

Appeal Decision

Appeal Reference:	2022/A0074
Appeal by:	Willisfield Property Developments.
Appeal against:	The refusal of full planning permission.
Proposed Development:	The demolition of an existing commercial unit and its replacement with a 4-storey building with new ground floor (Class A2) commercial unit and 12 No. apartments along with associated development.
Location:	5-11 Holywood Road, Belfast.
Planning Authority:	Belfast City Council.
Application Reference:	LA01/2022/1030/F.
Procedure:	Informal Hearing on 1 st May 2024.
Decision by:	Commissioner Damien Hannon, dated 11 th June 2024.

Decision

1. The appeal is dismissed.

Reasons

2. 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, so far as material to the application, and to any other material considerations. The Belfast Local Development Plan, Plan Strategy 2035 (PS), was adopted in May 2023. The PS is the relevant local development plan and several of its provisions, which I will refer to below, provide the policy context relevant to consideration of this appeal.
3. There was no objection to the principle of residential development at the appeal site and no dispute that the proposal constituted windfall housing as referred to in Policy HOU 2 of the PS. Also, at the hearing the Council withdrew the four below numbered reasons for refusal (RfR) relating to the stated matters and Plan Strategy policies: -
RfR 3. Reuse of the existing building; Policy ENV 2.
RfR 4. Adoption of measures to adapt to environmental change; Policy ENV 2.
RfR 5. Sustainable drainage measures; Policy ENV 5.
4. Furthermore, there was agreement that the delivery of the proposed affordable housing could be appropriately secured through a planning condition. Consequently, the Council also withdrew reason for refusal No. 6 relating to an alleged failure to provide adequate affordable housing based on Policy HOU 5 of the PS. Therefore, the outstanding issues raised by this appeal are whether the proposal would have an unacceptably detrimental impact on the amenity of future occupants, whether the bin storage area design would be sufficiently safe and accessible and whether the scheme provides adequate wheelchair accessible accommodation.
5. Policy DES 1 of the PS is entitled 'Principles of urban design' and states that planning permission will be granted for new development that is of a high quality, sustainable design that makes a positive contribution to placemaking. Furthermore, Policy RD1 of the PS requires new residential development to be in accordance with general urban design

policies. The Council objected on the grounds that the residents of two ground floor apartments would suffer unacceptable loss of residential amenity through overlooking because of the proximity of their living room windows to the Upper Newtownards Road. A buffer space of balcony type design is proposed that would ensure that the windows in question are separated from the public realm by at least 1.5m. Such a layout, however, is not uncommon in an inner-city urban environment, and I do not consider it to be one that would give rise to any unacceptable loss of residential amenity through overlooking. The Council's objection in this respect is not sustained.

6. Criterion h of Policy RD1 of the PS requires that living rooms, kitchens and bedrooms in new residential development have access to natural light. The Council objected on the grounds that two ground floor apartments did not have large enough windows to allow sufficient natural light into their living rooms. The amended drawings discussed at the hearing and the 'Lighting Assessment' provided by 'Consil' consultancy indicate that the windows would allow for sufficient daylight and sunlight amenity in accordance with good practice guidelines as embodied in the 'BRE Report 209-Site Layout Planning for Daylight and Sunlight, A guide to Good Practice' (The BRE Report 2022). In this evidential context, I do not judge the Council's objection regarding natural light to be well founded. I conclude that objection on amenity grounds in respect of overlooking and lack of natural light not to be upheld and the Council's first reason for refusal, based on policies DES 1 and RD1 is not sustained.
7. The Council raised objection regarding the design of the bin storage area. They argued that the proposed arrangement was unsafe for all occupiers and provided inadequate accessibility for wheelchair users as it necessitated occupants to cross an external alleyway to use the facility. The appellant however tabled an amended design providing internal access to the bin storage area that addresses this concern. The Council's objection on these safety and accessibility grounds is not upheld and its second reason for refusal based on Policy DES 1 of the PS is not sustained.
8. Policy HOU7 of the PS is entitled 'Adaptable and accessible accommodation' and states that all new homes should be designed in a flexible way to ensure that housing is adaptable throughout all stages of life, maximising the ability for occupants to remain in their homes and live independent lives for as long as possible. It further states that to help deliver adaptable and accessible homes, planning permission will be granted for new housing where 6 stated criteria are met. There was no dispute that the proposal would meet these 6 criteria.
9. However, the policy adds that additionally, for all residential developments of 10 units or more, planning permission will be granted where at least 10% of units are wheelchair accessible and pursuant to policy criterion g, designed in accordance with the space standards for wheelchair housing set out in appendix C. The proposal involves the provision of 12 apartments, only one of which is wheelchair accessible in accordance with appendix C standards. The Council argued that permission should be refused as the proposed 8% provision falls short of the minimum 10% required under Policy HOU 7.
10. Policy HOU 7 contemplates exceptional circumstances where not all its requirements can be accommodated whilst still meeting other planning policy obligations. In this context it refers to, by way of an example, the situation where conversion or retrofitting of a historic building for apartment use may require some standards to be applied flexibly to prevent harm to the historic fabric of the building. However, the evidence does not establish that, in this case, a relaxation of this standard is necessary to ensure that other planning policy obligations are met. In this context I am not persuaded that exceptional circumstances exist that would justify a departure from the 10% requirement and conclude that the proposal would conflict with Policy HOU 7 in this respect. Consequently, I conclude that the proposal would not be in accordance with the Plan.

11. 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. The appellant argued that, in this case, material considerations existed that would justify a decision that did not accord with the plan. The addition of a second wheelchair accessible unit would bring the overall provision up to over 16%. While this would be an overprovision, it is the only means of meeting the quota in a situation where 12 units is proposed, given that the policy makes no provision for 'rounding down' the figure. I also accept that the proposal would provide much needed windfall housing on brownfield land, is of an acceptable design and that an 8% wheelchair accessible provision may be acceptable to whatever organisation ultimately manages the scheme. However, I do not judge these factors, either individually or cumulatively, to justify a departure from determining the appeal in accordance with a policy provision of the Plan.
12. I conclude that in the absence of material considerations that indicate otherwise, I must make my determination in this appeal in accordance with the relevant provision of the PS. The Council's objection on grounds of inadequate provision of wheelchair accessible accommodation is well founded and its reason for refusal No. 7 based on Policy HOU 7 is sustained and determining in this case.

This decision relates to the following drawings referred to on the Council's decision notice: -

- 1:1250 scale Site Location Plan GA-A-100-001 revision 2
 - 1:100 scale Proposed Main Elevation1(elevation 1) GA-A-300-001 revision 3
 - 1:100 scale Proposed Upper N'Ards Elevation (elevation 2) GA-A-300-002 revision 3
 - 1:100 scale Proposed Holywood Road Elevation1(elevation 3) GA-A-300-003
 - 1:100 scale Proposed Rear Elevation1(elevation 4) GA-A-300-004 revision 3
 - 1:100 scale Proposed Balcony Precedents PR-A-990-400 revision 1 and;
- the following drawings submitted post hearing by the appellant and received by the Commission on 1st May 2024.
- 1:100 scale Proposed Ground Floor Plan GA-A-200-001 revision 6
 - 1:100 scale Proposed First-Second Floor Plan GA-A-200-002 revision 5
 - 1:100 scale Proposed Third Floor Plan GA-A-200-003 revision 4
 - 1:100 scale Proposed Roof Plan GA-A-200-005 revision 4

COMMISSIONER DAMIEN HANNON

List of Documents

Planning Authority: - COU 1 Statement of Case
COU 2 Rebuttal
COU 2 Additional Comments following LDP adoption

Appellant: - APP 1 Statement of Case
APP 2 Rebuttal
APP 2 Response to adoption of LDP

List of Appearances

Planning Authority: - Matthew Best
Niall Hasson

Appellant: - Gavyn Smyth (Clyde Shanks)
Nigel Murray (Todd Architects)
Gavin McEvoy (Quicklet)