

# Appeal Decision

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<b>Appeal Reference:</b>	2022/A0005
<b>Appeal by:</b>	Mr Breen
<b>Appeal against:</b>	The refusal of full planning permission
<b>Proposal:</b>	Proposed change of use from office building into 11 bedroom HMO incorporating a 3 storey rear extension
<b>Location:</b>	1 Dacre Terrace, Londonderry
<b>Planning Authority:</b>	Derry City & Strabane District Council
<b>Application Reference:</b>	LA11/2020/0824/F
<b>Procedure:</b>	Written representations with Commissioner's site visit on 10 March 2023
<b>Decision by:</b>	Commissioner Mandy Jones, dated 16 March 2023

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## Decision

1. The appeal is allowed, and full planning permission is granted subject to the condition below.
2. A Claim for Costs was made by Mr Breen against Derry City & Strabane District Council. This claim is the subject of a separate decision.
3. This appeal decision is linked to appeal decision 2022/A0006 against the refusal of consent for demolition within a Conservation Area.

## Preliminary Matter

4. Planning Officer's recommended approval of the planning application along with the application for consent for demolition within a conservation area on 2 occasions. However, the Local Planning Authority's corporate stance on both planning applications subject of these appeals are set out in the reasons for refusal on decision notices issued by Derry City and Strabane District Council on 1<sup>st</sup> March 2022.
5. Within the appellant's statement of case an amended proposed ground floor plan was submitted ( PAC 5 rev A ) which reconfigured the internal layout to provide a larger kitchen / dining area. This was directly in response to the Council's reason for refusal. The Council stated that third parties and neighbours would be prejudiced, if this was accepted. The amendments only comprise the internal reconfiguration of walls within the ground floor layout. There is no impact on the external fabric of the building and window positions remain unaltered. The floor plans of the upper levels also remain unaltered. I do not consider that these minor

ground floor internal alterations would be prejudicial. As such, the amended ground floor plan is admissible, and will form part of my considerations.

## Reasons

6. The main issues in this appeal area whether there would be a detrimental impact on the residential amenity of proposed residents and on the character of the existing 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. The Derry Area Plan (DAP) 2011, is the local development plan for the area where the appeal site is located. The appeal site is within the development limits of Derry City, it is also within the Commercial Core and is identified as an office development area in the DAP. It is also within the Historic City Conservation Area. The DAP has a policy controlling flat conversions however, it is silent on Houses in Multiple Occupation (HMOs). The Plan offers no specific policy pertinent to this proposal.
8. Overarching regional policy is provided by the Strategic Planning Policy Statement for Northern Ireland (SPPS). It sets out transitional arrangements which 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 Statements. The reason for refusal referred to the SPPS.

### *Appeal Site and Proposals*

9. The appeal site is in a prominent position at Carlisle Circus, at the west bank end of the Craigavon Bridge. It is directly adjacent to Carlisle Road Presbyterian Church, which is a Grade 2 listed building.
10. No. 1 Dacre Terrace is a 3 ½ storey Georgian property, located at the end of a terrace of 4 similar properties. The terrace has a uniform front elevation with a consistent solid / void ratio across all individual frontages. Each property has a bay window with sliding sash windows above and a rendered finish. To the rear the property has a single storey return and outbuildings.
11. The immediate area is characterised by predominantly commercial / town centre uses along Carlisle Road with some residential development within the adjacent streets and mixed high density residential and commercial uses along Abercorn Road.
12. Proposals are for a 11-bedroom HMO across 4 floors and include the refurbishment of the existing Georgian building and a new build 3 storey rear extension. The amended plans ( PAC 5 rev A ) show a reconfigured internal layout on the ground floor which now provides a kitchen / dining space of 37 sqm, bedroom ( 12 sqm ) and lounge area ( 18 sqm ). A small service area to the rear encloses bin storage and a drying area. Proposed first floor plans include 4 ensuite bedrooms and a separate bathroom; proposed second floor plans include 4 ensuite bedrooms and a separate bathroom and the proposed third floor plan includes 2 ensuite bedrooms.

### *Character*

13. Within their statement of case, the Council stated that an HMO of this scale would adversely impact character. It was considered that the proposal is located on an important site at the end of the Craigavon Bridge, which is a gateway into the City. As such any adverse impact on the character of the area is considered to be more significant than it might otherwise be. The Council did not articulate if their concerns related to visual impact on character or land use objections and I propose to deal with both.
14. The surrounding area is characterised with mixed use development including retail, commercial, residential including apartment development, professional services and community uses. An HMO does not fall within any use class within The Planning (Use Classes) Order (Northern Ireland) 2015 and is considered 'sui generis.' A HMO is also considered to be one unit of accommodation and the Housing Order (NI) Order 2003 identifies an HMO as a house occupied by more than two qualifying persons – being persons who are not all members of the same family. The proposal will have a residential end use albeit with a higher density of occupants. In terms of use, given there is existing and approved high density residential development in Carlisle Terrace and Abercorn Road in close proximity to the appeal site, I consider there would be no adverse impact on the character of this mixed use high density area within the town centre.
15. In terms of visual impact, the only new build element is the 3-storey rear extension. The front elevation within the overall terrace remains unaltered. Views of the 3-storey extension to the rear of the terrace are extremely limited and contained. As such, I consider there to be no unacceptable visual impact on character. I would concur with the Planning Officer's Committee report dated 5 January 2022, that there will be no adverse impact on character as a result of the proposal.

### *Residential Amenity*

16. The Council considered that the proposal will harm the residential amenity of the proposed occupants, due to the lack of quality residential accommodation. It was considered that unacceptable living standards were provided for the residents due to the number of bedrooms when considered against the size of the kitchen, which is approximately 11.4 sq m. The appellant's amended drawings reconfigure the internal layout to provide a kitchen / dining area of 37 sq m. I note that the Council refers to NIHE space standards which do not make specific provision for kitchen size but rather states that no kitchen shall be shared by more than 10 occupants irrespective of its floor area. Instead, it focuses on the number of cookers and kitchen counters for benchmarks of acceptability. Whilst these space standard considerations fall outside the remit of planning policy there is an element of judgement which can be applied regarding residential amenity.
17. In analysing the new layout, I consider that the 37 sq m kitchen area ( 18 sq m kitchen area and dining area 18 sq m ) is acceptable for an 11 bedroom HMO. I consider that there is sufficient space for residents for carrying out day to day activities within this space. The appellant has stated that the kitchen now provides over 11m of worktop space, minus the sink and hob area and there will be an allocated cupboard space for each resident with a dining area and separate

lounge area. I consider the amended ground floor level plan drawings address the concerns of the Council in terms of living standards.

18. In terms of objections to the proposal at planning application stage: I do not consider that there will be an unacceptable adverse impact on light to the adjacent church ; protection of the stained glass during construction is not a planning matter ; there will be no potential impacts on parking for church users as there is no designated parking for either the appeal site or the church and the provision of a fire escape is a matter for building control. Occupancy and anti-social behaviour are not a planning matter.
19. I conclude that there will be no adverse impact on the established character of this area and that the proposal would not harm the residential amenity of proposed residents, and as such the reason for refusal has not been sustained. The appeal is allowed subject to the condition set out below.

### **Conditions**

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

This decision relates to the following drawings submitted with the planning application (with the exception of Drawing no. 5 submitted at appeal.)

<b>Pac Ref</b>	<b>Drawing</b>	<b>LPA Drawing No.</b>	<b>Date Received</b>
Pac 1	Location Plan @ scale 1:1250	01	13 October 2020
Pac 2	Existing Site Plan @ scale 1:200	02	13 October 2020
Pac 3	Proposed Site Plan @ 1:200	03	13 October 2020
Pac 4	Existing Plans @ scale 1:100	04	13 October 2020
Pac 5 rev A	Proposed Floor Plans @ scale 1 :100	-	10 June 2022
Pac 6	Existing Elevations @ scale 1:100 & 1:200	06	13 October 2020
Pac 7	Proposed Elevations @ scale 1:100 & 1:200	07	13 October 2020

**COMMISSIONER MANDY JONES**

### **List of Documents**

Planning Authority:  
( Derry City and Strabane District Council )

'A' Statement of Case  
'B' Rebuttal

Appellant:  
( agent : Lee Kennedy Planning )

'A1' Statement of Case  
'B1' Rebuttal