

---

<b>Appeal Reference:</b>	2021/A0059
<b>Appeal by:</b>	Mr Sebastian Rogala
<b>Appeal against:</b>	Refusal of full planning permission.
<b>Proposal:</b>	Use of flat 2 (1 <sup>st</sup> and 2 <sup>nd</sup> floor flat) as a House in Multiple Occupation (HMO)
<b>Location:</b>	Flat 2, 205 Albertbridge Road, Belfast
<b>Authority:</b>	Belfast City Council
<b>Authority's Reference:</b>	LA04/2020/2477/F
<b>Procedure:</b>	Written representations and Commissioner's site visit on 16 May 2024
<b>Decision by:</b>	Commissioner Paul Duffy, dated 17 May 2024

---

## Decision

1. The appeal is allowed, and full planning permission is granted.

## Preliminary Matter

2. On 18<sup>th</sup> June 2021, Belfast City Council (Council) refused planning application - LA04/2020/2477/F as being contrary to Policy HOU5 of the Houses in Multiple Occupation (HMO) Subject Plan for the Belfast City Council Area 2015, because the number of HMO dwelling units already met the 10% threshold limit within this section of Albertbridge Road meaning that no further HMO development could be permitted.
3. On 2<sup>nd</sup> May 2023, Belfast City Council adopted the Belfast Local Development Plan, Plan Strategy 2035 (PS). Following adoption of the PS, the Commission wrote to the parties seeking comments on the PS in so far as they may relate to the appeal development.
4. The Councils ultimate position advised that the previous assessment executed under the HMO Subject Plan employed a methodology which relied (in part) on a data source derived from data developed by Northern Ireland Housing Executive (NIHE) in 2004. This no longer applies and, as a consequence of the change in methodology, the previous refusal reason can no longer be sustained, however they did not formally withdraw the refusal reason and therefore it remains before the Commission.

## Reasons

5. Section 45(1) of the Planning Act (NI) 2011 (the Act) requires the Commission, in dealing with an appeal, to have regard to the local development plan (LDP), 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.
6. Following adoption of the PS, in line with the transitional arrangements as set out in Part 9 and the Schedule to the Local Development Plan Regulations 2015 (as amended) (Regulations), the LDP now becomes a combination of the Departmental Development Plan (DDP) and the PS read together. In accordance with the Regulations, any conflict between a policy contained in the DDP and those of the PS must be resolved in favour of the PS.
7. When fully completed the LDP will replace the Belfast Urban Area Plan 2001 (BUAP) as the statutory development plan for the city. The Belfast LDP will comprise of two documents, firstly the PS, recently adopted and secondly, the Local Policies Plan (LPP), which will provide the detailed land use zoning and proposal maps for Belfast. This second document has yet to be published.
8. The Court of Appeal declared the adoption of Belfast Metropolitan Area Plan unlawful in May 2017. It is therefore not a DDP according to the regulations. However, the 2004 Draft BMAP, which was never adopted remains a material consideration.
9. The HMO Subject Plan for Belfast City Council Area 2015, which ran in parallel with BMAP was formally adopted in December 2008. Prior to the adoption of the PS the HMO Subject Plan provided the operational policy context for assessing proposals for an HMO in Belfast City Council Area.
10. HMO Policy Areas and Development Nodes were identified within Subject Plan to accommodate the need for HMO accommodation. The appeal property on Albertbridge Road was not identified as being within either a Policy Area or Development Node, accordingly, the policy context for assessing HMO Development outside of an HMO designation was Policy HMO 5: HMO Development outside designated HMO Policy Areas and designated HMO Development Nodes.
11. Policy HMO 5 provided a methodology for assessing the appropriate level of HMO development considered acceptable within a given street. It was this methodology which the Councils refusal reason was based on. However, following the adoption of the PS a different methodology was introduced under Policy HOU 10 – Housing Management Areas

(HMAs), albeit the HMO designations within the Subject Plan remain material, as part of the DDP.

12. Policy HOU 10 of the PS (HMAs) is now the operational planning policy context for assessing an HMO outside of designated HMAs. The policy sets out the following methodology for assessing an HMO outside of a designated HMAs:

***“Outside of a designated HMAs, planning permission will only be granted for HMOs where the number of HMOs would not as a result exceed 10% of all dwelling units on that road or street. Where such a street is in excess of 600 metres in length, the 10% threshold will be calculated on the basis of existing residential units within 300 metres of either side of the proposal on that street”.***

13. Within the Councils submission (Impact of the Belfast Local Development Plan: Plan Strategy 2035 on the appeal proposal), the council advised that under the above methodology there is potential for a further nine HMOs on the qualifying section of Albertbridge Road before the 10% threshold is exceeded.
14. In the appellants initial evidence, the agent demonstrated that the appeal proposal met the previous methodology for assessing an HMO outside of a designated site, without exceeding the 10% threshold. The wording of the previous policy and the new policy remain generally consistent. The key differences are between the previous reliance on a NIHE 2004 HMO baseline register, which has now been replaced with a new HMO Licencing Scheme.
15. In the appellants Statement of Case (Addendum), the agent identified only one property on the HMO register along the qualifying stretch of Albertbridge Road, No. 189. This calculation corresponds with the Council’s assessment above that the updated policy supports the appeal development. I therefore find that the reason for refusal is not sustained. Accordingly, the appeal must succeed.
16. In the absence of any suggested conditions put forward by the Council, the subject development is approved unconditionally.

**COMMISSIONER PAUL DUFFY**

## **List of Documents**

- Authority:- Belfast City Council – Impact of the Belfast Local Development Plan: Plan Strategy 2035 on the appeal.
- Appellant(s):- Carlin Planning – Statement of Case  
Statement of Case (Addendum)
- Third Parties:- Mr Jack Reid – Letter of support