

Appeal Decisions

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Appeal Reference:	2019/A0133.
Appeals by:	Mr N Maguire.
Appeal against:	The refusal of full planning permission.
Proposal:	Proposed 6 No.1 bedroom apartments.
Location:	Site 20m south of Nos 22, 24 and 26 Townsend Street, on Back Row, Strabane
Planning Authority:	Derry City and Strabane District Council.
Application Reference:	LA11/2018/0376/F.
Procedure:	Informal Hearing on 29 January 2020.
Decisions by:	Commissioner Pauline Boomer, date May 2020.

Decision

1. The appeal is dismissed.

Preliminary Issues

Admissibility of amended plans

2. Section 59 (1) of the Planning Act (NI) 2011 states that a party to the proceedings is not to raise any matter which was not before the Council at the time the decision appealed against was made, unless that party can demonstrate (a) that the matter could not have been raised before that time or (b) that it not being raised before that time was a consequence of exceptional circumstances. Section 59 (2) states that nothing in subsection (1) affects any requirement or entitlement to have regard to (a) the provisions of the local development plan, or (b) any other material consideration.
3. The planning application for the proposal was submitted to the Local Planning Authority (LPA) on 23 April 2018. The application was assessed by the LPA over a period of 14 months with the decision notice issuing on 6 June 2019. Following receipt of the statutory consultation replies and a large number of objections, the LPA advised the appellant by email on 12 June 2018 of concerns about a number of issues including the scale of the proposed block, the impact on residential amenities and the shortfall in parking spaces, requesting a meeting to discuss these issues. Given that an identical scheme had been approved by the former planning authority, the Department of the Environment, they also advised that new planning policies had been introduced since that approval issued on 28 June 2007 under J/2006/1045/F. It took several months to arrange a suitable meeting which was held on 8 August 2018 attended by the appellant and his agent. A copy of the minutes of this meeting were presented at the Hearing which, although brief, indicate that the scale of the building and the potential to overlook those adjacent properties were discussed. Whilst these minutes also indicate that the appellant was advised of the concerns raised by Transport NI and their request for a parking survey, this was disputed by the appellant's agent who assumed that the only outstanding issue was parking. It

was agreed at that meeting that the appellant would submit a Supporting Statement, which was received by the LPA on 7 September 2018.

4. At that time, no revised plans were submitted but the appellant's agent presented arguments as to why the application should now be approved, given the previous approval and its compliance with all relevant planning policies, including those introduced in the interim. He also concluded that the need for parking here "is not of overriding importance" but no parking survey was submitted, nor the other details requested by TNI. There is no indication on file that TNI or any objectors were reconsulted with this additional information. Changes in staff over the next 9 months resulted in delays in the processing of the planning application with the appellant's agent sending several emails and telephoning, asking for an update, to be told that it would be discussed shortly. In May 2019, he was advised that the application was being recommended for refusal and indicated that he was shocked by this outcome which was not anticipated. The application was "called in" and considered by the Planning Committee on 5 June 2019 where the appellant declined the opportunity to comment on the recommended reasons for refusal. The decision notice issued on 6 June 2019.
5. The appellant has now submitted a revised scheme with his Statement of Case, reducing the number of apartments from 6 to 4 by removing the 2nd floor, altering the finishes and boundary treatments and introducing some additional cross sections, and landscaping details. As these issues were considered by the LPA during the processing of the planning application, I conclude that these are not new matters. The appellant was appraised of all of these concerns about the proposed scheme at the office meeting held on 8 August 2018 yet made a conscious decision not to address these issues, choosing instead to argue that the original scheme complied with all relevant planning policies and placing particular emphasis on the previous approval. No explanation has been given as to why this amended scheme could not have been submitted during the 14 months when the planning application was being processed or the 10 months after the office meeting was held. The appellant's agent stated at the Hearing that he was shocked by the decision to refuse this application, given the planning history and argued that he was given no indication that a refusal was imminent in the intervening months. I recognise that the LPA failed to give him detailed feedback on his supporting statement, either verbally or in writing and that when the agent made several requests for an update via email, he was advised only that it was being discussed internally. However, no evidence has been presented to confirm that there were exceptional circumstances which prevented the appellant from making significant amendments to the scheme following the office meeting where all these concerns were discussed, as outlined in the minutes of that meeting. In these circumstances, I conclude that this represents a different scheme to the original proposal assessed by the LPA and objected to by local residents. I agree with the LPA that the revised scheme submitted with the appellant's Statement of Case does not fall within the exceptions set out in Section 59 of the 2011 Act. I recognise that the revised submission represents a reduced scheme which seeks to address some of the concerns of the objectors. Nonetheless, as the revised scheme has not been readvertised and neither Transport NI (TNI) nor the objectors have had an opportunity to comment on these amendments, I consider that third party prejudice would result, even if the revised scheme was considered admissible. In this evidential context, I find that the amended plans and additional details submitted at this late stage are not admissible and cannot be considered as part of this appeal process.

Reasons

6. The main issues in this appeal include:
 - the impact of the development on the character of the area and the pattern of development within;
 - the impact on the residential amenity of the adjacent properties by reason of overlooking and overshadowing;

- the inability to provide additional car parking spaces; and
- the potential impact on priority habitat.

7. The Planning Act (NI) 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 Strabane Area Plan 1986-2001 (SAP) is the local development plan for the area. Whilst the site lies within the Settlement Development Limit (SDL) of the town, and outside the Town Centre, it is not zoned for any particular use. The SAP housing objectives include providing a choice of housing sites in convenient locations to support the provision of a range of dwelling types to meet different housing needs whilst protecting the character and amenity of existing residential areas.
8. The Strategic Planning Policy Statement for Northern Ireland (SPPS) retains certain existing planning policy documents. Amongst these are Planning Policy Statement 7: Quality Residential Environments (PPS 7), the 2nd Addendum to Planning Policy Statement 7: Safeguarding the Character of Established Residential Areas (APPS7 (2)) as well as Planning Policy Statement 12: Housing in Settlements (PPS12), Planning Policy Statement 3: Access, Movement and Parking (PPS3), Planning Policy Statement 2: Natural Heritage (PPS2) and the 1st Addendum to Planning Policy Statement 7: Residential Extensions and Alterations: (APPS7(1)). Creating Places, Development Control Advice Notice 8: Housing in Existing Urban Areas (DCAN8) and Guidance on Parking Standards also provide relevant planning guidance.
9. The appeal site represents a small area of backland enclosed by residential properties on three sides with an NIE substation to the south. Set back approximately 24m from Townsend Street, it is accessed via an existing laneway known as Back Row which links onto Fountain Street and provides right of way to the substation and the rear of the adjacent properties. A pedestrian pathway runs northwards off Back Row to provide access to the carpark off Springhill Park. This relatively flat plot is undefined to the north and west with a wooden screen fence defining the eastern boundary. A hedgerow along that eastern boundary has recently been removed by the appellant. A low wall defines part of the boundary between the appeal site and the substation to the south. There is a mix of housing enclosing the site with a single storey terrace of three bungalows immediately north, separated by a turning head and a terrace of 2 storey dwellings to the west, all at a comparable level to the appeal site. Immediately east of the plot sit two semi-detached two storey dwellings at Nos 9 and 10 St John's Place, at a level approximately 2m higher than the appeal site. Previously there was a carry out food bar and store on the appeal site, which has been demolished. It appears that the plot is currently being used as a dumping ground by fly-tippers. This was confirmed in a letter from the Environmental Health Department dated 18 June 2018 which raised concerns that general waste was being dumped on the plot with rats harbouring in the hedgerow. The appeal proposal seeks to erect a three storey L-shaped building on this backland site to provide 6 one bedroomed apartments.
10. The appellant places particular emphasis on the planning history on the appeal site which he considers established the principle of erecting a 3 storey apartment block on the appeal site. He argues that the approval of J/2006/1045/F in 2007 found that an identical scheme complied with all of the relevant policies and guidance, including all the criteria in Policy QD1 as well as Policy AMP3 and Creating Places. I was only provided with a full set of documents relating to that 2007 approval as Post hearing evidence, including the Case Officer's report, consultation replies and a copy of an objection letter from local residents, including a petition with 22 signatures as well as a further letter of objection from a local Councillor. I note that the appellant at that time submitted a parking analysis with his planning application indicating spare capacity in the Springhill Park car park. The TNI consultation response indicated the need for parking and turning to be provided within the curtilage of the site along with sightline

improvements. A copy of this was forwarded to the appellant and the post hearing evidence indicates that he made no response. It is noteworthy that the issue of parking is not addressed at all in the Case officer's report (my emphasis) and does not appear to have formed part of the Department's consideration at that time. Objectors had raised concerns about loss of privacy and general disturbance, given the proximity to existing properties whilst the local Councillor voiced concerns about the development being out of keeping with the character of the area. Having been initially recommended for refusal, based on failing to provide a quality residential development which would adversely affect residential amenities, the appellant submitted amended plans showing the removal of windows in the first floor and second floor windows in the north eastern elevation. Despite failing to address all of the other concerns raised about the scale of the building, its impact on the character of the area, overlooking of those Townsend Street properties and disregarding the concerns about parking raised by TNI, an approval was issued on 28 June 2007, with only landscaping conditions attached.

11. The LPA at the hearing argued that the 2007 approval represented a poor decision which should not be given determining weight in this appeal. I agree that there were significant shortcomings in the assessment of that development at that time and I am not satisfied that there was sufficient scrutiny against the relevant policies in PPS7 and PPS3. Notwithstanding these unresolved issues, approval was granted by the former Planning Authority, the Department of the Environment (NI) and Derry City and Strabane District Council, the new planning authority, is not bound by the decisions of the former Planning Authority. In any event, the planning context against which to assess the appeal proposal must be considered has changed since 2007, with the introduction of APPS 7(2) in 2010 and the SPPS in 2015. I agree that determining weight cannot be given to the previous approval in light of the failure to properly assess against the relevant planning policies and guidance at that time. In this appeal, I must now assess the proposed development against current planning policies and guidance whilst taking account of the concerns now raised by the objectors.
12. The first and second reasons for refusal state that the appeal proposal conflicts with Policy LC1 of APPS7(2). The appellant argues that APPS7(2) is not applicable to the appeal site as it does not fall within the definition of an Established Residential Area (ERA) set out in Annexe E as all adjoining dwellings are high rather than low to medium density referred to in that document. As this area is characterised by single family properties which all have private amenity space or gardens and are of a medium density, I agree with the LPA that it does not fall outwith the definition of an ERA. The appellant also contends that the appeal site meets one of the exceptions where Policy LC1 does not apply. As the appeal site lies outside the Town Centre and is not located along a key and link transport corridor or a main transportation node, I conclude that it does not fall within one of those specified exceptions. The proximity to a bus stop serving the round the town bus route does not persuade me otherwise. I am satisfied that APPS7(2) and Policy LC1 is applicable to the appeal site.
13. The appellant does not dispute the relevance of the SPPS, pointing to Paragraph 6.137 which identifies the need to deliver increased housing without town cramming (my emphasis) and espouses the importance of new housing respecting local character. This is reinforced in Planning Control Principle 1 (PCP1) of PPS12, referred to me by the appellant, which also stresses that to avoid town cramming, the overriding objective should be to avoid any significant erosion of the environmental quality, amenity and privacy whilst ensuring that new developments respect the form, scale and massing of adjacent housing and safeguard privacy. Both strengthen the requirements of Policy QD 1 of PPS 7 which states that development which would result in unacceptable damage to the local character, environmental quality or residential amenity of established residential areas will not be permitted. There is no dispute that this derelict and redundant area of backland has degenerated into an unsightly dumping ground which offers poor environmental quality at

present, failing to make a positive contribution to the character of the area. It is recognised that the SPPS promotes the development of such brownfield sites and the LPA confirmed at the Hearing that they would support appropriately scaled development on this site which would be beneficial in visual and environmental terms. Whilst they have no objection in principle to the development of this plot for residential use, they consider that given the scale and nature of the development now proposed, it fails to comply with criterion (a) and criterion (h) of Policy QD1 as well as Criteria (a) and (b) of Policy LC1.

14. Policy LC1 is an amplification of Policy QD1, seeking to strengthen existing policy criteria in PPS 7 to ensure that the quality of these ERAs is maintained, if not enhanced. The headnote of Policy LC1 states that in ERAs, planning permission will only be granted for the redevelopment of existing buildings or the infilling of vacant sites to accommodate new dwellings, where all the criteria in Policy QD1 as well as the additional criteria it identifies. This includes Criterion (a) which requires that the proposed density is no higher than that found in the ERA and Criterion (b) which seeks to ensure that the pattern of development is in keeping with the overall character and environmental quality of the ERA. The LPA concluded that the ERA should include the area east of Townsend Street and although the appellant argued that the defined area should extend further, he offered no further clarification. I am satisfied that the ERA relevant to this appeal should incorporate the housing developments east of the Mourne River.
15. Criterion (a) of Policy QD1 requires that development respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, landscaping and hard surfaced areas. The LPA and the objectors consider that the introduction of a 3 storey apartment block to the rear of existing single storey and two storey dwellings would be out of keeping and result in unacceptable damage to the local character of the area. In order to determine the potential impact of the appeal proposal, it is essential to firstly consider the existing pattern of development and the character of this ERA. The appeal site lies within a residential area characterised by a variety of single family dwellings. Directly west of the site there is a 2 storey terrace at Nos 30-52 Townsend Street, many with roof conversions and rear returns. A single storey development of terraced bungalows, at 22-26 Townsend Street, occupies a sloping site immediately north of the appeal site. The area to the south and east of the plot is dominated by a variety of 2 storey semi detached dwellings off Fountain Street, including those at St John's Place which abut the appeal site. It was confirmed at the hearing that there are currently no 3 storey buildings or apartment blocks in this area which is dominated by single family units with private amenity space of varying sizes.
16. The first three Reasons for refusal address the issue of the prevalent density and pattern of development within the area and whether the scale and massing of the proposed development reflects that. The LPA and objectors consider that the proposed development would create a density of development significantly higher than that found within the ERA, in conflict with Criterion (a) of both Policy QD1 and Policy LC1. The appellant disputes this, stressing that the appeal proposal would result only in a slightly higher density which would be acceptable here. Whilst I recognise that Planning Control Principle 1 (PCP1) of PPS12 promotes an increase in the density of housing developments in some central locations within towns, the appeal site does not lie within the Town Centre and does not benefit from high accessibility to public transport facilities, despite the proximity of a local bus stop. Paragraph 1.2 of APPS7(2) offers greater clarity on this issue. Whilst acknowledging that the Regional Development Strategy (RDS) promotes a drive to provide more housing within existing urban areas and advocates an increase in the density of urban housing, it stresses that this should not be interpreted as a mandate to force over-developed and unsympathetic housing schemes into ERAs, with the development of infill sites needing to be handled with particular sensitivity.

17. In order to properly assess the potential impact of the proposed scheme, it is necessary to determine the density of development which is currently found within the ERA to allow for an accurate comparison to be made. However neither the LPA nor the appellant presented any figures to clarify the current situation or make any comparisons between the density now proposed and that which is currently prevalent in this area. The onus lies with the LPA to demonstrate that the appeal proposal would result in a higher density rather than state this as a fact without providing any assessment or explaining how they reached that conclusion. The introduction of 6 residential units within this 0.028ha plot is likely to result in a higher density than that currently prevalent in the ERA. Whilst the first reason for refusal states that the appeal proposal would result in a significantly higher density, I have not been presented with evidence to confirm this. In the absence of the required details to allow for adequate scrutiny, I find that the first reason for refusal has not been sustained.
18. The LPA and objectors consider that the proposed pattern of development would not be in keeping with the overall character and environmental quality of the ERA, with the size and scale of the proposed apartment block failing to respect that character. The appeal proposal seeks to introduce a three storey building extending 9.7m in height above ground level with a hipped roof finished in black tiles. The building would be finished in red brick with a contrasting soldier course and some rendered panels introduced in the north western elevation. The plot would be enclosed by a variety of boundary finishes including a 1.2m high facing brick wall with steel fencing above and a 2m high rendered wall. The L-shaped block would have a footprint of approximately 120m² on each floor, each accommodating two one bedroomed apartments. I note that neither the LPA nor the objectors raised any issue with the design and finishes of the proposed building or the size of the proposed units. The LPA acknowledged that adequate amenity space, clothes drying facilities and bin storage would be provided. Some new landscaping is proposed in the communal area to the front of the block.
19. There is no dispute that the environmental quality of this unsightly plot is currently poor and that the introduction of appropriate development here could enhance the appearance of this area of backland. The LPA acknowledged in their report to Planning Committee that a mix of dwellings and apartments is encouraged by planning policy to ensure choice and create balanced communities. Whilst it was confirmed at the Hearing that there are no other apartment developments in this ERA and no other 3 storey buildings in the vicinity, there is no requirement in policy to replicate the existing house types and there is no embargo on apartment developments per se in urban areas. The appellant argued that, rather than cause unacceptable damage to the local area or significantly erode the local character, the appeal proposal would instead enhance the appearance of the area. I acknowledge that Paragraph 7.09 of Creating Places states that the use of differing heights, frontages and form will help to create variety and interest in the layout, enhancing its visual character. Whilst this document emphasizes that blocks more than 2-storeys in height should be located to provide focal points within a larger layout, particularly along local distributor roads and other important streets and avenues, I note that the location and size of this restricted backland plot differs significantly from those key sites referred to. The introduction of a three storey block to the rear of existing single storey dwellings and the 2 storey terrace along Townsend Street would tower above those existing properties. Whilst I acknowledge that the properties in St John's Place are set at a higher level and provide a backdrop against which the appeal block would be read, when viewed from the north and west, I am not persuaded that its scale and massing would be in harmony with the local character. I agree with the objectors that it would be unduly dominant in the street scene, despite its setback from adjoining public roads.
20. The LPA agree that the principle of residential development on an appropriate scale is acceptable here and recognise that it could revitalise and invigorate this unsightly backland

plot, offer better surveillance and security and generally enhance the appearance and environmental quality of this area. However I do not consider that the 3 storey block now proposed represents an appropriate form of development at this location as its scale, bulk and massing would fail to respect or harmonize with the character of the ERA. I therefore conclude that the appeal proposal conflicts with Criterion (a) of Policy QD1 and Criterion (b) of Policy LC1 and the 2nd and 3rd reasons for refusal and the objectors' concerns in this regard are sustained.

21. The 4th and 5th reasons for refusal address the potential impact of the proposed development on the residential amenities of adjoining residents. The LPA and the objectors consider that the appeal proposal would result in overlooking and overshadowing of the adjacent properties which enclose the appeal site, contrary to Criterion (h) of Policy QD1. Whilst Paragraph 4.38 of the Justification and Amplification text to Policy QD1 deals with the issue of privacy and refers to the need to provide reasonable space between buildings in order to minimise overlooking, it offers no specific guidance on separation distances and it is therefore necessary to seek further clarification in Creating Places. It is recognized that few households in an urban setting can claim not to be overlooked to some degree. Paragraph 7.12 of Creating Places states that layouts that include apartments facing onto the rear garden spaces of other dwellings should be avoided. It goes on to say that such layouts generally provide an unsatisfactory relationship between buildings. Paragraph 7.17 advises that great care is needed where apartments are proposed in existing residential areas, including living rooms on upper floors as this can cause a significant loss of amenity to adjoining dwellings, particularly where they are close to boundaries of existing properties. It points out that in such circumstances where new development abuts the private amenity space of existing properties, a minimum distance of around 15m should be provided between the apartment block and the common boundary (my emphasis). Whilst Paragraph 7.18 does allow for greater flexibility in inner urban areas, this is not applicable to the appeal site which lies outside the Town Centre.
22. The proposed 3 storey block lies to the rear of properties on three sides with windows orientated towards the rear elevations and private amenity space of many of these dwellings. The LPA has raised concerns about the potential overlooking and loss of privacy of Nos 22-24, 32-34 and 40-44 Townsend Street, as well as Nos 9 and 10 St John's Place. Objectors at Nos 30 and 38 Townsend Street have raised similar concerns. I agree with the LPA that the adequate separation distance from No. 30 would not result in that property being overlooked. Whilst attempts have been made to reduce the potential overlooking of Nos 36 and 38 Townsend Street by proposing a blank wall in the south western elevation which abuts Back Row, the recessed elevation further back seeks to introduce two windows on each of the three floors. Given the enclosure of the appeal site by a high wall, there are no issues with overlooking from any of the proposed ground floor windows. The main area of concern relates to the first and second floor windows serving a living room on each level. These terraced properties have a 2 storey flat roofed extension, with some single storey extensions, resulting in a modest rear yard, enclosed by a 3m high wall. The proposed upper floor windows would be positioned 13m distant from the wall enclosing the rear yard of each, falling short of the recommended separation distance. Whilst the proposal seeks to introduce 4 extra duty trees in the communal amenity space at the front of the apartment block, these would take time to mature and are unlikely to provide effective screening or filtering to minimize the potential for overlooking from upper floor windows for a considerable time. Despite the modest provision of amenity space for each of these properties, the objectors stress that this represents their only option for outdoor space which I agree is worthy of protection from overlooking. I am not persuaded by the appellant's argument that the configuration of the building and the position of windows within it would ensure that the potential loss of privacy and overlooking "would be kept to an acceptable level". Despite their enclosure by a 3m high wall, I consider that these private spaces to the rear of Nos 32 and

34 would be significantly overlooked from the proposed habitable rooms at first and second floor level, resulting in an unacceptable loss of residential amenity.

23. The LPA also consider that the properties at Nos 40-44 Townsend Street would be overlooked by the kitchen and bedroom windows proposed on the upper floors in the south eastern elevation of the building. Given the adequate separation distances and oblique angles involved, I do not find that these properties would be adversely affected by overlooking and loss of privacy. As there are no upper floor windows proposed in the north eastern elevation, no overlooking of Nos 9 and 10 St John's Place would result.
24. A similar design feature has been introduced in the north western elevation of the apartment block with a blank wall orientated towards the rear of No 26 Townsend Street and a recessed elevation fronting towards the rear gardens and rear elevations of Nos 22 and 24. These bungalows have a modest back garden enclosed by a low wooden screen fence. A kitchen window is proposed on both the first and second floor, orientated towards their rear gardens and rear elevations, which would be 15m and 20m distant respectively. I do not consider that obscure glazing in these kitchen windows as suggested by the appellant at the hearing, offers a suitable solution for these habitable rooms. Although just meeting the minimum separation distance to the common boundary specified in Paragraph 7.19, the introduction of two kitchen windows, one on each of the upper floors, would result in a significant loss of privacy. I am not persuaded that the existing boundary fence or the proposed planting would reduce the potential for overlooking from those upper floor windows, as suggested by the appellant. I therefore find that the 4th reason for refusal and objectors' concerns are sustained to the extent specified.
25. The LPA and objectors consider that the appeal proposal would result in the overshadowing of the adjoining properties which enclose it. In their Statement of Case, the LPA refer only to Criterion (h) of Policy QD1 which requires that account be taken of this factor, but offers no further guidance. I consider it necessary to take account of Paragraphs A32 and A33 of APPS7 (1)) which specifically address the issue of overshadowing. Although referring to residential extensions, the same principle applies to new development erected in close proximity to rear elevations and rear garden areas. It states that sunlight and daylight are valued elements in a good quality environment. It goes on to say that where an extension is poorly sited or badly designed, it can cast a shadow that may reduce a neighbour's daylight and adversely affect their amenity to an unacceptable level, requiring every effort to avoid or minimize the potential for overshadowing to a neighbour. This guidance is relevant to the appeal proposal, given the size, scale and massing of the proposed 3 storey block in such close proximity to the adjoining properties.
26. The appellant provided a number of diagrams and plans with his Statement of Case which he argues confirms that the adjoining properties would not be adversely affected by loss of daylight or overshadowing to an unacceptable level. The LPA offered little comment on these drawings, acknowledging only that seasonal differences apply. The terraced dwellings at Nos 36 and 38 Townsend Street lie directly west of the appeal site and the appellant recognises that their daylight is already compromised by their rear returns and east facing aspects. I agree that the introduction of a 9.7m high building within 4m of their boundary walls and within 10m of their rear returns would compound these difficulties, creating a greater "hemmed in feeling" and resulting in their rear aspects being overshadowed to an unacceptable level. The siting of such a sizeable building immediately south of Nos 22-26, 10m distant from their rear boundaries and 16m from their rear elevations would also cast a shadow on those properties, adversely impacting on their residential amenities. The semi-detached properties at Nos 9 and 10 St John's Place sit directly east of the appeal site, and despite the 2m differential in levels, the erection of the 3 storey building 1-1.5m removed from their party boundary would result in the unacceptable overshadowing of their rear

gardens. Whilst I acknowledge that there would be seasonal variations in the overall impact, I am not persuaded that the erection of this sizeable 3 storey building in such close proximity to existing properties would adversely affect their residential amenities by reason of overshadowing, contrary to Criterion (h) of Policy QD1. The 5th reason for refusal and the objectors' concerns are therefore sustained to the extent specified.

27. The objectors have also raised the issue of overdominance, arguing that the proposed block would appear overbearing when viewed from the rear of their dwellings. I agree that the erection of a 9.7m blank wall within 4m of the private amenity space at Nos 36 and 38 Townsend Street would have an overbearing impact on those properties. Similarly, the erection of an imposing and largely blank elevation within 1-1.5m of the party boundary with Nos 9 and 10 St. John's Place would appear overdominant, regardless of the differential in levels. I therefore find that the objectors' concerns in relation to overdominance are determining in this appeal.
28. The 6th reason for refusal addresses the issue of insufficient car parking being made available for the prospective occupants of the proposed apartment block. The LPA and objectors consider that the appeal proposal conflicts with Policy AMP7 of PPS3 which requires that development proposals provide adequate provision for car parking, having regard to the Department's published standards, whilst ensuring that proposals do not prejudice road safety or significantly inconvenience the flow of traffic. TNI confirm 1.25 car parking spaces are required per each residential unit, totalling 8 spaces to fully meet the parking standards. Policy AMP7 does outline exceptions where a reduced level of car parking provision may be acceptable where the development lies in a highly accessible location, well served by local transport or where it could benefit from spare capacity available in nearby public car parks or adjacent on street car parking (my emphasis). The appeal development does not propose any in curtilage parking to serve the 6 one bedroom units. The appellant argues that no new spaces are required within the restricted curtilage, given the spare capacity available within the car park to the north and the easy access to the local bus service.
29. TNI calculated that as the 11 dwellings at Townsend Street/Springhill Park required 17 car parking spaces, the spare capacity available within this carpark was only two spaces, falling well short of the 8 spaces required to accommodate this apartment development. Once advised of their concerns, the appellant put forward alternative proposals in his Supplementary Statement, emphasizing the fact that the previous approval was granted without any additional parking, relying upon spare capacity within the adjacent car park. I have already raised concerns that the issue of car parking provision and the concerns raised by objectors at that time was not addressed at all by the former Planning Authority and concluded that determining weight cannot be attached to that approval. Whilst aware of the estimated shortfall, the appellant did not carry out a parking survey to present alternative data, either during the processing of the planning application or in his Statement of Case. I do not agree with the appellant's conclusion that the need for parking here "is not of overriding importance". Paragraph 5.42 of PPS3 states that the onus lies with the appellant to demonstrate that there is spare capacity yet he has made no attempt to explain how or where any additional spaces are available for use by prospective residents, either in the adjacent car park or on Townsend Street. The objectors point out that parking in this locality can be problematic at times, with residents and visitors struggling to find spaces. The photographs submitted by the objectors show cars parked on the pavements along Townsend Street where no private parking is available for existing residents and I share their concerns that the appeal proposal would compound the problem by increasing competition for existing scarce resources.
30. I acknowledge that policy actively encourages the use of alternative forms of transport rather than reliance on cars and promotes the use of bicycles and public transport as well as

walking. I recognise that the appeal site lies close to the Town Centre, just off the bus route and within walking distance of a local shop. Whilst no communal bicycle stand is shown on the submitted plans, this could be conditioned. However, the exceptions listed in Policy AMP7, reinforced in DCAN8, allow for a reduction in car parking provision rather than no car parking provision at all as is currently proposed. In the absence of any evidence to the contrary, I agree with the LPA that the appellant has failed to demonstrate that adequate provision can be made for the parking of vehicles which would be attracted to the appeal site. The 6th reason for refusal and the objectors' concerns in this regard are therefore sustained.

31. The 7th reason for refusal related to the potential impact of the appeal development on the hedgerow which extended along the north eastern boundary of the appeal site. The LPA refer to conflict with Policy NH5 of PPS2, which states that planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to, known priority habitats or other natural heritage features worthy of protection. I share the appellant's concerns that the LPA offered no explanation why they considered that this hedgerow made a significant contribution to biodiversity when they described it as "scrub vegetation" in their report to the Planning Committee. In any case, the appellant had removed this hedgerow prior to the date of the hearing, which he pointed out was on the instruction of Environmental Health, given concerns about vermin infestation within. In the absence of any information to confirm that this hedgerow made a significant contribution to biodiversity, I find no conflict with Policy NH5 and the 7th reason for refusal is not sustained.
32. The eleven objectors raised a number of additional concerns. Whilst the introduction of an apartment block would create some additional noise from residents entering and leaving the premises, it is noted that the site was previously used as a carry out food bar which would have generated significant footfall, especially late at night. Within such an urban setting, I do not consider that the additional pedestrian traffic associated with the 6 apartments would cause excessive noise and disturbance, especially as it currently used as a pedestrian access between Fountain Street and Springhill Park. They also raised concerns that the appeal proposal would result in overdevelopment of the site, normally associated with a failure to provide adequate facilities for the number of units proposed. Whilst the scheme under consideration would provide adequate amenity space, bin storage and clothes drying facilities, the lack of any in-curtilage car parking and failure to identify suitable alternative provision confirms that this presents overdevelopment. I find the objectors' concerns in regards to overdevelopment to be determining in this appeal.
33. The LPA recognise that the principle of residential development on an appropriate scale is acceptable on the appeal site as it could revitalise and invigorate this unsightly backland plot, offer better surveillance and security and generally enhance the appearance and environmental quality of this area. However I am not persuaded that the 3 storey block now proposed represents an appropriate form of development at this location, given its scale, bulk and massing and its unsatisfactory relationship with adjacent residential properties, adversely impacting on their residential amenities. It has not been demonstrated that adequate car parking spaces would be available for use by the prospective residents. I therefore conclude that it fails to meet the housing objectives as set out in the SAP. As I have found the 2nd, 3rd, 4th, 5th and 6th reasons for refusal to be sustained to the extent specified as well as the objectors' concerns about over dominance and overdevelopment, this appeal must fail.

This decision relates to the following drawings, date stamped received by Derry City and Strabane District Council on 23 April 2018:-

Drg N.M.12 1:1250 site location plan/1:500 site map/1:50 boundary details;

Drg N.M.10 1:100 floor plans on 3 levels;

Drg N.M.11 1:100 elevations on 3 levels plus section; and

Drg 070501 1:100 landscaping proposals.

COMMISSIONER PAULINE BOOMER

2019/A0133

Attendees at Informal Hearing

Mr James Duffy Derry City and Strabane District Council

Ms Claire Higgins Derry City and Strabane District Council

Mr Brendan Johns (Agent for Appellant)

Mr Andrew McGirr (Architect for Appellant)

List Of Documents

LPA 1 Statement of Case and Appendices from Derry City and Strabane District Council

LPA 2 Copies of correspondence with Appellant submitted at the hearing
(including minutes of the meeting held on 8 August 2018.)

LPA 3 Post hearing evidence including full details of J/2006/1045/F
(including Case officer's report, consultation responses and objector letters and petition)

APP 1 Statement of case and Appendices from Appellant.