



# Appeal Decision

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**Appeal Reference:** 2019/A0243  
**Appeal by:** Green Homes (NI) Ltd  
**Appeal against:** Refusal of full planning permission  
**Proposed Development:** Proposed retention of 3 no. apartments – 2 no. 2 bedroom apartments and 1 no. 1 bed apartment  
**Location:** 19 West End Park, Derry City  
**Planning Authority:** Derry City and Strabane District Council  
**Application Reference:** LA11/2019/0271/F  
**Procedure:** Remote Hearing on 17<sup>th</sup> December 2020  
**Decision by:** Commissioner Helen Fitzsimons on 16<sup>th</sup> July 2021

## Decision

1. The appeal dismissed.
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 Local Development Plan (LDP); be out of character with the surrounding area; and if an appropriate level of car parking can be provided.
4. Section 45 of the Planning Act (NI) 2011 requires the Commission, in dealing with an appeal, to have regard to the local development plan (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. Policy H5 of DAP 'Designated Flat Zones' says 'planning permission will normally be granted in the defined Flat Zones for the conversion of buildings or the redevelopment of sites to flats and these are identified on Map FL1. The appeal site does not lie within any of the Flats Zones designated by DAP.
5. Policy H6 of DAP 'Conversions Outside the Designated Flat Zones' says that flat conversions will not be permitted outside the defined flats zones except where one of three bullet points is met. The appeal site comprises a residential property and as bullet point three of Policy H6 of DAP relates to redundant non-residential buildings it is not pertinent to my consideration of the appeal proposal.

6. Bullet point one of Policy H6 refers to circumstances where a dwelling is considered to be no longer suitable for family accommodation after an assessment of such factors as the size, age and condition of the dwelling, location and adjoining land uses.
7. The appeal site is one of twenty two three storey buildings in a terrace which was built between 1880 and 1895. Each property has a modest sized front and rear garden area. It is located outside the central area as designated by DAP and lies between the Creggan and the Bogside areas of the City. The terrace is a discreet built commitment in the streetscape which has vehicular access to its front and rear from Eastway by virtue of its roadway to the front and a mews lane to the rear which serve both residential traffic other traffic and services such as bin collection; emergency and other services. The laneway to the rear of the terrace is some 5.6m wide. No other development is served by this roadway. I observed at my site visit 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 to the rear. The only available car parking is on street. Of the twenty two buildings that comprise the terrace twenty are in residential use as single family accommodation
8. At the hearing the appellants argued that a six bedroom terraced family home without any meaningful front and back garden, no dedicated car parking and limited on street car parking in the inner city makes this type of property unattractive and unsuitable to large families. It was also argued that a property above 100 years old is difficult to heat and in this location it stands out as an exceptional size as at least 65% of households in the area are less than 2 - 3 persons; that the average household size in Derry City is 2.54; of the remaining 35% or so of households in Derry City 237 of those are 7 person households and 137 are 8 person households; and the predominant Northern Ireland Housing Executive dwelling size is one which is three bed roomed.
9. At my site visit I noted that the dwellings in the terrace appeared to be in good condition despite their age and that residents maintain them. I also noted a low vacancy rate which suggests to me that the dwellings are in demand for single family occupation. I am reinforced in this as on the day of my site visit I observed a family moving onto one of the properties. In my view bedrooms in a dwelling can be put to other uses such a study; home gym; sewing room or T.V room to name a few I am not persuaded by the arguments on household size in relation to the appeal site being out of keeping with the overall dwelling size in this discrete location. In addition I consider it important that housing stock provides a variety of choice in dwelling types and sizes across any city. Although the amenity space is not generous it is not inappropriate for a dwelling of this size and age and I do not accept that it is not 'meaningful'. In so far as I am aware there are modern heating solutions available for properties of this vintage. I was given no persuasive arguments in respect of adjoining land uses.
10. Given my conclusions regarding all of the appellants' arguments regarding the appeal dwelling I am not persuaded that the it can be considered no longer suitable for single family accommodation. The proposed development is not an exception under bullet point one of Policy H6 of DAP.

11. The second bullet point of Policy H6 of DAP requires that an exceptional local need for flat accommodation has been demonstrated to justify the creation of extra dwelling units. Where terraces are concerned a case based on exceptional local need is more likely to be acceptable where comprehensive schemes for the conversion of complete terrace blocks are proposed rather than haphazard proposals for single dwellings.
12. It seems to me that 'local need' is an identified need for accommodation in a particular area. Arguments were advanced in respect of an identified exceptional local housing need primarily on the basis of the Derry City and Strabane Housing Investment Plan 2019-2023 (HIP). Whilst there was dispute between the parties regarding the extent of an exceptional housing need identified in the local area by the HIP, it was not demonstrated by any of the parties there is no exceptional local need and I must conclude such a need exists. However, the need identified by the HIP is predicated predominantly on social housing need. At the hearing the appellants told me that the proposed development was to be aimed at the private rental sector. It therefore cannot be described as social housing and would not contribute towards reducing the identified exceptional need within the social housing sector in the local area. In any event the arguments relating to need were not restricted solely to a need for flats. The proposed development would offend the first element of bullet point two of Policy H6 of DAP.
13. Even if I were persuaded that the proposed development would assist in meeting an exceptional local need for flat accommodation it is not a comprehensive scheme for the conversion of the complete terrace but is a haphazard proposal for the conversion of a single dwelling. The proposed development would also offend the second element of the exception set out in bullet point two of DAP.
14. As the appeal proposal would fail to meet two of the exceptions set out in Policy H6 of DAP and that it does not fall within the scope of the third it fails the policy and would not accord with the provisions of the LDP.
15. Policy LC 2 of the second Addendum to Planning Policy Statement 7 'Quality Residential Environments' (PPS 7) 'Safeguarding the Character of Residential Areas' 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'. Five criteria are stated within Policy LC 2 of the second Addendum. The Council raised objections under criterion (c) of the policy that 'the original property is greater than 150 square metres gross internal floorspace'.
16. Paragraph 2.16 of the second Addendum to PPS 7 says that to ensure that individual dwellings are appropriate for conversion, a minimum size limit is placed on dwellings which will be permitted for conversion to flats or apartments. At some locations within designated city and town centres, along key and link transport corridors and sites adjacent to main public transportation nodes, the conversion of existing buildings to flats or apartments may be appropriate where an existing property is less than 150m<sup>2</sup> gross internal floorspace. In such cases a more flexible approach to the floorspace requirement in the policy may be applied.

17. Although close to, Westend Park is located outside the City Centre and the Commercial Core as designated by DAP. It is accessed from Eastway, which is a main public transportation corridor from the City Centre. I agree with the appellants due to the location of the appeal site along this main public transportation corridor the flexible approach to floorspace set out in paragraph 2.16 of the second Addendum to PPS 7 can be applied and a shortfall of 6m.sq. floorspace is not critical in this instance. The Council has not sustained its first reason for refusal based on criterion (c) of Policy LC2 of the second Addendum to PPS 7.
18. Objectors voiced concerns regarding criterion (a) of Policy LC2 of the second Addendum to PPS 7 which requires that 'there is no adverse impact on the local character, environmental quality or residential amenity of the surrounding area.' At the hearing the Council voiced similar concerns. Paragraph 2.14 of Policy LC2 of the second Addendum to PPS 7 says that the residential intensification of existing dwellings or the conversion of other buildings to residential use can however sometimes have negative impacts on the local character of an area , the amount of amenity space, and on the privacy of adjoining residents. For, example, as a result of increased density, overlooking, increased traffic congestion, and the loss of family sized housing.
19. 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 three apartments and the other offices. I agree with the Council and the objectors that character goes beyond built fabric and can also be defined by the day to day comings and goings of the family members such as going to work, school, shopping or children mixing outside helps to establish a sense of local character which is particular to single family occupation. In my opinion the proposed apartments would result in an unacceptable a loss of family sized housing and that would be out of keeping with the character and pattern of occupation of West End Park. This would offend criterion (a) of Policy LC 2 of the second Addendum to PPS 7 and the parties concerns in this respect are upheld.
20. 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. 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. At the Remote Hearing the appellants argued that the provisions of Policy TR 5 of DAP allowed for flexibility in the provision of car parking for the appeal proposal. Paragraph 6.19 of Policy H7 ' Flats Development and Redevelopment outside Designated Flats Zones' of DAP states that more detailed guidance on design and car parking on low rise apartment development in existing residential areas is given in Development Control Advice Note 8 'Small Unit Housing' (DCAN 8) . Because there is a LDP policy which deals directly with car parking arrangements for flats development I do not consider that Policy TR 5 of DAP is pertinent to this appeal.
21. 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.

22. The Council's evidence is that the proposed development would require four car parking spaces, that no in curtilage car parking is proposed and scarce car parking exists in the surrounding area. The objectors also consider that inadequate on street car parking is available to facilitate the proposed development. The appellants argued that the previous use of a 6 bed roomed house would have required four car parking spaces. This relates to a consultation response to the Council from the Department for Infrastructure (DfI) dated 18th April 2019. This consultation response predates the consideration of the application for planning permission, the subject of this appeal, by the Councils Planning Committee on 6<sup>th</sup> November 2019 where the Planning Committee considered a number of objections to the proposal and concluded that the proposed apartments would require additional car parking over and above that which was already necessary for the operation of the single residential unit, and was entitled to do so. I note that the appellants had an opportunity to rebut this but did not avail of this opportunity. However, and somewhat surprisingly given the Planning Committee's conclusions, at no point have I been given any evidence from the Council to suggest that the car parking requirements for the proposed development exceeds the original four spaces referred to by DfI and I will consider the proposal on that basis.
23. The appellants argued that forty eight car parking spaces were available to serve West End Park twenty four on West End Park itself and twenty four along the mews lane to the rear. I accept that the mews lane may serve as an informal occasional car parking overspill area, however, it is my view that it is not suitable to accommodate formal car parking facilities for twenty four vehicles and the other vehicular activity that might be associated with it for the following reasons:-
- I am told that on bin collection day bin lorries reverse along the length of the laneway, if twenty four parked cars were factored into the use of the laneway on bin collection day it would not be possible for those services to enter and exit the rear of the dwellings on West End Park to carry out their duties.
  - Each property in West End Park has an access from its rear onto the laneway where bins are set out for collection. Such a car parking arrangement could block those rear access points and make it difficult for residents to leave their bins out consequently a reduction in car parking provision would be required from the previous evening through to bin collection day;
  - The laneway is unlit and rear boundary walls are high and this does not promote a 'see and be seen' concept. It is not for the existing residents to provide additional lighting or surveillance to laneway or access their properties through the rear to facilitate the proposed development; and
  - At my site visit I encountered difficulty manoeuvring my way past a van which was properly parked in the mews lane near its access with Eastway, and this leads me to conclude that the mews lane is of insufficient width to adequately

accommodate parking for vehicles of varying sizes that might be attracted to West End Park for various reasons and various sized vehicles that may wish to egress via the mews laneway.

24. The appellants submitted two car parking surveys. One was carried out in March 2018 where a total of 33 car parking spaces are identified but it does not indicate where those spaces are and there is nothing in the background papers to this appeal to assist me in establishing their location. Therefore I attach little weight to it.
25. A further car parking survey was conducted on the afternoon of 28th May 2020 which included a plan and photographs identifying 24 car parking spaces on West End Park. At my site visit, which I conducted in the early afternoon, I observed that of the twenty four spaces referred to by the appellants sixteen were occupied and this is not significantly out of kilter with the appellants' findings that fourteen were occupied on 28/05/2020, the day of the parking survey. I conclude that during the day there is capacity for on street car parking on West End Park however, this is most likely due to the comings and goings of residents going about their daily business.
26. An 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 with four vehicles parked on the mews lane and one 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. The appellants' and the objector's car parking surveys reinforce in my mind that the availability of on street car parking during the day is transient due to residents going about their daily business and that at night time it has reached saturation point. There is no capacity to accommodate the on street car parking that would be associated with the appeal proposal.
27. 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 the proposed development it must follow that a reduction in the car parking standards would not be feasible. In any event, neither the Council nor the appellants indicated what degree of reduction in on street car parking would be appropriate and it is not for me to carry out such an assessment.
28. Having set aside the use of the mews lane as a suitable car parking arrangement and given my conclusions on the lack of further capacity for on street car parking along West End Park I am not persuaded that the appellants can provide any degree car parking that would meet the requirements of Policy AMP 7 of PPS 3. I agree with both the Council and the objectors that because of this the proposed development would in turn would have an adverse impact on the residents' amenities. The

Council's second reason for refusal is sustained and the objectors' concerns are upheld in this respect.

29. The Council told me that planning permission LA11/2017/1017/F for the retention of 3 no. two bedrooled apartments at No 20 West End Park was distinguishable from this appeal as the floorspace was in excess of 150 sq. m. that the agent had demonstrated that it met Policy H6 of DAP and it was a good decision in line with policy. Given my opposing conclusions regarding the LDP policies and taking account of my conclusions regarding the second addendum to PPS 7 I do not agree that that grant of planning permission is the result of a good planning decision. Having concluded in the evidential context of this appeal that the proposed development does not meet Policy H6 of DAP; Policy LC 2 of the second Addendum to PPS 7 or Policy AMP 7 of PPS 3 the appeal is distinguishable from that case and it does not set a precedent for allowing this appeal.
30. 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 apartments 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 apartments in the form of the amenity space currently associated with the dwelling. None of the objector's other concerns are determining in this appeal.
31. However, as the appeal proposal fails bullet points one and two of Policy H6 of DAP and would not accord with the requirements of the LDP; Criterion (a) of Policy LC2 of the second addendum to PPS 7 and Policy AMP 7 of PPS 3 the appeal must fail and planning permission is refused.

This decision relates to the following drawings: - the 1:1250 scale site location plan numbered 1073 - 01; the 1:100 scale drawing numbered 1073 - 02 entitled 'Plans' and the 1:100 scale drawing numbered 1073 - 03 entitled 'Elevations and Sections'

**COMMISSIONER HELEN FITZSIMONS**

### Attendances

|                           |  |
|---------------------------|--|
| Planning Authority: -     | Miss L Coyle<br>Mr M Mc Carron                   |
| Appellant: -              | Mr M Kennedy ( MKA Planning Ltd.)<br>Ms A Roarty |
| 3 <sup>rd</sup> Parties:- | Mr & Mrs Stevenson<br>Mr J Hundt                 |

### List of Documents

|                           |  |
|---------------------------|--|
| Planning Authority: -     | C1 Written Statement and Appendices<br>C2 Comments   |
| Appellant: -              | A1 Written Statement and appendices<br>A2 Comments   |
| 3 <sup>rd</sup> Parties:- | 3 <sup>rd</sup> Parties 1 Written Statements and Appendices<br>3 <sup>rd</sup> Parties 2 Comments and Appendices |