e) of PED7. These are respectively; that the present use has a significant adverse impact on the character or amenities of the surrounding area and that the site is unsuitable for modern industrial, storage or distribution purposes. Given planning permission has already been granted on the basis of criterion (b) for a mixed use development, the fact that the appeal before me does not seek to alter that mixed use, along with my conclusions in regard to compliance with criterion (b) of PED7, I need not address those arguments.

10. The necessity for the conditions must next be considered. The Appellant considered the conditions to be unnecessary and pointed to the counter-productive effect they were having on the viability of both the economic development element of the site and overall deliverability of the mixed use scheme. The Appellant pointed to the need for investment on the appeal site to

allow the dwellings to be constructed in the first place. The Appellant cited the campaign it had engaged in to market the economic development element of the site. This comprised a large on-site billboard next to the M1, in place for over a year, leaflet drops and online publicity. Despite the level of marketing, there have only been "tentative" enquiries relating to the site. The Lisney Marketing Report for the site, dated October 2016 did refer to limited interest in the site. It provided summaries of expressions of interest from four potential buyers, but concluded that the planning conditions acted as deterrents to would be purchasers. It suggested that "the relaxation of the time restrictions (allowing for market recovery) may help achieve a positive outcome for the site in the shape of construction activity and long term job creation".

11. The problems associated with the site in terms of its attractiveness to business uses were addressed in detail. Its relatively poor accessibility in comparison to other existing employment / industrial sites was raised. The cost of remediation / decontamination of the site was also cited as a major factor, being estimated to cost approximately £3.171 million, notably higher than the estimate contained in the Council's own Feasibility Study pertaining to the site, dated September 2014. I note that the Council's Feasibility Study had itself pointed to the reasonable availability of undeveloped employment/industrial sites in West Belfast, notably at the Forthriver Business Park and Springbank Industrial Estate. The Appellant produced a report from Lisney dated May 2014, which pointed to the availability of other sites and companies weighing up the cost of contamination remediation versus cost of development of an uncontaminated site. Another factor was that current rental levels would prohibit proposals such as call centres or warehouses being constructed on a speculative basis. The updated Lisney report dated October 2016 stated that the lack of commercial tenant demand for west of the city, site accessibility and availability of finance remained an obvious barrier to speculative, commercial development on the Visteon lands, even though the more general Lisney 2nd Quarter Report for Belfast, quoted by an elected representative at the hearing, pointed to a robust and good occupation across all sectors.

12. The general thrust arising from the Appellant's evidence was that whilst some interest from investors had been raised relating to the site, they had been put off by the overly restrictive nature of the conditions requiring erection of the buildings as per the terms of the permission. I note the letter of interest from Silverwood Property Developments Ltd provided by the Appellant at the hearing. Whilst the wording was in some respect was vague as to its overall intentions for the site, the offer of purchase was predicated on the removal of the conditions subject of this appeal. The letter reinforces the argument that the conditions are overly restrictive and deterring investment in that part of the appeal site.

13. I agree that the site is positioned prominently in relation to the M1. However, this prominent location is off-set by the relatively convoluted road network needed to access the site from Finaghy Road North, as shown on the approved plans. It does not provide straightforward access in comparison to some existing industrial sites and although relatively close "as the crow flies" to the airport and Belfast port, the journey by road is less straightforward. It does not follow that because the site and its accessibility level suited the previous industrial users of the site, it would automatically suit new investors. Whilst the proximity to existing and approved housing might act as a deterrent to certain investors, I do not accept it would sterilise the relevant portion of the appeal site for any economic development use.

I accept that there are other available sites and premises located both within the West Belfast and the Greater Belfast area, a fact accepted in the Council's own Feasibility Study. The Appellant's witness from Lisney was able to provide examples of vacant or under-utilised sites that he considered would be a more attractive and easier first choice than acquiring the relevant portion of the appeal site and erecting the buildings. He also pointed to the levels of vacant properties available. This included premises at Boucher Business Park, Hawthorne Office Park and Dargan Business Park. Springbank Industrial Estate was also referred to. Whilst the Council witness considered the other sites were not on all fours with the appeal site, that does not detract from the Appellant's argument that other different sites offer potentially easier, more attractive accommodation solutions than development at the appeal site.

14. Whilst the Council stated that further evidence was required in this regard to substantiate the Appellant's case, I have no reason to doubt what I was told. Nor were any persuasive counter arguments put forward in this regard by the Council or Objectors. Whilst the erection of the buildings would provide potential accommodation for businesses seeking to locate or start on the site, there is no guarantee their provision would result in their take-up in light of more accessible, available premises or sites elsewhere. Whilst an elected representative pointed to the success of the Innovation Factory on Springfield Road, where new premises were provided and have been taken up by business, I am not persuaded that the same thing would necessarily happen following erection of buildings on the appeal site, particularly given more accessible sites elsewhere the locality. I also note that the Innovation Factory availed of sizeable government funding to assist in its creation.

15. The Appellant pointed to the difficulties in raising funds for erection of the buildings and the funding link between that element and the housing construction on site. I was told that without the removal of the conditions the overall development could not go ahead given the prohibitive cost of erecting the business units. The PricewaterhouseCoopers (PWC) report dated October 2016 submitted by the Appellant calculated that to erect the business units to shell would result in a deficit of between £2,366,000 and £1,671,000. This deficit would increase to between £3,030,000 and £1,640,000 if completing the three units to fully fitted specification. Whilst the PWC feasibility study did not incorporate the cost of building and sale of the dwellings on site, nonetheless I accept that provision of the business units would prove to be a financial challenge, particularly given that presenting such a feasibility assessment as part of a business case to obtain funding from a financial institution would not be favourably received. Whilst the Council stated further evidence would be needed to substantiate this assertion, I find the report's assessment and conclusions to be feasible, particularly in light of no counter-evidence on the matter. I accept the position that the housing association could not allocate funds from its budget to complete the business element of the site, or from any other internal revenue funds it may possess given its specific remit to provide housing.

16. Whilst the Council suggested that Fold could raise funds some other way to pay for the erection of the business units, no realistic suggestions were forthcoming as to how the housing association could achieve this. The suggestion that a revised housing layout / mix of accommodation types might yield additional funding to facilitate the business units was not substantiated with any evidence. I was also

told that government funding would not be forthcoming for the appeal development and that Invest Northern Ireland, which had been offered the land, stated it would not invest speculatively. Whilst the Objectors stated that they had contacted Invest NI in respect of the site and were told that subject to changes in corporation tax it might be interested in developing the site, this is far from definitive, nor is it a commitment in itself.

17. From the evidence before me I accept that the conditions as they stand make development of the site difficult at best and appear to be deterring potential investors from acquiring the part of the site approved for economic development use. This in turn has implications for the overall delivery of the mixed use scheme, including the remediation of the site, now estimated to cost some £3.171m. It is also likely to frustrate the provision of the 244 residential units on the site, which includes social and affordable housing. I was told that without external funding for the provision of the employment element, which from the evidence I accept is unlikely to be forthcoming with retention of the relevant conditions, the overall scheme would not proceed, including the remediation of the land, provision of housing and community facilities. I note from the submitted evidence the level of social housing need in the area. Whilst the Council stated that the zoned housing sites in BMAP would address this, the zoning of land for housing does not guarantee actually delivery on those sites, nor would existence of such sites take away from the additional benefit that development of the appeal site would represent in alleviating housing pressures in West Belfast.

18. The Council imposed the conditions in order to secure sustainable employment uses on a portion of the overall site. It considered the conditions the mechanism by which employment on the site would be secured. From the evidence before me I am not persuaded that the requirement to erect three buildings would achieve this outcome. At best, the conditions would provide empty buildings, which even then I am told, would not suit some potential investors. At worst it would frustrate the very implementation of the scheme in full. In either scenario I am not persuaded that the conditions would achieve their stated intent. The Council and Objectors pointed to the fact the Appellant did not query the conditions during application stage or upon issuing of the decision notice. Irrespective of whether or not the Appellant was happy at the time with the conditions as imposed, the right of appeal exists to allow the recipient of a planning permission to challenge planning conditions imposed therein.

19. The Council considered that insufficient evidence had been put forward by the Appellant to substantiate the position that the removal of the conditions was necessary. The Council and Objectors did not provide any persuasive counter-evidence to demonstrate why they should remain, or that demonstrable harm to interests of acknowledged importance would arise were the conditions to be removed / varied as sought. I consider the totality of the Appellant's written evidence and witness testimony on this matter to be persuasive. The removal of the conditions would not affect the overall deliverability of the mixed use scheme, or its compliance with prevailing regional planning policy. The Objectors pointed to the high levels of unemployment in West Belfast and the need for the site to generate jobs as soon as possible. I find the conditions to be unnecessary and from the evidence before me their removal is more likely to improve the chances of delivery of the employment use element on the relevant part of the site, providing the accessible employment and sustainable development sought by the Council

and Objectors. In turn this would assist with the delivery of the overall development, including the substantial community benefits contained in the approved application. Whilst the Appellant also argued that the conditions were irrelevant to the development to be permitted and unreasonable, I need not address these arguments given my conclusions on the appeal as a whole.

20. The Objectors feared that deletion of the conditions was the first step to removal of the economic development element from the site in its entirety. The elected representative referred to such an attempt at another site at the former Bass Brewery at Glen Road, Belfast, where an application sought to remove the economic development element of what had been approved as a mixed use scheme. That scenario is not what is before me. Such a proposal would require a separate application and would in the first instance be a matter between the Appellant and Council, one which third parties would be able to comment on.

21. Whilst Objectors feared that the lack of buildings on this part of the site could lead to it becoming an anti-social hotspot, I am told that the site is secured with locked gates and under observation by a security firm. Whilst this was disputed, I noted the fencing around the entire site as well as locked gates. If the relevant part of the site was finished to an acceptable standard with the infrastructure and services in place for future buildings, as is intended, this along with the development of housing and community facilities on the overall site would assist in preventing such anti-social behaviour from occurring. The concerns raised on this matter would not warrant rejection of the appeal.

22. Land contamination was raised as an issue in respect of my site inspection. Despite some dispute between the parties, following further information in the form of a Site Visit Risk Assessment supplied by the Appellant, I considered it satisfactory and was able to visit the site. Although third parties, including the elected representative, raised questions as to the implications for nearby residents, the only concern raised by the Health and Safety Executive through the Council's Environmental Health Department at the hearing was in respect of visitors walking on the site itself, not in respect to adjacent dwellings. In any event a remediation scheme was conditioned as part of the approval and the Appellant intends to implement this in full. Any further queries on this would be a matter between those parties and the Council in the first instance.

23. Whilst the Appellant suggested a condition relating to remediation and clearance of the site area identified for economic development use, along with service provision, the Council considered it unnecessary as these matters would be addressed by existing conditions within the granted permission. I do not disagree with this position and the suggested condition need not be included.

24. As the objections to the removal of the conditions have not been sustained, the appeal shall succeed. Conditions 5 and 6 will be deleted. Condition 2 will be amended to ensure the retention of the land in question for the approved employment uses. Condition 4 will be amended to remove the requirement for erection of the business unit Block C, whilst retaining the requirement to erect the community building and associated infrastructure.

**Conditions**

Condition 2 of planning permission Z/2013/1434/F is amended to read:

'the area shown hatched as "lands identified for future employment use" on the 1:500 scale drawing numbered 4531-P-601, dated December 2016 shall be only used for Class B1b, Class B1c and Class B2 Planning (Use Classes) Order (Northern Ireland) 2015 and for no other purpose, save as agreed in writing with Belfast City Council'.

Condition 4 of planning permission Z/2013/1434/F is amended to read:

'In accordance with the Phasing Plan agreed under Condition 3 and on the occupation of the first residential unit, the Council shall be notified, and no later than three years from that date the Community Centre and associated infrastructure, marked on stamped approved drawing no. 2E, dated 28.08.2015 shall be completed and a report submitted to the Council to verify this'.

Conditions 5 and 6 of planning permission Z/2013/1434/F are deleted.

This decision is based on the following drawings submitted with the application, except drawing 4531-P-601, dated December 2016, which was submitted as part of the appeal process:-

| DRAWING NUMBER | TITLE | SCALE | DATE |
|---|---|---|---|
| 01 | Site Location Map | 1:2500 | Sep 13 |
| 02/E | Proposed Site Plan | 1:500 | Aug 15 |
| 4531-P-601 | Proposed Site Layout indicating Employment Use Lands | 1:500 | Dec 16 |
| 03 | Proposed Block Type A | 1:100 | Sep 13 |
| 04 | Proposed Block Type B | 1:100 | Sep 13 |
| 05 | Proposed Block Type C | 1:100 | Sep 13 |
| 06 | Proposed Block Type D | 1:100 | Sep 13 |
| 07 | Proposed Block Type E | 1:100 | Sep 13 |
| 08 | Proposed Block Type F | 1:100 | Sep 13 |
| 09 | Proposed Block Type G | 1:100 | Sep 13 |
| 10 | Proposed Block Type H – Plans & Roofplan | 1:100 | Sep 13 |
| 11 | Proposed Block Type H - Elevations | 1:100 | Sep 13 |
| 12 | Proposed Block J & K Apartments | 1:100 | Sep 13 |
| 13 | Proposed Bungalow Blocks L & L1 | 1:100 | Sep 13 |
| 14 | Proposed Bungalow Block M | 1:100 | Sep 13 |
| 15 | Proposed Block Type O - Affordable | 1:100 | Sep 13 |
| 16 | Proposed Block Type P Social Affordable | 1:100 | Sep 13 |
| 17 | Proposed Block Type Q | 1:100 | Sep 13 |
| 18 | Proposed Block Type R | 1:100 | Sep 13 |

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| 19/A | Floor Plans – Commercial Block A | 1:100 | Mar 15 |
| 20/A | Elevations – Commercial Block A | 1:100 | Mar 15 |
| 21/A | Elevations – Commercial Block B | 1:100 | Mar 15 |
| 22/A | Ground & First Floor Plans – Commercial Block B | 1:100 | Mar 15 |
| 23/A | Ground & First Floor Plans – Commercial Block C | 1:100 | Mar 15 |
| 24/A | Elevations – Commercial Block C | 1:100 | Mar 15 |
| 25 | Proposed Bungalow Block N & N1 | 1:100 | Sep 13 |
| 26 | Proposed Block S Apartments Plans & Roof Plan | 1:100 | Oct 13 |
| 27 | Proposed Block S Apartments Elevation | 1:100 | Oct 13 |
| 29 | Proposed Site Sections | 1:100 | Sep 13 |
| 31/B | Landscape General Arrangement | 1:500 | Aug 15 |
| 32 | Typical Site Boundary & Details – Sheet 1 | 1:25 | Sep 13 |
| 33 | Typical Site Boundary & Details – Sheet 2 | 1:25 | Sep 13 |
| 35/B | PSD Layout (sheet 1) | 1:250 | Aug 15 |
| 36/B | PSD Layout (sheet 2) | 1:250 | Aug 15 |
| 37/A | Road Section (sheet 1) | 1:500 & 1:100 | Nov 14 |
| 38/A | Road Section (sheet 2) | 1:500 & 1:100 | Nov 14 |
| 39/A | Road Section (sheet 1) | 1:500 & 1:100 | Nov 14 |
| 41 | Second & third floor plans – Commercial block B | 1:100 | Mar 15 |
| 42 | Second floor plan – Commercial Block C | 1:100 | Jun 15 |
| 43 | Ground & first floor plans – Community Centre | 1:100 | Aug 15 |
| 44 | Elevations – Community Centre | 1:100 | Aug 15 |

**COMMISSIONER MARK WATSON**

## List of Appearances

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| Planning Authority:- | Ms F Connolly BL instructed by Belfast City Council<br>Mrs K Mills (Belfast City Council)<br>Mr M McErlain (Belfast CC)<br>Mrs C Reville (Belfast CC)<br>Ms N Largie (Belfast CC)<br>Mr S Leonard (Belfast CC Environmental Health Department) |
| Appellant:- | Mr S Beattie QC instructed by Carson McDowell Solicitors<br>Mr T Stokes (TSA Planning)<br>Mr D Broderick (TSA Planning)<br>Mr G McGhee (Carson McDowell Solicitors)<br>Mr L Hannigan (Lisney)<br>Mr J Donaldson (PricewaterhouseCoopers)<br>Ms L McGill (Fold Housing Association) |
| Third Parties:- | Mr P Crossan (Objector)<br>Cllr T Atwood (Objector)<br>Mrs B Early (Objector)<br>Mrs B Devlin (Objector) |

## List of Documents

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| Planning Authority:- | 'A' Statement of Case & Appendices (BCC) |
| Appellant:- | 'B' Statement of Case (TSA Planning)<br>'C' Appendices Document (TSA Planning)<br>'F' Letter of interest re site (Silverwood Property Developments Ltd)<br>'G' Copy of Risk Assessment (Safety Advice Centre Ltd)<br>'H' Copy of Site Layout Plan with employment use land identified |
| Third Parties:- | 'D' Statement of Case & Appendix (Visteon Regeneration Committee)<br>'E' Statement of Case (Cllr T Atwood) |