
Appeal Reference:	2023/A0080
Appeal by:	Eamon Southwell
Appeal against:	The refusal of full planning permission
Proposed Development:	Change of use from a dwelling to a 6 bed HMO
Location:	1 Nicholson Terrace, Londonderry
Planning Authority:	Derry City and Strabane District Council
Application Reference:	LA11/2023/1579/F
Procedure:	Informal Hearing on 2 nd May 2024
Decision by:	Commissioner Trudy Harbinson, dated 24 th June 2024

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the appeal proposal would:
 - have adequate provision for car parking without prejudice to the safety and convenience of road users; and
 - unacceptably impact the residential character and amenity of the area.
3. In the determination of this appeal, Section 45 (1) of the Act states that regard must be had to the local development plan (LDP), so far as material to the application, and to any other material considerations. Where regard is to be had to the LDP, Section 6 (4) of the Act requires that the determination must be made in accordance with the plan unless material considerations indicate otherwise.
4. The Derry Area Plan (DAP) 2011 is the relevant LDP. Within it the appeal site is located within the Central Area (Proposal CA1 Central Area). It is also located within an existing residential area (Proposal CA5 Protection of residential stock). The Clarendon Conservation Area (CA) as shown in the DAP adjoins the appeal site however I was advised by the Council that the boundary to this CA was subsequently extended to include additional streets including Nicholson Terrace. Policy BE4 of the DAP 'Conservation Areas' sets out matters to be undertaken to preserve and where possible enhance the character and appearance of conservation areas. Policy TR5 of the DAP 'Car Parking Provision in New Developments' sets out car parking requirements on a zonal basis. I will consider the appeal proposal against these policies and proposals below. There is no specific policy provision within the DAP for Houses in Multiple Occupation (HMO). The DAP contains no other policies or proposals that are material to this appeal and directs to regional policy.

5. The Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS) sets out transitional arrangements that will operate until such times as a Plan Strategy (PS) for the whole of the Council area has been adopted. In this Council area no PS has been adopted. Accordingly, the SPPS retains certain Planning Policy Statements (PPS) and sets out arrangements to be followed in the event of a conflict between the SPPS and a retained policy. Any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS. The council's sole reason for refusal refers to PPS3 'Access, Movement and Parking'. There is no conflict between the provisions of the SPPS and the retained policy.

The appeal proposal

6. The appeal site is located at the eastern end of Nicholson Terrace. It is a two storey smooth rendered property with slate roof and dormer and a two storey pitch roof rear return. The dwelling fronts on to the terrace, with steps to its entrance door and a low wall and railings providing defensible space to its frontage. A pavement wraps around its side gable adjacent to Academy Road and De Burgh Terrace to its rear. A natural stone wall along the Academy Road footpath adjoins a single storey rendered garage structure which wraps around the side and rear, enclosing the rear space. There is a roller shutter and rear door accessing a dropped kerb on to De Burgh Terrace to the rear. The property currently has two downstairs living spaces and a kitchen, two first floor bedrooms and a bathroom and three bedrooms in the roofspace.
7. The appeal seeks to change the use of the property from a dwelling to a 6 bed HMO. Internally the sixth bedroom is accommodated in place of the second living room on the ground floor. The only external alteration proposed is the slight movement of the window on the second floor rear return to accommodate a second bathroom.
8. The immediate area is residential in nature. It is predominantly defined by terraces and is of a high density. There is a primary school to the south of Nicholson Terrace and a daycare centre and nursery school further north on Academy Road. The site is centrally located and in close proximity to the commercial core of the City. The North West Regional College (NWRC) is located at the end of Academy Road.

Car Parking and Road Safety

9. The Council refused the appeal proposal as they found it contrary to PPS3 Policy AMP7 'Car Parking and Servicing Arrangements' in that it would prejudice the safety and convenience of road users as adequate provision cannot be made clear of the highway for the parking of vehicles which could be attracted to the site. Third parties echoed these concerns.
10. Policy TR5 of the DAP states that car parking provision in new developments will be controlled on a zonal basis. Although not referred to in the Council's reason for refusal, this policy remains material to this appeal. The appeal site is located in Zone B, the remainder of the Central Area and areas of mixed use elsewhere in the urban area, in which both operational and non-operational car parking will be required as determined by the Department taking into account the nature of the

development, the availability of existing parking on and off street and other local circumstances.

11. Policy AMP7 of PPS3 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. Supplementary Planning Guidance 'Parking Standards' sets out the Department's published parking standards. The guide does not include a parking standard for HMO development.
12. The Council consulted the Department for Infrastructure Roads (DfI) who advised that four parking spaces would normally be required for a development of this nature, representing an increase of one from the current use as a five bedroom dwelling. It also observed limited on-street parking in the area surrounding the development. There was no dispute between the Appellant and the Council as to the requirement for four spaces.
13. Third parties considered that the parking requirement was higher. They stated that the terrace is mostly occupied by families with two adults and children, therefore not everyone is an adult who drives. Furthermore, it was their experience that at a six bedroom HMO already on the terrace each occupant has a car.
14. There is potential, where all the occupants in a property are unrelated adults, that there could be more cars than that associated with a family dwelling. Whilst it might be the case in the specific HMO property to which the third parties refer that every occupant has a car, it does not follow that this would be the case in every such scenario, particularly given the central location of the appeal site and being within walking distance of the local educational establishments and the city centre. No persuasive evidence was provided to show that those living in HMO accommodation would have greater access to a car than the residents of the dwellings. I nevertheless consider that there is a reasonable expectation of some uplift in parking requirements based on the type of development proposed, local circumstances and the policy context.
15. The DfI car parking requirement figure is extrapolated from their Parking Standards guidance tables, based on the number of bedrooms in a terraced house. Given that these are published standards, that the property remains a house albeit with more occupants, and the central location of the property I consider an uplift of one space from three to four in total to be reasonable.
16. The Appellant undertook a Car Parking Assessment (CPA). They used a 150m maximum walking distance to define their survey area. They based this on figures extrapolated from Creating Places and 'Guidelines for Providing Journeys on Foot' published by the Chartered Institute for Highways and Transportation. This incorporated Nicholson Terrace, Nicholson Square, De Burgh Terrace, Mountjoy Terrace and a stretch of Academy Road. It surveyed 122 existing spaces. The surveys were carried out over three days on the 19th, 21st and 22nd June, a Wednesday, Friday and Saturday. They were carried out at 23:03, 00:15 and 00:10. The survey stated that this aligns with times when occupancy will be at its peak. On these dates 39, 51 and 50 unoccupied car parking spaces were

recorded respectively. The CPA concluded that the availability of spaces outweighs the demand for four parking spaces and meets the requirements of Dfl.

17. Dfl were reconsulted on this CPA. It considered that the CPA was not fully robust as it only showed the parking situation at three different times with no dates or times. The dates and times were provided to the Council however it does not appear that Dfl Roads provided any further comment on that specific matter. The consultation went on to advise that *normally (my emphasis)* a parking survey should be current and carried out on a number of days when residential parking demand is at its peak. i.e. early mornings or evenings and should include weekends as well as weekdays. The survey *may (my emphasis)* include photographs (dated and timed), accompanied by a plan highlighting the available parking capacity within the area and *should (my emphasis)* include any parking associated with developments which are committed but not yet constructed (*my emphasis*). It further noted that 19 of the car parking spaces highlighted in the surveyed area are adjacent to the Model Primary School on Academy Road and that these spaces are restricted to one hour of parking between 8am and 6:30pm, Monday to Saturday. It goes on to state that it observed that on-street parking is limited in the area surrounding the development and that the scarcity of parking is well documented in this area.
18. The Council stated that no determining weight is given to the CPA as the surveys undertaken relied on car parking spaces subject to waiting restrictions, car parking spaces in adjacent streets that are subject to commuter parking pressures and that it was undertaken on dates outside of term time for students. It stated this is of relevance both in terms of students commuting to NWRC and also in terms of the stated likely student occupiers of the HMO. At the hearing, whilst the Council found the extent of the survey to be a reasonable walking distance, it stated that it should have been broader in terms of its timings to include AM and PM periods over a number of weekdays and weekends.
19. The Council stated that the area surrounding the appeal site is a popular location for commuter parking due to its proximity to the city centre and in particular the NWRC and professional offices at Clarendon Street. It also referred to acute periods of traffic congestion as a result of school traffic. It noted that double yellow lines at both ends of the street to prohibit parking for the benefit of road safety and traffic progression are not adhered to at all times, which may be an indication of parking pressures in the area. It stated both the lack of parking and unauthorised parking results in a reduction in road safety due to reduced visibility at the junction and adverse impacts on traffic progression, with difficulty for two cars passing at the same time. Whilst the unauthorised parking is not a constant feature, it stated it is regular and that the addition of a further vehicle parked in the area, using one of the already limited spaces, will result in more occurrences of this unacceptable situation. It stated that an increase in poor parking behaviours and congestion could also result in a higher risk to school children making their way to school, however there was no evidence presented to demonstrate that their safety would be directly impacted as a result of the appeal development.
20. The third parties echo the Council's concerns with the parking survey with respect to its timings, having been carried out when business and schools were closed and university and college students had finished their studies. They stated that there are 15 parking spaces and 15 houses in Nicholson Terrace, one of which is

a HMO. According to the third parties, the residents own 18 cars and there are six cars associated with the HMO. The number of cars exceeds available space on Nicholson Terrace and the third party advised that they regularly have to park outside other people's houses on adjacent streets, moving their car on to the Terrace when another car leaves. They also stated that the drawings that accompanied the parking survey show parking spaces available on the carriageway on both sides of DeBurgh Terrace. However, they stated that in reality cars must park on the pavement, restricting and compromising the safety of pedestrians including disabled persons, elderly, children and mothers with prams.

21. In response to third party objections DfI Roads stated in their consultation response that parking problems are being compounded by the development of former single dwellings into B&Bs, HMOs and apartments. However, no verifiable evidence was provided to demonstrate this point. The Council advised me that with the exception of the one HMO there were no such approvals on Nicholson Terrace itself.
22. There is no published guidance on parking survey requirements. The DAP Policy TR5 and PPS3 Policy AMP7 indicate that account will be taken of the characteristics of the development, the availability of existing parking on and off street and other local circumstances. The DfI consultation response also gives an indication of what is expected in such surveys. The Appellant's parking survey has been carried out on two weekdays, as well as one weekend, meeting that specific guidance from DfI. However, I agree with the Council that given the car parking pressures in the area from commuter parking, it would have been useful to have had a broader range of surveys that analysed morning periods as well as evenings. The surveys have also been undertaken outside term time and are therefore unlikely to have captured parking associated with other HMO properties in the area.
23. I visited the site on a weekend evening and a weekday morning. Whilst there were ample spaces available outside the Model School on Academy Road these are subject to a one hour restriction Monday to Saturday from 8am to 6.30pm. It is clear that the primary intent is for these spaces to serve short stay parking only. I agree with the Council and third parties that they cannot be relied upon to serve the proposed development. I noted that numerous cars on DeBurgh Terrace and DeMoylan Park were partially parked on the pavement in an effort to keep the carriageway clear, obstructing the pavement as a result. Whilst the parking survey largely excluded double yellow lines, I did note a space identified on the survey as being unoccupied was in fact on double yellow lines. I observed available spaces on Nicholson Square, Mountjoy Terrace and on Academy Road outside the Day Centre. However, on both my visits Nicholson Terrace was at capacity with cars parked on the double yellow lines at each end. On my morning visit one vehicle left the terrace, however the space was quickly occupied by another. As such, it would appear that unoccupied spaces in the adjacent streets are not always utilised despite their availability.
24. The Appellant did not dispute that there were parking pressures in the area. He stated that there are parking issues across the City, which is undergoing change. He was under the impression that the surveys he had commissioned on his behalf had been acceptable and addressed the DfI consultation. Whilst he was sympathetic to the parking demands at the appeal site it was his position that the

difference in traffic and parking demand generated from an extra bedroom in a house would be minimal.

25. Whilst I appreciate the uplift in spaces required by the proposal is minimal it is nonetheless important to consider the resultant impact given the existing parking demands on Nicholson Terrace, even if parking pressures already exist. For the reasons above the CPA does not persuade me that there is sufficient parking capacity to accommodate the appeal development.
26. Whilst the parking on double yellow lines and obstruction of public footpaths is an enforcement matter for the appropriate authorities, I have not been presented with any persuasive evidence that the development proposed will not exacerbate parking demands on Nicholson Terrace. Whilst there may well be some availability in adjacent streets, I was not presented with any up to date evidence to substantiate this. Whilst the Appellant stated that it was his understanding that the surveys were acceptable, the application was refused on 17th November 2023 at which point the Council's parking and traffic concerns would have been known to him. There was an opportunity to address the concerns in the interim period. Further surveys could have been conducted within term time, and consideration given to the specific circumstances in the area. However, that was not the case and no such analysis has been put before me for consideration.
27. At the hearing the Appellant stated that there is an in-curtilage parking space to the rear of the property. The in-curtilage provision of a parking space was not shown on the existing or proposed plans, however, I note that there is a roller shutter access at the rear which has a dropped kerb on to De Burgh Terrace. The Council did not consider this as a viable option, suitable for parking given arrangements at the back yard. I was not presented with any evidence that the roller shutter vehicular access had been used for an in-curtilage car parking space. Nevertheless, even if I were to accept that one in-curtilage space could be accommodated, that does not negate the overall uplift in the requirement for an additional space to facilitate the change of use to a 6 bed HMO. I was told that when the CPA was carried out the property was vacant, therefore the three cars associated with its use as a dwelling house would not have been present and parked at those times. However, even with one space provided internally there would still be a requirement of a further three on-street spaces for the proposed 6 bedroom HMO.
28. The third parties stated that poor parking blocks services from accessing the rear of their property and cite difficulties for emergency vehicles. The Council said they had no representation from emergency services, however they could imagine scenarios where vehicles could be obstructed due to the demand for parking and the unauthorised parking on double yellow lines which result in each end of the street not being kept clear for vehicles entering and leaving. I was told that councillors are in discussion with these services in respect to such issues. Having driven along the terrace myself, I noted that with cars parked on each side, care had to be taken. Upon my encountering another vehicle, an oncoming car had to reverse on to Nicholson Square to let me exit Nicholson Terrace. It is likely that when a larger vehicle such as a bin lorry or oil tanker is on the street any oncoming cars would have to temporarily await their departure before proceeding. However, no persuasive evidence has been presented to demonstrate that access

and egress to Nicholson Terrace by emergency services or service vehicles would be prohibited as a direct result of this HMO proposal.

29. Within the evidential context I have insufficient information on parking in the area. For the reasons indicated above I have not been presented with any evidence that the additional traffic generated by the appeal development would not prejudice the safety and convenience of road users as a result of the uplift in parking demand. The proposal fails to comply with Policy TR5 of the DAP and Policy AMP7 of PPS3. The Council's reason for refusal and the third parties' related concerns are sustained to the extent specified.

Character and Amenity

30. Third party objectors referenced the architectural heritage of the area and the appeal site's location within the Clarendon Street CA. The Council raised no concern on these matters. Section 104 (11) of the Act requires that, "where any area is for the time being designated as a conservation area, special regard must be had, in the exercise, with respect to any buildings or other land in that area, of any powers under this Act, to the desirability of – (a) preserving the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does not arise; (b) enhancing the character or appearance of that area in cases where an opportunity to do so does arise." The only external amendment proposed to the appeal property to facilitate the change of use is the slight repositioning of a second floor window on the rear return. The amendment is so minor that it will be relatively inconspicuous when viewed from De Burgh Terrace and Academy Road. The front elevation on to Nicholson Terrace and the side elevation on to Academy Road will be unaltered. The development taken as a whole would not provide an opportunity for enhancing the character or appearance of the CA, but, having had special regard to preserving its character or appearance, I am satisfied that the appeal development would satisfy Section 104 (11)(a) of the Act in this respect. Furthermore, for the same reasons Policy BE4 of the DAP would not be offended.
31. In addition to its built fabric, the character of an area is also defined by the nature of its use. The third parties raised concerns that the residential character is changing as a result of the introduction of HMOs and Air B&Bs onto the street. They stated that there is an underestimation of the number of such uses. They have counted approximately 18 in the area including Nicholson Square, Stewarts Terrace, Mountjoy Street and DeMoylan Park. I was not provided with specific details for these other alleged uses. The Council advised that in the immediate streets there were two HMOs approved on Nicholson Square and one in DeBurgh Square. I was told by the Council that there are no approvals on Nicholson Terrace for AirBnBs and that there is the one approved HMO, as previously referenced.
32. A HMO does not fall within any use class within The Planning (Use Classes) Order (Northern Ireland) 2015 and is considered 'sui generis' however the Housing Order (NI) Order 2003 identifies a HMO as a house occupied by more than two qualifying persons, being persons who are not all members of the same family. The appeal property will continue to be a house but, in this case, with a greater number of occupants.

33. The Council hold the relevant data to assess any cumulative impact of HMO or Air BnB developments which would enable it to identify the threshold at which the character of an area would be compromised. They did not object to the proposed appeal development on this basis. Given that there is high density residential development in Nicholson Terrace itself and in the streets immediately adjacent I do not consider that there would be an adverse impact on its character from the introduction of one additional HMO. Cumulatively I do not consider that the overall residential character of Nicholson Terrace would be undermined to an unacceptable degree by the introduction of a second HMO. The predominant use in Nicholson Terrace would remain that of single family dwellings. Proposal CA5 of the DAP Protection of residential stock is not offended. Whilst the matter of precedent was raised, given my overall conclusions on the unacceptability of the development, I need not consider it further.
34. Third Parties stated that the current HMO on the street is let out as an Air BnB during university holidays with resultant anti-social activity. That is not a matter for this appeal.
35. They are also concerned that the proposed HMO would give rise to noise, litter, waste and anti-social behaviour. The Council raised no concerns on these issues having consulted its Environmental Health Department (EHD) twice, the second time with specific regard to objectors' concerns on such matters. The Appellant stated that any approved HMO would be registered and licensed and that, whilst he is aware that unauthorised lettings can create such difficulties, a professionally let HMO is well run and managed. While it is possible that HMO residents could create more general disturbance than residents of a single-family home, I am satisfied that responsible landlords would have robust management procedures in place to ensure occupants do not cause unreasonable disturbance. Furthermore, such matters can be dealt with under the separate HMO licensing regime and the Council's EHD could investigate any noise complaints should they arise. Given the separate HMO licensing regime and its requirements, it is in the landlord's best interest to be a good neighbour. I am not persuaded that the conversion of this single dwelling to a HMO would give rise to significant problems and these matters alone would not justify the withholding of planning permission.

Other Matters

36. Third party objectors raised a number of other concerns. They stated that there was no need for the HMO accommodation, however there is no policy requirement to demonstrate a need. Whilst they stated that there is a saturation of student accommodation and a need for family homes, I have not been presented with any evidence that is the case. The Appellant advised that the managing agent was in contact with the University of Ulster with respect to lettings to student doctors and I note correspondence from the University received during the processing of the planning application in support of the proposal. That correspondence indicated that more students were seeking to stay locally, rather than travel to campus and that the University was committed to securing accommodation.
37. There was a third party objection that the development, if approved, would negatively impact on property values with families priced out of the market, however I was provided with no persuasive evidence that would be the case. These issues and others raised by the third parties would not individually or collectively warrant dismissal of the appeal.

38. The third parties also referred to work having already been undertaken on the property. The Council stated that any physical internal work may not have required planning approval. In respect of the use of the property, when they visited in October 2023 it was vacant and they recently confirmed with the HMO licensing team that no licence had been administered for the property. The Appellant said they were not aware of the property already being in use as a HMO. Regardless of an event last year when the third parties alleged multiple occupants were present at the appeal property, they said that there were currently two people residing at the property. I am content that the appeal development as described is correct.
39. The Appellant raised concern as to certainty for developers seeking to provide HMO accommodation in the city. He stated that it was very confusing to know where a HMO would be acceptable and where it would not. He also stated that other HMOs had been approved in areas more congested than the current appeal site. However, I was not provided with specific details of those approvals. Officers had recommended approval of the appeal proposal to the Planning Committee, however the Committee, having considered the proposal, voted against that recommendation. They cited issues in relation to access, movement and parking that lead to safety concerns. Whilst the Appellant may have been under the impression that the proposal was acceptable and irrespective of the initial recommendation by officers, the corporate view of the Council was that the proposed HMO should be refused.
40. I was advised that whilst Councillors were eager for more students in the city they considered that student accommodation had to be provided in a planned way. It was stated that a lack of planning was leading to growing concern and frustration for residents and that a dedicated taskforce was being set up. The Council stated that going forward the new Local Development Plan would consider HMO developments however that is not yet in place and the Council must assess each application on a case-by-case basis. Whilst there is no specific HMO policy currently in place, for the reasons given above, the appeal development does not comply with the current prevailing policy context.

Conclusions

41. The proposed development fails the requirements of Policy AMP7 of PPS3 and the related provisions of the SPPS. It also fails against Policy TR5 of the DAP. The Council's and third parties' related concerns in this regard have been upheld to the extent specified. Accordingly, the appeal must fail.

The decision is based on the following:

Drawing No.01 Block Plan and Location Map

Drawing No.02 Existing and Proposed Plans, Sections and Elevations

COMMISSIONER TRUDY HARBINSON

List of Appearances

Planning Authority:- Malachy McCarron, Derry City and Strabane District Council

Appellant:- Mr Kevin Kelly

Third Parties Ms Kathleen Feeney (also representing Ms Kelly)
Councillor Shaun Harkin (on behalf of residents)

List of Documents

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

Third Parties: - Statement of Case Ms Feeney
Statement of Case Ms Kelly