

Appeal Decision

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Appeal Reference:	2023/A0002
Appeal by:	Smart Parking Ltd.
Appeal against:	The refusal of full planning permission
Proposed Development:	Retention of temporary car park
Location:	Site at junction of Academy Street, Exchange Street and Hector Street, Belfast
Planning Authority:	Belfast City Council
Application Reference:	LA04/2022/0956/F
Procedure:	Informal Hearing on 9 th January 2024
Decision by:	Commissioner Cathy McKeary, dated 29 th March 2024

Decision

1. The appeal is dismissed.

Claim for Costs

2. A claim for costs was made by the appellant against the Council in writing. This claim is the subject of a separate decision.

Reasons

3. The main issue in this appeal is whether there is a need for the retention of the car park.
4. 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. 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. Both parties considered that The Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS) is relevant in relation to the proposal even though the Belfast Local Development Plan – Plan Strategy 2035 (PS) is adopted. Whilst the SPPS remains material in accordance with paragraph 1.9 thereof, as the Council has adopted its PS, the previously retained policies have now ceased to have effect.

6. On 2nd May 2023, the Council adopted the Belfast Local Development Plan – Plan Strategy 2035 (PS). In line with the transitional arrangements as set out in the Schedule to the Local Development Plan Regulations 2015 (as amended) the Local Development Plan now becomes a combination of the Departmental Development Plan (DDP) and the Plan Strategy (PS) read together. Again, in accordance with the subject legislation any conflict between a policy contained in the DDP and those of the Plan Strategy must be resolved in favour of the PS.
7. The Belfast Urban Area Plan 2001 (BUAP) operates as the relevant DDP. In that plan, the site is located within the city centre and Policy TR14 – ‘Car Parking in a Central Area’ is of relevance. It states that, *“The transportation strategy will seek to ensure that car parking supply in the central area will be sufficient to meet demand.”* It envisaged that multi storey car parks in planned developments and the reintroduction of controlled on street parking would meet the demands of the forecast increase in short stay parking provision. Subsequently the Draft Belfast Metropolitan Plan (dBMAP) was published in 2004 and then purportedly adopted, but the 2014 iteration was declared unlawful in 2017. Consequently, dBMAP 2004 is material in certain circumstances. In dBMAP, the appeal site is within a Belfast City Centre Area of Parking Restraint. However, this relates to a reduction in the level of parking required for developments in the central area. The site is also a Development Opportunity Site (CC042) and falls within the Scotch and Cathedral Character Area, Belfast City Centre Main Office Area, Cathedral Conservation Area, and Belfast City Core Area of Parking Restraint. None of these designations are pertinent to the appeal development.
8. The PS has transport policies including TRAN11 – ‘Provision of public and private car parks’ and TRAN12 – ‘Temporary car parks’. Both relate to managing parking in Belfast. TRAN11 states that, *“Planning permission will only be granted for the development or extension of public or private car parks, including park and ride and park and share where it is demonstrated that the proposal meets five criteria”*. The pertinent criterion in this case being criterion (c), that the parking meets a need identified by the DfI in the extant transport plan or accepted by the DfI following robust analysis provided by the applicant. Policy TRAN 12 states that, *“Planning permission will not be granted for the development of a temporary car park unless it is demonstrated that the proposal meets two criteria which relate to need which cannot be met in the short term by the council or the private sector and whether the proposal is submitted in conjunction with programmed proposals to develop /redevelop the site in question”*. Having reviewed the policies, there is no conflict between the relevant plans insofar as they relate to the proposal before me.
9. In light of the adoption of the PS, the Council provided three amended refusal reasons. The third was withdrawn at the hearing. The appellant considered that the provision of these new refusal reasons constituted new information under S59 of the Act. However, Sections 6(4) and 45 (1) of the Act requires that regard is to be had to the PS, as part of the LDP, therefore I must consider the proposal within this new policy context. Furthermore S59(2) of the Act states that nothing within S59(1) affects any requirement to have regard to the provisions of the LDP or a material consideration. In any event, the matters pertain to car parking provision

in the city centre which were clearly before the Council and was the subject of an application made by the appellant.

10. The appeal site is on the corner of Academy Street and Exchange Street. It is around 0.06ha in size. Hector Street, a minor service road, runs northeast to southwest along the eastern edge of the site. The site operates as a surface level car park and comprises a stoned surface informally laid out with around 20 car parking spaces, a ticket kiosk and some security cameras. It is secured by paladin fencing on three sides. The remaining boundary backs on to the rear of a commercial building.
11. In Policy TRAN11 the only matter of dispute engages criterion (c) which relates to whether the proposal *“meets a need identified by the Department for Infrastructure – Roads (DfI) in the extant transport plan or accepted by the DfI following robust analysis provided by the applicant”*. DfI stated that *“the applicant has not demonstrated that the proposal meets a need identified by DfI Roads”*. They also declined to comment on the second element of the policy. The Council considers that the policy is not satisfied. It is also clear from the consultation responses that DfI, despite being repeatedly asked by the Council, do not consider that they should be the ultimate decision maker.
12. The appellant considers that DfI accepts the proposal and thus the analysis provided by the appellant’s consultants. The appellant considers that this is supported by the fact that DfI have not explicitly rejected the proposal, nor did they supply any refusal reasons. They also add that DfI did not attend the hearing and instead supplied draft conditions that should be attached to an approval. The appellant further concludes that DfI must accept that they have provided adequate information to demonstrate that the existing car park pricing structure has deterred long term parking. In support of their position, the appellant provided three other DfI consultation responses (albeit in respect of other temporary car parks in Belfast), where DfI explicitly stated that the appellants in those cases had not demonstrated a need or provided robust analysis. The appellant considers that these other responses show that when DfI are not content with a proposal, this conclusion is clearly communicated through their consultation responses.
13. Criterion (c) of Policy TRAN11 requires an appellant to demonstrate that they meet a need identified or accepted by DfI following robust analysis (my emphasis). The second element of Policy TRAN 12 also requires that the developer demonstrates that a need exists which cannot be met in the short term by the council or the private sector. DfI have been explicit in their latest response that the proposal does not meet an identified need, therefore, it follows that they are of the opinion that element of the policy is not met. However, the proposal could still be acceptable if the second element of the policy is met. Whilst some of DfI’s actions as put forward by the appellant could be viewed as supportive of the appeal development, in the evidential context provided, DfI have never stated that they accept the analysis provided by the appellant. The three other cases referred to were taken in a different policy context and are therefore given limited weight in my consideration. This appeal falls to be decided in its own site specific and

evidential context and it is not unusual for a consultee to provide draft conditions at appeal stage as they are usually proffered on a without prejudice basis.

14. While it is normal practice for the council to consult DfI on car parking proposals and to take account of its views, the responsibility for determining whether a proposal satisfies the requirements of policy lies solely with the Council as the planning authority, despite the reference to DfI in the policy.
15. The SPPS states that, *“As part of preparing an overall car parking strategy, councils should bring forward local policies to ensure adequate provision for car parking within new developments”*, which would identify need in the area. Both parties referred to The Belfast Car Parking Strategy and Action Plan dated April 2018 (BCPSAP) but neither referred to it as a transport plan for the purposes of Policy TRAN11. In any event, the BCPSAP is the most up to date information relevant to the issue at hand and therefore is material to my consideration. The BCPSAP deals with parking need in terms of necessity, demand and desire. It looks at different types of users, the demand in different parts of the city, the users’ habits and the desires which inform parking behaviour. This is then balanced to achieve a sustainable strategic plan for parking in Belfast. The BCPSAP states that parking provision has a significant impact on economic vitality and parking provision should encourage sustainable commuter travel. The strategy addresses this in three areas namely, parking supply, parking location and parking price.
16. In relation to parking supply, the BCPSAP aims to maintain the current level of city centre parking in order to provide short stay parking. It also has an expectation that city centre sites will be redeveloped for uses other than car parking and that street level parking will be diverted to multi storey car parks. The BCPSAP goes on to indicate that new car parks within the city will only be provided where they replace existing spaces or where they are an essential part of new development proposals. Furthermore, the amount of private non-residential (PNR) parking provided across the city will be more tightly controlled to influence traffic demand in the city centre. The justification and amplification of policy TRAN11 states that, *“the overall transportation objective will be to minimise the use of the car and encourage shoppers and commuters to use public transport and park and ride initiatives. An ever-increasing supply of car parking spaces solely serving long-stay commuter demand can act as an impediment to economic growth by contributing to increased congestion and the erosion of environmental quality.”*
17. The appeal development is not part of any wider redevelopment proposal. As a stand-alone PNR car park, which encourages private car use into the city centre, it falls foul of the overall aims of the BCPSAP. This document explains there is a current oversupply of parking spaces within the city centre of approximately 10,000 spaces, even with the loss of spaces in the north core of the city as a result development and transport scheme proposals. Prior to the use of the site as a car park, there was a building on the site which had seven associated car parking spaces. This was demolished in 2020. As a result, an additional 13 car parking spaces became available for use. The appeal development which provides for 20 spaces was in place post the BCPSAP, so these 13 spaces are additional to the oversupply as set out in the BCPSAP. Given the abundant oversupply of city

centre parking spaces, any demand arising from the university nearby and any loss of parking spaces created by redevelopment sites is adequately provided for. Furthermore, the Traffic Assessment (TA) and pricing plan submitted by the appellant do not address parking supply in the area presumably because in quantitative terms there is an oversupply.

18. With regards to parking location, the retrospective proposal seeks to retain a small ground level car park providing 20 spaces in a city centre location. Within the TA the appellant argues that they meet the BCPSAP parking location requirements given the high turnover of use and the limited evidence of commuter or long stay use. The car park currently provides parking in the 'Cathedral Quarter', where the evidence from the appellant indicates that $\frac{3}{4}$ of the visitors stay for under two hours, with the majority parking less than 30 minutes. This evidence indicates that the car park provides a well-used, thus convenient, option for people who are briefly visiting the area. The appellant argues that without the car park, the site would become vacant, making zero contribution to the quality of the surrounding environment, it would fall into disrepair and attract antisocial behaviour. I accept that the car park brings activity to the street, deters anti-social behaviour and enables the lands to be utilised prior to any construction commencing of the approved development on the site. I also accept that as the car park is located in a central area, it is desirable to park there.
19. Notwithstanding my findings above, the movement patterns of those using the car park and the occupancy rate, if provided, would have given a clearer picture of use and potentially need. An average of 25 cars per day does not demonstrate full occupancy of the car park given the purported short-term use of the majority of users. This suggests that there is a sufficient supply of parking in the area such as the multi- storey car park at St. Anne's Square and the on-street parking nearby. The word "need" is capable of encompassing necessity at one end of the spectrum and demand or desire at the other; the particular meaning depends upon context. Whilst the car park might be in a desirable, convenient location, the failure to demonstrate high levels of occupancy therein undermines the appellant's argument that the car park meets an identified need.
20. In terms of parking pricing both BCPSAP and policy TRAN11 expect car parks to be priced to discourage long stay parking to encourage more sustainable travel. The appellant has indicated that their pricing structure is and will continue to be used to achieve this end. DfL Roads were also content with the pricing plan put forward, and that in the event of approval, a condition to ensure compliance with it could be imposed. I therefore accept that the pricing structure would discourage long stay parking.
21. All in all, there is clearly a demand for short term car parking in this area and a desire to park at street level in such a convenient city centre location. The pricing plan proposed by the appellant also meets the requirements of BCPSAP and Policy TRAN11 as set out above. However, it has not been adequately demonstrated there is a need for this car park given the abundant oversupply of parking provision in the central area. I therefore find that the development is contrary to Policy TRAN11 and the objectives of BCPSAP which aim to minimise

the use of the car and encourage shoppers and commuters to use public transport and park and ride initiatives. I am not persuaded that there is a need for this car park in accordance with criterion (c) of policy TRAN11.

22. Policy TRAN 12 has a conjunctive test within it. The policy requires the developer to show that a need exists which cannot be met in the short term by the council or the private sector and (my emphasis) requires the proposal to comply with Policy TRAN8 of the PS. The Council advised that the reference to Policy TRAN8 was a drafting error and their objection in this regard was withdrawn. Notwithstanding this, as described above the appellant has failed to show that a need exists that cannot be met in the short term by the council or the private sector given the existing oversupply of parking. The appeal development, therefore, also fails to comply with Policy TRAN12.
23. Overall, I am not persuaded that a robust analysis has been provided by the appellant to demonstrate that a need has been met by the appeal development in accordance with the second element of criterion (c) of Policy TRAN 11. I am also not persuaded that a need exists that cannot be met in the short term by the council or the private sector in providing parking. Therefore, the second element of criterion (a) of Policy TRAN12 is not met nor are the provisions of the BUAP which envisages any short term parking needs to be met by multi storey car parks and controlled on street parking. Furthermore, I am not persuaded that the benefits brought by the convenience of the parking and the use of a site that might otherwise be derelict outweighs the failure to comply with planning policy.
24. In line with the wording of the transitional arrangements in the 2015 LDP Regulations, when reading both the DDP and Plan Strategy together, the proposal does not accord with the LDP for the reasons stated. The Council's first and second refusal reasons are sustained insofar as stated and the appeal must fail.

This decision relates to the following drawings;

- Location Plan – 437 SL (90) 01
- Site Plan – 437CL (90) 01 – Rev B

COMMISSIONER CATHY MCKEARY

List of Appearances

Planning Authority:-	Beth Russell (Belfast City Council) Richard Taylor (Belfast City Council)
Appellant:-	Diana Thompson (MBA Planning) Richard Agus (MRA) Andrew Burnside (Smart Parking Ltd)

List of Documents

Planning Authority:-	Statement of case by Belfast City Council
Appellant:-	Statement of case by MBA Planning on behalf of Smart Parking Ltd.