Planning Appeals Commission

Appeal Decision

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Appeal Reference:	2019/A0030
Appeal by:	Botanic development company.
Appeal against:	The refusal of full planning permission.
Proposed Development:	Conversion, alteration and demolition of rear return of former office building to 6 No. apartments and construction of 31No. apartments, parking and associated development.
Location:	Land to the west of and including No. 81 University Street, Belfast.
Planning Authority:	Belfast City Council.
Application Reference:	LA04/2018/2192/F
Procedure:	Hearing on 14th November 2019 and 5th March 2020.
Decision by:	Commissioner Damien Hannon, dated 10th March 2020.

Decision

1. The appeal is dismissed.

Reasons

2. This appeal raises the main issues of whether the proposal would create a quality and sustainable residential environment, its impact on the overall townscape character of the area and its impact on road safety.

3. The Court of Appeal declared the adoption of the Belfast Metropolitan Area Plan 2015 (BMAP) unlawful on 18th May 2017 and consequently the document carries little or no weight. Other consequences of the Court of Appeal judgment are that the Belfast Urban Area Plan 2001 (BUAP), regardless of its vintage, now operates as the statutory Local Development Plan (LDP) and the draft Belfast Metropolitan Area Plan (dBMAP), published in 2004, is material to consideration of this appeal.

4. The policy context is provided by the relevant provisions of the BUAP and dBMAP, Planning Policy Statement 3: Access, Movement and Parking (PPS 3), Planning Policy Statement 6 Addendum: Areas of Townscape Character (APPS 6), Planning Policy Statement 7: Quality Residential Environments (PPS 7), Planning Policy Statement 12: Housing in Settlements (PPS 12) and Planning Policy Statement 13: Transportation and Land Use (PPS 13). Guidance contained in Development Control Advice Note 8: Housing in Existing Urban Areas (DCAN 8) and DCAN 15: Vehicular Access Standards, is also relevant to determination of this appeal. Reference was also made to provisions within the Strategic Planning Policy Statement for Northern Ireland - Planning for Sustainable Development - September 2015 (SPPS) and guidance contained in the Departmental publication

entitled ‘Creating Places: Achieving Quality in Residential Environments’ (Creating Places).

5. The appeal site is bounded by University Street to the north, Rugby Road to the west and Magdala Street to the south. It comprises 81 University Street and a hardsurfaced, enclosed car parking area sited between No. 81 and Rugby Road. The listed Fitzroy Church faces the car park on the opposite side of Rugby Road.

6. No. 81 University Road has two main components that display different design characteristics namely;
   - a 2½ storey Victorian red brick end of terrace fronting University Street with its side gable facing Rugby Road and;
   - a subsequently added part two storey, part single storey return with a main elevation facing the Rugby Road car park and a rear elevation fronting Magdala Street.

   The 2½ storey element, last used as offices, is currently vacant and is in a poor state of repair. It nonetheless displays classic Victorian features such as roof dormers, sliding sash, including ground floor bay, windows and stucco detailing to window and doorway surrounds, quoins and cornices. It has aluminium guttering to the front and upvc to the rear, although some cast iron goods remain.

7. The rear return is also constructed of red brick albeit from a different source than the original. Although it has sliding sash windows in its first floor western elevation and some remaining cast iron rain water goods, this elevation lacks the detailing of the front portion and has been substantially altered with ground floor window apertures infilled and recent additions including a modern chimney stack appended. The single storey elevation facing Magdala Street presents an inactive brick façade broken up by three shallow recessed panels with three small high level windows and an entrance archway set back off the façade by three metres.

8. The original scheme, which proposed 37 residential units with 11 car parking spaces, was amended to one comprising 36 units and 16 car parking spaces. Further drawings, providing additional information as to elevational treatment were submitted by the appellant at the hearing. The amended scheme involves retention and conversion of the 2½ storey part of No. 81, demolition of its small rear addition and rear return and the construction of an L-shaped extension to No. 81 rising to four storeys. The proposed design incorporates red clay facing bricks and a flat roofed upper floor finished in grey fibre cement panel.

9. Policy QD 1 of PPS 7 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 adds that 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 requires all proposals for residential development to conform to a number of criteria. The council argued that criteria (a) and (g) of Policy QD 1 would be offended as the proposal would fail to respect the surrounding context or draw upon the best local traditions of form, materials and detailing in terms of layout, scale, proportions, massing and appearance of buildings. The council argued that the proposal incorporated design elements not consistent with adjoining buildings and that consequently the scheme would read as a discordant element in the street scene that would detract from the prevailing character of the

surrounding area. The council made specific points in support of this argument including the following: -

- The scheme displays a condensed and inappropriate plot ratio.
- The proposed four-storey building is at odds with the 2 and 3 storey surrounding street frontage.
- The new building is box shaped with a flat roof and roof terraces.
- The ground and first floors of the proposed building combined are the same height as the ground floor of the adjoining building.
- The proposed fenestration including the dormer windows to the rear of No. 81 are not in keeping with that of its surroundings.

10. With the obvious exception of the Fitzroy Church, the streets immediately adjoining the appeal site are characterised by 2 and 3 storey 19th century Victorian terraces. The wider area displays a more eclectic development pattern and mix of uses including new, high-density development such as hotels and apartments. In this context and based on the submitted evidence, I am not persuaded that the proposed density or plot to building ratio, while higher than that of adjoining terraced housing, is materially greater than that prevalent in the surrounding area.

11. Although four storey, the roofline of the proposed building would be consistent with that of the adjoining 2½ storey No. 81 University Street. Given the stepped entrance and generous ceiling height of No. 81, the ground and first floors of the proposed building would occupy the same space as the ground floor of the existing building. Also, the proposed building does not replicate the window dimensions of No. 81, particularly at ground and first floor level and incorporates a flat roof, roof terraces and materials different to those of adjoining buildings. Nonetheless, the proposal incorporates horizontal design features such as transoms, banding, ridge and roof lines that follow those of No. 81. Furthermore, the rhythm of proposed façade, in terms of solid to void would complement that of its neighbour and the scheme does use red clay facing bricks. The dormer windows to the rear of No. 81 are large and would present as out of place and incongruous. However, due to their position and limited visibility from public viewpoints, they would have no unacceptable impact on the overall design.

12. The council further objected on the grounds that dead frontage, proposed along on Magdala Street at ground level, would appear as an intrusive element, detrimental to the visual amenity of the streetscape. The existing single storey elevation facing Magdala Street presents a plain and inactive brick façade. Contrastingly, the proposed Magdala Street elevation would provide some visual interest and interaction with the street and the rest of the development and to this extent would mark an improvement on the existing.

13. The council stated that the rear return made a positive contribution to the character of the surrounding area and argued that its loss through demolition would result in unacceptable detriment to townscape character. I accept that the Rugby Road elevation of the rear return may have historically presented as a residential terrace facing public open space. The current situation however, is one of a dilapidated, modified facade facing a hard surfaced area whose lawful use is as a car park. The Magdala Street elevation is stark and utilitarian and makes no positive architectural contribution to its surroundings. Taking these factors in the round, I conclude the contribution of the rear return to the character of the area to

be limited and that its demolition would not give rise to any unacceptable visual impairment of the street scene. Objection on the grounds that the demolition of the rear return would have a detrimental impact on the character of the area is not therefore well founded.

14. While policy requires development to respect its surrounding context in terms of scale, proportions, massing and appearance of buildings, it does not compel it to replicate the design of neighbouring development. The design of the proposed development is unashamedly contemporary and I consider that while not universally replicating them, it nonetheless draws upon the best local traditions of form and detailing in terms of layout, scale, proportions, massing and appearance of buildings. I am also persuaded that through the use of appropriate alternative finishes and design solutions where necessary, it successfully draws upon the best local traditions in terms of materials while adding a modern twist. In this context I conclude that the proposed development is of a design that would respect the surrounding context and comply with criteria (a) and (g) of Policy QD 1 of PPS 7. I further conclude that the proposal would create a quality and sustainable residential environment and that the council's second reason for refusal, based on of Policy QD 1 of PPS 7 is not sustained.

15. The appeal site lies within the area proposed as 'Holyland' Area of Townscape Character (ATC) in the dBMAP. The Commission, in its report on the BMAP public inquiry, considered objections to the general policy for the control of development in ATCs (Policy UE3) and to the specific designation BT 050 identifying key features of the ATC to be taken into account when assessing proposals. The Commission recommended that Policy UE3 be deleted and that detailed character analysis be undertaken, with a design guide produced for each ATC. As it stands, it is unclear how these recommendations will be reflected or how the area will be characterised, in any lawfully adopted BMAP. Nonetheless, the proposed ATC designation in dBMAP remains a material consideration relevant to this appeal.

16. The council objected on the grounds that the proposal would be contrary to policies ATC 1 and ATC2 of APPS6 (as mirrored in paragraph 6.22 of the SPPS). These policies however, apply to designated ATCs and therefore have no relevance to this appeal in respect of a proposed ATC. However, regardless of the lack of a policy context, the impact of the proposal on the overall character of the proposed ATC can still be objectively assessed in the context of the surrounding built form.

17. Given my earlier conclusions that the proposal would create a quality and sustainable residential environment, I further conclude that the proposed demolition and construction would have no unacceptable impact on the character of the surrounding built form. Objection on the grounds of detriment to existing townscape character are therefore not well founded and the council's first and third reasons for refusal based on policies ATC 1 and ATC 2 are not sustained.

18. The council advanced the argument that inadequate off street car parking provision was proposed and that this would exacerbate a situation of congestion on surrounding streets leading to a situation that would prejudice the safety and convenience of road users and whereby accidents would be more likely. The appellant stated that sufficient provision was made for vehicle parking when appropriate account is taken of policy and other relevant factors.

19. Policy TR 15 of the BUAP is entitled 'Car Parking Provision in New Developments' and states that in the case of development proposals in areas such as the appeal site, car parking provision will be agreed with the planning authority and will take account of the nature of the development and local circumstances. It is clear therefore, that while the BUAP does not designate Areas of Parking Restraint, it nonetheless embraces the concept of demand management.

20. The appeal site lies within the 'Belfast City Fringe Area of Parking Restraint' as designated in the dBMAP. In accordance with dBMAP Policy TRAN 4 'Parking Standards within Areas of Parking Restraint', one space per dwelling would be required in respect of the appeal proposal. It also states that variations from this normal standard may be considered in exceptional circumstances and then only if evidence of alternative transport arrangements can be clearly demonstrated. The Commission considered objection to this policy and in its report recommended minor changes to its wording stating; "The final paragraph of the policy should read; reductions in the above standards will be considered in appropriate circumstances where evidence of alternative transport arrangements can be clearly demonstrated or other material considerations exist that justify an exception to the policy".

21. These recommendations were carried forward by the council into the now quashed BMAP. However, there can be no certainty as to what provisions any future lawfully adopted BMAP would make regarding this issue although Draft Policy TRAN 4 of dBMAP remains a relevant material consideration.

22. PPS 13 aims to guide the integration of transportation and land use, particularly through the preparation of development plans and transport plans. While it provides no operational policies, it is nonetheless a material consideration in dealing with development proposals. One of its primary objectives is to integrate land use planning and transport by reducing the need to travel, especially by private car. Pursuant to its objectives, it advocates the use of Travel Plans for all significant travel generating uses in order to help reduce car dependency and advocates the use of parking controls to encourage more responsible use of the private car.

23. Operational policy regarding road safety is provided by PPS 3. Policy AMP 7 of PPS 3 is entitled 'Car Parking and Servicing Arrangements' and states that development proposals should not prejudice road safety or significantly inconvenience the flow of traffic and will therefore be required to provide adequate provision for car parking. It also states 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. The appeal site does not lie within an area of parking restraint designated in a development plan although as stated above, Draft Policy TRAN 4 of dBMAP remains a material consideration.

24. In any case, regardless of whether the appeal site lies within a statutory designated area of parking restraint, Policy AMP 7 goes on to state that beyond areas of parking restraint identified in a development plan, a reduced level of car parking provision may be acceptable in certain circumstances. These

circumstances include where, through a Transport Assessment, it forms part of a package of measures to promote alternative transport modes, where the development is in a highly accessible location well served by public transport or where it would benefit from spare capacity available as adjacent on street car parking. The planning authority argued that the use, in Policy TRAN 4, of the wording '*beyond* areas of parking restraint identified in a development plan, a reduced level of car parking provision may be acceptable', meant that reduced car parking provision cannot be considered within areas of constraint. Such a proposition however, would be entirely unreasonable as it could require other relevant material considerations to be disregarded.

25. Considering the evolution of relevant development plan provisions and policies, I conclude that parking restraint is appropriate to the appeal proposal and that when determining what is suitable car parking provision for a proposal, account should be taken of factors including the nature of the development, local circumstances and other material considerations such as evidence of alternative transport arrangements. Such an approach is advocated in advice contained in 'Creating Places' and DCAN 8. Policy TRAN 4 has not been adopted. However, commensurate with the weight it attracts as a material consideration, I consider it reasonable to use the specified standard of 1 car parking space per residential unit, while not an absolute, as a useful working benchmark.

26. In accordance with this standard, the proposal for 36 units with 16 car parking spaces would have a shortfall of 20 spaces. The appellant however argued that, when other relevant factors are considered, 16 spaces would constitute adequate provision for the proposal. The appellant's assertion that the area was well served by excellent public transport, cycling facilities and other amenities, as established through submitted evidence including the Transport Assessment Form, was not disputed.

27. The appellant also referred to the Car Parking Report by AECOM of October 2008 that concluded that, based on the most recent census data, 58% of apartment occupants in Botanic ward do not own a car. However, while I accept this statistic as correct, I am not persuaded that the figure necessarily reflects the aspirations of potential occupiers of the proposed development regarding car ownership. Furthermore, this evidence must be considered in the context that one bedroom apartments and, to an even greater extent, two bedroom apartments, may have multiple occupants. The Car Parking Report demonstrates that car ownership among apartment occupiers near the appeal site is below the average for the city as a whole. However, I do not accept that this factor alone would justify in curtilage provision of 0. 42 spaces per unit, as proposed.

28. The appellant also argued there to be significant available on street car parking in the vicinity of the appeal site and that this should be factored into the quantum of proposed parking provision. I was provided with evidence that residents parking zones and metered zones have been introduced as part of an ongoing initiative to address parking issues in the area. Based on this evidence and on my own observations, I conclude the streets surrounding the appeal site to be subject to considerable parking pressure. I am also aware that the relevant authority has the option of developing a comprehensive policy to address the matter of on street parking and to inform as to what is appropriate parking provision for proposed developments, perhaps through the development plan process. However, in the

absence of such an initiative I must make a determination based on the information available.

29. The appellant's main Parking Survey was carried out on 4 occasions namely: on 7th and 8th March 2018 at 0700h and again at 1900h. This concluded there to be surplus parking capable of accommodating between 10 and 29 vehicles at times of peak parking demand within a 200m radius of the appeal site. Two supplementary parking surveys were submitted showing 11 and 27 available car parking spaces within 100m of the appeal site. The council questioned the methodology employed in the parking surveys stating that: -
    - Photographs of the available spaces were not provided as was their standard requirement.
    - The survey included spaces located within 15m of a junction as well as spaces which, although mathematically available, were nonetheless inaccessible.

    Consequently, the council, while conceding there to be some degree of on street availability, did not accept the numerical conclusions of the surveys.

30. Taking the submitted evidence in the round, I would conclude that on street car parking convenient to the appeal site, while available, is limited both in terms of quantity and duration of availability. I also consider that to encourage residents to avail of on street spaces in an area of obvious parking pressure would be likely to encourage cruising and the temptation to illegally park, thereby contributing to congestion.

31. The commercial car park at the appeal site may accommodate commuters in the main and I accept that its removal may, to some extent, encourage modal shift to public transport. However, I was given no evidence to establish that local residents could not avail of these spaces. The Travel Plan presented by the appellant includes a comprehensive package of measures including provision of bicycles and or public transport subsidies and the active pursuit of initiatives, including car sharing, aimed at encouraging more sustainable and less car reliant travel patterns. However, while these initiatives would no doubt act to reduce car parking need, they are essentially aspirational and untested. In this context it is difficult to quantify what reduction in car parking provision such a package would justify.

32. The appellant made reference to a number of instances which he claimed to be comparable to the appeal proposal, where development had been approved with relaxed parking standards. While I accept that, in certain circumstances, similar concessions may have been made, I also am mindful that such decisions would have been the product of negotiation with the planning authority based on evidence, the detail of which I am not party. In any case, even if a pattern of inconsistent decision making regarding this issue was established, I do not consider it in the public interest that poor decisions are repeated.

33. Taking the submitted evidence in the round, I conclude that the mitigating factors presented by the appellant would justify a reduction in curtilage below the 1 space per residential unit specified in draft Policy TRAN 1. However, I remain unpersuaded that 16 in curtilage car parking spaces would be sufficient to accommodate a 36-unit scheme in this area. I conclude that the proposed provision would be likely to prejudice road safety or significantly inconvenience the flow of traffic. Objection to the proposal on road safety grounds is well founded. I accept that the proposal would involve some degree of environmental

enhancement and no detriment to amenity. However, these factors and that of the removal of a largely commuter car park, either individually or cumulatively would not outweigh objection to the proposal on road safety grounds that I have found upheld. The council's fourth reason for refusal based Policy AMP 7 of PPS 3 is therefore sustained.

34. Objection was also raised on the grounds that construction work may cause structural damage to neighbouring property, although no evidence was presented to substantiate this claim. In the event of such an occurrence, legal recourse would be available as is the situation in any other circumstance of construction adjoining neighbouring property. Objection was also raised on the grounds that construction noise would impact on the function of neighbouring office property where quiet is required to effectively conduct meetings. However, this situation arises with any construction project and such noise disturbance, within prosecutable nuisance parameters, would not be considered unacceptable. Third party objection on these grounds is not therefore sustained.

35. The council's reason for refusal that I have found sustained is determining in this case and the appeal fails.

This decision is based on the following drawings:-
1:1250 scale Location Map numbered 01 received by the Council on 24th August 2018.
1:200 scale Existing Elevations numbered 03 received by the Council on 24th August 2018.
1:250 scale Proposed Demolition Plan numbered 04 received by the Council on 24th August 2018.
1:100 scale Proposed Ground Floor Plan numbered 17106-ZZ-200-101 Rev 2 submitted at the hearing.
1:100 scale Proposed First Floor Plan numbered 17106-ZZ-200-102 Rev 1 submitted at the hearing.
1:100 scale Proposed Second Floor Plan numbered 09a received by the Council on 3rd December 2018.
1:100 scale Proposed Third Floor Plan numbered 11a received by the Council on 3rd December 2018.
1:100 scale Proposed Elevations 01 numbered 15a received by the Council on 3rd December 2018.
1:100 scale Proposed Elevations 02 numbered 17106-ZZ-400-107 Rev 02 received by the Council on 15th January 2019.
1:100 scale Proposed Elevations 03 numbered 17106-ZZ-400-108 Rev 02 Submitted at the hearing.
1:100 scale Proposed Elevations 03 numbered 17106-ZZ-400-108 Submitted at the hearing.

COMMISSIONER DAMIEN HANNON

List of Appearances 14th November 2019

Planning Authority:-	Ms Denise Kiley BL instructed by Belfast City Council. Ms Carol Anne O'Kane. Ms Louise Call (Council Solicitor). Ms Trudy Harbinson (Senior Planning Officer) Mr Kevin Murray (DFI Roads) Mr Eugene Curran (DFI Roads) Mr Neil McCann Botanic Development Co. Ltd.
Appellant:-	Mr William Orbinson QC instructed by Clive Shanks Mr Gavin Rolston (Planning Director Clive Shanks) Mr Andrew Murray (Director Todd Architects) Mr Stephen Duncan (Todd Architects) Mr Richard Agus (MRA)

List of Appearances 5th March 2020.

Planning Authority:-	Ms Carol Anne O'Kane. Ms Trudy Harbinson
Appellant:-	Mr Gavin Rolston Mr Andrew Murray

List of Documents

Planning Authority:-	COU 1	Statement of Case
	COU 2	Rugby Road/College Park Avenue Residential Parking Scheme drawing submitted at the hearing .
Appellant:-	APP 1	Statement of Case
Third Party Objector	T1	Statement of Case