Planning Appeals Commission

Appeal Decision

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Appeal Reference:	2019/A0028
Appeal by:	Mr Noel Graham
Appeal against:	The refusal of full planning permission
Proposed Development:	Erection of 9 dwellings
Location:	6-10 Fairview, Saintfield
Planning Authority:	Newry, Mourne & Down District Council
Application Reference:	LA07/2017/1849/F
Procedure:	Written representations and Commissioner's site visit on 14 October 2019
Decision by:	Commissioner Brigid McGlinchey, dated 28 November 2019

Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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 its not being raised before that time was a consequence of exceptional circumstances.

3. The appellant submitted an amended site layout drawing and a Bat Roost Potential Survey (BRPS) with his statement of case. Having reviewed the evidence in the round, I find that the amended drawing and the BRPS constitute new matters which was not before the Council at the time the decision was made. While the Council may have anticipated amendments and the submission of a BRPS as a result of communications with the appellant, the fact remains that these matters were not forwarded to the Council at the time the decision was made so they were not before the Council at the relevant time. The arguments presented including the chain of events that took place do not alter this fact.

4. The appellant presented arguments pertaining to exceptional circumstances as to why the amended site layout drawing and the BRPS were not submitted to the Council before the date of the decision. It is contended that there was a period of three weeks before the decision was issued to redraw a scheme and carry out an extended environmental survey. Whilst the appellant stated that he had been agreeable to reduce the scheme to eight dwellings and create additional parking, there is no evidence in the papers submitted that three weeks before the decision was issued on d22 March 2018 that the Council had countenanced a delay in determining the application to await this amendment. In any case, I consider that three weeks provided a sufficient time period to prepare and submit an amended site layout drawing and that there are no exceptional circumstances advanced which meant it could not have

been raised within that time frame. As the amended drawing is a 'new matter' it does not have the status of a material planning consideration to be considered under Section 59(2) of the Planning Act. I find that the amended drawing should not form part of the appeal. Accordingly, the decision is based on the site layout plan which was before the Council when it made its decision on 22 March 2018.

5. With respect to the submitted BRPS, I note that the appellant had submitted a second NI Biodiversity Checklist dated December 2018. This found that due to the identification of the potential suitability of the extant built structure to support roosting bats, it recommended that a BRPS was undertaken. It advised that such surveys are restricted to 1 March – 15 May and 15 August – 1 November. The appellant argues that the time limit before the planning decision was issued did not take account of the restricted duration for obtaining information for the BRPS. As the first available date to carry out the survey was 1 March, the applicant had effectively three weeks to carry out the survey and submit a report before the decision was issued. I note that such surveys have to be carried out under an appropriate license. The site investigations for the building roost assessments were undertaken by Ayre Environmental Consulting in March 2019 with the subsequent compiled report dated May 2019. Mindful that the Council was aware of the time restrictions for undertaking the survey and that an appropriate license is required, I consider that a restricted period of three weeks was unreasonable to facilitate a survey, prepare a report and have it submitted before the decision was issued. Given that the concern on the potential for roosting bats was the basis for a reason for refusal, the appellant should have been provided with a reasonable amount of time to provide the necessary information. Applying the yardstick of fairness and reasonableness, I am satisfied that the applicant could not have provided the information at that time of the decision being taken. I therefore consider that the BRPS should be considered as part of the appeal process.

6. The Council's corporate stance is set out on its decision notice and this supersedes the assessment and comments of any individual officer or representative from the consultation bodies that were made whilst considering the proposal. The final decision rests with the Council.

Reasons

7. The main issues in this appeal are whether:
   - the proposed development represents a quality residential development having regard to the surrounding context and character of the area and the proposed provision of private amenity space and parking;
   - sufficient information has been submitted in relation to the proposed parking in order to determine the application;
   - sufficient information has been presented to establish the impact on a protected species;
   - sufficient information has been submitted in relation to the Waste Water Network in order to determine the application.

8. As a consequence of the Court of Appeal declaring the adoption of the Belfast Metropolitan Area Plan 2015 (BMAP) to be unlawful on 18 May 2017, the Belfast Urban Area Plan 2001 (BUAP) operates as the statutory local development plan for the proposal. The draft BMAP (dBMAP) is a material consideration. The site lies within the development limit of Saintfield and is not zoned for any purpose in either plan. The BUAP encourages the provision of new housing within existing urban areas to stimulate urban renewal and meet local housing demand. The appeal development

would not be at odds with this or any of the other provisions of the BUAP or the dBMAP.

9. The Strategic Planning Policy Statement for Northern Ireland: Planning for Sustainable Development (SPPS) refers at paragraph 6.137 to the need to deliver increased housing without town cramming and espouses the importance of new development respecting local character and environmental quality, as well as safeguarding the amenity of existing and proposed residents. In respect of the appeal development, there is no conflict or change in policy direction between the provisions of the SPPS and that contained in Planning Policy Statement 7: Quality Residential Environments (PPS7), Planning Policy Statement 2: Natural Heritage and Planning Policy Statement 3: Access, Movement and Parking (PPS3) which provide the relevant policy context. The guidance in Creating Places: Achieving Quality in Residential Developments is also material to the consideration of the proposal.

10. The appeal site which covers an area of 0.13ha, has a road frontage width of approximately 30m and extends back to a depth of between 20-44m. It encompasses a two-storey terrace of four buildings fronting onto Fairview and a number of other buildings that extend back along two laneways defining the northeast and southwest boundaries of the site (both referred to as Fairgreen Lane in the appellant's proposed site layout drawing). Though the front elevations of the properties in the terrace have intact pitched tiled roofs and rendered walls, the rear returns are collapsed. The properties to the rear are a mix of one- and two-storey buildings which are boarded up and generally in a state of disrepair. In the P1 from accompanying the planning application, the structures on the site are stated as being "derelict and disused buildings last used approx. 1970". Notwithstanding this, I note planning history indicates that the narrowest building in the terrace had approvals for a change of use from a dwelling to a shop in 1974, a further change of use to a restaurant in 1976 and further approval granted in 1977 for internal alterations associated with the restaurant use. There is no planning history for any of the other properties.

11. A photograph of the terrace dated 15 January 1992 included in the appellant's evidence shows the aforementioned building and the two adjacent buildings as having evident commercial signage on the ground floor though all the premises appear to be vacant at that time. One of these buildings has a large opening with a roller shutter door which is not characteristic of a residential use and the photo shows a sign over the opening for a tyre service business. Whilst the appellant provided no specific details of the uses of the existing individual buildings, based on the planning history, the characteristics of the buildings and the photograph of the terrace, I accept that the appeal proposal entails replacing a mix of residential and commercial buildings. The appeal scheme involves demolition of all the existing buildings and replacing them with nine terraced dwellings, six along the road frontage and three to the rear with access for these latter dwellings from Fairgreen Lane running along the southwest of the site.

12. Policy QD1 of PPS7 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 environment. It further states in established residential areas, proposals for housing development will not be permitted where they would result in unacceptable damage to the local character, environmental quality or residential amenity of these areas. Under the policy, all residential development is required to conform to a number of stated criteria. The Council's objections relate to criteria (a), (c) and (f). Criterion (a) requires that development respects the surrounding context and is appropriate to the character in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and

hard surfaced areas. Criterion (c) requires adequate provision be made for private open space whilst criterion (f) necessitates that adequate and appropriate provision is made for parking.

13. The headnote of Policy QD1 states that the design and layout of residential development should be based upon an overall design concept that draws on the positive aspects of the character and appearance of the surrounding area. The amplification of the policy indicates that in assessing proposals in established residential areas particular account will be taken of the spacing between buildings, the safeguarding of privacy, the scale and massing of buildings and the use of materials. The acceptability of any scheme is thus dependent on its design and details as well as site-specific features and the context of the surrounding area. The appeal proposal is for nine 2½-storey dwellings (referred to as townhouses) with a ridge height of 8.4m. The six dwellings along the road frontage (No.1-6) are to be staggered in sets of two along the terrace reflecting the slight gradient of the road. They are to be setback 1m from the pavement edge with the residual area (surface unspecified) to be enclosed by railings. Each dwelling in the terrace would have a rear garden with four of the dwellings (Nos.2-5) having a parking space of 'gridforce' with grass within the garden. The other three dwellings (Nos.7-9) are to be positioned to the rear on the deepest part of the site and angled approximately 45º to the alignment of the front terrace. Each would have a rear garden. Five perpendicular parking spaces are indicated along the rear boundary of the site and to the front of No.7. Another parking space is indicated to the site of No.9.

14. The appeal site is immediately adjacent to a terrace of listed buildings at 1-5 Fairgreen and in proximity to another listed building at No.92 Main Street. From the most recent consultation response of Historic Buildings section of Historic Environment Division dated 8 June 2018, it is apparent that the design of the proposed dwellings were acceptable subject to the proposed works making use of traditional or sympathetic building materials which were listed. Apart from the rainwater goods which are unspecified, the appeal proposal appears to concur with the recommended materials. In this context, I consider that the design of the proposed dwellings would not be incompatible with the overall character of the surrounding area subject to details of the rainwater goods which could be secured by condition. However, the provision of dwellings compatible with the design of the listed buildings is not of itself demonstrative of the acceptability of the scheme. The acceptability of the overall proposal is dependent on the site layout and development concept with particular regard in this case to the proposed amenity space and in-curtilage parking provision.

15. Guidance provided in Creating Places recommends that back garden provision should range from a minimum of 40sqm to 70sqm per dwelling unit with smaller areas more appropriate for houses with 1 or 2 bedrooms. Whilst the quantum of the proposed amenity space for five of the dwellings meets the recommended minimum standard, four of the dwellings (Nos.2,3,4,5) have a substantial portion of the back garden designated as a parking space. Even if these parking spaces were finished in 'gridforce' with grass, they nonetheless would detract from the amount of useable amenity space. I consider that the shortfall in rear garden provision for these dwellings would not be counterbalanced in any way by the narrow enclosed strip to the front of the dwellings.

16. Whilst the floor plans for the dwellings identify 2 bedrooms, I note that one of the rooms on the first floor is notated as a study. I consider that given its position to the front of the dwelling and adjacent to the bathroom, that it probably would also be used as a bedroom by potential occupants. I agree with the Council's assessment of the proposal as 3-bedroom properties. I note that the guidance indicates that Paragraph

4.31 of the amplification of Policy QD1 attaches particular importance for the need for adequate private amenity space for family dwellings – generally dwellings with 3 or more bedrooms and that Creating Places states that garden sizes for dwellings for families would generally be larger than the average. Considering all these matters, I find that the proposal falls short of making adequate provision for private amenity space for the type of dwelling and the number of units on the site. The proposal therefore fails to comply with criterion (c) of Policy QD1.

17. Policy AMP7 of PPS3 states that development proposals will be required to provide adequate provision for car parking and appropriate servicing arrangements. The policy goes on to state that the precise amount of car parking will be determined according to the specific characteristics of the development and its location having regard to published standards or any reduction provided for in an area of parking restraint designated in a development plan. There would be a total of 10 parking spaces accommodated within the development site, four of which are designated spaces within the rear gardens of a number of dwellings. This quantum of parking would not meet the normal car parking standards espoused in Creating Places with the Council identifying a shortfall of eight parking spaces based on its assessment of the dwellings as 3-bedroom units. Whilst an additional 10 spaces are indicated perpendicular to the front terrace, this land is outwith the appeal site and is not within the appellant's ownership or control.

18. Policy AMP7 states that a reduced level of car parking provision may be acceptable in a number of stated circumstances. One of these is where the development would benefit from spare capacity available in nearby or on-street car parking. Paragraph 5.43 of the amplification of the policy states that it may be acceptable for small-scale developments, which do not generate significant parking demand, to rely on using on-street parking for a proportion of their parking provision. The policy also states that in assessing these options the decision maker will require evidence to demonstrate the capacity and availability of such alternative parking provision. In his statement of case the appellant stated that there were six commercial uses on the site plus six apartments and a large dwelling on the northeast boundary. Whilst the identified dwelling and the historic commercial uses have been indicated within the terrace, given the dereliction on the site the accommodation for the stated extent of residential and commercial uses was not apparent on the day of my site visit. Whilst he argued that the commercial premises and domestic properties on the site all had parking facilities, there was no obvious on-site parking provision and any existing parking provision has not been specified or quantified. In any case, the evidence from the appellant is that these uses have not been in operation for some considerable time. Whilst historically the existing uses on the site may have used on-street parking, no substantive information has been provided to make an informed judgment on this or to substantiate the appellant's claim that the proposal would increase the number of parking spaces. Whilst there is evident parking to the front of the terrace, no assessment has been made to demonstrate the availability and capacity of this street parking provision given the site's proximity to the town centre approximately 180m away. In this evidence vacuum, I agree with the Council that insufficient information has been submitted to determine the planning application. The Council's objection under PPS3 as set out the fifth refusal reason has therefore been sustained.

19. Criterion (f) of Policy QD1 of PPS7 also requires that both adequate and appropriate provision is made for parking. The proposed level of parking provision within the site is partially at the expense of making adequate provision for private amenity space. Notwithstanding the gardens to the rear of the houses, much of the visible area behind the street frontage would be taken up by hard surfaced car parking and turning area which would especially dominate the outlook from the three dwellings at the rear.

Although the appellant refers to the extensive areas of greenery and soft landscaping including the gridforce surface within some of the gardens, it is the hard surfaces which would visually dominate the development which would have an overall overcrowded appearance. I consider that the proposed parking layout would not be adequate nor appropriate and thus it would fail to satisfy criterion (f).

20. Paragraph 1.4 of PPS7 states that the promotion of more housing in urban areas should not be allowed to result in town cramming or damage to areas of distinctive townscape character. I find that the resulting configuration of amenity space and the quantum of parking spaces for the nine proposed dwellings is somewhat contrived. The layout of the houses on the site, which does not allow for a satisfactory resolution of adequate private amenity space and car parking provision, is indicative of overdevelopment of the site. Furthermore, even with the 45º alignment, the inadequate separation distance of 12m from the front elevation of dwelling Unit 9 to the rear elevation of dwelling Unit 4 is further indication of shoehorning the development onto the site. In my judgement, the proposed layout would appear cramped in appearance contrary to the overriding objectives of PPS7 and would be out of character in the surrounding context. I find that the proposal would not satisfy criteria (a), (c) and (f) of Policy QD1. Taking account of all the above factors set against the relevant policy considerations and guidance, I judge that the appeal proposal would not create a quality residential development in accordance with PPS7 and thus would be at odds with the policy provisions of the SPPS. The Council has sustained its first, second and third reasons for refusal.

21. Policy NH2 also sets out the planning authority's policy on the protection of European protected species and refers specifically those listed in Annex IV of the European Union's Habitats Directive 92/43/EEC. All eight species of bats resident in Northern Ireland are listed in Annex IV. The planning authority's concerns based on the consultation response from NIEA Natural Environment Division (NED) dated 5 February 2019 is that the existing buildings on the site may be suitable for roosting bats and that the demolition of the buildings may have the potential for injury or death of bats. The Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (the Habitats Regulations) transposes the provision of the Directive into domestic law. Regulation 3(4) of the Habitats Regulations requires the Commission in determining this appeal to have regard to the requirements of the Directive. Where there is a reasonable likelihood of bats being present on a site and affected by the development, the planning authority must adapt a precautionary approach.

22. The site investigations undertaken by Ayre Environmental Consulting Ltd on 21 March 2019 in preparation of the Bat Roost Potential Survey (BRPS) revealed that most of the existing buildings on the appeal site had a negligible habitat features likely to be used by roosting bats. Visual examination however of the east rear roof structure of No.10 found that it had potential roost features (PRFs) due to dislodged, broken and absent roof slates which would provide access to the internal aspect. The presence or absence of suitable PRFs within the internal aspect however was not determined as the inside of the building could not be accessed on the day of the site investigations. It was concluded that as the remaining inspected site area had an overall lack of physical evidence and continued decay to the eastern portions of the other units, it was deemed that the perceived risks of roosting bats utilising the building was minimal and thus it was assessed has holding negligible/low suitability. Nonetheless, due to the presence of identified PRFs and the potential for the loss of low suitability roosting provisions, the recommendations of the BRPS was that a further roosting suitability assessment should be undertaken either as a dusk or dawn survey between May-August to establish if the structure does support a roost. There is no evidence that this survey has been undertaken. In the absence of this information, I cannot be certain

that the development proposal if carried out would not be likely to have a significant detrimental impact on a European protected species. In these circumstances, there remains a lack of sufficient information and the planning authority has therefore sustained its third reason for refusal under PPS2.

23. It is proposed that the appeal development would link into the existing sewage system. The consultation response from NI Water indicated that though the Saintfield Waste Water Treatment Works has available capacity, the wastewater network is at its capacity. NI Water stated that it cannot approve connection with the implication that any further increase in the load has the potential to exacerbate this situation. However NI Water did indicate that it can consider connections where the developer can demonstrate (including calculations) that (i) the proposal is like for like development, (ii) extant previously approved development or (iii) where the development will offer a reduced loading on the sewer network. In these circumstances, I consider that it is necessary to have a concise assessment of the development currently on the site to determine if there is any capacity issue that would preclude linking to the public sewer network in the event of permission for the nine proposed houses being granted.

24. The appellant argues that the staff and residents that were and could be accommodated within the existing commercial and residential development would far exceed the residents of the proposed nine dwellings and consequently, the requirements and loading on the wastewater system is greatly reduced considering the possible reinstatement of the existing premises. However, though the appellant stated that there were six commercial uses on the site plus six apartments and a large dwelling, given the level of dereliction on the site, the accommodation for this extent of uses was not evident to me. In any case, the evidence points that the buildings on the site have not been in use for some considerable time. I therefore cannot determine if the development would offer a reduced loading on the sewer network.

25. Nonetheless, I consider that any shortfall in the existing public sewerage system could be satisfactorily addressed by an on-site treatment plant. As this is a full planning application, the matter can only be resolved by the imposition of a negative condition requiring installation of a package treatment plant on site pending its decommissioning upon any subsequent upgrade of the mains system. I consider the infrastructural deficiency does not weigh against the proposal and this matter of itself would not warrant the withholding of planning permission. The Council has not sustained its objection under its sixth reason for refusal.

26. However, as the other five reasons for refusal are sustained to the extent outlined above, the appeal must fail.

This decision is based on the following drawings:-

Drawing No	Scale	Title	Date received
1	1:1000	Untitled - Shows site location	23/11/17
2	1:1000	Untitled - Identifies viewpoints	23/11/17
3	1:500	Site survey	21/05/18
4	1:500	Existing site layout	21/05/18
5	1:500	Proposed site layout	21/05/18
6	1:100	Untitled - Shows elevations, floor plans and section	21/05/18
7	1:200/1:100	Untitled - Shows site layout and front elevation	14/08/18
8	1:200	Contextual elevation and shows site layout	21/05/18

COMMISSIONER BRIGID McGLINCHEY

List of Documents

Planning Authority:-	C1	Statement of case + Appendices
	C2	Rebuttal
Appellant:-	A1	Statement of case + Appendices
	A2	Rebuttal