
Appeal Reference:	2023/A0077.
Appeal by:	Mr Steve Bradley.
Appeal against:	The refusal of full planning permission.
Proposed Development:	The retention of change of use from single-family home to house in multiple occupation (5 beds).
Location:	1 Grafton Street, Derry, BT48 0ER.
Planning Authority:	Derry City and Strabane District Council.
Application Reference:	LA11/2022/0924/F.
Procedure:	Informal Hearing on 30 th April 2024.
Decision by:	Commissioner Kieran O’Connell, dated 5 th June 2024.

Decision

1. The appeal is allowed and full planning permission is granted.
2. A Claim for Costs was made by Mr. Bradley against Derry City & Strabane District Council. This claim is the subject of a separate decision.

Preliminary Matter

3. The planning application sought permission for the “*retention of change of use from a single-family home to a House in Multiple Occupancy (HMO)*.” The appeal papers also describe the development sought in this manner. There was some discussion at the hearing about the accuracy of the description with Third Parties indicating that as the house at No. 1 Grafton Street is not currently occupied as an HMO, it would be accurate to refer to a ‘proposed’ change of use to an HMO.
4. In response, the Appellant stated that the property had been used in the past as an HMO, but it has recently been occupied by a single family pending the completion of the formal HMO licencing process. Whether the appeal description is for a proposed change of use to an HMO or the retention of such, planning permission is required. In any event, I agree with the Council and the Appellant that from a planning perspective, either description does not significantly alter the nature of the development before me or the related issues to be considered. The description of the appeal development is not seriously misleading and as Third Parties are aware of the nature of the development and were able to discuss the planning consequences of both a proposed and existing HMO, no prejudice arises.
5. The Third Parties and Council further stated that the Appellant has applied for planning permission separately for a proposed three-bedroom HMO on the appeal

site. Whilst the Appellant may have another planning application under consideration by the Council on the same site, which he is entitled to do, neither that planning application or this appeal establish a baseline position nor do they change the issues before me for consideration.

Reasons

6. The main issues in this appeal are road safety, whether adequate car parking can be provided and if the development unacceptably affects the character of the area.
7. Section 45 (1) of the Planning Act (Northern Ireland) 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. Section 6(4) of the Act states that where regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
8. The Derry Area Plan (DAP) 2011, operates as the Local Development Plan for the area where the appeal site is located. Within it, the appeal site is on unzoned land within the development limits of Derry City and is not affected by any designation within the plan. Policy TR5 of the DAP is entitled 'Car Parking Provision in New Developments'. It states that car parking provision will be controlled on a zonal basis. These matters are considered later in this decision.
9. Proposal CA5 of DAP relates to the protection of existing residential areas within the Central Area and recognises the importance of a strong residential component to the area's general well-being. However, the subject site is located outside the Central Area and there is no specific policy provisions within the DAP for Houses in Multiple Occupancy (HMO). The DAP contains no other policies that are material to this appeal but directs the decision maker to regional policy.
10. The Strategic Planning Policy Statement for Northern Ireland – 'Planning for Sustainable Development' (SPPS) sets out the transitional arrangements that will operate until a Plan Strategy for a Council area is adopted. In this Council area, no Plan Strategy has been adopted. Accordingly, during the transitional period, the SPPS retains certain Planning Policy Statements (PPSs) and sets out the arrangements to be followed in the event of a conflict between the SPPS and a retained policy. Any conflict between both must be resolved in favour of the provisions of the SPPS. The Council's reason for refusal refers to Policy AMP 7 of the retained Planning Policy Statement 3, 'Access Movement and Parking' which is the relevant policy context per the transitional arrangements. They argue that the development prejudices the safety and convenience of road users as adequate parking provision is not available for vehicles associated with this development.

Appeal Site

11. The appeal site is an end-of-terrace building located within a larger residential terrace on the southwestern side of Grafton Street. The site is close to the junction of Park Avenue and within walking distance of the University of Ulster's Magee campus. Grafton Street is a narrow street characterised by terrace rows of residential properties, narrow footpaths and on-street parking on both sides. On-street parking is also prevalent in the surrounding streets. Creggan Burn Park is located to the north and northwest of Grafton Street.

Use Class

12. An HMO does not fall within any use class within The Planning (Use Classes) Order (Northern Ireland) 2015 (UCO), so it is considered 'sui generis.' An HMO is not classified as a dwelling for the purposes of the UCO nor is it classified as a hotel or within the same use class as a hotel as suggested by the Third Parties. It is a standalone land use. The Houses in Multiple Occupation Act (Northern Ireland) 2016 (HMO Act) defines an HMO as (1) A building or part of a building if (a) it is living accommodation, (b) it is occupied by 3 or more persons as their only or main residence, (c) those persons form more than two households and (d) rents are payable or other consideration is to be provided in respect of the occupation by at least one of those persons of the living accommodation.

Parking and Road Safety

13. Despite the legislative requirements as outlined above, neither the Council nor the Third Parties raised concerns with regard to the provisions of the DAP. Policy TR 5 of the DAP states that car parking provision in new developments will be controlled on a zonal basis. The policy refers to three zones (A, B and C). The appeal site is located outside of the Commercial Core and the Central Area. Grafton Street is residential in nature and, as such, falls within zone C. The DAP identifies zone C as 'all other areas' requiring full and non-operational parking. In zone C, off-street parking is normally to be provided as an integral part of all development schemes and where it is not possible to provide appropriate car parking within the curtilage of the development, the Department may require developers to contribute to the provision of car parking for public use. The number of spaces will vary depending on location, type of development and individual site circumstances. As indicated earlier, the Plan also directs to regional policy which is dealt with below.
14. The Council's sole reason for refusal relates to regional policy contained within Policy AMP 7 of PPS 3 and is based on alleged insufficient parking provision for the property and related road safety concerns. Policy AMP 7 'Car Parking and Servicing Arrangements' states that "*development proposals will be required to provide adequate provision for car parking and appropriate servicing arrangements. The precise amount of car parking will be determined according to the specific characteristics of the development and its location having regard to the Department's published standards or any reduction provided for in an area of parking restraint designated in a development plan. Proposals should not prejudice road safety or significantly inconvenience the flow of traffic.*" The Parking Standards are set out in supplementary planning guidance.
15. Policy AMP 7 also indicates that beyond areas of parking restraint as identified in a development plan, such as in this case, a reduced level of car parking provision may be acceptable in certain circumstances. Those circumstances are (i) through a Transport Assessment, where it forms part of a package of measures to promote alternative transport modes; (ii) where the development is in a highly accessible location well served by public transport; or (iii) where the development would benefit from spare capacity available in nearby public car parks or adjacent on street car parking; or (iv) where shared car parking is a viable option; or (v) where the exercise of flexibility would assist in the conservation of the built or natural heritage, would aid rural regeneration, facilitate a better quality of development or the beneficial re-use of an existing building.

16. There are no parking standards applicable for an HMO use contained within PPS 3 or supplementary planning guidance. The Third Parties' evidence indicates that the parking requirement for this development should be based on it being a hotel/guest house. The Appellant's parking surveys state that it should be treated as if it were a guest house also, even though at the hearing, they stated that the level of parking should not be significantly different from that required for the existing dwelling. The application of hotel or guest house parking standards would require one parking space per bedroom, thus, if correct, the appeal development would require 5 parking spaces.
17. In contrast, the Council witness advised at the hearing that only 3 parking spaces are required based on the parking standards for terrace houses. They stated that 2 spaces are required for a 3-bed terrace house, while two additional bedrooms require 1 additional parking space. At the hearing one of the third parties also stated that 3 parking spaces would be appropriate, however, this was not common case among the third parties. Table 7 of 'Parking Standards' sets out the parking requirements for apartments and houses that have communal parking provision. This table indicates that 1.75 unassigned spaces would be required for a three-bedroom terraced dwelling. The Appellant states that this equates to 0.6 parking spaces per bedroom. While no figure is provided for either four or five-bedroom houses, the Appellant's parking surveys indicates that a four-bedroom house (as the appeal site was and is currently) would require 2.4 parking spaces.
18. Dfl Roads consultation response indicates that the parking requirement for the appeal development is 3 spaces. While not specifically stated, the provision of 3 parking spaces would accord with the calculation for unassigned terrace dwellings as advanced by the Council at the hearing. Given its residential nature and the type of persons likely to reside therein, I consider that the parking requirements of an HMO are more closely related to those of a residential house than either a guesthouse or hotel which are likely to attract people from further afield, mainly on holiday, and likely to require parking. As such, I consider that 3 parking spaces would be adequate in this case. This quantum represents an uplift in parking spaces from the 2.4 spaces required for a four-bed house. I am reinforced in my conclusion by the Appellant's parking surveys which justify the parking provision of 3 additional spaces given, inter alia, that the site is in a highly accessible location.
19. Even if I were to accept the argument that 5 parking spaces would be required Paragraph 3.37 of DCAN 8 states that *"a reduced level of car parking provision may be appropriate where: a site enjoys a high level of pedestrian accessibility to local facilities and the public transport network. This is likely to include sites within 10 minutes walking distance (c. 800 metres) of a town centre or significant district centre which is well served by buses or local rail stations; the townscape character of the area surrounding the site would be undermined by in-curtilage parking; or car ownership among future residents is likely to be below average"*.
20. The Appellant contends that the HMO is within a 10-minute walk from the city centre and has a regular bus service. He says it is within proximity to several nearby facilities and amenities including a bar, spar, pharmacy and various leisure and recreational amenities. The Third Parties acknowledge that there is an hourly bus service along Park Avenue, however, in the main they do not consider the city nor this area to be well served by public transport in general. From my observations on site, it is evident that the appeal site is close to the central area of

the city and several commercial and community facilities along Park Avenue. While the nearest bus stop is located a short walk away on Park Avenue, whether an hourly service can be regarded as 'well served' is a moot point given the overall convenience of the location to the city centre and nearby facilities and amenities located on Park Avenue. The appeal site is within a highly accessible location, meaning that reliance on a private car is diminished to an extent. For the reasons given, I am satisfied that even if 5 spaces were required, a reduced level of 3 is acceptable despite Third Party arguments to the contrary including the assertion that car ownership among HMO residents and, in particular students, is high.

21. The Appellant argues that the proposal results in the beneficial re-use of an existing large dwelling and assists in its conservation. It is further argued that these older dwellings are too large for most families and have no meaningful private amenity space for small children. While the conversion of a dwelling to an HMO helps retain the building as residential stock and does not weigh against the proposal, no persuasive evidence has been provided to support the argument that the property is too big for a family or that insufficient amenity space would be available particularly as the appeal site is within close proximity to several recreational amenities including Creggan Burn Park to the north. In any event, these issues, taken in isolation, would not merit a reduction in parking provision.
22. The dispute, in part, between the parties' centres on the capacity of the host street to facilitate on-street parking and the resultant road/public safety concerns. The Appellant alleges that on-street parking spaces are available on Grafton Street and the surrounding streets of Park Avenue and Lower Nassau Street. The Council advised that while they had no quantitative data to support its position, they allege that members have observed parking and congestion problems that have led to parking on pavements and obstruction of these pavements for pedestrians and emergency services accessing Grafton Street. The Third Parties allege that it is difficult to park on Grafton Street after 19:00 hours and that the parking surveys place an over-reliance on neighbouring streets for parking provision. They also question the adequacy of the surveys regarding the days and times they were carried out, in part, as they took place over university reading/exam weeks. They go on to argue that, if unassigned parking spaces within 100m walking distance of the appeal site are to be considered, then the impact of the overspill parking within this radius must also be factored in.
23. The Appellant carried out parking surveys along Grafton Street, Park Avenue and Lower Nassau Street over eight days between 10th May 2023 and 21st May 2023. Those surveys were recorded between 22:30 and 07:00 hours and were accompanied by plans and photographs. The surveys show that within the survey area, there were between 36 and 48 spaces unoccupied. Although I note the Third Parties concerns regarding the timing of the surveys including that they were taken in part over the University of Ulster reading and exam weeks, DfI Roads in their consultation response were content that the parking surveys were robust and did not require any days to be specifically surveyed nor did they raise concern regarding the impact the University of Ulster reading and exam weeks may have. As such, I have no persuasive evidence before me to suspect that these periods would be any more or less busy than others, nor do I have sufficient reason to doubt the parking surveys conclusions.

24. Whilst I agree with DfI Roads that on-street parking is limited in the area, they do not conclude that no parking is available or that there are/would be any road/public safety concerns arising as a consequence of one HMO. The Third Parties provided a series of photographs in support of their position that parking is restricted in the area. These photographs, however, are undated and are not accompanied by a map. It is difficult therefore to ascertain if there was any available parking along the extent of Grafton Street or in the surrounding streets. As such, I can only attribute limited weight to this evidence.
25. I have carried out two site inspections, one on a morning between 08:30 and 09:30 and the other on an evening between 19:00 and 20:00. Even though the area was busy, I observed cars parked outside the properties on both sides of Grafton Street. I also saw cars parked on both sides of Lower Nassau Street and on Park Avenue. On both occasions, I observed parking availability along Grafton Street, Lower Nassau Street and Park Avenue. Given my on-site observations and having regard to the findings of the Appellant's parking surveys and DfI Roads comments, I am content that Grafton Street could accommodate the additional parking space required for this HMO both in the morning and in the evening.
26. Even if I were to accept the Third Parties requirements for 5 parking spaces and the impact that overspill parking from other HMO's and similar developments may have on this area, based on my onsite observations and the findings of the parking surveys, this amount would be available on Grafton Street and the adjacent streets. As such, I have no persuasive evidence before me to suggest that overspill parking from similar developments is currently having a detrimental effect on parking availability within the area. Accordingly, the appeal development does not offend Policy AMP 7 of PPS 3 or the related provisions of the DAP in that there would be adequate and appropriate provision for parking.
27. The Third Parties allege that emergency service vehicles have difficulty accessing and egressing Grafton Street and provided two photographs to this effect dated 9th September 2023, and 9th January 2024. A Third Party also raised concern with the inability of Council vehicles to get into the street to empty bins due to lack of space and resultant damage being caused to vehicles on the street. The Appellant argues that Grafton Street and Park Avenue have been double-parked for 20 years and that this would not change because of one HMO.
28. Having visited the site and witnessed parking on both sides of Grafton Street which narrows the carriageway in which drivers must pass through, I could drive my vehicle along it without any problem arising. The photographs provided demonstrate that emergency service vehicles can pass through Grafton Street with due care. I can only conclude that on both occasions, Grafton Street may have been obstructed. This, however, may have been due to careless parking, as suggested by a Third Party at the hearing. No persuasive evidence has been presented to demonstrate that access and egress to Grafton Street by emergency service or Council vehicles would be prohibited as a direct result of this HMO. Given my onsite observations, including the availability of parking and the parking requirement for this HMO, I am not persuaded that such a use significantly inconveniences the flow of traffic or prejudices road safety.
29. The Council witness stated that she saw cars parked on double yellow lines in the area on the morning of the hearing. The Third Parties highlighted accessibility

concerns along pedestrian footpaths due to the overcrowding of vehicles parked on same, obstructing pedestrian access for vulnerable groups. It is alleged that these road safety problems will only be exacerbated with an increase in residents and vehicles. Whilst I witnessed individual cars parked, in part, on the footpaths along Grafton Street, the parking on double yellow lines and obstruction of a public footpath is an enforcement matter for the appropriate authorities, whether that be the Council or the PSNI. As such, this matter is outside the scope of this appeal. Furthermore, no persuasive evidence has been provided to show that those living in the HMO would have greater access to a car than the existing residents of a dwelling on the street. I therefore find that the current on-street parking arrangements are unlikely to significantly change because of this HMO. Issues relating to driver/parking behaviour and the obstruction of Grafton Street are likely to occur regardless of whether the HMO is permitted or not. All in all, I conclude that the Council has not sustained its reason for refusal relating to road safety.

Impact on the Character of the Area

30. The HMO does not alter the appearance of the host building and therefore does not have a detrimental impact on the visual character or appearance of the street or area as a result.
31. The Third Parties' concerns regarding the impact on the character and appearance of the area relate to the loss of a single-family home to an HMO and the overprovision of HMOs in the area. The Council raised no concerns regarding the impact on the character and appearance of the area.
32. The Third Parties evidence indicates that there are 176 HMOs in the Derry City and Strabane District Council Area, 171 of these are in the BT48 postcode (Cityside) and 5 are in the BT47 area (the Waterside). Some 93 of the 171 HMNOs (54%) are clustered in the Rosemount area near Grafton Street. A further 18 HMOs are pending approval, 14 of which are in the Rosemount area. The Third Parties argue that should these be approved, the area surrounding Grafton Street will account for 107 (57%) of all HMOs in the BT48 area and that these statistics demonstrate that the number and capacity of HMOs in the locality is becoming excessive and represent an overprovision in the area.
33. Whilst there are several HMOs in the wider Rosemount area and there is pressure for further HMOS within the extensive BT47 and BT48 postcode areas, there is only one other HMO on Grafton Street, that is, No.17 as confirmed by the parties. The remainder of Grafton Street (some 50 dwellings) is characterised largely by terrace dwellings on either side, with a terrace of bungalows at the northern extent of the street. In terms of the residential component, Grafton Street would remain predominantly in single-family occupation despite the appeal development.
34. Irrespective of the fact that there is no current planning policy within the DAP or regional policy to limit the number of HMOS that could be approved in a particular area, I have not been persuaded that the introduction of one additional HMO on Grafton Street would change or undermine the character of the area to an unacceptable degree. With regard to the cumulative impact on the wider area, the Council is in the best position to control this in deciding future applications and assessing the point at which the character of the area would be changed. They did not object to this development on that basis. Each application must be assessed on a case-by-case basis and given I have found the appeal development to be

acceptable from a planning policy perspective, I am satisfied that it does not create a precedent for further HMOs in this area as argued by the Third Parties.

35. The Third Parties also allege that short-term let apartments, B&Bs and Airbnb's further add to the parking and congestion in this area, however, no verifiable evidence was provided to demonstrate this point.
36. Third Parties objected to the proposed use as an HMO, in that it would be out of character with the area and prospective tenants could create anti-social behaviour and noise. Neither the Council nor its Environmental Health Section raised any objection in this regard. While it is possible that HMO residents could be nosier and create more general disturbance than residents of a single-family home, responsible landlords should have robust procedures in place to deal with noise and/or disturbance as it would not be in the landlord's interest to antagonise surrounding residents. In any event, even if there were to be noise or anti-social behaviour from prospective tenants, this matter would be dealt with by the Council's Environmental Health Section who can intervene and impose penalties as required affecting the Appellant's HMO licence. These matters would not justify the withholding of planning permission.

Other Matters

37. The Appellant alleges that the Council has been inconsistent in its decision-making on applications for HMOs in the area. The Appellant stated that the Council approved four other HMOs in this area and only refused this application on the basis that it was objected to. The Council refuted this allegation, stating that each application is assessed on its own merits and that there is no 'one-size-fits-all' scenario for HMO development. I have no detail of any specific cases to demonstrate how the Council has been inconsistent in its decision-making, or how any of those cases are directly comparable to this appeal. In any event, each application must be assessed on its own merits and within its site-specific context. The concerns in this regard are not upheld.
38. A Third-Party representation states that with the Northern Ireland Housing crisis, it was disappointing to see a property, which would make a perfect family home, be made into an HMO for students. However, there is no guarantee that the future occupants would be students, nor has any persuasive evidence been provided to demonstrate that an HMO use does not assist with the housing crisis.
39. The Third Parties allege that the Appellant has not demonstrated the extent to which an HMO is necessary to meet the housing accommodation need as required by Part 12 (b) of the Houses in Multiple Occupation Act (Northern Ireland) 2016. There is no needs-based requirement for development of this nature contained within planning policies relating to HMOs in the DCSDC area. That may change in the new plan strategy. The requirements of an HMO licence and whether such a licence would be granted falls under a separate regulatory regime. This matter would therefore not merit the withholding of planning permission.
40. The Third Parties also alleged that all the residents on Grafton Street were not notified of the proposal during the processing of the application. This is a matter for the Council. In any event, as several Third Parties submitted an objection to the application and have made representations to this appeal, I do not consider prejudice has arisen at appeal stage. Third Parties also raised concerns regarding

the perceived impact on property values within the area as a result of an additional HMO, however, no persuasive evidence was provided to support this claim.

41. In conclusion, the Council's reasons for refusal and the Third Parties' objections are not sustained for the reasons given. The appeal shall therefore succeed. Full planning permission is granted unconditionally, as the appeal development is for the retention of an HMO.

This decision relates to the following drawing: -

01 – containing 1:1250 scale, Site Location Plan, 1:500 Block Plan, Floor Plans and Elevations date stamped received 30th March 2021.

COMMISSIONER KIERAN O'CONNELL

List of Appearances

Planning Authority: - Ms Katrina Hope Derry City and Strabane District Council

Appellant: - Mr Steve Bradley Appellant
Matt Kennedy MKA Planning Ltd
Miss Aoibhinn Roarty MKA Planning Ltd

Third Parties: - Stella O'Donnell
Gerogios Zoulis
James McGarrigle
Geraldine Curran
Eddie Curran
Julia Black
Susan Gifty

List of Documents

Planning Authority: - Statement of Case by Derry City and Strabane District Council

Appellant: - Statement of Case by MKA Planning Ltd

Third Parties: - Statement of Case by Stella O'Donnell et al
Statement of Case by Mariann Farrell
Statement of Case by Mark H. Durkan MLA