Planning Appeals Commission

Appeal Decision

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Appeal Reference:	2019/A0113
Appeal by:	Amstel Developments
Appeal against:	The refusal of full planning permission
Proposed Development:	Additional two storeys for a duplex apartment on an apartment building approved under LA04/2018/1811/F
Location:	King Street, Belfast
Planning Authority:	Belfast City Council
Application Reference:	LA04/2019/0911/F
Procedure:	Hearing on 31 January 2020
Decision by:	Commissioner Brigid McGlinchey, dated 8 April 2020

Decision

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

Preliminary Matters

2. Article 3 of the Planning (General Development Procedure) Order (NI) 2015 sets out that a planning application should contain and be accompanied by a plan sufficient to identify the land to which it relates and showing the situation of the land in relation to the locality and in particular in relation to neighbouring land. Section 42 of the Planning Act (Northern Ireland) 2011 requires submission of a certificate identifying the ownership of land in respect of the site which is the subject of an application for planning permission. The purpose of an Article 42 certificate is to ensure that certain persons likely to be interested in or affected by the outcome of a planning application are notified of it**.** I must be satisfied that the owner has not been prejudiced and the purposes of the provisions of the Planning Act are not impaired in this regard.

3. The appeal site comprises a narrow gap between the Ibis Hotel and the College Central apartment block. The maintenance balconies on the 3rd, 6th, 9th and 10th floors of the proposed apartment building extend beyond the red outline of the appeal site and overhang a small triangular piece of land which was coloured blue in the accompanying location plan. I am satisfied that the plan identifies and locates the development site to meet the requirements of Article 3 of the Planning (General Development Procedure) Order (NI) 2015. Whilst the completed Certificate A accompanying the application indicated that the applicant had ownership or control of all the lands associated with the application proposal, other evidence before me indicates that the land outlined in blue belongs to a third party.

4. The courts have ruled however that an inaccurate certificate does not have the inevitable effect of invalidating a planning application and have tended to focus on the purpose of the statutory provision rather than its mandatory language in assessing the effect of a breach of the provision. The appellant at the hearing presented a letter from a solicitor acting on behalf of the owner of the adjacent land showing that an airspace encroachment easement from the first floor upwards had been granted to the appellant. Whilst the certificate pertaining to land ownership is inaccurate and this is technically an administrative deficiency, the evidence presented demonstrates that the owner of the adjacent land is fully aware of the proposed development and has engaged in the process. I am therefore satisfied that he has not been prejudiced and thus the requirement of the legislation has been met. I consequently find that there is a valid appeal in respect of the proposal determined by the planning authority.

5. Two reasons for refusal were initially advanced. By e-mail dated 19 December 2019, the Council indicated that it had received sufficient information to demonstrate that there was a safe method of discharging the calculated storm water run-off from the development and accordingly withdrew its second reason for refusal relating to Policy FLD3 of Planning Policy Statement 15: Planning and Flood Risk.

Reasons

6. The remaining issues in this appeal are (i) whether the proposal is in accordance with the development plan, (ii) its effect on the character and appearance of the area and (iii) impact on residential amenity.

7. Section 45(1) of the 2011 Planning Act requires regard to be had to the local development plan, so far as material to the application and to any other material considerations. Section 6(4) states that where regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise. The adoption of the Belfast Metropolitan Area Plan 2015 (BMAP) was declared unlawful by the courts in May 2017. Consequently the Belfast Urban Area Plan 2001 (BUAP) now operates as the local development plan for the area. A further consequence of the judgement is that the draft BMAP (dBMAP), published in 2004 and the Commission's report on the dBMAP Public Inquiry are material considerations in the determination of this appeal. The Council's reference however to the BMAP in its reason for refusal is misplaced as that plan's provisions do not apply.

8. The appeal site is located in the city centre of Belfast as defined in both the BUAP and the dBMAP. Policy CC7 of the BUAP seeks to re-introduce residential development to the City Centre and thus lends general support to the appeal proposal. Policy CC12 of BUAP states that high buildings must be sympathetic in scale to the traditional height of buildings in the City Centre. The text of the policy says that Belfast does not have the tradition of high point or slab blocks normally associated with large urban areas and that the centre has been built to a height of mainly four to six storeys. It goes on to say that policy will seek to ensure that high buildings relate sympathetically in design to the urban structure of the city and to their immediate surroundings.

9. While the appeal proposal would significantly extend the height beyond the traditional norm specified as being between 4-6 storeys in height, the immediate surroundings of the site also fall to be considered. Development on either side of the site comprises the College Central apartment block and the Ibis Hotel which are both 10-storeys high. There is no sense of sympathy or cohesion between the height, scale and design of these buildings and the more modestly scaled buildings on the other side of King Street which are 3-4 storeys in height. I have been provided with no evidence that there has been any material change in circumstances between the times when the decisions approving the higher blocks were taken and now. However, I must consider the appeal proposal in the current legislative context which gives primacy to the development plan. Notwithstanding that some of the established development in the immediate area would lend some support to the proposal, I consider that on the whole the proposal runs counter to the main thrust of Policy CC12 as it would create a 12-storey building, twice the height of the upper limit specified as a requirement.

10. The principle of development on the appeal site however has already been established with the approval of a 10-storey apartment block on 21 February 2019 under planning reference LA04/2018/1811/F. Whilst this application was determined in the same legislative context currently prevailing, I find that the height of the approved development also runs counter to the thrust of Policy CC12 of BUAP. Nevertheless, based on the evidence before me, this recent approval represents a realistic fall-back opportunity for the appellant. In light of the fact that there has been no change in the relevant policy or legislation, I must therefore make a comparison between this fall-back positon and the appeal proposal.

11. The dBMAP contains a number of relevant City Centre policies and designations that are material to the appeal. Policy UE1 states that within the designated character areas, planning permission will only be given to development proposals which comply with urban design criteria in the District Proposals. The PAC report following the public examination into dBMAP recommended no major change to this policy but recommended that the wording of the policy be amended from 'comply' to 'which are in accordance with'. The Department agreed with this amendment. It is therefore likely that if BMAP were ever to be lawfully adopted, the amended version of Policy UE1 would be included.

12. In dBMAP, the site falls within Designation CC012: Old City Character Area and within Designation CC031: City Centre gateway site. There are no pertinent design criteria under Designation CC031 relevant to the appeal proposal. Designation CC012 however sets out numerous urban design criteria. In the 'Intersections' section, it stipulates the maximum height of buildings on key gateway sites to be 7 storeys. The appeal proposal would be at odds with this criterion and thus would not be in accordance with Policy UE1 in this regard. However, there is the extant approval for the 10-storey apartment block which represents a realistic fall-back development opportunity for the appellant. Whilst this fall-back was granted under the same prevailing policy context, the Council's rationale for approving that development proposal was that the existing buildings on this gateway site already exceeded the height restriction with the prior approval and development of the College Central Apartments and the Ibis Hotel. This rationale was also taken having regard to the design criterion in the 'General' section of Designation CC012 which states that development proposals shall take account of the height of adjoining buildings. This 'general' criterion is a broad requirement and I consider

that ‘to take account of the height of adjoining buildings’ does not necessarily mean that proposals must slavishly adhere to the established height of the neighbouring buildings. I note that the Council indicated that increased height variances were evident along the predominant primary frontages of College Avenue and the junction of Castle Street. I am unaware of any material change in planning circumstances since the extant permission was granted. In these circumstances, I must consider what harm, if any, would be caused by the appeal proposal, taking into account what has been allowed on the appeal site in the context of adjoining development from the identified viewpoints.

13. The appeal site is a narrow gap site measuring 4.8m. The approved 10-storey apartment building on the site extends to the width of the plot. The appeal proposal for an additional two storeys which would extend the height of the approved building by 4.7m and mimic its material palette. When viewed heading north at the junction of King Street and College Avenue, the appeal proposal would be seen in the context of the jagged roofline of the adjacent College Central apartment block. There would be negligible appreciation of any height difference with either the adjoining apartment block or the Ibis Hotel from this perspective. From more distant approaches to the south along College Avenue, views of the extension would be screened by the existing apartment block and would barely be discernible. From the more distant views from the east at the junction of King Street and Berry Street, the appeal proposal would be seen in the context of the bulk and mass of the Ibis Hotel in the foreground and would not be a noticeable feature.

14. When viewed from Millfield/Carrick Hill, the proposal would be seen in the context of the northern elevation of the College Central apartment block which has protruding bay modules that define the roofscape of its corners. In this context, the height of the appeal proposal would not appear overly discordant from this perspective. The height differential of the proposed extension with its neighbours however would become apparent from the junction of King Street and Castle Street and when heading south on King Street which forms, what the Council refer to as the ‘secondary frontage’ of the gateway designation. Though the resulting building would appear taller than the adjoining 10-storey buildings, I do not consider that it would attract undue emphasis as it would be seen in its totality as a slender insertion between the two large blocks either side. I consider that the height differential of this narrow protrusion would not appear overly discordant within this standalone designated gateway site and would not harm the integrity of the Old City Character Area where other roof top level variances in this and other parts of the city centre are evident. The additional two storeys would not be unduly visually disruptive to unbalance the legibility of the established blocks within this character area. Consequently, the proposal would not result in demonstrable harm nor indeed would it be at odds with the general criterion of designation CC012.

15. Having regard to what has been approved on the appeal site and based on my consideration that there would no adverse environmental impact, I find that though the proposal does not accord with the BUAP or all of the material considerations in the dBMAP, on balance the appeal proposal would be acceptable. As a consequence, the first element of the reason for refusal is not sustained. I now turn to the other material considerations in this case.

16. Regional planning policy relating to the proposal is contained in the Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS). Paragraph 4.27 of the SPPS states that planning authorities will reject poor designs particularly proposals that are inappropriate in their context, including schemes that are out of scale, or incompatible with their surroundings, or not in accordance with the local development plan or local design guide. Specific policy for residential development proposals is set out in Planning Policy Statement 7: Quality Residential Environments (PPS7) which is retained by the SPPS. Policy QD1 of PPS7 sets out a list of criteria that all residential developments should conform to. The objections raised in this case relate to criteria (a), (g) and (h). Criterion (a) requires that the development respects the surrounding context and is appropriate to the character of the site in terms of inter alia scale, proportions and appearance of buildings. Criterion (g) necessitates that the design of the development draws upon the best traditions of form, materials and detailing. The aims of criterion (h) include avoiding any unacceptably adverse effect on existing or proposed properties in respect of matters such as loss of light or any other disturbance.

17. Though the proposal would be taller and protrude above the neighbouring buildings, I consider that having regard to its narrow width, the resulting height and scale of the building would not cause acute visual disharmony or detriment to the built form of the area. The design of the additional two storeys complements the contemporary design and mimics the material palette of the 10-storey apartment building already approved (LA04/2018/1811/F). As that approved scheme was deemed acceptable and is still live, the expressed concerns regarding the design of the appeal proposal are not sustainable. I find that the proposal does not offend criteria (a) and (g) of Policy QD1.

18. The angled alignment of the College Central apartment block means that windows on its northwest elevation do not face directly towards the apartment development approved on the appeal site. The objector's concern was that the proposed development would impact on the amount of light entering habitable rooms of the apartments on the top two floors of the College Central block. Whilst the objector had arranged access to the apartment block, entry to the actual subject apartments on the 9th and 10th floors was not facilitated on the day of my arranged site visit. Nevertheless, based on my assessment at street level and from an walkway serving the apartments on the 9th and 10th floors which provided views of the windows which the objector stated served bedrooms, I am not persuaded that the additional height would result in a material loss of light to the apartments on the two upper floors or a significant increase in the sense of enclosure effect in relation to those properties. The objector made reference to an outlet flue on the ground floor of the northeast elevation of the College Central apartment block. There is no substantial evidence to support his claim that that gas from the outlet flue would be trapped as a consequence of the proposed addition of two floors and be a significant risk to cause detriment to the existing or proposed residents. I am reinforced in this as there was no objection from Environmental Health in this regard. Considering all the matters raised, I am satisfied there would be no unacceptable impact on the living conditions of the occupiers of the nearby apartments or proposed apartments as a result of the appeal proposal. The proposal therefore complies with criterion (h) of Policy QD1 of PPS7.

19. As the concerns under criteria (a), (g) and (h) have not been sustained, I find that the proposal is not contrary to Policy QD1 of PPS7 or to the SPPS. As a

consequence, this element of the reason for refusal and the third party objections have not been upheld. The appeal therefore succeeds.

20. The Council presented only the standard time condition to be attached to the appeal proposal. At the hearing, the Council however revised its position on the conditions that should be imposed and indicated that the conditions attached to the previous permission for the apartment building (LA04/2018/1811/F) should be replicated. The appellant did not object to this and third party objector had no comment on the matter. Having reviewed these conditions in detail and bearing in mind the legislative tests for conditions, I have reworded a number of them in order to provide greater clarity.

21. The appeal site is in close proximity to sensitive receptors and the development process can be disruptive to local residents due to dust and noise albeit that it would be temporary. In relation to these matters, Condition 2 of the extant approval reads as follows:
"Prior to commencement, the methodology detailed in the Air Quality Impact Assessment (October 2018) and Construction Air Quality and Noise Impact Assessment (November 2018) shall be carried out and the proposed noise and vibration monitoring methods, noise mitigation methods and evidence of neighbour liaison shall be submitted to and agreed in writing by Belfast City Council".
I however find that the overall wording of this condition to be unclear and imprecise as it included a reference to an Air Quality Impact Assessment (October 2018) which related only to the operational phase of the development project; the 'methodology' appears to be that carried out to do the assessments; and noise and vibrating monitoring methods were not proposed or detailed in either assessment. I therefore consider that more concisely worded conditions be applied relating directly to the detailed mitigation measures as set out in the 'Construction Air Quality and Noise Impact Assessment' (November 2018) which included details of the proposed time periods of the building operations.

22. Condition 3 of the approval reads as follows:
"The sound insulation of all the residential units shall include the implementation of the noise and vibration mitigation measures outlined in the Air Quality Impact Assessment (October 2018) and 'Construction Air Quality and Noise Impact Assessment' (November 2018)".
I note however that there are no sound insulation measures set out in either of the two listed assessments and as a consequence, this condition is unclear, imprecise and unenforceable. Sound insulation measures for the proposed apartments were however set out in the 'Noise Impact Assessment' (October 2018). The condition should therefore be reworded to make reference to this latter report.

Conditions

(1) Prior to commencement, a Dust Management Plan and evidence of neighbour liaison shall be submitted to and agreed in writing by Belfast City Council

(2) During the construction phase of development, the Dust Management Plan, communications and the other site specific mitigation measures relating to dust management, site management practices for construction and trackout and noise mitigation measures as set out in the 'Construction Air Quality and Noise Impact Assessment' (November 2018) shall be carried out.

(3) The construction activities shall operate only between the hours of 08.00 and 18.00 on Mondays to Fridays, between 08.00 and 13.00 on Saturdays and there shall be no activity on Sundays or Bank Holidays.

(4) The sound insulation of all the residential units shall include the implementation of the noise and vibration mitigation measures outlined in the 'Noise Impact Assessment' (October 2018).

(5) The entire window system (including frames, seals and glazing) and ventilator units shall be so installed so as to ensure that internal noise levels within any of the proposed apartments shall:

- Not exceed 35dB $L_{Aeq,16hrs}$ at any time between 07.00hrs and 23.00hrs within any habitable room, with the windows closed and alternative means of acoustic ventilation provided in accordance with current building control requirements;

- Not exceed 30dB $L_{Aeq,8hr}$ at any time between 23.00hrs and 07.00hrs within any proposed bedrooms with the windows closed and alternative means of acoustic ventilation provided in accordance with current building control requirements;

- Not exceed 45db L_{Amax} more than 10-15 times between 23.00hrs and 07.00hrs within any proposed bedrooms with the windows closed and alternative means of acoustic ventilation provided in accordance with current building control requirements;

(6) Prior to occupation, the installation of the gas fired boiler for the proposed development shall meet the technical specification as detailed in Table 2 within Chapter 3.0 of the Air Quality Impact Assessment (October 2018). Prior to installation of the boiler, details of the location and the height of the vent or stack to provide adequate dispersion of emissions shall be submitted to and agreed in writing by Belfast City Council.

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

This decision is based on the following drawings submitted with the planning application:-

- 01 1:1250 Site location plan;
- 02 1:200 Existing/Approved site layout;
- 03 1:100 Existing approved floor plans;
- 04 1:100 Existing approved elevations;
- 05 1:100 Proposed floor plans; and
- 06 1:100 Proposed elevations.

COMMISSIONER BRIGID McGLINCHEY

List of Appearances

Planning Authority:-	C Doherty
Appellant:-	P Lee, Arcus Architects D Donaldson, Donaldson Planning
Third Parties:-	G Smyth, Clyde Shanks Ltd

List of Documents

Planning Authority:-	C1	Statement of case + Appendices
Appellant:-	A1	Statement of case + Appendices
	A2	E-mail and map from TLT solicitors
	A3	Photomontages of the appeal proposal from different viewpoints
Third Parties:-	O1	Statement of case + Appendices