

PLANNING APPEALS COMMISSION

**THE PLANNING ACT (NORTHERN IRELAND) 2011
SECTION 58**

Appeal by Mr Gary Mullan
against the refusal of full planning permission for a change of use from a single
occupancy dwelling house to a House of Multiple Occupancy at No. 11 Park Avenue,
Rosemount, Derry, BT48 0EH.

Report
by

Commissioner Kieran O'Connell

Planning Authority Reference: LA11/2021/0393/F

Procedure: Written Representations

Commissioner's Site Visit: 1st March 2024

Report Date: 21st March 2024

1.0 BACKGROUND

- 1.1 Derry City and Strabane District Council received the application for planning permission on 30th March 2021.
- 1.2 By notice dated 7th October 2022, the Council refused planning permission giving the following reasons: -
- 1. The proposed development is considered contrary to the Strategic Planning Policy Statement (SPPS), paragraphs 2.3 and 4.12, as the impact of an HMO along this street, would unacceptably affect the existing character of the area and use of the land that ought to be protected in the public interest due to an overprovision of HMOs in the locality and it would also unacceptably impact the well-being of the residents of the property due to the size of the HMO.**
 - 2. The proposed development would, if permitted, prejudice the safety and convenience of road users since sufficient provision cannot be made for the parking of vehicles which would be attracted to the premises.**
- 1.3 The Commission received the appeal on 17th November 2022 and advertised it in the local press on 31st January 2023 and 2nd February 2023. No representations were received from third parties. The Council forwarded to the Commission thirteen representations it had received at the planning application stage.

2.0 SITE AND SURROUNDINGS

- 2.1 The appeal site comprises No. 11 Park Avenue, a two-and-a-half-storey, roadside, mid-terrace dwelling with a dormer window to the front and rear. A two-storey rear return fills the majority of the enclosed rear yard. The southeastern perimeter is defined by a 3m wall, with a pedestrian door providing access to a parking area to Tutor Court at the rear of the property.
- 2.2 Internally the ground floor comprises one bedroom to the front and a living room, dining room, and kitchen to the rear. On the first floor level, there is a shower room, a bathroom and two bedrooms while on the second floor, there are two bedrooms. Each of the bedrooms has its own external lock.
- 2.3 The wider area adjacent to the appeal site comprises residential developments, retail shops, takeaways, a bar, bookmakers and hair and beauty salons. There are also community and recreational facilities, including Brooke Park and Creggan Burn Park. On-street parking is prevalent in the area surrounding the appeal site including along Park Avenue, Academy Road, Tutor Court and Tutor Close.

3.0 PLANNING AUTHORITY'S CASE

- 3.1 The Planning Authority did not provide a statement of case within the required period, however, background papers were supplied. Third parties at application stage raised concerns with the impact on the character of the area, the area should

be retained for single family occupancy, perceived impact on property values, noise and anti-social behaviour.

4.0 APPELLANT'S CASE

- 4.1 Derry City and Strabane District Council (DCSDC) planning officers recommended the planning application for 'approval' to the Planning Committee on the 6th of July 2022. However, this was overturned by the Planning Committee for two reasons as set out on the decision notice.
- 4.2 The guiding principle under the Strategic Planning Policy Statement for Northern Ireland (SPPS) for determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to the interests of acknowledged importance. Council Officers, in their Planning Committee Report, concluded that the proposal would not cause demonstrable harm to interests of acknowledged importance and recommended approval.
- 4.3 The refusal of this planning application has failed to demonstrate how this development will cause demonstrable harm to interests of acknowledged importance contrary to the conclusion of the Planning Committee Report.
- 4.4 The first refusal reason is the subjective opinion of the Planning Committee. The second refusal reason based on car parking has been provided despite the conclusion of two detailed parking assessments conducted by the Appellant in August and December 2021 concluding that there was ample parking available to service this scheme. No evidence has been provided contrary to these findings nor has an addendum been provided to the committee reports to support this refusal.
- 4.5 The appeal site is located at No. 11 Park Avenue, a large two-and-a-half-storey, terraced dwelling with an overall external gross footprint of 201.6 square metres (2170.0 square feet). It provides five bedrooms over three floors, with two bathrooms on the upper floors. The living, dining, utility, and kitchen areas are all on the ground floor for residents, with a rear yard and access out onto Tutor Court, a large public parking area used mainly by people attracted to Park Avenue.
- 4.6 This dwelling is located within the Rosemount area of the city, a high-density inner-city urban area close to the University of Ulster (UoU), Northwest Regional College and the city centre. Park Avenue is a main road linking Rosemount with other areas of the city and can become very busy/congested at peak times and difficult to navigate during these times.
- 4.7 This is a mixed-use area with the appeal building located directly opposite a busy public house and off-licence, a few doors down from a newsagents, a busy local Spar shop. It's also near a health centre, betting shop, cafes, fast food takeaways, barbers, chemists, hairdressers, and Brooke Park a large area of recreational and leisure space. All of which are located along Park Avenue / Rosemount Avenue. This part of Park Avenue informally acts as a local centre serving the surrounding community. All the land uses in the immediate area have been set out on the Land Use Map.

- 4.8 The approval of this House in Multiple Occupancy (HMO) will have no adverse impact on the character of this highly densified mixed-use area, nor cause problems in terms of noise, nuisance, or disturbance. Considering this building's proximity adjacent to a busy main road, next to a Spar Convenience Store, and opposite a public house and off-license, its occupancy or requirement as a single-family home will be in short demand.
- 4.9 The appeal proposal does not give rise to any change to the external frontage appearance/elevations of the property. The impact on the character is therefore limited. No concerns or objections have been raised by the Council or third parties in respect of the impact of the appeal development on the character and appearance of this area.
- 4.10 A mix of residential tenures in this area assists in the delivery of diversity and vibrancy in this part of the city. Whilst the occupants of an HMO may be more transient, the landowner has a responsibility to maintain and manage the property to an acceptable standard.
- 4.11 The Derry Area Plan 2011 (DAP) is 12 years beyond its notional end date but is still the extant local development plan for the area until the new draft plan is adopted. The appeal site is located within the settlement limit of Derry, just outside of the Central Area of the city. It is in the heartland of the Rosemount area of the city and in close proximity and easy walking distance to the University of Ulster, Northwest Regional College, a vast range of Community Facilities, and Brooke Park, a large area of open space, as well as the City Centre. The DAP recognises the importance of a strong residential component to the general well-being of the plan area. This is the perfect accessible location for an HMO to increase residential densities and contribute towards the student demand for housing near educational facilities.
- 4.12 The DAP offers no policy or designations for Housing of Multiple Occupancy (HMO), nor does it preclude HMOs in this area of the city.
- 4.13 All statutory consultees have no objection to this scheme in terms of the change of use to HMO, the standard of accommodation being provided, or the size of the dwelling being converted. The standards, size, and shared facilities of HMOs are covered by separate legislation set out and determined by the Northern Ireland Housing Executive under the Houses in Multiple Occupation Act (Northern Ireland) 2016.
- 4.14 A full planning history search has been carried out on the appeal site and surrounding area and the following relevant planning approvals have been returned.

Planning Reference	Proposal	Location	Appeal Status
PAC 2018/A0161	COU to HMO	2 Grafton Terrace – opposite appeal site.	Approved by Commission
LA11/2019/0617/F	COU to HMO	15 Park Avenue, Derry	Approved by Council
LA11/2019/0804/F	COU to HMO	5 Fairman Place, Derry	Approved by Council
LA11/2020/0040/F	COU to HMO	17 Grafton Street, Derry	Approved by Council
LA11/2021/1301/F	COU to HMO	19a Rosemount Avenue, Derry	Approved by Council
LA11/2022/1126/F	COU to HMO	13 Rosemount Avenue, Derry	Approved by Council

- 4.15 The Planning histories listed are all within the context of the appeal site and confirm that Council officers determined that the area could absorb further HMOs. No. 13 Rosemount Avenue (Planning Ref: LA11/2022/1126/F) was approved in July 2023, after Committee Members refused this current appeal.
- 4.16 Commissioner McGlinchey in PAC decision 2018/A0161, determined that in terms of Paragraph 2.3 of the SPPS, the basic question is whether a proposal would unacceptably affect amenities and the existing use of land and buildings that ought to be protected in the public interest.
- 4.17 From the outset, refusal reason one of the Council's decision notice relates to the size of the HMO unacceptably impacting the well-being of residents due to its size. This is an unfounded reason for refusal not supported by any assessment or documentation associated with this appeal.
- 4.18 This proposal seeks approval for the retrospective conversion of the existing building to a five-bedroom HMO. Notably, the overall size of this building is 201.6 square metres or 2170.0 square feet with an overall gross internal floor space of 150.5 square metres or 1619.9 square feet. The appeal building has a significantly higher gross internal floor space than the building at No. 2 Grafton Terrace which provides 118 square metres of internal floor space as approved by the Commission under 2018/A0161. This is less than 60m from the appeal site.
- 4.19 This is a change of use from a residential dwelling to an HMO which requires a license to operate under strict HMO legislation. The living standards for HMOs are strict, and if not complied with, a license application will be refused or revoked. This building, if approved, will require an HMO License and its conversion will be done under current HMO licensing standards.
- 4.20 This building will house five occupants in five large double rooms spread out over three floors of the property providing two bathrooms and a communal kitchen, dining, and living room on the ground floor of the property. HMO Regulations for a bedroom with a single occupant is 6.5sqm. The room sizes provided in this property are: -

Room Number	Square Metre
Room 1	11.60
Room 2	14.20
Room 3	16.10
Room 4	10.30
Room 5	16.10
Communal Areas	
Kitchen	11.40
Dining	10.19
Utility	2.90
Living:	12.10
TOTAL:	104.89

- 4.21 The Council's refusal on the amenity impact of residents is unfounded. The room sizes and communal size provision are well above the HMO standards. We note Council Members' concerns at the Committee Meeting were directed toward the bedroom space, which is significantly above the recommended standards with bedrooms 2, 3, and 5 being over double the recommended HMO standard of 6.5sqm.
- 4.22 The proposed plans indicate communal areas on the ground floor consisting of a kitchen, utility, living, and dining area of 37 sqm. Access is provided to the rear yard for bin storage and access to Tutor Court, an area of public car parking that can be used by the property.
- 4.23 The kitchen provides over 8m of worktop space, excluding the sink and the hob, etc. The utility room worktop of 1.75m will provide for a wash machine and space for a dryer. The recommended HMO standard is 1m per occupant with allocated cupboard space for each, lockable if preferred. Residents will also have adequate space to consume meals in the dining area or relax in the living room area of the property.
- 4.24 The appropriate number of bins will be provided for residents and left kerbside onto Tutor Court on the appointed day each week for collection by Derry City & Strabane District Council.
- 4.25 This building has a small service area to the rear of the property for bin storage and a drying area but it is within minutes of Brooke Park and Creggan Burn Park. The proposed occupants can avail of the recreational and leisure facilities at Creggan Burn Park or Brooke Park, which consists of a bowling green, indoor and out football pitches, large green spaces, a gym, a café, and a play park all within a short walking distance of the appeal building.
- 4.26 There is a social housing crisis within Derry-Londonderry with people unable to access social and affordable housing. The Northern Ireland Housing Executive (NIHE) has confirmed that single people make up almost half of the social waiting list for Derry & Strabane.
- 4.27 NIHE Housing Investment Plan 2023-2026, outlines that there were approximately 5,736 applicants on the waiting list for Derry City & Strabane with 4,275 in housing

stress. Single persons represent approximately 2874 (51%) of the housing list for the district.

- 4.28 It states that there will be a requirement to increase construction rates of suitable accommodation for older persons, single persons, and small adult households as Derry – Londonderry’s projected growth of households is concentrated in adult-only households whether they be single-person or households with more than one adult.
- 4.29 Also, as household groups continue to reduce in size, HMOs will continue to play a greater role in the housing market, particularly for single households aged under 35.
- 4.30 Derry City Social Housing Need from 2022-2027 is estimated to be a total of 3,561 new units with single, older persons and small family households comprising 89% of the housing stress waiting list in the council area. It is therefore evident that a large proportion of the social housing list comprises single households and action needs to be taken to tackle this issue with the provision of HMOs in appropriate locations.
- 4.31 In addition, the UoU Magee Campus has a new medical school in operation since September 2021 and has relocated a vast range of Allied Health Sciences courses from September 2022 with up to 900 new students arriving in the city this past year.
- 4.32 UoU Magee Campus currently provides accommodation of 657 rooms over three different campuses while having a total of 5,242 students. In an email provided by the University to a local Rental Agent, they confirm that a 2023 Cushman & Wakefield report indicates there is a need for an additional 500-700 student beds in Derry- Londonderry.
- 4.33 The UoU, to accommodate the growing need for student numbers, has had to lease rooms in local hotels this past year and has written to all landlords in the area on the HMO Register to obtain properties to accommodate this urgent student need. The University has taken over 120 bedrooms from landlords on a head lease scheme this year but is short 70 bedrooms.
- 4.34 The Vice Chancellor of UoU stated to Belfast Live in a recent interview that the UoU Magee Campus has 5,242 students and this will increase over the next five years to 6,500 students creating an increased demand for residential accommodation with an additional 1,251 students with HMOs in the locality playing a critical role in those plans.
- 4.35 Students create a significant demand for additional HMOs in the city to which the residential services of the UoU Magee cannot accommodate the need and have requested help from local landlords. This puts a significant demand on local housing suppliers to provide this nature of accommodation to meet the demand.
- 4.36 Refusal reason two refers solely to parking and that sufficient provision for parking cannot be provided for vehicles attracted to this site. This refusal reason is bizarre and unreasonable when the Appellant provided not one, but two different traffic assessments during the processing of the application.
- 4.37 DfI Roads indicated a building of this nature and use would normally be required to provide 3 car parking spaces. Unquestionably, these are available on-street.

- 4.38 The first Traffic Assessment was carried out in August 2021 (provided with the papers). It was supported by evidence that identified copious amounts of on-street car parking spaces available and could be used by the residents of this proposal if deemed necessary over a 6-day period. A second assessment was then carried out, as DfI Roads indicated concerns that the first assessment was carried out during COVID-19 and a time when students were not attending the UoU campus. The second assessment also demonstrated that there were generous amounts of on-street car parking available that could be used by this proposal.
- 4.39 Both Traffic Assessments concluded that at any given time there were no fewer than 56 car parking spaces available within 100m of the appeal building which can be utilised by the proposed residents. Furthermore, in the run-up to this appeal, a rudimentary Traffic Assessment of available car parking in the area found unlimited spaces that can be used for this proposal in the surrounding street.
- 4.40 We fully acknowledge that historically, Park Avenue has been difficult to navigate during peak times due to poor infrastructure and the width of the road. This, however, is an existing problem not associated with the appeal site in any form, and unfortunately one of the problems of living in a high-density mixed-use area that acts informally as a local service centre for the local community. The number of retail shops, pubs, off-licenses, barbers, and hairdressers attract vast amounts of transient visitors who abandon vehicles or double park on footpaths etc., to avail of these services.
- 4.41 We are aware of several objections to this Change of Use. Genuine planning concerns have been addressed above and note concerns regarding anti-social activity from other premises. This appeal proposal has no association with any other building and under HMO legislation the building will be secured, and its occupants managed appropriately. No anti-social activity will be accepted by the proposed residents at these premises.
- 4.42 For the reasons set out above, the Commissioner is respectfully requested to allow this appeal.

5.0 CONSIDERATION

Claim for Costs

- 5.1 A claim for costs was made by the Appellant against Derry City and Strabane District Council. This claim is the subject of a separate decision.

Consideration

- 5.2 The main issues in this appeal are whether the appeal proposal would:
- unacceptably affect the character of the area;
 - have a detrimental impact on the well-being of proposed residents; and
 - provide adequate car parking arrangements.
- 5.3 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.

- 5.4 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.
- 5.5 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.
- 5.6 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. There is however no specific policy provision within DAP for Houses in Multiple Occupancy (HMO). The DAP contains no other policies that are material to this appeal and directs to regional policy.
- 5.7 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 it sets out the 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 first reason for refusal refers to the SPPS while the second reason for refusal surprisingly does not refer to any particular planning policy, although, I note that PPS 3 is referred to in the round within the background papers.

Character

- 5.8 The Council's concerns as expressed within their first refusal reason broadly relate to Paragraphs 2.3 and 4.12 of the SPPS. Paragraph 2.3 states that the planning system operates in the public interest of local communities and the region as a whole and encompasses the present as well as future needs of society. It further states that the basic question is whether or not a proposal would unacceptably affect amenities and the existing use of land and buildings that ought to be protected in the public interest.
- 5.9 Paragraph 4.12 of the SPPS states other amenity considerations arising from development, that may have potential health and well-being implications, include design considerations, impacts relating to visual intrusion, general nuisance, loss of light and overshadowing.
- 5.10 The Council considers that the use of the appeal building as a HMO would adversely impact on the character of the area and that there is an over provision of HMOs in this area. A HMO does not fall within any use class within The Planning (Use Classes) Order (Northern Ireland) 2015 (UCO) and is also considered 'sui generis.' A HMO is not classified as a dwelling for the purposes of the UCO. The Houses in Multiple Occupation Act (Northern Ireland) 2016 (HMO Act) defines a 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.

- 5.11 The appeal proposal involves the retrospective change of use from a single dwelling to an HMO. However, from my internal inspection of the building, it is evident that the physical alterations have taken place in accordance with the proposed plans Drawing No. 04. No physical changes to the exterior of the building are proposed. As such the use as an HMO does not alter the appearance of the host building, nor does it have a detrimental impact on the visual character or appearance of this street or area as a result.
- 5.12 The surrounding area as recognised by the Appellant is characterised by a mix of uses including retail, residential, professional services, community uses, and 'sui generis' uses such as a betting office, public house, and an off-license. The evidence indicates that this is a dense area of mainly terrace type dwellings. Within this area there are six HMOs which is undisputed. The introduction of one more HMO in this context would not change or undermine the character of the area to an unacceptable degree. In terms of the residential component the area would remain predominantly in single family occupation. Thus, given that lack of evidence from the Council on the character issue, the Council's concerns are not sustained on this matter.

Well-being

- 5.13 The second element to the Council's first reason for refusal relates to paragraphs 2.3 and 4.12 of the SPPS and specifically to the well-being of the proposed residents being detrimentally impacted due to the size of the HMO. While the Council's concerns in this regard have not been substantiated, it is noted from the background papers that their Environmental Health Section raised no concerns regarding its size. They do however direct the Appellant to the HMO Act space standards and the requirement for an HMO licence. These design standards and the requirement for a HMO licence would fall under another regulatory regime outside of the remit of planning. Nevertheless, a planning judgment is required to determine the acceptability of the appeal proposal on matters germane to residential amenity.
- 5.14 The Appellant states that the property has a gross internal floor area of 150.5 sqm and is larger than other HMOs in the wider area. The room sizes and communal spaces are above the aforementioned HMO standards. I note that each of the five bedrooms within this property is more than the 6.5 sqm HMO standards for one person as stated by the Appellant. The communal rooms within the building, including the kitchen, dining room, living room, bathroom, and shower room, are all spacious in their own right and contain the necessary facilities. In the evidential context provided and based on my internal observations of the property, I am not persuaded that the size of the accommodation proposed is insufficient, nor is it detrimental to the residential amenity of prospective residents. The Council therefore has not sustained its objection to the appeal development on this matter.

Parking

- 5.15 The Council's second reason for refusal relates to road safety due to alleged insufficient parking provisions for vehicles attracted to the property. Despite raising

this as a reason for refusal, the Council has not justified their position in relation to planning policy. Additionally, the Council has not provided any verifiable evidence to support its position.

- 5.16 As indicated in paragraph 5.3 above, there is a statutory duty for decision makers to have regard to the local development plan. Policy TR5 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 falls within zone B, given the mixed-use area in which it is situated. The DAP identifies zone B as 'the remainder of the Central Area and areas of mixed-use elsewhere in the urban area'. Zone B requires the provision of both operational and non-operational car parking, taking into account the nature of the development, the availability of existing parking on and off street and other local circumstances. As indicated earlier, the Plan directs to regional policy and the issues therein are dealt with below.
- 5.17 Park Avenue and the surrounding streets are characterised by on-street parking, given the terraced nature of development within these areas. DfI Roads, in their consultation response to the planning application, stated that three parking spaces would be required for the appeal development. This was not disputed by the Appellant, as they are of the view that three parking spaces are available on-street to meet this requirement.
- 5.18 In support of their position, the Appellant has undertaken two traffic assessments during the processing of the planning application. Both assessments conclude that there is available parking capacity within 100m of the appeal site that could be utilised by occupants of No. 11 Park Avenue. The Appellant has also provided photographic parking surveys dated Sunday 8th October 2023 at 19.37, and Wednesday 11th October 2023 at 17.17 within their Statement of Case showing available capacity. However, these surveys do not show the specific locations of the available spaces, nor are their locations readily identifiable relative to the appeal site.
- 5.19 Notwithstanding the conclusions of the Appellant's various parking surveys, during my site inspections, I observed spare on-street parking capacity along Park Avenue to the front (northwest) of the appeal site and in Tutor Court to the rear (southeast) in excess of three spaces. I also observed additional capacity in the surrounding streets, which could accommodate more than three parking spaces.
- 5.20 While DfI Roads state that three parking spaces would be required and alludes to a 'scarcity of parking' in this area, no evidence has been provided to justify this position. In my judgement, a five bedroom dwelling house could theoretically have access to three cars, therefore there is no guarantee that those living in the HMO would need any more car space than the residents of a single-family dwelling. Accordingly, as no persuasive evidence has been provided to substantiate the claim that the proposal would if permitted, prejudice the safety and convenience of road users, I conclude that the Council's reason for refusal is not sustained.

Other Matters

- 5.21 I note the Appellant also refers to third party concerns regarding anti-social behaviour, noise and disturbance associated with HMO developments. The Council raised no concerns on this issue, having consulted with their Environmental Health Section, the competent authority on such matters. In any event, responsible

landlords should have robust procedures in place to deal with noise and/or disturbance. Should noise or anti-social complaints arise, the Council's Environmental Health Section can intervene and impose penalties as required and it could affect their HMO licence.

- 5.22 The 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 the claim.
- 5.23 The Council has not sustained its objections for the reasons stated above. Whilst the Council proposed a draft condition relating to the standard time limit for the commencement of development, given that the change of use has already taken place, this condition is not considered necessary, nor are any other conditions.

7.0 RECOMMENDATION

- 7.1 I recommend to the Commission that the appeal be allowed and that full planning permission be granted, unconditionally.
- 7.2 This recommendation relates to the following drawings: -
01 - 1:1250 scale, Site Location Plan date stamped Received 30th March 2021.
02 - 1:200 scale, Site Plan date stamped Received 30th March 2021.
04 - 1:100 scale, Proposed Plans date stamped Received 30th March 2021.

List of Documents

Appellant: - Statement of Case by Lee Kennedy Planning