Planning Appeals Commission

Appeal Decision

Park House
87/91 Great Victoria Street
BELFAST
BT2 7AG
T: 028 9024 4710
F: 028 9031 2536
E: info@pacni.gov.uk

Appeal Reference:	2019/A0071
Appeal by:	McLaughlin and Harvey Limited
Appeal against:	The non-determination of an application for full planning permission
Proposed Development:	Development of 10 semi-detached houses and 11 apartments and associated landscaping and site works
Location:	Former Castle Erin Hotel and Conference Centre, Castle Erin Road, Portrush
Planning Authority:	Causeway Coast and Glens Borough Council
Application Reference:	LA01/2019/0459/F
Procedure:	Informal Hearing on 4th December 2019
Decision by:	Commissioner Diane O'Neill, dated 9th April 2020

Decision

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

Claims for Costs

2. A claim for costs was made by the appellant against the planning authority. A claim for costs was also made by the planning authority against the appellant. These claims are the subject of separate decisions.

Preliminary Matters

3. At the end of the hearing the appellant suggested that, if necessary, I consider a reduced scheme which would involve the removal of proposed apartment block A (units 1-3). Following post-hearing evidence on the matter from the planning authority, the appellant however withdrew the suggestion requesting that I determine the appeal based on the submitted plans and supporting information. The appeal has been determined on this basis.

Reasons

4. The main issue in this appeal is whether the adjacent amusements would have an adverse impact on the residential amenity of the proposed residents.

5. 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. Within the Northern Area Plan 2016 the appeal site is located within the settlement development limit

of Portrush and is partially located within West Bay Local Landscape Policy Area-Designation PHL 02. The area to the west of the appeal site is designated as the Portrush West Strand ASSI due to its underlying geology and as the Skerries and Causeway SAC due to its marine area, sea inlets and marine and coastal habitats.

6. 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 are Planning Policy Statement 7: Quality Residential Environments (PPS 7). Creating Places also provides relevant planning guidance.

7. The appeal site is located between a railway line (to the east) and the shoreline of Portrush (to the west). A coastal path is located at a lower level along the western boundary of the appeal site. Barry's Amusements complex and Castle Erin Road are located to the north of the appeal site; Portrush railway station is located to the north-east. A major area of existing open space is located adjacent and to the south of the appeal site. Predominantly terraced residential properties are located on the other side of the railway line along Eglinton Street. Having been the site of the former Castle Erin hotel, which has been demolished, it is primarily covered in hard surfacing and enclosed in metal or wooden post and wire fencing. Planning history of note on the appeal site is LA01/2015/0459/F, submitted on 21st July 2015, which is for the same proposal on the same site; this is under consideration by the planning authority.

8. The appeal proposal is for the erection of 10 no. semi-detached houses and 11 no. apartments together with associated landscaping and site works. The 10 dwellings would be located along the western seaward frontage of the site together with one of the blocks of apartments (Apartments A). Apartments A would comprise of a three-storey block of three apartments. It would have a semi-enclosed acoustic shelter located within its communal amenity space located along its north-westerly seaward front elevation. The shelter would have a steel frame with timber and glass cladding and would be located at the northern point of the amenity space. Screen planting would be placed to the east of the acoustic shelter between it and the Castle Erin Road which would be utilised to provide the access to the development. There would be two blocks of 4 apartments each located along the eastern boundary of the site adjacent to the railway line. A 2.5m high rendered wall, together with screen planting, would be located along the eastern side of the northern boundary and would be positioned between a proposed car parking area and Barry's Amusements complex. Steps down to the coastal path, located along the western side of the appeal site, would be repositioned to be located between semi-detached properties (units 7 and 8).

9. Irrespective of planning officers' recommendation to approve an identical proposal (LA01/2015/0459/F) at numerous planning committee meetings, it is the corporate view of the Council on the current appeal proposal which I have to assess. Their view was expressed within the draft reason for refusal which stated that the proposal was contrary to criterion (h) of Policy QD 1 in PPS 7 and paragraph 4.11 of the SPPS in that it had not been demonstrated that the development would not create conflict with the adjacent amusement/fun fair land use as it was considered that this would have an unacceptable adverse effect on the proposed properties in terms of noise. The planning authority stated at the hearing that their concern

related to the noise level that would be experienced within the proposed amenity space of the three apartments in Apartments A. An objector stated that the proposal would have a negative impact on the existing amusements business however did not substantiate their concern. Barry's Amusements complex is currently for sale however, regardless of who the future owner may be, its impact on the proposal, and their compatibility, has to be assessed.

10. Irrespective of work having commenced to update it, the scope of British Standard (BS) 8233:2014 'Guidance on sound insulation and noise reduction for buildings' states that it provides guidance for the control of noise in and around buildings; it is therefore not accepted that it is only applicable for assessing internal noise levels. Paragraph 7.7.3.2 deals with the design criteria for external noise and states that for traditional external areas that are used for amenity space, such as gardens and patios, it is *desirable* (my emphasis) that the external noise level does not exceed 50dB $L_{Aeq,T}$ with an upper guideline value of 55 dB $L_{Aeq,T}$ which would be acceptable in noisier environments. These values correspond with the World Health Organisation (WHO) Guidelines for Community Noise (1999); the WHO Environmental Noise Guidelines (2018) only relate to environmental noise originating from transportation (road traffic, railway and aircraft) noise, wind turbine noise and noise people are exposed to during leisure activities.

11. The BS 8233 guidelines recognise that these values are not achievable in all circumstances where development might be desirable. In higher noise areas, such as city centres or urban areas adjoining the strategic transport network, a compromise between elevated noise levels and other factors, such as the convenience of living in these locations or making efficient use of land resources to ensure development needs can be met, might be warranted. In such a situation, it is stated that development should be designed to achieve the lowest practicable levels in these external amenity spaces, but should not be prohibited. Other locations, with the example given of balconies, roof gardens and terraces, are also said to be important in residential buildings, such as apartment blocks, where normal external space might be limited or not available. In these locations, the guidelines consider that the specification of noise limits is not necessarily appropriate. The general guidance on noise in amenity space is still however said to be appropriate for larger balconies, roof gardens and terraces, which might be intended to be used for relaxation. In high-noise areas, consideration should be given to protecting these areas by screening or building design to achieve the lowest practicable levels. It is acknowledged that achieving levels of 55 dB $L_{Aeq,T}$ or less might not be possible at the outer edge of these areas, but should be achievable in some areas of the space.

12. The planning authority considered that the guideline noise level of 50-55dB should be adjusted to take account of the specific character of the noise at this location. Paragraph 7.7.1 of BS 8233 states that the identified indoor ambient noise levels for dwellings relate to noise without character. While the internal guideline levels partly relate to preventing sleep disturbance, they also provide levels for resting and dining which are activities which could also occur in the external amenity space of a property. There is an accompanying note within Paragraph 7.7.1 to state that noise has a specific character if it contains features such as a distinguishable, discrete and continuous tone, is irregular enough to attract attention, or has strong low-frequency content, in which case lower noise levels might be appropriate. It is therefore logical that the design criteria for external

noise, in the following page of the document, also relates to noise without character. Although paragraph 7.7.3.2 does not refer to adjusting the desirable external levels due to the specific character of the noise, the introductory paragraph of the guidelines state that the levels suggested might need to be adjusted to suit local circumstances. The appeal proposal would be located adjacent to Barry's Amusements which operate on a seasonal basis. The appellant estimated that it opens approximately 30% of the year and the planning authority stated that it operates during daytime hours predominantly in the summer months. The results of a noise survey conducted by the appellant in August 2019 demonstrated that the predominant noise generated from the Barry's Amusements complex was music as well as mechanical noise from the big dipper fun ride and people screaming. As a consequence, I concur with the planning authority that the external noise levels also need to be corrected and uplifted by 6dB.

13. The appellant's October 2019 noise impact survey report recorded measurements in the vicinity of the most proximate residential unit (unit 1 of Apartments A) to Barry's Amusements complex. The ambient noise level outside the hours of operation of Barry's Amusements ranged from 55-65dB $L_{Aeq,15min}$ during the daytime and night time due to wave movement and coastal noise. The survey found that the noise levels impacting unit 1 would vary from 67.3-70.1dB $L_{AEQ,10hr}$ during the times at which Barry's Amusements facility is in operation. Lester Acoustics report, prepared by Barry's Amusements who are an objector to the proposal, predicted a value of 70.8dB L_{Aeq} at the survey location. The appellant's noise assessment used this worst case scenario figure to establish mitigation measures which they considered to be appropriate and which concurred with both sources of data. One of the mitigation measures which related to the external amenity space of Apartments A was positioning an acoustic barrier within this area. At the hearing the appellant accepted that the attenuation noise levels within the acoustic shelter could be uplifted by 6dB to take account of the specific character of the noise at this location. The appellant also stated that the noise level within the shelter would be below 55dB.

14. Paragraph 5.20 of Creating Places states that, in the case of apartment development, private communal open space will be acceptable in the form of landscaped areas, courtyards or roof gardens. These should range from a minimum of 10 sq.m per unit to around 30 sq.m per unit. The appropriate level of provision should be determined by having regard to the particular context of the development and the overall design context. It is stated that generally development in inner urban locations and other high-density areas will tend towards the lower figure. No concern was raised in relation to the level of open space provision for Apartments A.

15. Although it was claimed by the appellant that the previous hotel users did not experience any noise nuisance, it would have been occupied by visitors as opposed to residents and its layout would have been of a different formation thus preventing it being an appropriate comparison. No substantive evidence was presented by the objector that the residential properties along Eglinton Street are adversely impacted from the noise generated from the Barry's Amusements complex or that this has given rise to a complaint. The appeal site is however in a popular location within the development limit of Portrush close to its town centre and in close proximity to the railway station. The development of this unsightly brownfield site makes efficient use of the land resource within the settlement limit

of the town. The three three-bed apartments (Apartments A) would have an open plan living, dining and kitchen area with extensive glazing along the north-westerly elevation permitting views towards the sea. Given that it is for an apartment development, this communal area of Apartments A would act as a visual amenity space which would allow the proposed residents to enjoy the views from within the seaward facing properties. If they so wished, residents could sit within the amenity area or within the acoustic shelter and it could be ensured by planning condition that the noise level within the acoustic shelter would be at the lowest practicable level. The planning authority stated that the proposed residents would wish to avail of the amenity area during the times when Barry's Amusements would be operational. However, the appellant's design expert highlighted that given their orientation, Apartments A would not benefit from much sunshine and would be exposed to coastal winds; these factors may reduce the frequency of the proposed residents' inclination to relax within the more open section of this area. The noise generated by Barry's Amusements would be of a seasonal nature when the seaside town would be experiencing its most visitors. According to the planning authority, the noise from the complex would not occur before 10am or after 10pm. Barry's Amusements is also a long established complex and potential residents would be aware of its existence. The planning authority's objection only related to 3 of the proposed 21 residential units and it would be a matter of choice for the potential occupants whether they selected one of these apartments as opposed to one of the other 18 units. The scheme would also provide access via a coastal path to a substantial area of existing open space along West Strand Beach which is adjacent and to the south of the appeal site. This path also provides access to Mill Strand and the harbour area located to the north of the appeal site.

16. In terms of the purpose of planning, paragraph 2.3 of the SPPS states that good neighbourliness and fairness are among the yardsticks which development proposals will be measured. Paragraph 4.11 of the SPPS also states that the planning system has a role to play in minimising potential adverse impacts, such as noise pollution on sensitive receptors, by means of its influence on the location, layout and design of new development. Reference is also made to strategic guidance being provided within Annex A of the document. Annex A acknowledges that noise is an inevitable consequence of human activity and cannot be avoided entirely. It recognises that noise, particularly where it is loud, prolonged or evident during normally quiet periods or in unusually quiet areas, can impact adversely on human health and well-being. Annex A calls for decision makers to reach balanced decisions that consider noise issues alongside other relevant material considerations, including the wider benefits of the particular proposal.

17. Given the nature and context of the proposal in a sustainable location adjacent to a long established amusements complex, the seasonal, intermittent and daytime occurrence of the noise when the seaside town would be at its busiest and the proposed mitigation measures including the erection of an acoustic barrier and units having sound proofing design elements which could be secured by planning conditions, I consider that within these circumstances there would not be an unacceptable conflict between the adjacent amusement land use and the amenity space of Apartments A.

18. As I consider the proposal to comply with planning policy in relation to this matter, I am not persuaded that the current noise level generated by Barry's Amusements,

on which the assessment was based, would present a risk of nuisance within the amenity area of Apartments A for the reasons previously outlined. Case law was presented by the appellant in relation to the possibility of Barry's Amusements being granted a potential easement to transmit soundwaves across the appeal site however at the hearing the appellant stated that Barry's Amusements had failed to enter into such a discussion. No substantive evidence was presented to support the planning authority's assertion that should Barry's Amusements complex chose to change their fun rides that the noise level experienced within the external amenity space of Apartments A would increase to an unacceptable level.

19. Accordingly, the draft reason for refusal and the objectors concerns in relation to this matter are not sustained.

20. No substantive evidence was presented as to how the proposal would result in ground stability issues and not to be in keeping with the character of the area or why infrastructure could not accommodate the additional 21 residential units. A drainage assessment accompanied the proposal and DfI Rivers, who are the competent authority in relation to this matter, raised no objection to the scheme.

21. As the draft reason for refusal and the objectors concerns are not sustained, the appeal succeeds.

22. In terms of the imposition of planning conditions, all construction activity should be confined to within the site boundaries in order to protect the integrity of the adjacent designated sites (Skerries and Causeway SAC and Portrush West Strand ASSI). A final Construction Environmental Management Plan (CEMP) should be submitted and agreed with the planning authority prior to the commencement of works on the site in order to protect the sensitive marine environment. Specification of the piling method would also protect the marine mammals. Details in relation to the connection of drainage infrastructure to the protected marine environment should be specified by planning condition. The imposition of landscaping conditions and the removal of permitted development rights would be in the interests of visual amenity and help the proposal integrate into its environment. As the appeal site may contain remains associated with the Portrush tramway (Industrial Heritage Register IHR 03714) it is appropriate to condition the agreement and implementation of a developer-funded programme of archaeological works. A preliminary and generic quantitative risk assessment identified that there would be no unacceptable risk from the proposed development and the statutory consultees raised no objection to this matter. Consequently, it is unnecessary to impose conditions in relation to land contamination.

Conditions

(1) No development shall take place until a determination has been made under Article 3 of the Private Streets (Northern Ireland) Order 1980.

(2) The landscaping scheme, as indicated in Drawing Number 14 dated received by the planning authority on 16th May 2019, shall be carried out during the first planting season after the commencement of the development. Trees or shrubs dying, removed or becoming seriously damaged within five years of being planted

shall be replaced in the next planting season with others of a similar size and species unless the planning authority gives written consent to any variation.

(3) Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015 (or any legislation revoking that Order and re-enacting those provisions) no extension, enlargement (including alteration to roofs) or the construction of external structures, walls or fences shall be carried out to the development hereby permitted without the grant of a separate planning permission from the planning authority.

(4) A 2.5m high acoustic barrier shall be constructed prior to the occupation of residential units 1, 2, 3, 20 and 21. The barrier shall be constructed of rendered concrete block and be 300mm in width. The acoustic barrier shall be positioned as depicted in blue on Drawing 03 (Rev K) 1:500 proposed site plan dated April 2019.

(5) Prior to the occupation of the permitted residential units, their façades shall be capable of providing a sound reduction of at least that stated within Table 1 below with respect of the transmission of noise from the exterior to the interior of the building, and shall be provided to all habitable rooms.

Site Number as per Drawing 03 (Rev K) 1:500 proposed site plan dated April 2019	Required façade attenuation (dB Rw) for all habitable rooms	Façades orientation
1	Minimum 41	North-west, east, south-east
2	Minimum 41	North-west, east, south-east
3	Minimum 41	North-west, east, south-east
4	31	North-east, south-east
4	21	West
5	31	South-east, south
5	21	West
6	31	North, east
6	21	West
7	31	East, south
7	21	West
8	31	North, east
8	21	South-west
9	31	East, south-east
9	21	South-west
10	31	North-west, north-east
10	21	South-west
11	31	North-east, east
11	21	South-west
12	31	North, west
12	21	South
13	31	North, east
13	21	South

14,16,18,20	31	West
20,21	31	North
15,17,19,21	31	East

(6) Prior to the occupation of the proposed residential units, passive and mechanical ventilation, in addition to that provided by open windows, capable of achieving a sound reduction of that stated within the table above when in the open position (with respect to noise transmission from the exterior to the interior of the building), shall be provided to all habitable rooms on all façades of the units. Mechanical ventilators shall not have an inherent sound pressure level, measured at 1m, in excess of 30dB(A), whilst providing a flow rate of at least 15 litres per second.

(7) Prior to the occupation of residential units 1, 2 and 3 as presented in Drawing 02 (Rev K) 1:1000 proposed site plan dated April 2019 and Drawing 03 (Rev K) 1:500 proposed site plan dated April 2019 an acoustic shelter shall be constructed in the position coloured blue. The acoustic shelter shall be constructed in accordance with the specification stipulated within FR Marks and Associates Noise Impact Assessment date stamped 23rd May 2019 and Drawing 11 1:50 acoustic shelter dated November 2018 in order to achieve acoustic performance properties to attenuate noise levels by a minimum of 21dBA-26dBA.

(8) Prior to the occupation of the residential units, the developer shall at his/her expense employ a suitably qualified and competent person to undertake a post completion/verification acoustic report in order to demonstrate conformity with conditions 4, 5, 6 and 7.

(9) All construction activity shall be confined to within the boundaries of the development site. The boundary of the designated areas shall not be disturbed in any way without the written consent of the planning authority.

(10) A final Construction Environmental Management Plan (CEMP) must be submitted to the planning authority at least 8 weeks prior to the commencement of works on site. The CEMP should identify all potential risks and pollution pathways to the marine environment, demonstrate adherence to good working practices and detail all mitigation measures to be employed to minimise the risk of pollution to the waterway.

(11) Piling on site shall be limited to continuous flight auger piling methods.

(12) Throughout the construction phase the drainage infrastructure from the proposed development shall remain completely isolated from the marine environment west of the development site. Final connection to the marine environment shall only be constructed after all other construction works have been completed.

(13) No site works of any nature or development shall take place until a programme of archaeological works has been implemented, in accordance with a written scheme and programme prepared by a qualified archaeologist, submitted by the appellant and approved by the planning authority. The programme shall provide for the identification and evaluation of the archaeological remains within the site, for mitigation of the impacts of the development through excavation recording or by preserving remains in-situ, for the preparation of an archaeological report and preparation of the digital, documentary and material archive for deposition. The arrangements shall be implemented as agreed.

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

This decision is based on the following drawings:-
Drawing 01 1:2500 site location plan dated April 2019
Drawing 02 (Rev K) 1:1000 proposed site plan dated April 2019
Drawing 03 (Rev K) 1:500 proposed site plan dated April 2019
Drawing 04 1:100 proposed plans and sections (Apartments A) dated July 2018
Drawing 05 1:100 proposed elevations (Apartments A) dated July 2018
Drawing 06 1:100 proposed plans and elevations House Type A (Rev B) dated July 2018
Drawing 07 1:100 proposed elevations (Rev B) House Type A dated July 2018
Drawing 08 1:100 proposed plans Apartments B dated July 2018
Drawing 09 1:100 proposed elevations Apartments B dated July 2018
Drawing 10 1:500 site elevations (Rev G) dated April 2019
Drawing 11 1:50 acoustic shelter dated November 2018
Drawing 12 Rev 1 1:200 site sections Rev E dated received by the planning authority on 28th June 2019
Drawing 13 Rev 1 1:500 horizontal and 1:100 vertical longitudinal sections dated received by the planning authority on 28th June 2019
Drawing 14 1:250 landscape proposals dated received by the planning authority on 16th May 2019
Drawing 15 Rev 1 1:500 site layout dated received by the planning authority on 28th June 2019

COMMISSIONER DIANE O'NEILL

List of Appearances

Planning Authority (Causeway Coast and Glens Borough Council):-	Mr Conor Fagan, barrister Mr Stephen O'Neill, planner Ms Bronagh McLaverty, environmental health officer Ms Jennifer Lundy, planner
Appellant:-	Mr David Elvin, QC Mr David Donaldson, Donaldson Planning Mr Des Ewing, architect Mr Rupert Thornely-Taylor, Rupert Taylor Limited, noise acoustic and vibration consultant Mr Tim Goodwin, Ecology Solutions consultancy Mr Gary McGhee, Carson McDowell solicitors

List of Documents

Planning Authority (Causeway Coast and Glens Borough Council):-	Statement of Case (PA 1) Post-hearing evidence (PA 2)
Appellant:-	Statement of Case (A 1) Post-hearing evidence (A 2)
Third Party Objector Ms Fiona Dougherty	Statement of Case (OB 1)