



# Appeal Decision

Park House  
87/91 Great Victoria Street  
BELFAST  
BT2 7AG  
T: 028 9024 4710  
F: 028 9031 2536  
E: info@pacni.gov.uk

**Appeal Reference:** 2019/A0242  
**Appeal by:** Green Homes (NI) Ltd  
**Appeal against:** Refusal of full planning permission  
**Proposed Development:** Change of use from dwelling to 6 bedroom HMO  
**Location:** 19 West End Park, Derry City  
**Planning Authority:** Derry City and Strabane District Council  
**Application Reference:** LA11/2017/0833/F  
**Procedure:** Written Representations with Commissioner's Site Visit on 4<sup>th</sup> May 2021  
**Decision by:** Commissioner Helen Fitzsimons on 16<sup>th</sup> July 2021

## Decision

1. The appeal dismissed.

## Claim for Costs

2. A claim for costs was made by Green Homes Ltd against Derry City and Strabane District Council. This claim is the subject of a separate decision.

## Reasons

3. The main issues in this appeal are whether the proposed development would have regard to the Local Development Plan (LDP); if an adequate car parking arrangement would be provided; and if it would be out of keeping with local character.
4. Section 45 of the Planning Act (NI) 2011 requires the Commission, in dealing with an appeal, to have regard to the LDP, so far as it is material to the application, and to any other material considerations. The appeal site is located within the settlement limit for Derry City as designated by Map 2 'City Map' of the Derry Area Plan 2011 (DAP), the LDP which operates for the area within which the appeal site lies.
5. The appellants told me that the appeal site lies within Zone C as designated by DAP. Policy TR 5 of DAP 'Car Parking Provision in New Developments' says that car parking provision in new developments will be controlled on a zonal basis. Three Zones (A, B and C) are referred to under the policy. The appeal site lies outside the Commercial Core and the remainder of the Central Area as designated by DAP and it falls within Zone C. In regard to car parking within Zone C full operational and non-operational car parking will normally be required. The policy continues that in Zone

C, off street car parking will normally be provided as an integral part of all development schemes. Where it is not possible to provide the appropriate car parking requirement within the curtilage of the development, the Department may require developers to contribute to the provision of car parking for public use especially where large developments are concerned. The number of spaces will vary depending on location, type of development and individual site circumstances.

6. Paragraph 14.13 of the policy says that in Zone C off street parking will normally be provided as an integral part of all development schemes. The appellants gave me no arguments as to the materiality of the LDP policy or how the proposed development would meet the exception in Policy TR 5 in respect of Zone C. No offer of any alternative car parking offer as envisaged by Policy TR 5 was made. In such circumstances I can only conclude that the proposed development would fail to meet the requirements of Policy TR 5 of DAP. There are no other plans or policies within DAP pertinent to the appeal proposal.
7. Policy AMP 7 'Car Parking and Servicing Arrangements' of Planning Policy Statement 3 'Access Movement and Parking ' (PPS 3) states that development proposals will be required to provide adequate provision for car parking and appropriate servicing arrangements. The precise amount of car parking will be determined according to the specific characteristics of the development and its location having regard to the Department's published standards or any reduction provided for in an area of parking restraint. Supplementary Planning Guidance 'Parking Standards' sets out the Department's published parking standards.
8. I agree with the appellants that there are no published car parking standards for HMO developments and the Council did not dispute this. However, the Council made the observation that 'approval of this HMO for six bedrooms alongside the adjacent HMO has the potential to increase the requirement for parking due to the number of residents that could potentially reside in both properties'. Given the proposed six bedroomed development and that an extant planning permission exists for a six bedroomed HMO at No. 20 West End Park I agree with the Council that the level of car parking required to facilitate both properties would extend beyond that currently identified by the appellants as the existing tenants of No 19 West End Park having two cars and those of No 20 having one. The objectors also raised a number of concerns regarding car parking provision.
9. Although the appellants argued in respect of the lack of car parking standards for proposals of this nature, that said, they have nonetheless stated that four on street car parking spaces are available to serve the proposed six bedroomed HMO and that the proposed development would not give rise to matters of road safety or inconvenience to road users.
10. The appeal site is one of twenty two, three storey buildings, in a terrace which was built between 1880 and 1895. It is located outside the 'Central Area' as designated by DAP and lies between the Creggan and the Bogside areas of the City. Vehicular access from Eastway to West End Park is via a road which extends along the length of the front of the terrace and mews lane to the rear of the terrace. This arrangement serves residential traffic, other traffic and services such as bin collection and emergency services associated with the use of the terrace. The mews lane to the

rear of the terrace is some 5.6m wide. No other apparent development is served by the roadway and the mews lane.

11. At my site visit I observed that an informal one way traffic system appears to be in place whereby traffic enters West End Park via the front of the terrace and egresses via the mews lane. It appears to me that this is because the width of West End Park is insufficient to accommodate on street car parking and two way traffic. I drove the length of the mews lane where three cars and a van were parked.
12. In support of their arguments the appellants told me that there are twenty four on street car parking spaces currently available. They presented me with the results of two car parking surveys they had carried out to demonstrate this. The first refers to thirty three spaces being available with an uptake of some 47.3 % on five days in March 2018. The background papers to the appeal contain a plan which indicates nine spaces available for car parking at the southern end of the terrace where the road passes No 22 West End Park to join the mews lane. At my site visit I noted that an extensive area of this part of the roadway has been cordoned off with concrete bollards and I was given no evidence that they would be removed. The existence of these bollards has reduced the width of this part of the road to the extent that it cannot facilitate the parking of vehicles. Consequently, I attach little weight to that survey.
13. The second car parking survey which was conducted on 28<sup>th</sup> May 2020 was accompanied by a plan and photographs which shows twenty four car parking spaces with dimensions of 2.4m x 4.8m laid out in a linear / parallel car parking fashion along the western side of the road. On the day of my site visit I witnessed that of the twenty four spaces referred to in the appellants' car parking survey sixteen were occupied and this is not significantly out of kilter with the appellants' findings that fourteen car parking spaces were occupied on 28/05/2020. I agree with the appellants that during the day there is some capacity for on street car parking on West End Park, and I consider that this is likely due to the daily comings and goings of residents.
14. One objector submitted a car parking analysis, including supporting photographs, taken over the following three evenings 19<sup>th</sup> September 2020 at 21.15 hrs, 16<sup>th</sup> October 2020 at 19.45 hrs and 21<sup>st</sup> October 2020 at 21.30 hrs. The analysis shows that on each date the total number of cars parked in association with the properties on West End Park were 28, 27 and 29 respectively. On 19<sup>th</sup> September one space was available to the front of No 21 West End Park, four vehicles were parked on the mews lane and one vehicle was parked at right angles to the concrete bollards at the southern end of the terrace. On 16<sup>th</sup> October one car parking space was available outside No 12-13 West End Park with a second one outside No.1, three cars were parked on the mews lane and one adjacent to the concrete bollards. Finally on the 21<sup>st</sup> October one car parking space was available outside No 23, four cars were parked on the mews lane and a further car was parked at the concrete bollards. Another objector submitted photographed evidence dated 21 August 2020 timed at around 21.00 hours which shows car parking along the terrace at near full capacity with some overspill along the laneway. The objectors' evidence offers a consistent picture of the high level of car parking uptake on West End Park in the evening and it carries significant weight.

15. I also was given evidence from objectors in the form of a letter from Derry City and Strabane District Council's Refuse Collections Manager indicating that 'on bin collection day bin lorries reverse along the length of the laneway, often vehicles are parked in a 'restrictive way' which prevents the refuse vehicle reversing along the laneway and causes the Council difficulty providing a proper service,' which I accept as a reflection of what may occur on bin collection day. In addition, in the course of my site visit I had some difficulty passing a van parked on the mews lane because of the amount of roadway it needed to occupy to properly park. From my experience navigating the mews lane and the difficulties identified by the Council's Refuse Collection Manager I consider other larger service and emergency vehicles would be likely to experience similar difficulties and I must conclude that use of the mews lane would not be a suitable means by which to provide additional car parking.
16. I have attached significant weight to the objectors' evidence which indicates that there is insufficient car parking on West End Park in the evenings to accommodate the four car parking spaces the appellants have said they can achieve. Given this and taking account of my conclusions regarding the suitability of the mews lane for additional car parking I am not persuaded that the appellants can deliver any of the four car parking spaces they say they can within the existing on street car parking arrangements.
17. The appellants argued in favour of a reduction in car parking in accordance with both Policy AMP 7 of PPS 3 and 3.37 of Development Control Advice Note 8 'Housing in Existing Urban Areas' (DCAN 8). As I have concluded that there is no capacity within the existing road network of West End Park to facilitate any additional on street car parking to serve the proposed development it follows that a reduction in the car parking standards could not feasibly be delivered. In any event, the appellants did not indicate what degree of reduction of on street car parking would be appropriate and it is not for me to carry out such an assessment.
18. Given my conclusions regarding the lack of capacity for additional on street car parking provision on West End Park and the unsuitability of the Mews Lane for formal on street car parking the Council has sustained its sole reason for refusal based on Policy AMP 7 of PPS 3 and the objectors' concerns are upheld.
19. West End Park is a discrete attractive terrace of buildings the majority of which are in single family occupation. An objector referred me to the paragraph 2 of the Executive Summary of DCAN 8 which says that ' the drive to encourage additional housing in existing urban areas must not result in town cramming and a situation where unsympathetic development is forced into established residential area. The overriding concern in such areas needs to be the maintenance of environmental quality, local character and the privacy of existing residents. The character and pattern of occupation of West End Park is typically one of generous family sized housing with the exception of the two aforementioned buildings one of which is in use as a apartments and the other offices. I consider that the character of the terrace goes beyond its built fabric and that it can also be defined by the day to day comings and goings of the families going about their family life which in turn builds a sense of neighbourliness, cohesiveness and settled community. Whilst the appellants' argued that the proposed development would result in a loss of 4.5% of the housing stock and that it 'will only result in a single HMO in the area' there is a cumulative effect that must be considered. Planning permission LA11/2017/0268/F was granted for a

6 bedroomed HMO at No. 20 West End Park on 15<sup>th</sup> June 2017 and although not implemented remains extant. Planning Permission LA11/2017/1017/F for 3no. apartments at 20 West End Park has been implemented. In addition one of the former dwellings in the terrace has been converted to an office. The combination of the loss of single family housing stock that could occur is therefore in the region of 13.5 % which I consider to be at a point where the character of the locale may be adversely impacted upon. In this evidential context I share the objectors' concerns regarding the impact of the proposed development on the character of the locale and give them significant weight in this appeal.

20. An objector referred me to Policy LC 2 of the second Addendum to Planning Policy Statement 7 'Quality Residential Environments' (PPS 7) 'Safeguarding the Character of Residential Areas' which states 'that planning permission will only be granted for the conversion or change of use of existing buildings to flats or apartments (including those for multiple occupancy) where all the criteria set out in Policy QD 1, and all the additional criteria set out below are met'. Footnote 2 of Policy LC 2 of the second Addendum to PPS 7 says that a House in Multiple Occupation (HMO) is defined by Article 75 of the Housing (Northern Ireland) Order 1992 as amended by Article 143(1) of the Housing (Northern Ireland) Order 2003, and repeated in Article 2 (1) of the Planning (Use Classes) Order (Northern Ireland) 2004
21. A HMO is defined by legislation as a house occupied by more than two qualifying persons who are not all members of the same family. In Appendix 5 of their statement of case the appellants submitted appeal decision 2018/A0161 which concludes that Policy LC 2 relates to the conversion or change of use of existing buildings to flats or apartments. The reference therein to "multiple occupancy" relates specifically to the conversion and change of use of existing buildings to flats or apartments including circumstances where the proposed apartments or flats would be in multiple occupancy. That is not the case in the appeal proposal which involves the conversion of a dwelling to a category of HMO and does not entail either flats or apartments.
22. The appellants' statement of case contained in Appendix 5 a Commission decision in respect of an appeal 2018/A0161 for 'Change of use from dwelling to HMO'. No arguments were advanced in respect of the Commissioner's reasoning in that appeal and I have no reason to depart from that reasoning. I therefore agree with the appellant that Policy LC 2 of the second Addendum to PPS 7 is not material in this appeal and the objector's concern is not upheld.
23. Planning Permission LA11/2017/1017/F for the retention of 3 no. two bedroomed apartments at No 20 West End Park does not sit on all fours with this proposal for a six bedroom HMO and therefore is distinguishable from this appeal. Objectors' concerns in that regard are not upheld.
24. In respect of the objectors other concerns, no evidence was presented to me to demonstrate that the proposed development would have a negative impact on property prices in West End Park, I do not agree that the conversion of this single dwelling to a HMO would give rise to significant problems with noise, litter, waste and refuse, crime and antisocial behaviour. I attach little weight to the anecdotal evidence regarding previous tenants. I am satisfied that matters of noise between properties can be satisfactorily dealt with by the use of suitable sound proofing methods during construction. The Derry Area Plan 2023 is in draft form and its draft policies are not

material in this appeal. As far as I am aware there is no right for any resident to have control over the residents in West End Park. I am satisfied that adequate amenity space is available for the proposed HMO in the form of the amenity space currently associated with the dwelling. None of the objector's other concerns are determining in this appeal.

25. As the proposed development fails the requirements of Policy TR 5 of DAP and Policy AMP 7 of PPS 21 and that a number of the objectors' other concerns have been upheld the appeal must fail and planning permission is refused.

This decision relates to the following drawings:- Drawing No PL01 Rev A entitled existing Plans which contains the 1:1250 scale site location plan, a 1:500 scale site block plan 1:100 scale existing floor plans; the 1:100 scale Drawing No PL02 entitled 'Proposed Plans' and the 1:100 scale Drawing No PL03 'Existing and Proposed Elevations'

**COMMISSIONER HELEN FITZSIMONS**

## List of Documents

Planning Authority: -

C1 Written Statement and Appendices  
C2 Comments

Appellant : -

A1 Written Statement and Appendices  
A2 Comments

3<sup>rd</sup> Parties :-

3<sup>rd</sup> Parties 1 Written Statement and Appendices  
3<sup>rd</sup> Parties 2 Comments and Appendices