Appeal Decision

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Appeal Reference:	2016/A0102
Appeal by:	Apex Housing Association
Appeal against:	The refusal of full planning permission
Proposed Development:	Construction of 20 No. 3-bedroom and 7 No. 2-bedroom social housing dwellings with associated landscaping
Location:	Lands at McClure Street to include lands south of railway and north of Powerscourt Place between No.10 Cameron Street and No.85 Ormeau Road, Belfast
Planning Authority:	Belfast City Council
Application Reference:	Z/2014/0586/F
Procedure:	Hearing on 20 December 2016
Decision by:	Commissioner Brigid McGlinchey dated 20 March 2017

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Section 58 (3) of the Planning Act (NI) 2011 indicates that notice of an appeal must be served on the Planning Appeals Commission (PAC) within 4 months from the date of notification of the decision. In this case, the decision was refused on 14 April 2016 and the date that the appeal was submitted to the PAC was 12 August 2016. The appeal is therefore valid. As a decision has been issued by the planning authority, the objector's arguments in respect of a non-determination application are not relevant to the determination of this appeal.

3. The Appellant with its statement of case submitted amended plans for consideration and indicated that the alterations to the scheme were in response to comments from Transport NI who sought amendments to the parking arrangements. In deciding whether I can consider the amended drawings, I must determine whether the changes are substantial and thereby alter the nature of the proposal and whether anyone would be prejudiced or deprived of the opportunity of making representations on the scheme.

4. The appeal site extends to about 1ha and consists of two tracts of land that straddle either side of McClure Street. The proposed housing is to be located on the smaller narrow tract of land that adjoins the railway line to north of the street. The proposed scheme of 27 detached dwellings considered by the planning authority had no in-curtilage parking. Furthermore, the associated drawings indicated that the existing landscaping on the larger tract of land to the south of the street was to be retained The changes shown in the amended drawings entail:
   - A reduction in the number of dwellings from 27 to 23;

- Introduction of different house types consisting of 20 semi-detached dwellings and 3 detached dwellings with significant changes to the design, fenestration, roof profile and presentation to the road;
- Introduction of in-curtilage parking for each dwelling;
- Detailed landscaping proposals consisting of both proposed planting and hardworks including a pedestrian walkway, an astro turf area, paved areas, pergolas and seating areas.

5. Notwithstanding that there has been no increase in the area of the site that is to be developed for housing and that the number of proposed dwelling units has decreased, I consider that the changes shown in the amended plans are substantial as they indicate a totally different layout and arrangement of buildings with significant changes to the design of the dwellings and parking arrangement. The proposed hard landscaping works on the land to the south of McClure Street are significantly different to the original scheme which was confined to retention of the existing limited landscaping. While the objector at No.37 Powerscourt Place was present at the appeal hearing and has seen and commented on the revised scheme, the resident at 28 Powerscourt Place did not participate in the appeal process and consequently would not be aware of the changes. Though the nature of his objection did not relate to the layout and arrangement of buildings, he nonetheless would be denied the opportunity of commenting on the revised scheme which includes a proposed astro turf area located close to the rear boundary of his property. I cannot be certain that his interests would not be prejudiced especially as the Appellant has indicated that the proposed improvements to the quality of the open space would create a focus for activity.

6. Apex Housing Association distributed a letter to local residents in April 2014 which had an attached map that identified only the land to the north of McClure Street within the red outline of the development site. As this was done prior to the submission of the detailed planning application in May 2014, I find it surprising that the objector who participated in the appeal process and attended the hearing was not previously aware that the tract of land to the south of McClure Street was also included within the proposed scheme. This nonetheless raises concerns that other residents in the area may not appreciate that the land to the south of McClure Street (which also adjoins the rear boundaries of 18 other properties in Powerscourt Place) is part of the appeal proposal. They also would be denied the opportunity to comment on the proposed hard landscaping works on the tract of land adjacent to their properties.

7. Given the significance of the amendments to the original proposal and that adjoining neighbours would be denied the opportunity to consider and make comments on the revised scheme, I deem that there would be prejudice to these parties. Accordingly, my assessment of the proposal is therefore confined to the original plans submitted and determined by the planning authority.

Reasoning

8. The main issues in this appeal are the loss of open space, mitigation of flood risk in particular drainage and whether the proposal would create a quality residential environment.

9. Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires the decision maker to have regard to the development plan, in so far as material to the application, and to any other material considerations. Section 6 (4) indicates that any determination under the Act must be in accordance with the local development plan unless material

considerations indicate otherwise. The relevant plan in this case is the Belfast Metropolitan Plan 2015 (BMAP) which identifies the appeal site as consisting of two areas of existing open space. The decision maker is obliged to go with the published plan unless there are material considerations indicating otherwise since the plan was adopted in September 2014. Consequently, arguments which arose during the plan inquiry are therefore irrelevant to my consideration.

10. The Strategic Planning Policy Statement for NI (SPPS) is a material consideration. It states that until Councils have adopted a new Plan Strategy, planning authorities will apply existing policy contained within retained Planning Policy Statements. BMAP directs that Policy OS1 of Planning Policy Statement 8: Open Space, Sport and Outdoor Recreation (PPS8), which has been retained, will apply to all areas of existing open space. Whilst PPS1: General Principles has been cancelled by the introduction of the SPPS, the other relevant cited retained policies that apply in this case are Planning Policy Statement 15: Planning and Flood Risk (PPS15) and Planning Policy Statement 7: Quality Residential Developments (PPS7).

11. Policy OS1 of PPS8 indicates that development that would result in loss of existing open space irrespective of its physical condition and appearance will not be permitted. It however identifies some specific exceptions where the presumption against the loss of open space could be set aside. One of these is where it is clearly shown that the redevelopment will bring substantial community benefits that decisively outweigh the loss of open space. The policy does not give any specific guidance as to what constitutes a 'substantial' benefit nor does it state what exactly the term 'community' means. This indicates to me that judgement requires to be exercised by the decision maker. The principal community benefit advanced by the appellant in this case is the provision of social housing to meet demand within the local Cromac/Lower Ormeau Common Landlord or catchment area within which the appeal site is located. Other community benefits presented were the generation of employment within the construction industry and opportunities for apprenticeships for local unemployed people for the duration of the building works.

12. The latest figures on housing need are contained in the Belfast Housing Investment Plan Annual Update 2016 which indicated that there were 74 applicants on the waiting list who were considered to be in housing stress within Cromac and 202 in Lower Ormeau as of March 2016. The appeal proposal however consisting of two and three bedroom houses would be addressing the 'family housing' element of the overall housing need figures. I note that the Housing Executive in a letter dated 9 December 2013 stated that family housing was its priority. Within the catchment area, the Annual Update shows that there are 62 families in housing stress indicating an evident unmet need for social housing within the catchment area.

13. The planning authority however drew attention to two zoned housing sites identified in BMAP that are not yet developed. One of these, Zoning CC04/04 at Chambers Street, Ratcliffe Street and Posnett Street car park is specifically designated for social housing. The other zoned site Zoning CC03/01 at Botanic Link, Botanic Avenue and Bradbury Place is identified as a committed housing site. A planning approval for a mixed-use scheme of 92 apartments with retail units below expired on this latter zoned site in June 2014. Though the principle of residential use on that site has been established, there was no requirement for social housing. The site is in private ownership and its development for housing is problematic until it comes onto the market for sale. Furthermore the suitability of apartments for families is questionable. Albeit that Zoning CC04/04 is presently leased out for car parking, the planning authority stated that it belongs to the Housing Executive and its' potential for development as social housing for families consequently remains the most feasible

option of these two zoned sites. Whilst the objector advocated other alternatives as possibilities to address the social housing shortfall with reference to a number of other sites being progressed by other housing associations both within and just outside the catchment area, these are not relevant as they are either completed and occupied or are addressing social housing need for target groups other than families. Whilst reference was also made to other brown field sites, none were specifically identified for detailed consideration.

14. The appellant argued that those on social housing waiting lists are not socially mobile and do not typically move away from their immediate area. However, though Zoning CC04/04 is not within the Cromac/Lower Ormeau catchment area, it is relatively close by. At the hearing, the appellant however advanced an additional argument that housing need is a "patchwork quilt" stating that the identified housing need in the catchment area is primarily in the nationalist community and that Zoning CC04/04 could only be occupied by the other community. From the site visit, it is apparent that the area close to Zoning CC04/04 clearly displays painted kerbstones and flags traditionally associated with a unionist community which points that this location would not be suitable for people in housing stress from a nationalist community. I also note that despite its ownership of the site, the Housing Executive in its letter of 9 December 2013 stated that the availability of suitable sites for social housing is a pressing issue in south Belfast. Yet Zoning CC04/04 remains undeveloped for social housing with no evident plans for its development. Therefore, whilst the available land for social housing has not been exhausted, I must conclude that the development of Zoning CC04/04 would not address the identified housing need for families within the Cromac/Lower Ormeau catchment area. In the context of the this social housing scheme on the appeal site being pursued by a housing association, the proposal for 27 units would partially address the housing need of 62 families. Notwithstanding that the proposal would not address all of the identified housing need for families it would make a significant contribution in alleviating the need.

15. Paragraph 5.5 of the amplification of the policy states that applicants will generally be expected to demonstrate that their proposals are supported by the local community. In December 2010, Belfast City Council through its Strategic Policy and Resources Committee had agreed that the appeal site should be put on the market as a cost saving exercise with a view to it being developed for housing. The undisputed evidence from the appellant is that the intention of the Council to sell the land has not been withdrawn. More recently in September 2014, there has been expressed support for social housing on the site by an MLA and a local Councillor. Whilst a number of residents stated that they were not opposed to social housing per se, they did not accept that it should be at the expense of loss of open space which they wish to be retained. They have advocated for improvements to the open space and liaised with the Parks Department of Belfast City Council for provision of works which have taken place that included landscaping to form mounds to prevent commuter parking. Though the subject lands do not form part of an open space strategy for the council area, an objector indicated that there has been discussion with the local community for a potential bio-diversity project on the open space and that she has investigated potential funding sources though Ground Works NI. Despite the provision of other existing open space within the immediate area, I have the evidence from the objector that despite the graffiti in the vicinity, the appeal site is used by local people. Along with the expressed objections from the local community, there is also the rejection of the proposal for social housing by the Planning Committee of the present local authority who have endorsed the recommendation to refuse the application. This evidence suggests to me that despite the expressed support for use of the site for social housing, there is community objection to the loss of open space.

16. I however must weigh up the loss of open space for the immediate community in proximity to the appeal site with the need for social hosing in the wider community of the catchment area. The proposed development of social housing is confined to the narrow portion of the appeal site positioned to the north of McClure Street (approximately 0.38ha) with the majority and larger more meaningful area of open space across the road being retained (approximately 0.62ha). Notwithstanding the indicated desire to develop the open space, there are no firm proposals from the local Council or the community. Presently none of the open space is overlooked to any significant degree by residential properties. I consider that the provision of housing to one side of McClure Street would overlook the remaining larger area of open space and provide more formal surveillance which would enhance the perceived safety and public value of it. The development would add life and activity to the street and I consider that the remaining open space would be framed and become more of a focal point increasing its visual amenity. Subject to the satisfactory details of the proposal, the addition of housing to north side of McClure Street has the potential to enhance the townscape character of the area. When considered with the other subsidiary identified short-term benefits, the principal of the use of part of the site for 27 units of social housing represents a substantial community benefit to outweigh the loss of open space to meet an exception to Policy OS1 subject to the proposal satisfying other policy requirements which I consider below. The planning authority's first reason for refusal and the objectors' concerns in this regard have not been sustained.

17. Policy FLD3 of PPS15 indicates that a Drainage Assessment (DA) is required for all development proposals that exceed certain thresholds. The appeal proposal for 27 dwellings surpasses the first threshold for residential development thus requiring a DA. Notwithstanding that only a small part of the appeal site falls within an area where there is a history of surface water flooding as identified on the Strategic Flood Map, the policy does not indicate that this would justify an exemption from the necessity for a DA. The Strategic Flood Map serves to assist developers in identifying broad locations where surface water flooding could be a potential problem. NI Water has indicated that there is no surface water sewer and that an application for requisition of a storm sewer will be required. A DA would provide the proposed drainage layout and the required calculations to demonstrate that adequate measures will be put in place so as mitigate any potential flood risk. I am not persuaded that imposing of a negative condition requiring the DA in advance of the commencement of development would be adequate as the representative from Rivers Agency stated that it cannot be certain that any proposed attenuation measures for run-off would be feasible. On the basis of the lack of information, it has not been demonstrated that the proposal would provide satisfactory measures for the mitigation of flood risk and in particular drainage. The planning authority has sustained its third reason for refusal.

18. Policy QD1 of PPS7 states that the design and layout of residential development should be based on an overall concept that draws upon the positive aspects of the character and appearance of the surrounding area. The test for new residential development under Policy QD1 is whether it would cause unacceptable damage to local character, environmental quality or residential amenity and requires that all proposals conform to a number of criteria. Criterion (a) necessitates proposals to respect the surrounding context and to be appropriate to the character of the site. Paragraph 4.6 of the amplification text of the policy refers to the need to have regard in particular to the townscape setting. Whilst the appeal site in its present state contributes to the visual amenity and townscape character of the area, for the reasons set out above I consider that the proposed dwellings on the narrow tract of land to the north of McClure would enhance the amenity value of the larger expanse of open space on the other side of the road. The proposed design of buildings fronting onto McClure Street would respect the surrounding context and would fit with the

established character of this inner city location. The proposal would comply with criterion (a).

19. Criterion (c) requires adequate provision for private open space as an integral part of the development. Supplementary planning guidance on amenity space is provided in 'Creating Places: Achieving Quality in Residential Developments'. It states that the appropriate level of provision should be determined by having regard to the particular context of the development and indicates a minimum requirement of 40 sqm for any individual house. The appeal site to the north of McClure Street is narrow and backs onto the railway line. The proposed 2-bedroom houses have amenity space to the side and rear to meet the needs of a family house. The plots of each of the proposed 3-bedroom houses extend across the full depth of the site with a 4.5m wide strip of amenity space positioned between the proposed dwellings. Though the amenity space of these houses would not be positioned to the rear, it is to be enclosed by 2.1m high brick wall which would provide an appropriate level of privacy. The proposed provision of private amenity space meets the minimum guidance in Creating Places. The objection under this criterion is therefore not sustained.

20. Criterion (f) requires that adequate and appropriate provision is made for parking. Section 20 of Creating Places set out the requirements for the total numbers of parking spaces to be provided for residents, visitors and other callers and indicates that lesser provision may be acceptable in inner urban locations and other high density areas. The layout of the proposal however makes no provision for in-curtilage parking and instead proposes formalised and marked out layby parking spaces on McClure Street to the front of the dwellings. The street however currently experiences a heavy demand for commuter parking during the working week. Transport NI indicated that the proposal was unacceptable in its present form due to the conflicting parking demand for residential parking and commuter parking with concerns expressed by a local resident that there could be consequent displacement of commuter parking into neighbouring residential areas. The proposal does not comply with criterion (f) and therefore does not represent a quality residential development. The planning authority's second reason for refusal and the objector's concerns in this regard under Policy QD1 are sustained.

21. The failure of the proposal to produce an appropriate arrangement for parking along with the lack of information to demonstrate satisfactory measures for the mitigation of flood risk both serve to detract from the acceptability of the principle of development of part of the site for social housing. On this basis the appeal must therefore fail.

This decision is based on the following drawings:-

01 (Drawing L01) – 1:1250 scale Location plan and 1:500 scale Site layout plan;
02 (Drawing L02) – 1:100 scale Floor plans and elevations of House Type A and House Type A1;
03 (Drawing L03) – 1:100 scale Floor plans and elevations of House Type B.

COMMISSIONER BRIGID McGLINCHEY

List of Appearances

Planning Authority:-	R Taylor N Largey, Solicitor S Lancashire, Rivers Agency D Beckett, Transport NI
Appellant:-	C Hughes, Turley
Third Party:-	Denise Kelly

List of Documents

Planning Authority:-	C1 Statement of case + Appendices C2 Letter from Rivers Agency dated 14 December 2016 referred to by the appellant at hearing C3 Letter from Transport NI dated 16 December 2016 referred to by the appellant at hearing
Appellant:-	A1 Statement of case + Appendices
Third Parties:-	O1 Statement of case O2 A letter from Apex Housing Association to local residents dated 8 April 2014 about the proposed scheme with site map attached