Planning Appeals Commission

Appeal Decision

4th Floor
Ann Street
BELFAST
BT1 3HH
T: 028 9024 4710

E: info@pacni.gov.uk

Appeal Reference:	2021/A0241
Appeal by:	Huxley Group Ltd
Appeal against:	The refusal of full planning permission
Proposal:	1 no. 4 storey apartment building (12 apartments) with associated landscaping, pedestrian access, internal road and car parking areas located within the grounds of existing apartment complex
Location:	Lands NW of apartments 1-23 Fortwilliam Grange, Fortwilliam Park, Belfast
Planning Authority:	Belfast City Council
Application Reference:	LA04/2020/1665/F
Procedure:	Written Representations with Commissioner's Site Visit on 19 & 27 April 2023
Decision by:	Commissioner Mandy Jones, dated 28 April 2023

Decision

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

Preliminary Matter

2. Within the appellant's Statement of Case a number of updated drawings were submitted. These were updated site plans, elevations, landscaping proposals, roads layout, cycle enclosure details and an additional cross section through the site. The main amendments to the proposal incorporated; proposed NW and SW boundary treatment details; removal of privacy screen to the ground floor rear elevations and additional heavy specimen planting; changes to the materials specification of the cycle enclosure; minor updates to the roads layout and an additional cross - section indicating the proposal in context with Ross House to the rear and existing development to the front. A Travel Plan was also submitted.

3. The appellant's Statement of Case including the updated drawings was exchanged with the parties and the Council did not submit any rebuttal evidence. I consider the amendments which take into consideration the various planning concerns to be relatively minor and as such there would be no prejudice to any other party. These submissions will form part of my considerations.

4. Within their Statement of Case the Council withdrew refusal reasons 3 & 4 relating to roads objections.

Reasons

5. The main issues in the appeal are whether the proposed development would result in a loss of residential amenity for existing and future residents and whether the proposal can be adequately serviced in respect of waste water.

6. Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires the Commission, in dealing with an appeal, to have regard to the local development plan, so far as material to the application and to any other material considerations. The Belfast Urban Area Plan 2001 (BUAP) operates as the local development plan for the area, with the draft Belfast Metropolitan Area Plan (d MAP), published in 2004 remaining a material consideration. In both plans, the appeal site is located on unzoned land within the development limits of Belfast. The plans contains no specific polices which are relevant to the appeal proposal.

7. Overarching regional policy is provided by the Strategic Planning Policy Statement for Northern Ireland (SPPS). It sets out transitional arrangements which will operate until a local authority has adopted a Plan Strategy for the whole of the council area. Whilst Belfast City Council have published a draft Plan Strategy, it is not yet adopted. Until a plan is adopted the SPPS retains certain existing Planning Policy Statements including Planning Policy Statement 7 – Quality Residential Environments (PPS7). The SPPS is no more prescriptive than the abovementioned retained policy and in accordance with the transitional arrangements set out in the SPPS, the appeal should be determined in accordance with the retained policy.

8. Policy QD 1 of PPS7 Quality in New Residential Development states 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 development. The design and layout of residential development should be based on an overall design concept that draws upon the positive aspects of the character and appearance of the surrounding area. It states that all proposals for residential development will be expected to conform to a number of specified criteria. The Council's objections relate to criteria (a), (c) and (h) of Policy QD 1.

9. The appeal site is located within the grounds of Fortwilliam Grange Apartment complex which accommodates 65 apartments within three blocks. The existing apartment blocks are narrow and linear in plan form and are 4 storeys. External finishes are red brick and render. They are sited to face inwards onto a central landscaped parking courtyard and their outdoor amenity spaces are to the rear of the blocks. The complex is set within extensive landscaped grounds (1.7 hectares).

10. The appeal site is located in the north west corner of the apartment complex on an area of open ground which is currently being used as a compound containing storage containers and stored materials. Levels fall approximately 2-3 m in a north western direction (to the rear) across the appeal site. The car park of the Fortwilliam Youth Centre adjoins the appeal site to the south west, with the four storey apartment block containing units 1 -23 of Fortwilliam Grange to the south

east. Ross House, a 13-storey apartment building and its associated car parking and outdoor areas are to the north east.

11. The wider surrounding area contains a mixture of land uses. On lower ground to the south east along the A2 Shore Road is a large Asda supermarket, McDonalds restaurant, petrol filling station, commercial premises and housing. On the opposite side of Fortwilliam Park to the south west set amongst mature vegetation on higher ground is St Katherine's Parish Church. Detached housing fronts onto Fortwilliam Park west of the existing apartment complex. To the north, is Mount Vernon Park, which is a mix of semi detached and terraced properties and Mount Vernon Court apartments.

12. The appeal proposal is a liner rectangular 4 storey block of 12 apartments with 3 apartments per floor. The footprint of the proposal is 7.7m x 30m. Each apartment is approximately 70m^2 and are 2 bedroom – 3 person. Private amenity spaces are to the rear with parking areas to the front. External wall finishes are vertical timber cladding, brickwork – colour buff, aluminium windows – colour grey, ppc aluminium cantilever - colour bronze and roof tiles – colour dark grey.

13. Criterion (a) of QD1 of PPS 7 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.

14. The context of the Fortwilliam Grange complex is 3 no linear rectangular apartment blocks. Each block has a narrow footprint (with a depth of 9m), set around landscaping parking areas to the front, and small patio terrace areas and communal areas of lawn to the rear used as outdoor amenity space. The 3 existing apartment blocks are surrounded with mature vegetation and grassed areas. 65 parking spaces are provided within the site at a ratio of one space per apartment.

15. The proposal is set within the north western part of the overall site on a NE – SW axis. It has a footprint of 8m x 30m. It has 12 parking spaces with landscaping to the front, a narrow building footprint and patio terrace area and communal lawn areas to the rear. I consider that the proposed apartment block responds to the existing apartment blocks in terms of its 2 – dimensional spatial relationship within the site and to the 3 – dimensional existing built form. The depth of the private terrace and communal areas to the rear is comparable with the existing apartment blocks. The proposed parking area ratios are also compatible with the existing apartments.

16. In terms of massing, the Council consider that the proposal would read as an overbearing extension to Fortwilliam Grange, infilling a gap site and removing relief and visual separation. Pac 14, Cross Section indicates comparable eaves and ridge heights with the existing blocks and the four-storey proposal set against Ross House, which is 13 storeys to the rear to the proposal. Existing mature vegetation along with proposals for considerable new landscaping will soften and further integrate the proposal into its surrounds. Although the proposed building occupies the full width of the site, given the sloping topography, the 3-dimensional

context and landscaping, I do not agree that the proposal will read as an overbearing extension to Fortwilliam Grange.

17. When viewed from Mount Vernon Road to the rear, the proposal would be seen set against existing mature vegetation within the grounds of Ross House to the north west.

18. I consider that the proposal 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 hard surfaced areas and complies with criterion (a) of policy QD1.

19. Criterion (c) requires that adequate provision is made for public and private open space and landscaped areas as an integral part of the development. Where appropriate, planted areas or discrete groups of trees will be required along site boundaries in order to soften the visual impact of the development and assist in its integration with the surrounding area.

20. Amenity spaces comprise of private terraces, balconies and communal areas and the Council concur that these are all sufficient in quantity. Rather, their concerns relate to the quality of the provision and their orientation where the main rooms of the apartments and balconies face north, and do not utilise south light. It was argued that the communal amenity spaces and private amenity spaces of the ground floor units will largely be in shadow.

21. Each ground floor apartment has a private terrace area ranging between 18.5 - 25 m^2 and the apartment block is provided with an area of communal amenity space to the rear of approximately 170 sqm. Terraces are provided for the apartments on the ground floors and balconies for the upper floors. Screen planting is proposed to the rear boundary and encloses the communal amenity space.

22. The rear elevation has the main habitable rooms for each apartment and along with the ground floor terraces and upper level balconies face north west. The orientation of the proposed apartment block and associated amenity spaces is broadly reflective of one of the other apartment blocks within the site; which has north east facing terraces and communal amenity areas. The open outlook from the terrace and balcony amenity spaces has a backdrop of screen and mature planting. I was told that the proposed residents will be able to utilise other communal amenity spaces within the wider complex. Given this, the sizes of the amenity spaces with an open outlook and landscaped backdrop and comparable orientation to existing apartment blocks, I do not consider this north west orientation to be fatal to the overall proposal.

23. Criterion (h) requires that the design and layout 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.

24. The Council argues that there is insufficient separation distances between the existing Ross House to the north and Fortwilliam Apartment block (nos 1 -23) to the east of the site resulting in unacceptable levels of overlooking. Ross House

sits to the north east of the proposal and does not have a back to back relationship with the proposal and there is no direct intervisibility between the two buildings. Ross House is completely off set from the proposed apartment block. The closest window in the proposal which is a bedroom window is located 15 m away from Ross House and given the oblique angle, I consider that no direct overlooking will occur. Overlooking of the proposed communal amenity space will occur from the upper level apartments, which is similar to the situation that occurs with the existing apartment blocks. In any case, the overlooking of amenity spaces is not unreasonable in an urban context.

25. The area to the north east of the proposed apartments is the parking area for Ross House. The windows in the gable elevation are for bathrooms and obscure glazing is specified. As such, no overlooking will occur. Additional heavy specimen tree planting is proposed along the northern and eastern boundary of the site which will assist screening between the proposal and Ross House.

26. There is a separation distance of 20m between the appeal proposal and the existing apartment block to the south east. There are no living rooms or balconies on this front elevation facing towards the existing apartment block. The closest window within the front elevation is a bedroom window on floors 1 - 3. Given this and due to separation distances, extreme oblique views and intervening proposed landscaping I do not consider there to be an unacceptable level of overlooking of the existing apartments. This also applies to any overlooking towards the existing rear amenity spaces. Likewise due to the orientation of each block there will be no overlooking from the existing apartment block towards the proposal. I consider there will be no unacceptable loss of privacy to existing or future residents.

27. The Council raised concerns regarding the poor outlook for proposed residents of the ground floor apartments towards a 1.5m high privacy screen positioned 2m away from the rear elevation. Pac 8, Updated Landscaping Section (drawing ref 6186-L-1103 rev c) indicates the removal of the 1.5m privacy screen to the rear of the ground floor apartments terrace area and introduces perpendicular screen fencing to separate and provide privacy between each ground floor terrace. The ground floor apartments now have an open outlook towards the communal amenity space to the rear which has a backdrop of planting. This is reflective of the current situation of the ground floor terrace areas of the existing apartment blocks in the complex which also have screening to separate each individual area allowing an open outlook to the communal area beyond.

28. Concerns were also raised in respect of bedrooms on the southern front elevation which address the car parking area. The Council considered that there would be issues in terms of general disturbance and nuisance from cars utilising the parking area in terms of noise and car headlights at night. I note that Environmental Health have no objections to the proposal and have advanced a condition to ensure an appropriate standard of glazing is installed to ensure internal noise levels within habitable rooms are acceptable. I consider it appropriate to attach such a condition. Pac 7, Updated Landscape Proposals (drawing ref 6186-L-1102 rev c) and Pac 8, Updated Landscaping Section (drawing ref 6186-L-1103 rev c) indicate mixed shrub planting along the building perimeter in the spaces between the car parking spaces and the ground floor bedroom windows. This will filter car headlights and prevent disturbances. The main outlook of the proposed

apartments is to the rear of the site towards Mount Vernon Road. Whilst it does not address the wider Fortwilliam complex I consider this orientation allows more privacy for proposed residents and a pleasant outlook towards private and communal amenity spaces. Any arguments in relation to internal apartments have been addressed by the superseded scheme submitted to the Council.

29. I do not consider that the proposal will create conflict with adjacent land uses that would result in an unacceptable adverse effect of existing or proposed properties in terms of overlooking, noise or other disturbance. As such, criterion (h) of policy QD1 has been met.

30. As criteria (a), (c) and (h) of policy QD1 of PPS 7 have been met the Council's first and second reasons for refusal have not been sustained.

31. The Council argue that the applicant has failed to demonstrate that the proposal can be adequately serviced as they have not addressed NI Water concerns in respect of availability of Wastewater Treatment Works capacity.

32. Initial consultation responses from NI Water dated 2 November 2020, recommend that either no further connections to the foul sewer network should be made or a condition is used requiring a separate treatment solution for the proposed development.

33. The appellant then provided a Drainage Design Statement prepared by McCloy Consulting to the Council on 31 March 2021. Conclusions were that in the absence of network capacity (or foul loading betterment opportunity), it proposed an alternative treatment solution in the form of a temporary on-site waste water treatment plant with applications for discharge consent deferred to post approval.

34. The Council stated that whilst the applicant provided a drainage plan indicating the location of a Kingspan Biodisc treatment plant no specification details were included and it was not included in the description. On a further consultation response dated 12 April 2021, NI Water commented that there is currently no waste water treatment works (WWTW) capacity available to serve the proposed development. No comments were made in relation to alternative treatment solutions, and they were not reconsulted.

35. I was told by the appellant that since the refusal an application has been made to NI Water for a Water Impact Assessment to determine with more accuracy the ability or otherwise of the network to accept foul discharges from the proposal. It was considered by the appellant that as the foul treatment solution remains undetermined at the time of the application, it was not appropriate to amend the description of the proposal to refer to an on-site treatment plant as it may not be necessary, and I accept this point.

36. I consider a negative condition could be imposed to prevent the commencement of development on the site until a method of sewage disposal has been agreed in writing with NI Water or a Consent to discharge has been granted under the terms of the Water (NI) Order 1999. If these were not obtained, any approval could not lawfully commence. On this basis, the fifth reason for refusal could be overcome.

37. In terms of objections made during the processing of the application, I do not consider that the proposal of 12 units would result in unacceptable levels of parking (12 spaces) or cause traffic safety issues and the additional traffic movements within the overall complex would affect existing residents. Regarding the loss of vegetation along the boundaries, proposals include the extensive replacement of planting. A Service Management Plan dated November 2020 was submitted to ensure servicing operations associated with the proposal (namely deliveries and refuse collection) are properly managed. An updated version of this can be required by condition.

38. In conclusion, the appeal proposal accords with the BUAP and dBMAP. I consider that it has been demonstrated that the proposal will create a quality and sustainable residential environment and as such it complies with PPS 7, Policy QD1. Issues regarding details of sewage disposal can be required by the imposition of a negative condition. Accordingly, the Council's reasons for refusal have not been sustained.

39. DFI Rivers Planning Advisory Modelling Unit consultation response 9 October 2020, indicates that the submitted drainage assessment stated that it was a preliminary design and proposes to accentuate more than the 30 year event in the drainage network. A condition is required for the submission of a final drainage assessment prior to the commencement of development. A condition requiring new contamination risks identified during construction to be investigated is required given the findings of the WYG 'Land Contamination Preliminary Risk Assessment' and the appeal site location. A condition ensuring that the elements of the building fabric are installed as specified to maintain internal noise levels at an acceptable level is required. In addition, a condition is required to ensure that noise levels from building plant are maintained to acceptable levels. Conditions to ensure protection measures for existing trees during building operations are required and landscaping conditions will ensure the provision, establishment and on-going maintenance of a high standard of landscaping in line with that proposed.

Conditions

(1) The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

(2) Prior to the commencement of development, a final drainage assessment compliant with FFD 3 & Annex D of PPS 15, containing a detailed drainage network design must be submitted to the Planning Authority for its consideration and approval.

(3) If during development works, new contamination or risks are encountered which have not previously been identified, works shall cease and the Planning Authority shall be notified immediately. This new contamination shall be fully investigated in accordance with best practice. In the event of unacceptable risks being identified, a Remediation Strategy and subsequent Verification report shall be agreed with the planning authority in writing, prior to the development being occupied. If required, the Verification report shall be completed by competent persons in accordance with

best practice and must demonstrate that the remediation measures have been implemented and that the site is now fit for end use.

(4) Prior to occupation of the development, the noise mitigation measures relating to the development ie facades, roof system, glazing, ventilation systems, plant room and party floor / ceiling as recommended in Section 4 of the KRM Acoutics report ' Inward noise assessment', dated 11 May 2020, shall be installed and remain thereafter to ensure that internal noise levels within habitable rooms shall not exceed :

- 35dB LAeq,16 hr between 07.00hrs and 23.00hrs within any habitable room, with the windows closed and alternative means of ventilation provided in accordance with current Building Control Regulations requirements.

- 30dB LAeq, 8 hr within bedrooms between 23.00hrs and 07.00hrs, with the windows closed and alternative means of ventilation provided in accordance with current Building Control Regulations requirements.

- 45dB LAFmax, by more than 10 single sound events in any proposed bedrooms, with the windows closed and alternative means of ventilation provided in accordance with current Building Control Regulations requirements.

(5) All plant and equipment associated with the development hereby permitted, shall be selected, designed and installed so as to achieve a combined rating level (LAr) no greater than the representative (daytime and night time background sound level (dBLA90) when measured or determined at the façade of the nearest noise sensitive premises in accordance with BS 4142:2014+A1:2014.

(6) No development shall take place on-site until the method of sewage disposal has been agreed in writing with Northern Ireland Water (NIW) or a consent to discharge has been granted under the terms of the Water (NI) Order 1999. Verification of that agreement is to be provided in writing to the Council.

(7) No equipment, machinery or materials are to be brought on the site for the purpose of the development including demolition and site clearance until tree protection measures have been put in place in accordance with recommendations in the Dr Philip Blackstock Tree Survey & Report dated September 2017, updated April 2020, Park Hood Development Impact Plan dated 2020 and PAC 9 : Park Hood, Development impact on existing vegetation, (drg no 6186-L-1101). These protection measures shall remain in place until the construction works hereby approved are complete and all plant and machinery have been removed from the site.

(8) Where fences and foundations are proposed within the Root Protection Area (RPA) of existing trees, careful hand digging will be employed with extreme care being taken not to damage roots. Construction of boundary walls / fences shall be in accordance with recommendations outlined in BS 5837:2021 'Trees in relation to design, demolition and construction – Recommendations,' where these works are within the root protection area (RPA) of any tree.

(9) All proposed landscaping and planting works shall be carried out in accordance with PAC 7: Park Hood Landscape Proposals (Drg no 6186-L-1102 rev C) and PAC 8 : Park Hood Landscape Section (Drg 6186-L-1103 rev C). The works shall be carried out prior to the occupation of the development hereby approved or within the first available planting season after occupation, whatever is the sooner or unless otherwise agreed in writing by the Council.

(10) Any new trees or plants indicated on the approved scheme which, within a period of five years from the date of planting, die, are removed or become seriously damaged, diseased or dying shall be replaced during the next planting season with other trees or plants in a location, of a species and size, details of which shall have first been submitted to and approved in writing by the Council.

(11) The development hereby approved shall not be occupied until a long-term landscape management and maintenance plan has been submitted and agreed by Belfast City Council. Once completed, all soft landscaping shall be managed and maintained in accordance with this plan.

(12) The vehicular access, including visibility splays and any forward sight distance, shall be provided in general accordance with drawing no. PAC 10, Updated Road Layout, (JPC 010 rev B), prior to the occupation of any other works or other development hereby permitted.

(13) The development hereby permitted shall not be occupied until hard surfaced areas have been constructed and permanently marked in accordance with drawing no. PAC 10, Updated Road Layout, (JPC 010 rev B), to provide for parking within the site. No part of these hard surfaced areas shall be used for any purpose at any time other than for the parking and movement of vehicles in connection with the approved development.

(14) The development hereby permitted shall not be occupied until sheltered cycle parking facilities have been provided in general accordance with drawing no. PAC 11, Proposed Cycle Enclosure, (Like Architects drg no 300-12 rev A).

(15) Prior to occupation a Service Management Plan shall be submitted to Belfast City Council for approval. This should be in conformity with the Service Management Plan (dated November 2020) previously submitted. This should be operated in perpetuity.

This decision relates to the following drawings submitted with the planning application with the exception of those denoted * which were submitted with the appeal.

Schedule of Drawings

Pac Ref	Drawing	LPA drawing no	Date received by Pac
Pac 1	Site Location Plan Like Architects drg no 100-01 Scale 1:1250 @ A4	01	14 April 2022
Pac 2 *	Existing & Proposed Site Plan Like Architects drg no. 100-02 rev D Scale 1:500 @ A1	02 (superseded)	8 June 2022
Pac 3	Proposed Ground Floor Plan Like Architects drg no 200-01 rev A Scale 1:100 @ A3	03A	14 April 2022
Pac 4	Proposed First & Second Floor Plan Like Architects drg no 200-02 rev A Scale 1:100 @ A3	04A	14 April 2022
Pac 5	Proposed Third Floor Plan Like Architects drg no 200-03 rev A Scale 1:100 @ A3	05A	14 April 2022
Pac 6 *	Proposed Elevations Like Architects drg no 300-01 rev B Scale 1:100 @ A1 / 1:200 @ A3	05B (superseded)	8 June 2022
Pac 7 *	Proposed Landscaping Proposals Park Hood drg no 6186-L-1102 rev C Scale 1:200 @ A1	06A (superseded)	8 June 2022
Pac 8 *	Proposed Landscaping Section Park Hood drg no 6186-L-1103 rev C Scale 1:100 @ A2	07A (superseded)	8 June 2022
Pac 9	Development impact on existing vegetation Park Hood drg no 6186- L-1101 Scale 1:200 @ A1	08	14 April 2022
Pac 10 *	Proposed Road Layout JPC Consulting drg no JPC 010 rev B Scale 1:250 @ A1	09A (superseded)	8 June 2022

Pac 11 *	Proposed Cycle Plan & Elevations Like Architects drg no 300-12 rev A Scale 1:30@A3	10 (superseded)	8 June 2022
Pac 12	Proposed Bin Plan & Elevations Like Architects drg no 300 -11 Scale 1:50@ A3	12	14 April 2022
Pac 13	Three dimensional visuals Like Architects	13	14 April 2022
Pac 14 *	Proposed Cross Section Like Architects drg no 500-01 Scale 1:500@A3	-	8 June 2022

COMMISSIONER MANDY JONES

List of documents

Planning Authority: (Belfast City Council)	'A'	Statement of Case
Appellant: (agent : Gravis Planning)	'B'	Statement of Case
	'B1'	Rebuttal