Appeal Decision

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Appeal Reference:	2017/A0081
Appeal by:	Music Hall Services Limited
Appeal Against:	The refusal of full planning permission.
Proposed Development:	Demolition of existing building and construction of 4-storey apartment block containing 20 apartments.
Location:	Porters Annex, Apsley Street, Belfast.
Application Reference:	LA04/2017/0468/F
Planning Authority:	Belfast City Council.
Procedure:	Informal Hearing 22 November 2017
Decision by:	Commissioner Alistair Beggs, 4 December 2017

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are:
   - The character and appearance of the area
   - The setting of listed buildings
   - The amenity of proposed and existing residents
   - Roads and traffic issues
   - Drainage

3. Section 45(1) of the Planning Act (NI) 2011 requires that regard must be had to the local development plan (LDP), in so far as it is 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.

4. The Court of appeal has judged that the Belfast Metropolitan Area Plan 2015 (BMAP) was adopted unlawfully. As such the Belfast Urban Area Plan 2001 (BUAP), despite its age, now operates as the relevant LDP. The draft version of BMAP (dBMAP) however remains a material consideration. This situation regarding the BUAP and BMAP was discussed at the hearing and all the parties had the opportunity to comment on the relevant policy background.

5. In both the BUAP and dBMAP the site lies within the City Centre and it is not zoned for any purpose. The dBMAP identifies the site as being within the Belfast City Core Area of Parking Restraint. The broad policy thrust of the BUAP encourages the provision of new housing within the existing urban area provided

the character and the amenity of the existing residential area is safeguarded. As regards dBMAP, its housing strategy also seeks to balance support for new housing in urban areas with the protection of residential character and amenity.

6. Policy CC14 of BUAP indicates that car parking requirements for residential developments in the city centre will be decided on their merits taking into account the nature of development and local circumstances. A material consideration in the appeal is Policy TRANS4 of dBMAP which relates to identified areas of parking restraint. While this policy was objected to, the Commission, in its report into objections to the Plan, supported its retention subject to amendments.

7. The provisions of the Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS) do not conflict with extant regional policy in respect of proposals for dwellings within settlements. Accordingly, the relevant regional policy context for the proposal is provided by Planning Policy Statement 3 'Access, Movement and Parking' (PPS3); Planning Policy Statement 7 – 'Quality Residential Environments' (PPS7); Planning Policy Statement 6 'Planning Archaeology and the Built heritage' (PPS6) and Planning Policy Statement 15 'Planning and Flooding'. Relevant supplementary guidance is contained in 'Creating Places - Achieving Quality in Residential Developments' (CP).

8. The Council's first reason for refusal relates to Policy QD1 of PPS7. This policy advises that that planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a quality and sustainable residential environment. It adds that all proposals for residential development will be expected to conform to nine criteria. The Council's concerns were that the proposal would fail to comply with criteria (a), (b) and (g).

9. Criterion (a) requires proposals for residential development to respect the surrounding context and advises that proposals should be appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and the appearance of buildings, structures and landscaped and hard surfaced areas. Criterion (g) requires the development's design to draw upon the best local traditions of form, materials and detailing.

10. The area in the vicinity of the appeal site has a varied townscape and mix of land uses. Much of its general character is characterised by traditional 2 and 3 storey terraces addressing the street frontages. However, the appeal site effectively adjoins more modern structures - such as a youth club and its car park fronting onto Donegall Pass and the Community Centre on Apsley Street. A play park also abuts the site's northern boundary. The existing vacant building on the site has two elements, the traditional red brick and pitched roof frontage element fronting onto Apsley Street, and the generally lower more modern flat roofed structure extending back into the site. While this existing building presents an attractive frontage to Apsley Street it is not listed, and as such the main focus must be on the merits of the appeal proposal.

11. The more modern buildings have eroded the traditional streetscape, and the contemporary design of the appeal proposal would sit farther back from Apsley Street than the existing building. It would have a smaller footprint than the building it would replace, and its height would be similar to that of the highest element of

the existing building on site (the red brick structure) and of the nearby listed 3-storey terrace formed by Nos. 56-71 Donegall Pass. However, the majority of the appeal building would be four storeys high with higher eaves levels than the existing buildings. This and its flat roofed design means that it would have a scale and massing on its site that would appear bulky and out of context with the surrounding area. Especially when viewed in the context of the two storey terraces on the other side of Apsley Street. Also, given its general design and use of materials it would not relate strongly to any particular element of the area's existing character.

12. The proposal's east elevation would front onto Apsley Street. Despite its setback and having a three storey element at this elevation, its design, wall to void ratio and fenestration pattern mean that it would appear as a bland, bulky and discordant presence in the streetscape. The proposed southern elevation, while fronting unto a private lane would be seen from elements of Apsley Street and in part from the junction of Apsley Street with Donegall Pass. Notwithstanding the presence of existing modern buildings there would be an impression of a large blank expanse of walling with little fenestration. This would only draw attention to the proposal's bulk.

13. The proposed use of blue engineering brick on part of the structure's finishes would also be discordant with the area's character and exacerbate its jarring presence in the street scene. The proposal would be harmful to the character and appearance of the area. While modern buildings may have been approved elsewhere in the City Centre, including close by, these do not to my mind justify approving the detrimental impact of the appeal proposal on this particular streetscape. Criteria (a) and (g) of Policy QD1 are not met.

14. While Criterion (b) of Policy QD1 of the Policy was referred to by the Department at the hearing I find that this relates to archaeological and built features present on or at a site and not to off-site elements such as the Listed terrace on Donegall Pass.

15. The Council at the hearing advised that the concern raised in their second reason for refusal related to the provision of amenity space. Policy QD1 of PPS7 refers to the provision of a quality residential environment and its Criterion (c) 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) for apartment developments on small urban infill sites advising provision of between 10 and 30 sq metres per unit. They considered that in the appeal site's context that 10 sq metres per unit would be acceptable, and that the appeal development should provide 200 sq metres of private open space. Communal private open space provision would be acceptable under the CP guidance.

16. The Council and Appellant's agent agreed at the hearing that the appeal development would provide private balconies and roof terraces amounting to about 170 sq metres of space. Of this about 130 sq metres would be provided by the roof terraces serving the 2 apartments with three bedrooms. The remaining 40 sq metres would be split between balconies serving one bedroom apartments on the upper floors. The 6 ground floor apartments would have no such individual

provision and would have to rely on the communal areas surrounding the building. The landscaped area shown on the submitted plans to the northern site boundary is part of the adjoining play area and not the appeal site. The communal areas around the building are essentially shown as parking and circulation areas. As such they would not reasonably constitute useable private amenity space. While the appellant contended that the parking spaces were not necessary they are on the plans before me. While landscaped areas can constitute private open space the proposed landscaped areas abutting Apsley Street are to be densely planted to provide a 'soft edge' to the street and would be clearly visible from it. Such landscaping would not fit comfortably with the concept of private open space. While the presence of the adjacent play area is acknowledged it could have limited interest for the potential residents of the proposed apartments given all but two would have one bedroom.

17. The site's city centre location is acknowledged and the Appellant contended that many city centre developments have provided little or no private open space. However, no details of other developments are before me. Also, in considering this specific proposal I am not persuaded that it justifies accepting a lower level of private open space on this particular site than that indicated in CP. As an appropriate level of private open space is not provided Criterion (c) of Policy QD1 is not met.

18. The Council's third reason for refusal refers to Policy BH11 of PPS6, and the concern was that the proposal would have an adverse impact of the setting of the listed buildings in the vicinity including St. Mary Magdalene Church and Nos. 56-70 Donegal Pass. I have already concluded upon the views of the proposal that would be seen from the vicinity of the Apsley Street / Donegall Pass junction. The resulting visual impact as seen from these views, and notwithstanding the more modern buildings in the streetscape, means that the proposal would detract adversely from the setting of the listed terrace of Nos. 56-70 Donegall Pass.

19. In terms of the available views from Lindsay Street the appeal proposal would be viewed in the context of the rear elevations of the listed Donegall Pass terrace and St. Mary Magdalene Church. These views are already impacted upon by a profile metal clad mechanics workshop situated to the appeal site's south-east corner. The foreground of the views is influenced by the Community Centre dominating the Apsley Street / Lindsay Street junction. In this context the views of the rear elements of the listed buildings as seen from Lindsay Street are not as critical as the Council contend. How the area and the pattern of development within it evolved historically does not alter this conclusion. However, this does not take away from the concerns expressed earlier about the damaging impact of the proposal on the area's character overall which is inclusive of the listed buildings.

20. The proposal is contrary to the provisions of Policy BH11 of PPS6 as far as is indicated above.

21. The Council's fourth reason for refusal related to access and parking concerns, though its reference to BMAP policy TRAN1 cannot be sustained for the reason given in paragraph 4 above. The reason for refusal also refers to PPS3 and PPS7 and their provisions in relation to access and parking.

22. Policy QD1 of PPS7 requires adequate and appropriate provision to be made for car parking. Policy AMP7 of PPS3 advises that development proposals will be required to provide adequate provision for car parking and appropriate servicing arrangements. The precise amount of car parking is to be determined according to the specific characteristics of the development and its location and having regard to the Department's published standards or any reduction provided for in an area of parking restraint designated in a local plan. Areas of parking restraint require a lower level of parking provision than those shown in published standards. It is borne in mind that dBMAP identifies this area as one of parking restraint, and that the related Policy TRANS 4 seeks provision of 1 space per dwelling - a less demanding standard for the appellant to meet than if normal standards were applied. The Commission's recommended changes to the policy allow for further reductions to be considered in appropriate circumstances where evidence of alternative transport arrangements can be clearly demonstrated, or other material considerations exist to justify an exception to the policy. Overall the more recent policy context gives scope to consider the characteristics of a development and its location – as does Policy CC14 of BUAP.

23. The appeal plans show 6 parking spaces for the development accessed via the existing private lane to the southern side of the site. This lane also accesses the rear of the terraces on Donegall Pass and a workshop. The Appellant judged that full time parking spaces were unnecessary for apartments close to public transport and to city centre facilities, and that the proposed parking spaces were simply shown to indicate where drop off and pick-ups could take place. I have considered these points and while there is little on-street parking available during the day more parking is likely to become available during the evening when the apartments would be more likely to be occupied. However, without a more detailed assessment of the situation there is insufficient evidence to persuade me that either no parking spaces are required for the proposed development, or that the six spaces shown on the appeal plans would suffice. While other developments in the city centre, including ones close by, may have no car parking I have no reason to dispute the Council's contention that these would all have been considered in light of detailed assessments presented in each circumstance. I conclude that the proposal is contrary to the above mentioned policies.

24. Policy AMP2 of PPS3 indicates that planning permission will only be granted for a development involving direct access or intensification of the use of an existing access onto a public road where such access will not prejudice road safety or inconvenience the flow of traffic. There was no argument that the appeal proposal as submitted would not cause an intensification of the existing private lane. This lane is substandard and given its width manoeuvring in and out of the proposed parking spaces would be difficult. The lane is also narrow, and if two vehicles met at its entrance there would be a conflict. No satisfactory reason was presented as to why a more standard wider entrance of 4.8m width should not be sought in this context. The provisions of Policy AMP2 are not met.

25. Policy FLD3 of PPS 15 requires a drainage assessment for a development of this size. In the absence of one it is not possible to conclude that flood risk is an issue or that it can be adequately mitigated. The proposal is contrary to the provisions of the policy

26. It is accepted that the Appellant was disappointed at the speed at which the application was processed by the Council and that no opportunity was given to amend plans or submit the drainage or traffic assessments. However, there is no statutory requirement that the Council have to seek additional information before determining an application, and how the application was processed is a matter for discussion between the appellant and the Council.

27. Third parties raised concerns about the height of the structure, the character of the neighbourhood, and access and car parking issues. I have commented on these matters above. In relation to other issues raised, given the juxtaposition of the proposal with existing buildings loss of light or overshadowing would not be an issue. Nor do I see the overlooking of the play park or the community centre to be a problem. A condition on any approval could seek a solid boundary feature between the appeal site and the community centre and play area to allow for security. There is no obvious reason why the apartments would be likely to either cause or exacerbate existing antisocial behaviour in the area. Building works would require careful management and I am unaware that the provision of services to the apartments would be a particular issue. There is no requirement for community consultation with a development of this size.

28. All the Council's reasons for refusal, and the related concerns by third parties, are sustained insofar as is outlined above. As such the appeal must fail.

This decision relates to the following plans stamped refused by the Council on 24 April 2017:

Council Ref:	Scale:	Description:	Drawing No:	
01	1:1250	Site Location Map	DM-1926_L01	Rev P
03	1:100	Proposed Elevations	DM-1926_A03	Rev P
02	1:100	Proposed Plans	DM-1926_A02	Rev P1
04	1:100	Proposed Section & Elevation	DM-1926_A04	Rev P
05	No Scale	Site Concept Plan		

COMMISSIONER ALISTAIR BEGGS

2017/A0081

Attendance

Council:	Mr M McErlane, Planning Service Ms T Mills, Planning Service Mr S Lancashire, Department of Infrastructure – Rivers Ms N Quinn, Historic Environment division Mr A Fahy, Department of Infrastructure- Roads
Appellant:	Mr C Malseed, Design Management, agent Mr G Nelson, Design Management, agent

Documents

Council:	‘A’	Statement of Case
Appellant:	‘B’	Statement of Case
Third Parties:	‘C’	Statement of Case - Ms Gourley
	‘D’	Statement of Case – Mr & Mrs McDougall