Planning Appeals Commission

Appeal Decision

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Appeal Reference:	2016/A0202.
Appeal by:	Northside Regeneration Ltd & Balfour Beatty Investments.
Appeal against:	The refusal of full planning permission.
Proposed Development:	Purpose built managed student accommodation comprising 620 units with associated amenity and ancillary support accommodation with 54 no. lower ground floor parking spaces.
Location:	140 Donegall Street, Belfast.
Planning Authority:	Belfast City Council.
Application Reference:	LA04/2015/0609/F.
Procedure:	Hearings on 2 June and 20 June 2017.
Decision by:	Commissioner Mark Watson, dated 21 November 2017.

Decision

1. The appeal is allowed and full planning permission is granted, subject to the conditions set out below.

Preliminary Matters

2. The Council confirmed that following receipt of an updated Heritage Statement from the Appellants, the Department for Communities (DfC), Historic Environment Division withdrew its objections relating to the potential impact of the appeal development on several nearby listed buildings. In its Statement of Case the Council consequently withdrew its fifth reason for refusal relating to that issue. The Objectors' concerns on this matter remain before the Commission and shall be addressed in the decision.

3. The Council's first two reasons for refusal were largely founded on the Belfast Metropolitan Area Plan 2015 (BMAP). Since the issue of the decision to refuse planning permission for the appeal development, the Court of Appeal judgment issued which determined that BMAP was unlawfully adopted. The Council presented amended reasons for refusal at the outset of the first hearing. Their representative stated that draft BMAP should be inserted into the relevant reasons in place of the adopted BMAP. The matters are before the Commission and Appellants were given opportunity to respond and debate these matters at the hearing. They have therefore not been prejudiced.

4. The Appellants submitted additional landscaping details in two drawings contained in their Statement of Case. The Council accepted that these were admissible both when considered against Section 59 of the Planning Act (NI) 2011 and with respect to any potential third party that would be unaware of the additional

drawings. The amendments comprise details of trees within planters to be sited within the courtyard areas and areas of Astroturf surfacing. These details do not go to the heart of, or alter, the substance of the proposed development. I agree that they are admissible and will consider the appeal development on that basis.

Reasons

5. The main issues in this appeal are whether or not:
   - Purpose Built Managed Student Accommodation (PBMSA) would be acceptable in principle on the site as opposed to social housing;
   - the proposed design would respect the existing site context;
   - it would adversely impact on nearby listed buildings;
   - it would adversely impact on existing nearby residential amenity;
   - it would provide acceptable amenity space; and
   - provide an acceptable level of on-site parking provision.

6. The appeal site comprises a surface level carpark situated between Donegall Street and Little Donegall Street. Carrick Hill, a four lane orbital road bounds the site to the north and north-west. The site is dressed in gravel and access to the car park is taken from Little Donegall Street. A large four storey Victorian building, the Marshall Building, lies adjacent and north-east of the site along the Donegall Street frontage. There is a row of listed buildings opposite and north-east on the opposite side of Donegall Street comprised of several terraced Georgian dwellings, St Patrick's RC Church, the Christian Brothers School building and CB Hall. Opposite and north is the Carrick Hill housing area on the other side of a 4 lane orbital road. To the west on the opposite side of Little Donegall Street is a 4 storey social housing block and to its rear another surface level car park. The site occupies a mixed use area with various shops and commercial premises further along Donegall Street to the east of the site. The site has previously been approved for a 226 apartment development (ref Z/2006/1544/F). Dispute exists between the parties as to whether or not this permission has expired or whether development was in fact commenced.

7 The appeal development comprises PBMSA comprised of 620 units (98 studio and 522 cluster units). The building is arranged in a U-shape which would wrap around part of Donegall Street, Carrick Hill and Little Donegall Street, with two further accommodation blocks protruding into the internal courtyard areas to the rear of the Little Donegall Street side. Resident access is to be from the Carrick Hill elevation, with all access to the other internal blocks derived from the courtyards. The appeal building varies in height between 6 and 9 stories with the highest part along the Little Donegall Street aspect. Proposed materials comprise a mix of several brick types, with areas of cladding, including zinc, on upper sections. External amenity space is to be provided in the form of three courtyards enclosed by the built structure and the adjacent Marshall Building. There are also to be interior recreation spaces and a gym.

Policy Context

8. Section 45(1) of the Planning Act (NI) 2011 requires that regard must be had to the local development plan (LDP), so far as material to the application. Section 6(4) of the Act requires that where in making any determination under the Act, regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

9. Following BMAP being declared unlawful, that plan must be disregarded. The Belfast Urban Area Plan 2001 (BUAP), despite its obvious vintage, now operates as the LDP for the area the site lies in. In it the site lies within the City Centre and is not zoned for any purpose. The BUAP contains no policy or proposals material to the appeal development.

10. The Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015 (HMO SP) is a freestanding plan. It has not been affected by the judgement that BMAP was unlawfully adopted. In respect of the Planning Act it can be considered as a LDP for considering the appeal proposal against. Critically, the HMO SP itself allows for PBMSA, with Policy HMO 7 of the Plan directly dealing with such proposals. The HMO 7 amplification states that the policy is designed to facilitate the need and demand for multiple occupation, protect the amenity of other residential areas and promote appropriate development of student accommodation. Whilst the Objectors referred to the appeal development's shortcomings against elements of the Council's own Planning and Place Advice Note on PBMSA in Belfast, these matters can be addressed through policy in the HMO SP.

11. In the HMO SP the appeal site lies within the HMO Development Node HMO 4/17 Scotch Quarter. Policy HMO 3 of the HMO SP states that along the frontages of designated HMO Development Nodes planning permission for HMOs will be granted, providing it does not include HMO development at ground floor level within a designated commercial node or shopping area. The amplification text states that the policy is designed to accommodate the need and demand for HMO accommodation and direct it to areas where it can contribute to regeneration. Whilst there are some shops further along Donegall Street the appeal site is not within a designated commercial note or shopping area as designated in any LDP. According to the Appellants the appeal development would give rise to capital construction investment and employment, jobs arising from operation of the development, bring 620 new consumers into the area and generate business rates payable to the Council. Whilst no precise figures were provided on these matters it is nevertheless evident that the development would possess a regenerative element for the area, were permission to be granted. The appeal development is not at odds with the provisions of Policy HMO 3 of the HMO SP.

12. Policy HMO 7 allows for the granting of planning permission for large scale purpose built student accommodation subject to several criteria. The appeal development falls into this type of development. The appeal development consists of more than 50 units. It also would accommodate more than the minimum 200 occupants requirement of the policy. There was no disagreement that all the units were self-contained for the purposes of the policy. The location is not within a primarily residential area and the development meets the requirement that the accommodation be managed. The matter of landscaping and amenity space in accordance with a landscaping plan I address later in this decision, but given my later conclusions on this matter, Policy HMO 7 of the HMO SP is met when read as a whole. Whilst the Objectors considered there to be no need for such further accommodation, there is no requirement in the policy for demonstrating need. Similarly although the Council pointed to the large number of approved developments for student accommodation in the city centre area, it does not follow that this would warrant rejection of this proposal.

13. The appeal proposal does not offend the provisions of the BUAP, which is the LDP for the area. Additionally the site lies in an area specifically identified in the HMO SP as being suitable for PBMSA. It also meets the relevant policies within that LDP. The proposed development is therefore in accordance with both LDPs.

Social Housing

14. Draft BMAP (dBMAP) is a material consideration. In it the appeal site is zoned for social housing (ref CC06/06), as well as being zoned as a Development Opportunity Site (ref CC 037). The site lies within the Scotch and Cathedral Quarters Character Area, with the northern most corner of the site also identified as a Gateway. Certain urban design criteria would be applicable to any proposed development on the site. The site also lies within the City Centre Core Area of Parking Restraint (CC 102).

15. The Joint Ministerial Statement of 31 January 2005 Development Plans and Implementation of the Regional Development Strategy contains guidance on the weight to be afforded to emerging draft plans. No issue of prematurity was raised by the Council. Following the Ministerial Statement of June 2012, accompanying the release of the Commission's Report on the BMAP Public Inquiry, a decision on a development proposal can be based on draft plan provisions that will not be changed as a result of the Commission's recommendations. Despite a strategic objection to DOS zonings at the strategic level, there is no evidence before me that the particular zonings relating to this site were objected to and it would be inappropriate to pre-empt the potential outcome of a future adoption process for dBMAP.

16. The material considerations of dBMAP with regard to the principle of use, including the draft social housing zoning and Policy SETT2, as well as the draft urban design criteria that would apply to the site must yield to the compliance of the appeal development with the LDP, which must take precedence. However, the matters of social housing provision and design issues remain important material considerations in themselves and shall be addressed within this decision.

17. The Council referred to the broader needs of the city in terms of use of the land for social housing, despite the provisions of the HMO SP. Objectors were also greatly concerned at the potential loss of a site for social housing. The Council evidence included March 2017 figures pointing to 2513 people on the housing waiting list with the North Belfast Area. 1764 of these people are deemed to be in housing stress. The Council pointed to the lack of new or under construction zoned social housing sites (in the since declared unlawfully adopted BMAP), as well as the loss of two such sites through two appeal decisions at Nelson Street (2012/A0079) and Frederick Street (2013/A0102). Projected figures for 2016 – 2021 provided by the NI Housing Executive (NIHE) show a need for 1400 new dwellings. The Council also referred to the fact there were only 10 remaining zoned (in the unlawfully adopted BMAP) housing sites within the city centre boundary, with the appeal site potentially accounting for approximately 47% of that remaining capacity. The Objectors quoted from the NIHE Unmet Social Housing Need Prospectus which identified an unmet social housing need in North Belfast of 1010. They also referred to the Belfast Housing Investment Plan Annual Update 2016 which gave a social housing need in North Belfast between 2016 and 2020 of 1225. Whilst the

parties opposing the appeal development utilised slightly different figures, the serious need in relation to social housing in this area is undisputed.

18. The issue of delivery of social housing was examined in the previous appeal decisions referred to above. Whilst each proposal must be assessed on its individual merits and I note there were particular reasons for setting aside the social housing zonings in the appeal decisions previously referred to, the zoning of the appeal site for social housing would not in itself guarantee that it would yield social housing. Plan zonings provide certainty to prospective developers as to what is deemed to be acceptable on a zoned site in a plan. However, a tension exists within dBMAP in that the appeal site is zoned for social housing but also identified as a DOS. The DOS zoning did not specify a land use for the site, only that access arrangements be agreed with DRD Roads Service. The two zonings on the site are conflicting in nature, with the DOS zoning not precluding development of the site for PBMSA, or indeed some other non-social housing use. Even if the zoning in dBMAP were to be afforded considerable weight, it would not provide for an actual delivery mechanism.

19. The Appellants in this case have explicitly stated that they are unwilling to develop the site for social housing regardless of the outcome of this appeal. They also stated that the site is not registered with the NIHE, nor will it be. Whilst I agree that land ownership in itself cannot be given determining weight, neither can it be discounted, particularly when taken together with the lack of an actual delivery mechanism to achieve the desired outcome of the draft social housing zoning in dBMAP, notwithstanding my conclusions on the weight to be given to dBMAP in the first instance.

20. The Appellant provided a list of approved sites for social housing within the Belfast area. Although one was relatively close to the appeal site, the majority of the others were elsewhere within the city centre. The table showed that some 1155 units had been approved over the past 5 years, with only 56 of those on actual land zoned for that purpose. The evidence in highly indicative that despite the loss of zoned sites for other purposes, unexpected or “windfall” sites do occur which can assist with the provision of social housing in the Belfast area, albeit in an ad-hoc manner. Although I accept that no decision has as yet issued I note the different approach taken with a site at the Gasworks (which was zoned for social housing in the since declared unlawfully adopted BMAP) where the Council appears amenable to permitting a non-social housing use on it.

21. Evidently there remains a need for further social housing provision in this part of Belfast. Whilst the Council considered permitting development in such an ad-hoc manner took no credence of the NIHE local allocation process, I note that no objection from NIHE or the DfC was received in respect of the appeal development. Aside from vesting the land, which is theoretically possible though no such indication has been given that this is likely to happen, I am not persuaded that the site can be compelled for use for social housing. The Council pointed to the localised nature of social housing need and the acknowledgement of that issue in appeal decision 2016/A0102 Lands at McClure Street etc., Belfast. However, the totality of the evidence does not persuade me that the granting of planning permission for the appeal development would prejudice the provision of social housing in this part of Belfast given no mechanism exists to secure its delivery, even if the draft BMAP zoning were to be afforded significant weight. By the same

reasoning, the withholding of planning permission on this basis would not secure or deliver social housing on the appeal site, notwithstanding the stated, on-record refusal of the landowner to allow its release for this use. I also note the changing and evolving situation in this part of Belfast with the university development and wider regenerative process taking place that has overtaken the plan context as was framed during the BMAP process.

22. These factors taken together with the Appellant's information showing "windfall" social housing developments persuade me that the refusal of planning permission on this basis would not be justified. Whilst the Council is preparing its own new LDP, its Preferred Options Paper published in January 2017, work on the plan is still at an early stage. I am not persuaded that permission should be refused for the appeal development on the basis that the loss of the appeal site for social housing would not advance the objectives of the new LDP, or the Belfast City Centre Regeneration and Investment Strategy (published September 2015). Whilst the provisions of dBMAP remain material considerations, I find that the provisions of the BUAP and HMO SP, both adopted LDPs, outweigh those of draft BMAP. The first reason for refusal as amended and the related concerns of the Objectors are not sustained.

Design Considerations

23. The Council considered the appeal development would read as over-development given its scale, massing and design, harming the character and appearance of the area. Objectors shared some of these concerns. The Council's Statement of Case based part of its argument on urban design criteria contained in BMAP. Several of the draft BMAP Urban Design Criteria for Designation CC 013 are of relevance to the appeal site:
    - the density of development in the area shall be maintained and increased, where appropriate, through high site coverage and high plot ratio (including residential);
    - development proposals shall take account of the height of adjoining buildings;
    - that part of any development that fronts onto Carrick Hill shall be a minimum building height of 4 storeys, or 12 metres to building shoulder height, and a maximum height of 6 storeys;
    - development that fronts onto Carrick Hill shall be set back 1.5 metres from the footway to allow for a privacy zone for residential development and other activity associated with the development to extend outside the building without interrupting pedestrian movement; and
    - on the key gateway site at the intersection of Donegall Street and Carrick Hill, building height shall be a minimum of 4 storeys and a maximum of 6 storeys.

24. Again, given my consideration of the status of draft BMAP and in light of the compliance of the appeal development with the BUAP and HMO SP, the draft BMAP urban design criteria should be afforded little weight. In any event the HMO SP has identified this location as being suitable for this type of development. I will therefore consider the development design against prevailing regional policy on its own merits.

25. The Strategic Planning Policy Statement for Northern Ireland *'Planning for Sustainable Development'* (SPPS) refers at paragraph 6.137 to the need to deliver increased housing without town cramming and espouses the importance of new development respecting local character and environmental quality, as well as

safeguarding the amenity of existing residents. Although this was framed within the context of existing residential areas, despite the appeal site occupying a more mixed use area, these matters would still be of importance in considering proposed new development on the appeal site. In respect of the appeal development, there is no conflict or change in policy direction between the provisions of the SPPS and that contained Planning Policy Statement 7 – Quality Residential Environments. PPS7 remains the applicable policies to consider the appeal development under, with the Council and Objectors framing much of their detailed argument under this policy context. Criterion (a) of Policy QD1 of PPS7 requires that the development respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and hard surfaced areas.

26. The Council considered that the area surrounding the appeal site had a general 2 - 4 storey character. Whilst many of the buildings in the vicinity do fall within this height range, this in itself does not prevent larger or taller buildings from being acceptable provided they can work sensitively with the existing context. The use of a 6 storey transitional element stepping up from the Marshall Building on Donegall Street and at the corner towards Carrick Hill assists the appeal development to do so, avoiding the impression of an overly dominant structure simply inserted into the streetscape. The open nature of the appeal site and its gateway location, along with its current and relatively longstanding use as a surface level car park are such that any new building on it would inevitably be perceived as having a greater impact than were it replacing an existing building on the site. Therefore the appeal design must be read and understood within this perceptual context, as well as in terms of the actual surrounding built development. In this regard I find the overall built form and massing acceptable given the variation in roofline and stepped back portions of the structure which soften the impact on the skyline from various views. The use of vertically emphasised fenestration and recessed panelling to break up the facades, along with the chosen materials and their disposition provide sufficient visual interest to avoid a monolithic or monotonous design.

27. Whilst I accept that the lack of active frontage at ground level along the Little Donegall Street is not ideal, it arises from the overall design ethos relating to secure access for the PBMSA. Again, the vertical emphasised fenestration panels assist with breaking the façade up and adding visual interest. The presence of the on-street access to the electrical switchgear along this façade I am told is necessary to provide access for Northern Ireland Electricity staff to access the electrical infrastructure. This must be accessible from the street at ground level rather than internally accessed and I note similar provisions on several of the more modern buildings in the wider locality. The entrance to the car park and cycle storage facilities are also accessed from this side of the development. This element is not objectionable given the functional need for this facility, which also provides access for the internal refuse storage. Whilst the lower height buildings and the sloping nature of the northern end of Little Donegall Street as it falls away from Carrick Hill, does give a sense that the appeal building could be viewed as quite high and dominant when travelling along the length of the appeal building itself on that frontage, these views are confined to a limited stretch of the street. I am not persuaded that from this view the appeal development would appear

dominant to such an objectionable degree that would warrant the withholding of planning permission.

28. The scale, height and massing of the appeal development are such that given its position relative to Carrick Hill housing area, being separated by the 4 lane orbital road, along with the higher land that housing occupies in relation to the appeal site, it would not swamp the Carrick Hill community in terms of scale. Nor would it present as over-development of the site for the same reasons when viewed from Carrick Hill. The appeal building is large and whilst its upper levels exceed the height of the immediate surrounding built context, as well as the urban design criteria in dBMAP, for the reasons given above the appeal development nonetheless would respect the surrounding context without appearing unacceptably dominant, overwhelming or reading as over-development, thus harming the character of the area.

29. Whilst detailed debate took place with regard to the status of the fallback position asserted by the Appellant, given that I have found the appeal development design acceptable in its own right, I need not address the fallback matter further. The development meets criterion (a) of Policy QD1 of PPS7 and the related elements of the SPPS in regard to design. The second reason for refusal and the related concerns of the Objectors are not sustained.

Listed Buildings

30. Objectors considered that the appeal development would adversely impact on several listed buildings in the vicinity. Those specified were Clifton House (Grade A listed), St Patrick's RC Church (Grade B+), St Patrick's Parochial House (Grade B2) and the Former St Patrick's CB School (Grade B1). Section 91(2) of the 2011 Planning (NI) Act requires that the decision maker in considering whether to grant planning permission for development which affects a listed building or its setting, must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Policy BH11 of Planning Policy Statement 6 – Planning, Archaeology and the Built Heritage (PPS6) states that development will not normally be permitted that would adversely affect the setting of a listed building. It goes on to state that development proposals will normally only be considered appropriate where all of 3 criteria are met.

31. The quality of these listed buildings is without question, as is their contribution to the character of the area within which the appeal site lies. The transitional stepping element provided by the 6 storey design next to the Marshall Building and the corner where the building turns from Donegall Street onto Carrick Hill allows for the introduction of a larger building into the streetscape whilst avoiding it acting as a dominant feature that would compete with the listed buildings opposite, including St Patrick's RC Church. This stepped down height at the corner of Donegall Street and Carrick Hill also avoids the appeal building acting as a competing visual feature with the spire of St Patrick's RC Church when viewed from Carrick Hill and the orbital road travelling along either direction towards the site. The proposed materials relate well to the existing brickwork in the Marshall Building and despite the more modern style and finish of the appeal development it would not appear visually discordant or disruptive with the appearance of the listed buildings opposite. By the same rationale the appeal development would not adversely affect the settings of these listed buildings.

32. Clifton House lies to the opposite and north of the site across Carrick Hill. It is surrounded by mature vegetation set within its grounds. Given the separation distance and the lack of visual appreciation or inter-linkage between the two, I am not persuaded that the appeal development would adversely impact on the character or the setting of Clifton House. The appeal design respects the setting of the listed buildings in question, including views in and out from them and I find the Appellant's Heritage Statement persuasive in respect of this issue. The development, despite its more modern design, does not offend any of the three criteria contained in Policy BH11, or the policy read as a whole. Having had special regard to the desirability of preserving the buildings and their settings as required by Section 91(2) of the Act, I find that the appeal development would be acceptable in the context of the listed buildings raised by the Objectors. The Objectors' concerns on this matter are not sustained.

Residential Amenity

33. Criterion (h) of Policy QD1 of PPS7 requires that the design and layout of new residential development will not create conflict with adjacent land uses and there is no unacceptable adverse effect on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance. The Council considered that the appeal development would impact on the residential amenity of those occupying the 4 storey residential block situated at the corner of Little Donegall Street and Carrick Hill. It lies approximately 13m at its nearest point from the appeal building. Despite the relative proximity of the appeal building, it would face onto Little Donegall Street at an angle from the existing building opposite. There are no direct facing windows between the two buildings and whilst I accept that the degree of fenestration on this part of the appeal building could be perceived by some as having the potential for causing unacceptable overlooking, I am not persuaded that actual unacceptable overlooking would occur, even from the upper floor windows, given the angles of view involved and the relative positions of the two buildings to one another. I do not accept that the appeal building would unacceptably dominate the lower height building, again arising from their relative disposition to one another.

34. The Council also raised the potential for views into the rear of the amenity of those existing properties. The area in question to the rear of this 4 storey development comprises a shared yard with bin storage and an under-building car park. It is enclosed by a high brick wall and accessed by residents-only locked gates. This area does not serve as a conventional private amenity area and any very limited degree of incidental overlooking into this area, would not result in an unacceptable adverse impact on the amenity of the residents therein given the area is not used as a conventional amenity area. Thus I find that the overall design, including the height, scale and massing, acceptable in the context of its potential impacts on the nearby residential units.

35. The Objectors feared the impacts of a large number of transient students residing in close proximity to the Carrick Hill area. The proposal is for PBMSA, thus student activities and conduct within the appeal development would be managed and controlled. A final management plan detailing matters relating to management of the PBMSA, including tenant conduct and behaviour, could be provided in line with the Council's suggested draft condition in the event of permission being granted. I note the submitted noise assessment and its acceptance by the

Council's Environmental Health Department. Measures contained within the report could be conditioned as suggested by the Council in the event of permission being granted, along with the submission of a verification report to demonstrate that all measures had been fully implemented. The Appellants indicated they had no objection to such conditions. Within the public realm the normal public order controls would apply to address any potential anti-social issues. The 4 lane orbital roadway between the appeal site and the Carrick Hill housing area would also serve as an effective physical separation feature. This would also be reinforced by the likelihood that the majority of student residents are more likely to head towards the city centre for leisure activities than crossing the orbital road to Carrick Hill. Again, given the relative separation between Carrick Hill and the appeal site I am not persuaded that the character and community identity of Carrick Hill would be swamped or dominated by students residing in the appeal development, even when taken with other approved PBMSA in the city centre area. I find that the development does not offend criterion (h) of QD1 of PPS7. The Council's third reason for refusal and the related concerns of the Objectors are not sustained.

Provision of Amenity Space

36. The Council considered that the appeal development did not provide sufficient amenity space for residents and also had issue with the quality of said provision. Criterion (c) of Policy QD1 of PPS7 requires that adequate provision is made for public and private open space and landscaped areas as an integral part of the development. The Council referred to the guidance in Creating Places (CP) where provision should be between 10 and 30 sq m per unit, though in this case the Council considered that given the city centre context, the lower figure of 10 sq m would be acceptable. The appeal development will provide approximately 1407 sq m of external amenity space located principally within several courtyard areas. It will also provide some 475 sq m of internal space divided between a gym and a number of communal study and relaxation areas. The Council considered that the development's provision fell short of the normal expectation of some 6000 sq m. The Appellants provided a list of 12 other approved PBMSA developments that had been granted permission with levels of internal and external amenity space less than the appeal development would provide proportional to the number of occupants. Several of these were granted by the Council. I agree that in comparison the appeal development fares reasonably well in terms of provision.

37. The quality of the space was also raised given its location within the building complex, as the Council was concerned that parts of it would suffer from remaining in shade throughout the day. The Appellants' architect explained that the layout and design of the open space areas was a deliberate response to the PBMSA nature of the development. Roof terraces and balconies were deemed unacceptable in the design process given the potential for safety related incidents. The spaces in question were designed to be only accessible by occupants and have adequate surveillance from accommodation within the development to ensure a safe environment for users of the space. The need for occupants of the other blocks within the development to enter through the courtyard areas would also ensure frequent usage and again provide a surveillance aspect. The courtyard areas and the proposed trees set in planters, as detailed in the additional drawings submitted at appeal stage, are designed to avoid large amounts of maintenance whilst softening the environment by providing some greenery. They are also designed to discourage any form of informal sporting activity taking place therein. I accept that this approach in terms of quality is

logical when considering the managed nature and tenure of the appeal development. I also accept that the proposed features including the use of AstroTurf would facilitate an acceptable level of quality for the purposes of PBMSA. Although some prospective residents might perceive the spaces as being hemmed in by the surrounding buildings, such an experience is a personal and subjective one. The heights of the relevant parts of the building and layout of the courtyards are such that I am not persuaded that they would create a claustrophobic environment, rendering them unusable or of little value. Whilst several corners of the courtyards would inevitably experience long periods of shade, I am not persuaded that this would render the amenity space taken as a whole unusable.

38. Despite some disagreement between the Council and Appellants on the exact amount of amenity space the development would provide, in terms of quantum the appeal development does not provide the nominal amount expected for apartments having regard to the guidance in CP. However, this must be weighed against several factors:
    - the tenure of the occupants, who as students are less likely to be residing there fulltime and possibly only for part of the duration of their academic course, with different and likely lesser needs in respect of amenity space; a different scenario from someone living fulltime in a conventional apartment;
    - the design rationale for the secure amenity space which will create spaces which promote personal safety and be accessible only by residents;
    - the proximity of the development to the new Ulster University campus, as well as other recreational facilities within walking distance, such as the areas of public amenity space at the Mac and St Anne's Square; and
    - the permissions referred to by the Appellants granted previously for PBMSA wherein lower levels of amenity space were deemed acceptable, even if some of those were granted permission by the previous planning authority.

    Thus, whilst the provision of amenity space falls short of what the guidance would ordinarily expect, when weighed against the factors above, as well as the wider acceptability of the development in policy terms, this shortfall is not determining. The fourth reason for refusal is therefore not sustained.

Parking Provision

39. Objectors raised the matter of the level of parking provision being below what policy and guidance would require. Whilst the Objectors referred to the Area of Parking Restraint the site lies within as designated in BMAP, again, that plan must be disregarded. Whilst parking levels are limited in comparison to a conventional apartment development, as already outlined above, the nature of the proposed development and the tenure of its occupants is a factor to be considered. Presumably in Transport NI finding the proposed level of 54 vehicle spaces acceptable it took account of these matters. I agree with the Appellants that many students would either choose to walk or avail of public transport given the city centre location of the development. I note the student management plan and the Travel Plan which were submitted as part of the overall proposal. These plans could be conditioned as part of any planning approval in line with the Council's draft conditions, conditions the Appellants indicated they had no objection to. The Objectors' concerns on these matters would not warrant the withholding of planning permission.

40. Whilst the Council's decision to refuse planning permission was a democratic one, that in itself is not a reason to uphold it when policy considerations and planning judgements dictate otherwise. As the Council's reasons for refusal as amended and the Objectors' concerns have not been sustained, the appeal shall succeed. The matter of conditions must be addressed. A construction noise management plan would be necessary to ensure existing residential amenity is not unacceptably impacted during construction. Although the conclusions of the Appellants' Environmental Site Assessment were not contested, I agree that conditions relating to any new contamination risks, including those to groundwater, identified during construction and remediation in any such event would be necessary given the previous use of the land and its inner city location. Verification reports in respect of any remediation works undertaken would also be necessary. A piling risk assessment would be necessary if piling is to be utilised for construction, which seems likely given the location of the site and the scale of the proposed development. The Appellants stated they had no objection to such conditions. Provision of the access works would be necessary in the interests of road safety, whilst the necessary parking and cycle storage provision can be secured through implementation of the lower ground floor layout, without the need for a separate condition relating to the cycle stand spaces. Implementation of the landscaping would be necessary to a quality residential environment is achieved. A programme of archaeological mitigation works and monitoring, with access provision for a nominated archaeologist, would be necessary given the site's location within a part of the city with a longstanding industrial heritage. The Appellants indicated no objection to these conditions.

Conditions

(1) Prior to occupation of the approved development the applicant must submit to Belfast City Council for review and approval a Noise Verification Report carried out by a competent acoustic consultant which demonstrates:
   a) that the noise mitigation measures outlined in the Peter Lloyd and Associates report entitled "Noise Assessment, Proposed Student Housing, 140 Donegall Street, Belfast" dated February 2016 have been implemented;
   b) the window systems and acoustically attenuated mechanical ventilation have been installed so as to ensure that internal noise levels within any residential unit shall:
      - not exceed 40 dB LAeq, 16 hrs at any time between 07:00hours and 23:00 hours within any habitable room, with the windows closed and alternative means of acoustic ventilation provided in accordance with current building control requirements;
      - not exceed 35 dB LAeq 8hr at any time between 23:00 hours and 07:00 hours within any habitable room, with the windows closed and alternative means of acoustic ventilation provided in accordance with current building control requirements; and
      - not exceed 45 dB Lamax for any single sound event between 23:00 hours and 07:00 hours within any proposed bedrooms with the windows closed and alternative means of acoustic ventilation provided in accordance with current building control requirements.
   c) that the rating level (dB Lar) of sound from all combined building services plant associated with the development does not exceed the background sound level(for both daytime and night-time) at the nearest sensitive premises.

(2) Prior to the commencement of development, a Construction Noise Management Plan shall be submitted for review and approval by Belfast City Council. The Plan shall outline methods to be employed to minimise any noise and vibration impact of demolition and construction operations demonstrating "best Practicable means". The Plan shall pay due regard to BS 5228:2009 Noise and Vibration Control on Construction and Open Sites. The Plan shall include a detailed programme for the demolition / construction phase, the methods for proposed noise and vibration monitoring, noise mitigation methods and evidence of neighbour liaison.

(3) Prior to commencement of operation of the approved development, the applicant must submit to the Planning Authority a Final Management Plan to be agreed and approved by the Council. Evidence must be provided that the Management Plan will be delivered by a competent Purpose Built Student Accommodation operator with a proven track record in this management of this type of accommodation. The Final Management Plan must demonstrate compliance with a government approved accreditation scheme for purpose built student accommodation such as the ANUK/UNIPOL National Code of Standards or the Universities UK/HE Guild Management Code.

(4) The Final Management Plan shall detail arrangements to address:
- noise control and tenant behaviour;
- measure for controlling hours of use and potential noise disturbance from the approved gym and social space/games rooms;
- proposed liaison arrangements with the relevant educational institutes, the Council and the Police Service Northern Ireland in relation to tenant behaviour;
- the Travel Plan for staff and students;
- general management operations;
- site and landscape maintenance; and
- servicing, security features, CCTV, lighting, intercom system and soundproofing.

(5) No development shall commence until the Planning Authority has received in writing and agreed that risk assessments and supporting site data have been provided which identify all unacceptable risks to the water environment. The investigations shall include:
- site investigations and groundwater monitoring to be designed and implemented in accordance with BS 10175:2011 'Investigation of Potentially Contaminated Sites, Code of Practice' to identify the risks associated with the potentially contaminating activities which previously took place at the site; and
- provide a risk assessment(s) in accordance with the guidance on Model Procedures for the Management of Land Contamination (CLR11) to identify all unacceptable risks to the water environment and provide remedial criteria to be met through the remedial strategy.

(6) No development shall commence until a detailed remediation strategy to address all unacceptable risks to environmental receptors identified from Condition (5) is submitted in writing to and agreed with the Planning Authority. The strategy shall identify all unacceptable risks on the site, remedial objectives/criteria and the measures proposed in order to mitigate them (including maps / plans showing the remediation design, implementation plan detailing a timetable of works, remedial criteria, monitoring program etc.).

(7) If a piling foundation is to be used in the construction of the approved development, no development or piling work should begin until a piling risk assessment informed by the Risk Assessment required under Conditions (5) and (6) above has been submitted in writing to and agreed by the Planning Authority. Any Piling Risk Assessment carried out shall be carried out in accordance with the methodology contained in the Environment Agency document entitled 'Piling and Penetrative Ground Improvement Methods on Land Affected by Contamination: Guidance on Pollution prevention'.

(8) The development hereby permitted shall not be occupied until the remediation measures as described in the Remediation Strategy submitted under Condition (6) have been implemented to the satisfaction of the Planning Authority. The Planning Authority must be given 2 weeks written notification prior to the commencement of the remediation work.

(9) If during the development works, new contamination and risks are encountered which have not previously been identified, works should cease and the Planning Authority shall be notified immediately. This new contamination shall be fully investigated in accordance with the Model Procedures for the Management of Land Contamination (CLR11). In the event of unacceptable risks being identified, a remediation strategy shall be agreed with the Planning Authority in writing and subsequently implemented and verified to the satisfaction of the Planning Authority.

(10) Following completion of the remediation works under Conditions (6), (8) and (9) and prior to occupation of the approved development, a Verification Report shall be submitted in writing to the Planning Authority and agreed. This report shall be completed by competent persons in accordance with the Model Procedures for the Management of Land Contamination (CLR11). The Verification Report should present all the remediation and monitoring works undertaken and demonstrate the effectiveness of those works in managing the risks and achieving the remedial objectives.

(11) The development hereby permitted shall operate in accordance with the approved Travel Plan bearing stamped received by Belfast City Council on 10/11/2015. This shall include the provision of the Translink Corporate Commuter Initiative, the Translink TaxSmart Initiative and the Bike2Work Initiative, or equivalent measures agreed by Transport NI.

(12) The development hereby approved shall not become operational until the vehicular access, including visibility splays and any forward sight distance have been constructed in accordance with the approved drawing numbered 15A entitled 'Car park Entrance Plan, 2338-PL-0-111', stamped received by Belfast City Council Planning Authority on 13 June 2016. The visibility splays shall be kept clear and permanently retained thereafter.

(13) The development hereby approved shall not become operational until hard surfaced areas have been constructed in accordance with the approved layout drawing numbered 03B entitled 'Lower Ground Floor Plan, 2338-PL-0-099 Rev A' stamped received by Belfast City Council Planning Authority on 13 June 2016. No part of these hard surfaced areas shall be used for any other purpose at any time other than for parking, cycle storage and servicing.

(14) The landscaping and scheme of planting contained in the approved drawings numbered 2338-PL-0-300 and 2338-PL-0-350 respectively entitled 'Landscape Plan' and 'Typical Tree Planter detail', submitted with the Appellant's Statement of Case shall be carried out prior to operation of the development.

(15) No development shall take place on the site until a programme of archaeological mitigation works prepared by a qualified archaeologist has been completed in accordance with a brief approved by the Planning Authority.

(16) No development or site works of any nature shall take place until arrangements have been agreed in writing with the Planning Authority for archaeological surveillance of topsoil stripping and site preparation and for the recording of any archaeological remains that may be identified. These arrangements shall also include provision for access to the site at any reasonable time for an archaeologist nominated by the Council or Department to observe operations and monitor implementation or archaeological requirements. The arrangements shall be implemented as agreed.

(17) The development shall be begun before the expiration of five years from the date of this permission.

This decision is based on the following drawings:-

DRAWING NUMBER	**TITLE**	**SCALE**	**DATE**
01	Site Location Plan	1:1250	May 2015
03B	Lower Ground Floor Plan	1:200	29/10/15
04B	Upper Ground Floor Plan	1:200	29/10/15
05A	1st – 5th Floors	1:200	May 2015
06A	6th Floor	1:200	05/05/16
07A	7th Floor	1:200	05/05/16
08A	8th Floor	1:200	05/05/16
11A	Elevations 1	1:200	24/05/16
12A	Elevations 2	1:200	24/05/16
13A	Elevations 3	1:200	05/05/16
14A	Elevations 4	1:200	05/05/16
15A	Carpark Entrance Plan	1:100	Oct 2015
16A	Lower Ground Floor Plan	1:250	May 2015
2338-PL-0-300	Landscape Plan*	1:200	May 2017
2338-PL-0-350	Typical Tree Planter Detail*	NTS	May 2017

*Contained in Appellant's Statement of Case

COMMISSIONER MARK WATSON

List of Appearances

Planning Authority:-	Mr L McCollum QC (instructed by Belfast City Council)* Mr M McErlain (BCC)* Mr D O'Kane (BCC) Ms N Largey (Solicitor for BCC)*
Appellants:-	Mr W Orbinson QC (instructed by James T Johnston & Co Solicitors)* Dr M Gordon (Turley)* Mr H McConnell (RPP Architects)* Mr K McKay (Northside) Ms T Bogoina

* In attendance at both hearings

List of Documents

Planning Authority:-	'A' Statement of Case & Appendices (BCC) 'D' Copy of appeal decision 2016/A0102 'F' Draft planning conditions 'H' Comments on table of approved social housing developments 'I' Comments on fallback position submission from Appellant
Appellants:-	'B' Statement of Case & Appendices (Turley) 'E' Table of approved social housing developments 'G' Submission including caselaw on fallback position
Third Parties:	'C' Statement of Case & Appendices (Carrick Hill Residents' Association)