Planning Appeals Commission

Appeal Decisions

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Appeal Reference:	2018/A0099.
Appeals by:	Mr Paul Allen.
Appeal against:	The refusal of full planning permission.
Proposal:	Erection of 2 No. Commercial units and 10 No. Apartments and car parking.
Location:	160-162 Kingsway, Dunmurry.
Planning Authority:	Belfast City Council.
Application Reference:	LA04/2018/0386/F.
Procedure:	Informal hearing held on 23 January 2019 and 14 February 2019.
Decisions by:	Commissioner Pauline Boomer, dated 31 October 2019.

Decision

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

Claim for Costs

2. A claim for costs was made by Mr Allen against Belfast City Council. This claim is the subject of a separate decision.

Preliminary Matters

Admissibility of additional information

3. Section 59 (1) of the Planning Act (NI) 2011 states that a party to the proceedings is not to raise any matter which was not before the Council at the time the decision appealed against was made unless that party can demonstrate (a) that the matter could not have been raised before that time or (b) that it not being raised before that time was a consequence of exceptional circumstances. Section 59(2) states that nothing in subsection (1) affects any requirement or entitlement to have regard to (a) the provisions of the local development plan, or (b) any other material consideration. The Local Planning Authority (LPA) raised an objection to the consideration of reports on Contamination, Drainage and Parking along with a full set of amended drawings submitted within the appellant's statement of case. Further addendums to the Contamination report were submitted by the appellant following the exchange of the statements of case and after the first hearing.

4. The planning application for the proposal was submitted to the LPA on 16 February 2018. The normal consultations with statutory consultees such as Transport NI (TNI), Environmental Health (EH) and Rivers Agency (RA) were not carried out until 20 March 2018, 4 weeks into the process. It is unclear what additional information, if any, was requested by the LPA as a result of the consultee responses in the appeal papers. It was not until the first hearing that information on deadlines given for submission of information and correspondence around possible delays was presented. The 4th, 5th and 6th Reasons for Refusal identified that insufficient information had been presented by the appellant to address concerns about contamination, drainage and parking and I shall consider each of these issues in turn.

Contamination

5. Following consultation on the proposal, a response from the Council's Environmental Health section (EH) dated 10th April 2018 was forwarded to the LPA requesting that the appellant carry out a Preliminary Contaminated Land Risk Assessment. This was around concerns about the possibility of ground contamination on the appeal site due to the former use as a car repair garage at No. 3 Church Avenue and a previous hardware store operating at No. 162. In that detailed response, EH also outlined that if the preliminary report demonstrated that potential pollutant linkages were evident on the appeal site, a Quantitative Risk Assessment would be required, along with a Remediation Strategy. As this issue had not been raised by EH during the processing of the previous planning application on the appeal site, the appellant would not have anticipated the need to provide such information.

6. There were considerable delays in receipt of the consultation response from EH and the appellant was not advised of the need for further information until mid-April 2018, 8 weeks into the process. Contrary to the arguments presented by the LPA that the details of any consultation response from EH could be viewed on the Planning Portal, the appellant confirmed that this offered no details, only the date of receipt. His first awareness of this additional requirement was on receipt of a letter dated 17 April 2018 when the LPA requested that a Preliminary Contaminated Land Risk Assessment be submitted within 2 weeks, thus by 1 May 2018. In a letter dated 30 May 2018, the architect confirmed that the Preliminary Contamination Report was being prepared and would be submitted in the near future.

7. Despite the LPA's assessment that a two week timeframe is standard practice, I do not agree that two weeks was adequate time to produce even the Preliminary report. The appellant explained that the process of delivering such a specialist report involves going out to tender before engaging a consultant and once the preliminary survey was carried out, it became apparent that a 2nd more substantive report was necessary which took a considerable time to complete. The LPA was alerted on 30 May 2018 that the Contamination report was in the final stages of preparation when the appellant wrote asking for a delay in decision making to allow for its completion. Whilst at the hearing the LPA stated that if they had been made aware of delays in formulating these reports and been given a definitive timeline, they could have been more flexible with the timing, their immediate response to that letter was to issue a decision

notice two days later. I acknowledge that the appellant could have better explained the difficulties being experienced in producing these reports but the LPA displayed no willingness to be flexible here.

8. I agree with the appellant that the two week timeframe offered for the submission of even the preliminary report was inadequate and unrealistic. Given that the issue of contamination was considered by the LPA during the processing of the planning application, it is not a new matter. I therefore find that these Contamination Reports are admissible and should be considered as part of the appeal process.

Drainage

9. In a consultation response dated 09 April 2018, Rivers Agency advised that as the appeal proposal involved a residential development comprising 10 or more dwelling units, a Drainage Assessment was required along with a Schedule 6 Agreement. This issue had been addressed by an informative in the previous planning application. Eight weeks after the submission of the planning application, the appellant received a letter from the LPA dated 17 April 2018 requesting the submission of a Drainage Assessment within 2 weeks, to arrive no later than 1 May 2018. In an email on 31 May 2018, the LPA requested an update. The architect advised that the report would be completed by 8 June 2018.

10. At the hearing, the Engineering Consultant argued that, by issuing a two week time frame to deliver a Drainage Assessment, the LPA displayed no understanding of the process of delivering such a report. The Consultant confirmed that this involved a lengthy process which required negotiating with NI Water, taking at least 3 months to determine a Schedule 6 Application which is needed to inform the Drainage Assessment, further complicated by the need for attenuation in this case. In the absence of any representative from NIW or Rivers Agency, this was not disputed by the LPA. I agree with the appellant that the allocation of two weeks to submit a Drainage Assessment was totally inadequate and undeliverable. Given that the issue of drainage was considered by the LPA during the processing of the planning application, I consider that it is not a new matter and find that this Drainage report is admissible and should be considered as part of the appeal process.

Traffic and Parking

11. A parking survey was submitted with the planning application and forwarded to Transport NI (TNI) for comment. Although a Transport Assessment (TA) and Travel Plan were submitted at that time, they were not scanned and sent to TNI for comment. In a consultation response dated 11 May 2018, TNI requested that a revised Parking Survey was required, taking account of the proposed commercial units. Unaware that one had already been submitted, a TA was also requested, along with details of cycle parking. Amendments to the width of the vehicular access to the car parking and completion of full details on the P1 form showing proposed floor space and existing/proposed vehicle and people movements were also requested. Only three months after the receipt of the

planning application was the appellant made aware of what was required in a letter from the LPA dated 16 May 2018. This additional information was to be submitted within 2 weeks, so no later than 31 May 2018. In a letter dated 30 May 2018, the architect confirmed that the updated parking survey would be completed within one week with the amendments to the cycle parking and entrance width to be submitted within 1-2 weeks. The survey was undertaken on 29-30 May 2018 and submitted to the LPA on 1 June 2018. The LPA failed to pass this new information on to TNI for their assessment. TNI representatives confirmed at the first hearing that had they been in receipt of the original TA and Travel Plan and been consulted with this revised Parking survey, they would have had no objections to the scheme. As parking was considered by the LPA during the processing of the planning application, I conclude that it is not a new matter but the revised Parking survey offered further clarity on the issue. In these circumstances, I find that the additional information submitted with the appellant's Statement of case is admissible and should be considered as part of the appeal process.

Noise

12. The Environmental Health Officer in a consultation response dated 20 April 2018 confirmed to the LPA that the appellant could not rely on the Noise Impact Assessment (NIA) submitted in the previous planning application in 2008 but that an updated and site specific NIA was now required. The appellant confirmed that he was not formally advised by the LPA of the need to provide this information. In his Statement of Case he states that any concerns about noise can be addressed by condition which the EH have accepted in their post hearing submission.

13. At the first hearing, the appellant submitted a copy of Belfast City Council's Guidance on "How we process your application" which states clearly that they will contact applicants once their initial assessment of the application has been carried out to tell him/her how the process is going. It goes on to say that if they find a problem with any application, they will let the applicant know as soon as possible, aiming to work together to try to find a solution, where this is feasible. If an application is to be refused, the guidance states that they will always let the appellant know beforehand if there is a problem with the application.

14. The LPA was aware that all the requested reports had been commissioned with some to be forwarded imminently. In response to a telephone conversation with the case officer on 30 May 2018, a letter from the appellant dated 01 June 2018 requested that the Council continue to engage with him to resolve the outstanding matters, where possible, before issuing a decision. He also expressed concerns that adequate time had not been allowed to address those matters of contamination, traffic and drainage which needed resolved. Furthermore, he also requested clarification of the reasons for refusal if the LPA was minded to refuse. Despite the assurance given by the case officer on 30 May 2018 that he would be in contact within the next few days, to advise on a way forward, a decision notice issued on 01 June 2018. The actions of the LPA

in issuing a decision notice without allowing the appellant adequate time to submit the technical reports commissioned contradicts the above advice issued by the Belfast City Council. Despite the assurances given at the first hearing that the Council would have allowed extra time if they had been made aware of any difficulties experienced, the response to the appellant's letter dated 1 June 2018 requesting that the LPA engage with him to resolve the outstanding issues was to produce the decision notice immediately. The LPA acknowledged that the allocated timeframes were set to meet their internal target. Whilst the LPA were not in receipt of definitive dates for the contamination report and parking survey at that time, they confirmed at the first hearing that they were not willing to enter into negotiations on these outstanding matters as they disliked the design of the proposed development.

15. The LPA clearly failed to comply with their own guidance in not offering sufficient time for the appellant to submit the contamination and drainage reports he had commissioned. They also failed to consult TNI with the TA, Travel plan and the Revised Parking Survey and issued the decision notice with a reason for refusal stating insufficient information on parking had been provided. They failed to request the updated NIA considered necessary by EH. I agree with the appellant that the LPA should not introduce an element of surprise, not only in their failure to allow adequate time for the submission of the reports they had requested but also in failing to outline the reasons for refusal or offer him an opportunity to address these unspecified concerns as requested in his letter of 30 May 2018. Concerns have also been raised about the speed with which the LPA issued the decision notice. I agree with the appellant that it does not appear coincidental that the decision notice was issued in time to meet the LPA's performance target which may have been their priority. Whilst I appreciate the appellant's frustrations that the BCC delegated powers do not allow for a call-in for presentation to Planning Committee after 21 days of receipt of the planning application, the procedures of the Council are not matters to be addressed in this appeal.

16. I consider that the failures of the LPA to engage in any meaningful discussions with the appellant on all of these outstanding matters which were before them and provide realistic timeframes for the delivery of the reports which they requested represents a justifiable reason why all of this technical information was not submitted during the processing of the planning application. Applying the principle of procedural fairness which underpins the legislative requirement, I am satisfied that the appellant could not have provided this information at that time. I find that it falls within the remit of exceptional circumstances as set out in Section 59 of the 2011 Act. In this evidential context, I conclude that all of the matters raised in these reports were before the Council during the processing of the planning application. Accordingly, I conclude that all of the additional technical information submitted with the appellant's Statement of case and later addendums should be considered as part of this appeal process.

Admissibility of Amended drawings

17. The first indication given by the LPA that they had concerns about the design of the appeal proposal was in a telephone conversation between the appellant

and the Case Officer on 30 May 2018, 15 weeks after the submission of the planning application. On receipt of the responding letter on that same date, when the appellant referred to a fall-back position regarding the previous 2010 approval on the appeal site, the LPA appears to have made an assumption that he was unwilling to revise the proposal. Given that the appellant responded by seeking a delay to resolve matters and offered to engage in exploratory talks, he was shocked to receive a refusal notice only two days later.

18. Given that the appellant only had two days' notice of general concerns about design, and had no awareness that a decision notice was about to be issued, amended drawings could not have been generated at an earlier stage of the planning process. The amended scheme submitted with the appellant's Statement of Case involves a marginal increase in floor space at both ground floor level and first floor level but generally retains the form, scale, and finishes of the original scheme. The introduction of additional private amenity space, for the most part, within the original structure has resulted in a number of external alterations, including the reorientation and redesign of windows. In addition, the introduction of additional terraces and balconies, some open and some enclosed by large areas of glazing would have an impact on the streetscape. Nevertheless, I consider that the revised scheme does not significantly alter the nature, scale and overall design concept of the building.

19. The amended drawings were not before the LPA during its deliberations. I therefore conclude that technically, they are new matters. I acknowledge that the revised scheme has neither been advertised, nor been subject to public consultation. However, despite the alterations incorporated within the revised scheme, I disagree with the LPA that any appeal based on the revised scheme would result in third party prejudice. All of the objectors were provided with a copy of the revised drawings by the appellant prior to the first hearing and had the opportunity to attend that hearing to advise of their concerns about the proposed amendments. I am satisfied that no one who could be potentially affected by the revised scheme has been deprived of their right to be consulted. Only the owners of No. 5 Church Avenue, Mr and Mrs Graham, were in attendance on the first day of the hearing. Mr Graham's main concerns related to the implications of both the original and revised scheme on parking and traffic which with the exception of two additional cycle spaces being provided, remain largely unchanged. None of the objectors raised any issue with their residential amenity being affected by the original proposal and the revised drawings seek to address the concerns expressed by the LPA on this matter. It remains an issue to be considered in my assessment of the first reason for refusal.

20. In considering this issue, the appellant referred me to the judgement in the recent JR case Belfast City Council v the PAC (2018) NIQB17 where it was judged that amended plans were admissible because of the exceptional circumstances in that case. I agree that there are some similarities in the fact that the appellant was advised at such a late stage in the processing of the planning application that there were concerns about the design of the building which he had no earlier opportunity to address. In his conclusions, Judge

McCloskey stated that "developers should not be ambushed or taken by surprise". As the appellant had only two days' notice of the concerns about the design of the appeal building, I conclude that the issue of design could not fairly or reasonably have been raised by the appellant at an earlier stage of decision making. Given the short timeframe between being made aware of those concerns and the issue of the decision notice, no opportunity was afforded by the LPA to address those concerns about design. Applying the principle of procedural fairness which underpins the legislative requirement, I conclude that the amended drawings are admissible and that this appeal is based on those revised drawings submitted with the appellant's Statement of Case.

21. I therefore conclude that the information on parking, drainage and contamination submitted with the appellant's Statement of Case and later submissions during the appeal process and the amended drawings are all admissible and should be considered as part of the appeal process.

Reasons

22. The main issues in this appeal include:
- the impact of the development on the character of the proposed Dunmurry Area of Townscape Character (ATC) and the surrounding area;
- the impact on the residential amenity of the adjoining properties;
- the provision of suitable living conditions for prospective residents;
- the potential impact on traffic congestion in the area; and
- the environmental impact of the proposed development in terms of risk of contamination, flooding and noise.

23. Section 45 (1) of the Planning Act (NI) 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 adopted Belfast Metropolitan Area Plan 2015 (BMAP) was declared unlawful by the Court of Appeal on 18th May 2017. As a result of this, the Lisburn Area Plan (LAP) operates now as the statutory development plan for the area with draft BMAP remaining a material consideration in the determination of the appeal. In LAP, the site is located within the settlement limit and is not zoned for any particular use. In dBMAP, the appeal site is designated as lying within the proposed Dunmurry Area of Townscape Character and proposed Local Centre. It also abuts a Protected Route.

24. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for the whole of the council area. The SPPS retains certain existing planning policy documents and amongst these is Planning Policy Statement 7: Quality Residential Environments (PPS 7), and the Addendum to Planning Policy Statement 6: Areas of Townscape Character (APPS6). Creating Places and Development Control Advice Note 8 (DCAN 8) also provide relevant planning guidance.

25. The LPA have referred in all submissions to the proposed Dunmurry ATC in dBMAP as if that designation was in place but this is not the case as it remains a draft designation (my emphasis). Following the declaration of BMAP being

unlawful in May 2017, the LPA has provided no evidence as to the likelihood of the proposed ATC designation forming part of any adopted BMAP. In these exceptional circumstances, I cannot rely on that proposed designation as set out in the dBMAP as a bona fide ATC. I note that the LPA failed to make any reference in their Statement of case to the proposed ATC in their justification of the 3rd reason for refusal. However, even if I could give determining weight to the proposed ATC, the LPA failed to provide me with any details on the character of the proposed Designation ML22 against which to assess the acceptability of the appeal proposal. In the absence of any explanation as to how the proposed development fails to respect the prevailing character of the proposed ATC, the LPA has failed to sustain its 3rd reason for refusal.

26. Whilst the LPA has no objection in principle to a mixed commercial and residential development at this location, they consider that the original scheme submitted to them would not respect the context and character of the site and surrounding area. Policy QD 1 states that development which would result in unacceptable damage to the local character, environmental quality or residential amenity of established residential areas will not be permitted and requires compliance with a number of listed criteria. The LPA contends that the proposed scheme conflicts with Criteria (a), (c), (g) and (h) of Policy QD1 and I shall consider each in turn.

27. Criterion (a) of Policy QD1 requires that 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, landscaping and hard surfaced areas. In conflicting with criterion (a) of Policy QD1, they consider that the proposed development would result in unacceptable damage to the local character of the area. The appeal site now represents a brownfield site in the urban area and I agree with the appellant that, following the demolition of Nos 160 and 162, the plot has fallen into a dilapidated state and currently detracts from the character and appearance of this area. The design and layout of the proposed commercial/residential development is therefore a key factor in determining its acceptability, which the appellant argues draws upon the positive aspects of the character and appearance of the surrounding area. Whilst the LPA makes no reference to the SPPS in its assessment of the proposed design within its Statement of Case, I note that Paragraph 4:29 states that Planning Authorities should not attempt to impose a particular architectural taste or style arbitrarily but seek to promote or reinforce local distinctiveness whilst encouraging good design and responsible innovation, originality or initiative.

28. The appeal proposal seeks to erect a substantial building on this vacant plot. Located immediately west of Jubilee Park, an area of open space, the appeal site lies east of a 2-storey terrace comprising commercial/retail outlets at ground floor level with flats/offices above at Nos. 166-186. No. 164 still remains standing alone, retained as a retail unit with a flat above. At the western end of this terrace sits a single storey flat roofed building with a 2-storey block of similar form behind. Immediately to the south of the appeal site can be found two and a half storey detached and semi-detached Victorian villas, each set in substantial mature plots. The LPA confirms in their Statement of Case that this end of Kingsway is characterised by commercial

development in an eclectic range of architectural styles, yet the 2nd reason for refusal states that the proposed development would be out of keeping with that character. They also acknowledge that, in some instances at corner sites, there may be some flexibility in respect of building heights but consider that, in this case, the appeal proposal would be at odds with the form, massing and fenestration of the existing terrace. Their main area of concern appears to be the relationship between the proposed building and the adjoining terrace and the difference in ridge and eaves levels rather than consideration of whether or not the appeal proposal reflects the character of the area as a whole.

29. I agree with the appellant that, within the immediate vicinity, there is no uniform design with a variety of buildings differing in size, scale, massing and finishes evident along Kingsway. A number of more recent developments include the two x three/ three and a half storey commercial / residential blocks on the northern side of KIngsway where the overall height reflects that of the appeal building and where the size, scale and massing differs significantly from the 2-storey terrace abutting each. I note that Dunmurry Presbyterian Church has recently been built immediately north of the terrace at Nos. 168-186, introducing a very substantial flat roofed circular building finished partly in red brick but with substantial areas of glazing and cladding. It is in this context that I have to consider whether or not the appeal building would result in unacceptable damage to the local character, in conflict with Criterion (a) of Policy QD1 and the SPPS.

30. The appeal proposal seeks to introduce a part 3-storey/ part 4-storey building with frontages onto both Kingsway and Church Avenue. With two retail units at ground floor level along with communal parking area, it is proposed to introduce 4 apartments at both the 1st and 2nd floor levels with 2 penthouse apartments above. Only the flat roofed section at the junction would extend to the maximum height of 12.4m, as this would reduce down to a pitch roof with a ridge height of 9.8m, extending 1.2m above the ridgeline of the adjacent terrace and No. 164. The ridgeline of the new block would also be stepped down as you move southwards through the plot, to align with the ridgeline of No. 5 Church Avenue to the rear**.** The use of different roof details at different heights would reduce the scale and massing of the overall building as would the recession of Apartment 10 behind the highest flat roofed block.

31. The appellant expresses surprise that the appeal proposal was refused on design grounds as it reflected the design concept approved under S/2009/0610/F, albeit on a reduced scale. That approval has now expired but accepted the principle of a 3-4-storey development with a flat roofed section at the corner using similar materials. The appellant argues that the previous planning history has to be given determining weight despite the fact that it has long expired. In the absence of a Lawful Development Certificate, I am not persuaded that that development was commenced as argued by the appellant or that this represents a valid fallback position. However, the significant change relates to the relevant authority now responsible for implementing and interpreting that policy. Whilst the historic permission remains a material consideration, Belfast City Council is a separate planning authority which is not bound by the stance taken by the previous decision maker, the Department of the Environment. In any event, the planning context against which to assess

the appeal proposal must be considered has changed since 2010, with the introduction of the SPPS in 2015 and the change in status of the draft BMAP, and in particular the proposed ATC.

32. Given its size and location at the junction of Kingsway and Church Avenue, the site represents a prominent plot visible on the approach from the City Centre, with views filtered in part by the mature trees fronting the adjacent park. In this context, I consider that it is appropriate to introduce a degree of flexibility in respect of building heights on this corner plot as, in so doing, it would offer the opportunity to create better visual linkages between the modest 2 storey terrace fronting onto Kingsway and the much more substantial villas abutting Church Avenue. Within this dual fronted landmark building, the use of different building forms and heights would help to break up the massing of this sizeable block whilst creating variety and interest in the streetscape. The use of black stained timber cladding around the penthouse façade and lead surrounds to dormer windows would provide contrast to the red clay brick and slate roof which provide a unifying element with the adjoining properties. The dimensions of the windows in the western elevation have been marginally changed in the amended plans to better reflect the proportions of the windows in Church Avenue properties. Whilst the objectors have also raised concerns about the 4 storey element and in particular its flat roof , the appeal building would sit below the ridgeline of the development opposite and that further west with which it would be visually linked when travelling from the City Centre. Whilst the appeal building would introduce a flat roof on the corner, there are a variety of roof heights and styles on both sides of Kingsway, including the mansard roof on the Public House to the east and the flat roofed circular façade at Dunmurry Presbyterian Church, all of which project well above the ridgeline of their adjacent terraces. Unlike those buildings which have a standard ridgeline at a similar height, I consider that the appeal proposal would add interest and variety by reducing its height, scale and massing as you move away from the corner. In so doing, it would introduce a landmark building on this key dual fronted corner plot which would not mirror adjoining properties but would draw upon some of the positive aspects of the character and appearance of the surrounding area.

33. To address the concerns about the introduction of balconies and terraces in the original scheme, the balconies either side of the corner have been removed. Whilst the LPA has raised concerns about the solid to void ratio within the proposed building, brick piers have been introduced on the corner to break up the area of glazing. The reorganization of the internal layout has created a terrace to Apartment 3 at first floor level within the eastern elevation which would not have any public aspect. Two new glazed balconies are proposed at the outer edge of the western elevation to serve Apartments 1 and 5 which would be recessed and would not project beyond the main wallplate. Given the prominence of numerous balconies and terraces on the two large developments opposite abutting the arterial route, I do not find the modest recessed balconies now proposed would be unduly dominant in the streetscape. I do not consider that the increase in height above the ridgeline of the adjacent terrace is fatal to this proposal, nor is the introduction of balconies, as both features are reflective of the other apartment developments on the opposite side of the road.

34. Despite projecting forward of Church Avenue properties, this would reflect the building line established by the recently demolished buildings at Nos. 160 and 162. Whilst the LPA make a passing reference to the density being at odds with the 2-storey terrace alongside and the objectors refer to it being out of keeping with the general area, no figures were presented to confirm that. The appellant in his Statement of Case provided evidence that the proposed density compares favourably with the previous approved scheme on this site as well as the mixed use development directly opposite which was not disputed. Although the 2nd reason for refusal also refers to the appeal proposal creating an undesirable precedent for similar developments, this was not addressed by the LPA in their submissions. In this evidential context, I am not persuaded that the appeal proposal would be out of keeping with the established character of this area and therefore find no conflict with the spirit of the SPPS and Criterion (a) of Policy QD1. None of the aspects of the 2nd reason for refusal and the objectors' concerns have therefore been sustained.

35. The first reason for refusal states that the appeal proposal would result in overdevelopment of the plot as it would create undesirable living conditions for prospective residents in failing to provide adequate amenity space and bin storage to facilitate the development. It also raises concerns about the potential for overlooking of existing residential properties. In reaching those conclusions, the LPA finds conflict with Criterion (c) and Criterion (h) of Policy QD1. The LPA consider that the design of the appeal building would result in an unacceptable level of overlooking, detrimental to the amenities enjoyed by the residents of No. 5 Church Avenue. Criterion (h) of Policy QD1 requires that there is no unacceptable adverse effect on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise and other disturbance. Paragraph 4.38 of the Justification and Amplification text to Policy QD1 deals with the issue of privacy and refers to the need to provide reasonable space between buildings in order to minimise overlooking.

36. No 5 Church Avenue lies immediately south of the appeal site with a conservatory to the rear, enclosed by a low hedge along the party boundary. Whilst I note that the owner of No. 5 raised no concerns about overlooking in his submissions, the LPA raised concerns that in the original scheme, the terrace of Apartment 9 would overlook his private amenity space as would the rear windows of Apartments 2, 6 & 9. The appellant has sought to address these concerns by providing a rear terrace to Apartment 2 which would be enclosed by a 1.8m wall to reduce any overlooking from the living room within. A similar arrangement is now proposed around the terrace of Apartment No. 9 which I am satisfied would minimise the potential for overlooking. Within Apartments 6 & 9, the standard windows in the living rooms originally shown orientated towards the rear garden of No. 5 have been replaced by windows set at an oblique angle and now orientated towards the gable wall of No. 5 which the LPA acknowledged would offer some mitigation. Whilst the LPA raised concerns that the separation distances between the rear elevations of the apartment block does not met the 15m separation distance to a common boundary specified in Paragraph 7.17, Paragraph 7.18 allows for greater flexibility in inner urban locations. I am satisfied that the marginal shortfall in separation distances now available is adequately compensated by the design

solutions now proposed. I have no concerns about public open space adjacent being overlooked by the proposed development. I conclude therefore that the revised proposal does not conflict with criterion (c) of Policy QD1.

37. Policy QD1 promotes a high quality of design, layout and landscaping in all new housing developments to ensure more attractive and sustainable residential environments for present and future generations and that equally applies to apartments in a mixed development such as now proposed. Criterion (c) states that adequate provision be made for public and private open space as an integral part of the development. Paragraph 5.20 of Creating Places indicates that in apartment or flat developments, private communal open space (my emphasis) should be provided in the form of landscaped areas, courtyards or roof gardens within a range of 10-30m^2 per unit, with the lower limit applicable to developments in inner city locations, but makes no specific reference to individual private spaces. The appeal proposal as revised indicates that 6 out of the 8 apartments would be provided with private balconies or terraces, some open with others enclosed by glazed doors/windows. These range in size from 10- 13m^2 whilst each of the two Penthouse Aapartments 9 and 10 would be able to avail of one or two terraced areas per unit comprising a total area **o**f 21m^2 and 27m^2 respectively. Whilst the LPA in their Statement of Case refer to the cumulative total required for 10 apartments being a minimum of 100m^2, the total now proposed within the appeal building would be 114m^2. I am not persuaded by the appellant's argument that some occupants have no desire to have their own private amenity space, preferring more spacious internal accommodation. Policy requires the provision of private amenity space within apartment developments but does recognise that the availability of public open space in the immediate vicinity has to be factored in. Whilst there would be a shortfall in the provision with two of the 10 apartments having no private amenity space, I acknowledge that there is adequate public provision in the local area, given the close proximity to the adjacent Jubilee Park and the play park and open space available within the nearby section of Lagan Valley Regional Park which compensate for this deficit. I conclude that the proposed development now finds support in criterion (c) of Policy QD1 and Creating Places.

38. The inadequacy of bin storage in the original scheme has been addressed in the revised proposal. This issue is not addressed in planning policy. However to separate the residential and commercial bin storage as required by Building Control the revised scheme now proposes a total of 12.2m^2 for residential bin storage and 10.9m^2 for commercial use. Despite the LPA concerns that a different type of bin collection operates now compared to 2010 when the previous approval was granted, I consider that the appeal proposal before me offers an adequate level of provision for all users.

39. The issue of outlook of prospective residents was not raised by the LPA in their Reason for refusal or their Statement of Case. However at the hearing they argued that some rooms in Apartments 2 & 3 in the revised scheme would have a poor outlook. I agree with the appellant that the reference in Paragraph 4.16 of Policy QD1 refers only to ensuring that all buildings are orientated towards the public road and the appeal building would present frontages onto both

Kingsway and Church Avenue. Paragraph 5.9 of DCAN 8 does address the issue of outlook from all main living rooms and bedrooms which it states should enjoy natural light and a pleasant outlook. Both the living room and bedroom windows in Apartment 2 would be orientated towards its private terrace and despite its enclosure by a 1.8m high wall; its orientation to the south will ensure adequate light. The two bedrooms in Apartment 3 will also be orientated onto the terrace offering adequate light and whilst views would be restricted at the rear of the building; this would be compensated by the main living room / kitchen fronting the main road. I do not consider that the restricted outlook in one apartment would justify dismissal of the appeal.

40. EH also raised concerns about the proximity of the appeal building to the main aertial route and the potential for high noise levels associated with road traffic. The potential for noise emanating from the 2 ground floor retail units was also raised. EH are now satisfied that these matters can be addressed by condition, to ensure that adequate noise mitigation measures are introduced as outlined in a Noise Verification Report to be submitted and agreed by the Council. A Service Management Plan was submitted which confirmed that deliveries to the retail units would be restricted to protect residential amenities and reduce congestion. I am therefore satisfied that satisfactory living conditions would be provided for the prospective occupants of these apartments with the larger 2 bed apartments offering potential as family units. Given the adequate amenity space and bin provision and all other facilities, I do not agree that the appeal proposal would result in overdevelopment of the appeal site. The first reason for refusal has not therefore been sustained.

41. The 4th Reason for Refusal addresses issues of parking and access. The TA, Travel Plan and revised Parking Survey had not been forwarded to TNI hence the recommendation to refuse. The revised scheme indicates an increased access width which allows for the required sightlines of 2.0 x 33m to be achieved, as well as providing two additional cycle spaces. TNI acknowledge that the 10 car parking spaces now indicated does not meet the standards set out in Table 7 of Creating Places. However in light of the availability of adequate public transport in the area, given the close proximity to the local train station and main bus route and the provision of adequate bicycle spaces, TNI have raised no objection to the scheme. The objectors raise concern about the constant parking along Church Avenue, usually on the pavement, which blocks their accesses and obscures their visibility but this is a police matter. They consider that the parking surveys supplied do not reflect the level of on street parking during business hours or when there is a service on at a local church or hotel. TNI recognise that this is an issue but consider that there is adequate on street provision for visitors on the street and in local car parks to accommodate visitor parking associated with the appeal development.

42. Whilst there appears to be ongoing discussions about ways of addressing the problem with congestion in the general area, Church Avenue is too narrow to introduce yellow lines and other alternatives are being considered. Reference is made by objectors to the potential collective impact of another residential development in the general area but this is still under consideration by the LPA. I acknowledge the frustrations of residents who feel that the appeal proposal

would exacerbate the existing difficulties. The appellant has sought to encourage the use of public transport in order to reduce the use of cars by offering annual passes for two residents within the appeal building. In light of this and adequate provision for resident parking, cycle parking, and given that TNI have raised no objection to the revised scheme, the concerns of the LPA and the objectors on this matter are not determining and the 4th Reason for Refusal is not sustained.

43. The 5th Reason for Refusal addressed the need for a Drainage Assessment which was submitted with the appellant's Statement of Case. However the LPA failed to forward this detailed report to Rivers Agency for their assessment during the planning process or the appeal process. The appellant did provide a copy of the DFI Rivers consent for these proposals under Schedule 6 of the Drainage (NI) Order 1973 dated 5 February 2019. Whilst the consultant engineer indicated that this informs the RA agreement, and so it is unlikely that RA would have any objections, the LPA were unable to make any comment. I am not persuaded that a negative condition can be attached to address this issue. In the absence of evidence to the contrary, and given the granting of the Schedule 6 Agreement, I am satisfied that adequate measures can be put in place to mitigate flood risk and deal with drainage from the appeal site. The 5th reason for refusal has not therefore been sustained.

44. The 6th Reason for Refusal addressed the issue of potential contamination on the appeal site, given the former uses on that plot. EH have assessed the three Contamination Report submitted during the appeal process and as post hearing evidence have confirmed that no significant pollutant linkages have been identified on the appeal site which might have a significant risk to the human health of those prospective residents. In light of these conclusions, there is no need to consider unexpected future contamination or attach an informative requiring a verification report as suggested by EH. As I am satisfied that the matter has been resolved, the 6th Reason for Refusal has not been sustained.

45. As none of the 6 reasons for refusal or objectors' concerns have been sustained, the appeal shall succeed. The matter of conditions remains before me. To address the issue of parking first, conditions are required to ensure that none of the residential units are occupied until the parking areas for cars and bicycles have been provided, with further conditions requiring the provision of annual travel cards for two residents and compliance with the Service Management Plan. In the interests of road safety, sightlines of 2.0m x 33m must be provided prior to the occupation of any of the residential units and permanently retained. To protect residential amenities, it is necessary to attach a condition requiring the submission of a Noise Verification Report prior to the occupation of any of the approved development, demonstrating that the noise mitigation measures outlined in the 2008 Noise Impact Assessment have been incorporated to ensure that internal noise levels do not exceed the required standard set out in BS8233: 2014. Service deliveries and collections to and from the commercial premises should be restricted to between 7am and 11pm on any day to further protect residential amenities. Details of all materials to be used in the construction of the appeal building should be submitted to and agreed by the LPA. A condition is necessary to ensure the erection of the 1.8m

high walls enclosing the private terraces of Apartments 2 & 9 prior to their occupation, in order to protect the residential amenities of the adjoining property.

Conditions

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

(2) Prior to occupation of the hereby approved development, the applicant must submit to the Council, for review, a Noise Verification Report which:

(a) Demonstrates that the noise mitigation measures outlined in the F.R Mark 2008 Noise Impact Assessment have been incorporated into the proposed residential and commercial development, and;

(b) Demonstrates that internal noise levels within the proposed residential units shall:

Not exceed 35 dB $L_{Aeq.16hrs}$ at any time between 07:00 hrs and 23:00 hrs within any habitable room, with the windows closed and alternative means of acoustic ventilation provided in accordance with current building control requirements;

Not exceed 30 dB $L_{Aeq.8hr}$ at any time between the hours of 23:00hrs and 07:00hrs within any habitable room, with the windows closed and alternative means of acoustic ventilation provided in accordance with current building control requirements;

Not exceed 45 dB L_{Amax} more than 10 times between 23:00hrs and 07:hrs within any proposed bedrooms with the windows closed and alternative means of ventilation provided in accordance with current building control requirements.

The development shall not be occupied until the Verification Report has been approved in writing by the planning authority

(3) No service deliveries or collections to and from the premises shall take place between 11pm and 7am on any day.

(4) The development hereby permitted shall not be occupied until hard surfaced parking areas have been constructed in accordance with Drawing No. 14/130/PL03A. 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.

(5) The vehicular access 4.8m wide shall be constructed in general accordance with Drawing No**.** 14/130/PL03A. Prior to the occupation of any of the residential units, sightlines of 2m x 33m shall be provided and permanently retained.

(6) Six covered cycle parking shall be provided prior to the occupation of any residential unit and shall be permanently retained.

(7) The development hereby permitted shall operate in accordance with the Service Management Plan date stamped received by the LPA on 08/02/2018.

(8) The residential units hereby approved, shall not be fully occupied until 1 year travel cards has been provided free of charge to two of its occupants.

(9) No development shall commence on site until details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

(10) Apartments 2 and 9 shall not be occupied prior to the installation of a 1.8m high wall to enclose their private terrace which shall be permanently retained.

This decision relates to the following drawings and documents date stamped received by BCC on 8/02/18:

Drg. No. 14/130/PL01 1:1250 Site Location Plan;
Travel Plan;
Service management Plan
Design and access Statement; and
Transport Assessment.

as well as the following drawings submitted with the Appellant's Statement of Case date stamped received 19.12.18

Drg. No. 14/130/PL02 A 1:500 roof plan (revised)
Drg. No. 14/130/PL03 A 1:100 ground and first floor plans (revised)
Drg. No. 14/130/PL04 A 1:100 Proposed elevations (revised)
Drg. No. 14/130/PL05 A 1:100 Sections (revised)
Drg. No. 14/130/PL06 A Photomontage (revised)
Drg. No. 14/130/PL07 1:100 2nd & 3rd Floor Plans (revised)

In addition to a Revised Parking Survey REV A and Drainage Assessment dated November 2108, both received with the appellant's Statement of Case on 19/12/18 along with an updated Preliminary Risk Assessment and Generic Quantitative Risk Assessment received by the Commission on 11 February 2019.

COMMISSIONER PAULINE BOOMER

2018/A0099

Informal hearing held **23/01/2019**

Attended by:

BCC	Mr Paul O'Reilly (Planning BCC) Ms Kiera Reville (Planning BCC) Ms Miriam Quinn Senior (Environmental Health Officer BCC) Ms Rebecca McElwaine – (Contaminated Land Officer BCC)
DFI	Mr Colin Sloan TNI (Roads) Mr Kevin Murray TNI (Roads)
Appellant:	Mr Reg Weir QC Mr Eamonn Loughrey (agent) Mr McCreanor (Architect) Mr Tony O'Hare (McCreanor Architect) Mr John McKenna (Stratex) Mr John Keenan (TJK Consulting)
Objectors:	Mr & Mrs Graham (No. 5 Church Avenue)
Observers:	Mr Robert Jamison Ms Alison Redson

2nd Hearing **14/02/2019**

Attended by:

BCC:	Mr Paul O'Reilly (Planning BCC) Ms Kiera Reville (Planning BCC) Ms Nora Largey (Solicitor BCC)
Appellant:	Mr Reg Weir (QC) Mr Eamonn Lougrey (agent) Mr Tony O'Hare (Architect) Mr Paul McCrearnor (Architect) Mr John Keenan (TJK Consulting) Mr John McKenna (Stratex)

2018/A0099

List Of Documents

LPA 1 Statement of Case from Belfast City Council with Annex A
LPA 2 Documents submitted at the informal hearings including consultation responses and correspondence with the appellant; and
LPA 3 Consultation response from Environmental Health received 28 February 2019

APP1a Summary Statement from Appellant
APP1b Statement of Case from Appellant with Appendices
APP2 Documents submitted at the informal hearings including
- correspondence with the LPA;
- copy of Schedule 6 application dated 5/2/19;
- BCC guidance on waste storage; and
- BCC guidance on how planning applications are processed.

OBJ 1 Statement of Case from Mr and Mrs Graham with Appendices