
Appeal Reference:	2019/A0137
Appeal by:	Heron Bros Ltd
Appeal against:	The refusal of full planning permission
Proposed Development:	Change of use from parish hall to licensed social club
Location:	St Agnes Parish Hall, 146 Andersonstown Road, Andersonstown, Belfast
Planning Authority:	Belfast City Council
Application Reference:	LA04/2018/2081/F
Procedure:	Hearing on 26 th February 2020
Decision by:	Commissioner Diane O'Neill, dated 20 th March 2020

Decision

1. The appeal is allowed and full planning permission is granted, subject to the conditions set out below.

Preliminary Matters

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 its 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. The planning authority raised an objection to the consideration of amended drawings submitted within the appellant's statement of case evidence and at the hearing.
3. The planning application for the proposal was submitted to the planning authority on 9th August 2018. Following previous consultation on the proposal, on the 8th February 2019 the council's environmental health section stated in their response that bin storage areas had not been identified on the plans. Confirmation was to be provided of waste bin storage areas including specific arrangements for the storage and disposal of waste bottles within the site given the potential to cause significant noise disturbance. The planning authority and the objectors identified a further concern in relation to the possibility of noise breaking out from the premises due to access being possible to the proposed smoking area via a door located on the northern elevation of the appeal building. Within the planning authority's statement of case evidence concern was also raised that, due to a building control note on the submitted drawing, the appellant intended to sub-

divide the building to create separate office space with the capacity for 50 persons and that this could not be considered as part of the current proposal.

4. The amended drawings submitted within the appellant's statement of case evidence were primarily intended to address the planning authority's concern in relation to the storage of bins on the appeal site. The drawings were further amended and presented at the hearing to show that the first floor area would be 'surplus space', as opposed to unrelated office accommodation. The door opening into the smoking area was also removed.
5. As well as requesting confirmation of the waste bin storage areas and arrangements for the storage and disposal of waste bottles within the site, the environmental health consultation reply of 8th February 2019 recommended a number of conditions in the event of planning permission being granted by the planning authority. The appellant understood this to mean that environmental health had no objection to the proposal. The environmental health consultation reply was available on the planning portal and was viewed by the appellant however the planning authority did not formally request the information sought given their objection to the principle of the development. Although the drawings could have theoretically and technically been submitted by the appellant prior to the planning committee meeting on 11th June 2019, and whilst the appellant chose not to attend the meeting, the drawings sought to address the issue of the waste storage areas which was not a new matter; it was before the Council at the time the decision appealed against was made.
6. The removal of a proposed door opening into the smoking area sought to respond to the planning authority's and objectors' concerns about the potential for noise breakout from the premises. This is a minor amendment to the proposal, which essentially would reduce the proposed changes to the fabric of the existing building, in order to help overcome the reason for refusal. Although it could have been removed prior to the planning application being present to the planning committee, it sought to address the issue of noise which is not a new matter; it was before the Council at the time the decision appealed against was made.
7. The annotation that the first floor accommodation would be 'surplus space' arose from a concern raised by the planning authority in their statement of case evidence. The appellant would not have been alerted to this concern prior to the receipt of this evidence. It would therefore not have been possible to amend the drawing before this time. Although the provision of self-contained office development would require planning permission in its own right, given that the amendment provides clarification as to the use of the first floor of the building, it would be unreasonable not to allow the annotation.
8. Given that the drawings overcome the planning authority's concerns in relation to the positioning of the waste bin storage area, provide clarification of the first floor use of the building and seek to reduce the noise emitting from the proposal, to not allow the drawings would produce an austere and unfair outcome. I therefore consider these drawings to be admissible; they will be assessed as part of this appeal.

Reasons

9. The main issue in this appeal is whether the proposal would have in a detrimental impact on the residential amenity of nearby residents.
10. Section 45 (1) of 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 adopted Belfast Metropolitan Area Plan 2015 (BMAP) was declared unlawful by the Court of Appeal on 18th May 2017. As a result of this, the Belfast Urban Area Plan 2001 (BUAP, 1990) operates now as the statutory development plan for the area with draft BMAP, published in 2004, being a material consideration in the determination of the appeal. In the BUAP and draft BMAP the planning application site is whiteland within the development limit of Belfast.
11. The appeal site accommodates St Agnes Parish Hall located off the Andersonstown Road. The two-storey building is finished in rough render and has a pitched roof. The only ground floor window openings are located on the eastern elevation of the building. The site is enclosed by metal security fencing. The main access to the site is via a laneway, which slopes in a southerly direction, located between Nos.146/148-150/152 Andersonstown Road. Along the Andersonstown Road, to the north of the appeal building, there is a row of commercial premises which include a restaurant, furniture store and hairdressers. There are bays for on-street parking along the frontages of these premises. Commercial premises located to the north-west of the appeal site have an associated car park located to the west of St Agnes Parish Hall. To the west and south of the appeal site are the Riverdale Park East residential properties. To the east of the appeal site is the newly renovated Andersonstown Leisure Centre. Pedestrian access is currently available to St Agnes Parish Hall via gates located along the eastern boundary of the appeal site adjacent to the leisure centre.
12. The appeal proposal is to change the use of St Agnes Parish Hall to a social club in order to accommodate the Casement Park Social Club. Although considerable alterations are required to the interior layout, the main changes to the exterior of the building would be to accommodate a bin store and smoking shelter area along its northern front elevation. The access to the building would remain to be via the existing laneway with the pedestrian accesses along the eastern elevation being only for emergency exit. Whether the appellant has a legal right to use these pedestrian accesses is a civil matter between the parties. Whether or not the appellant has erected an unauthorised gate within the appeal site is a matter for the planning authority to investigate.
13. Paragraphs 4.11 and 4.12 of the Strategic Planning Policy Statement for Northern Ireland (SPPS) is the basis for the reason for refusal due to a concern that, if permitted, the proposal would result in an incompatible land use in close proximity to residential dwellings and have a detrimental impact on the residential amenity of nearby residents through the potential for noise, nuisance and general disturbance.
14. A planning application (LA04/2017/0474/F) was submitted on 28th February 2017 in order to redevelop the existing Casement Park premises to create a regional Gaelic Athletic Association (GAA) stadium. This application is currently being

assessed by the Department of Infrastructure and is thought to be at an advanced stage. If approved, it is anticipated by the appellant, who is the main appointed contractor for the redevelopment, that the planning and construction period would last for the next 3-6 years. The appeal proposal is to relocate the approximately 50 year old Casement Park Social Club, which is currently sited within a stand which is proposed for demolition, in order to facilitate the redevelopment of the stadium and to permit the club to continue to operate during this process. The relocation of the club is also the subject of a legal agreement between the Ulster Council of the GAA, the Trustees of Casement Park and the Department of Culture, Arts and Leisure which requires vacant possession of the site as a condition of the current funding arrangement. The proposed stadium would include a dedicated area for the Casement Park Social Club and the appellant provided assurance that the relocation of the club would only be for the duration of the redevelopment. I am therefore satisfied that there would not be two Casement Park Social Club facilities once the redevelopment is complete.

15. Temporary planning permission had been granted on two occasions (2015 and 2017) for the social club to relocate to a prefabricated modular building on land south east of No.102 Andersonstown Road and to the rear of the dwellings at Nos. 2 and 4 Owenvarragh Park. The landowner of this site however limited the rental of the ground to a 2-2 ½ year lease and the appellant stated at the hearing that it is unlikely that it is still available. Due to uncertainties about the timeframe of the redevelopment project, the constraints that temporary venues can pose in terms of entertainment licencing and the acoustic benefits of the appeal building over a temporary modular building, the appeal proposal was considered by the appellant to be a more suitable proposition. Concern was however raised by the planning authority and the objectors in relation to the impact of the appeal proposal on the existing residential properties at Riverdale Park East.
16. The appellant's Noise Impact Assessment followed the requisite assessment methodology provided by British Standard 8233: Guidance on Sound Insulation and Noise Reduction for Buildings (2014) and the World Health Organisation (WHO) Guidelines for Community Noise (1999). These guidelines consider that for bedrooms the sleep disturbance criteria should be taken as an external noise level of 45dB L_{Aeq} and above. The WHO Environmental Noise Guidelines for European Region (2018) are not applicable in this case as they relate to outdoor exposure to environmental noise from road traffic, railway traffic, aircraft, wind turbines as well as outdoor and indoor exposure during leisure activities. A background noise level of 48dB L_{Aeq} was recorded in proximity to the rear of the Riverdale Park East properties which is in excess of the British Standard 8233 and WHO guideline level of 45dB L_{Aeq} . The appellant's technical expert and the environmental health officials considered this to be representative of such an urban location. No substantive evidence was presented to support the objectors' assertion that road widening works were being carried out at the time of the survey which could have influenced the readings and the planning authority agreed that the readings reflected the existing background noise level at this location.
17. Taking account of the predicted noise levels arising from the proposed smoking area, boiler plant and noise breakout and assuming a worst case scenario of high internal noise level of 80dB(A) with all doors wide open, a noise level of 38.6-41.4dB(A) was anticipated at the Riverdale Park East properties. A predicted noise level of 42dB(A) would have been anticipated at No.2 Owenvarragh Park if

the social club were to operate from the modular building. Although a consultee, the environmental health officers, as the planning authority's technical experts, accepted the finding of the Noise Impact Assessment that there would be no increase in the existing noise level at the Riverdale Park East properties. Conditioning that a noise verification report be submitted and approved by the planning authority, whereby the rating level from the combined plant and equipment would be 3dB below the existing background level, would address the concern that the equipment may have to be repositioned on the site. If this condition was imposed and given the separation distance between the residential properties and the hall, environmental health had no concern about resultant noise. The objectors concern that there would be an unacceptable change to the noise level experienced in outdoor living areas in this urban area is therefore not supported.

18. The existing social club has an average usage from Monday to Friday of circa 6-10 patrons per day and circa 50-60 patrons per day on Saturdays and Sundays. Entry to the club is limited to members and their guests who have to sign in when entering and exiting the premises. The club would operate a three strike rule whereby disruptive members/customers would be prevented from entering the premises. Whilst the appeal building has not been used for social purposes since 2015, it had an entertainment licence capacity of 675 persons. In comparison, the club's current entertainment licence allows for up to 150 people to attend the venue which, given the recorded level of attendance, is considered to continue to be more than adequate. The social club's current entertainment licence permits normal operating hours on Mondays to Saturdays of 11am to 11pm and on a Sunday from 12.30pm to 10pm. As opposed to the Monday to Saturday 7am-11pm operating hours proposed by the planning authority, with the premises closing at 10pm on Sundays, it could be conditioned that the appeal proposal retain the current licenced operating hours. The club currently opens less hours than what they are permitted in their licence namely Monday to Friday 7.30pm-11pm, Saturday 12noon-11pm and Sunday 12.30pm-10pm.
19. The current entertainment licence entitles the club to 84 exceptional occasion licence extensions per year, allowing it to remain open until 1am. These extensions must be approved by the PSNI one month in advance and are used on bank holidays and at weekends. There is no record of complaints in relation to the existing club over the 7 year period for which records are retained. Although the appeal building is of a considerable size, this does not however mean that it will be used to full capacity given the existing level of members' usage of the current club. Environmental health had no record or recollection of noise complaints at the appeal building and whilst the hall did not have a liquor licence it did have a 14 day occasional entertainment licence. The objectors stated that discos were stopped at the hall approximately 20 years ago following noise complaints from neighbouring residential properties however the planning authority had no record of such complaints. The appellant is said to have no intention to start to hold such events which are currently not being held within the existing club. The age profile of the club's members, with the majority being over 60 years old, would also make the demand for such events more unlikely. The Noise Impact Assessment, whose findings were accepted by environmental health, confirmed that even operating to 1am when the occasional late licence was granted, the resultant noise would be of an acceptable level and not pose an

unacceptable adverse impact. Environmental health had no objection to the annual 84 exceptional extensions.

20. Although the number of people allowed in the premise under the entertainment licence would not be known until the licence is granted and no condition limiting the number was proposed by the planning authority, it is a reasonable proposition that it would be on nights when there is entertainment that people would be most attracted to attend the venue. The submission of a more robust noise management plan could be the subject of a planning condition in order to address, among other things, the dispersal of patrons which the environmental health officials stated was when a noise issue could arise. The plan could require that patrons travelling by car are dropped off and collected along the Andersonstown Road with only those with mobility difficulties having vehicular access to the appeal site. Patrons and their guests having to sign a registrar, as is the current practice and which could be specified in the management plan, would help to control the numbers attending the premises. The plan could also set out details in relation to the management of the smoking only area, which it is estimated could accommodate 12 patrons, to ensure it is used by smokers as opposed to these patrons standing elsewhere outside the premises. If such a plan was in place, together with the extended opening hours being limited to a maximum of 84 days, then environmental health officials had no objection. No persuasive evidence was presented as to why the planning authority could not enforce the management plan and monitor the premises if the appellant provided the planning authority with advanced notification of when the extended hours opening was granted. A notification period of a minimum of 14 days would be reasonable given the practice of applying for all of the extended opening days once a year; it would be an adequate duration of notice of the first event after the licence to arrange any inspection. A longer one month notification period, as suggested by the planning authority, could result in the appellant having to notify the planning authority prior to it being agreed with the PSNI.
21. If there transpired to be an issue in relation to noise nuisance arising from the proposal, including from the 84 days of extended opening, I am satisfied that the registration of the club under the Registration of Clubs (NI) Order 1996, entertainment licencing, the club's disciplinary provisions as well as the environmental health complaint process would come into play. There is no record of such an issue arising from the operation of the social club at its current location and mitigation measures such as the sound proofing of self-closing doors should help to control the out-breaking of noise. Given the presence of the air-handling unit, there should be no necessity for the doors to be kept open for air circulation purposes. Given the restricted nature of the site, there is also limited space for patrons to loiter and a gate would prohibit access to the rear of the building. Deliveries and collections by commercial vehicles could also be conditioned to occur during the daytime Monday to Friday as per the service management plan.
22. The appeal proposal does not include in-curtilage parking provision and objectors raised concern that Riverdale Park East would be used for overnight car parking by patrons. However, given that the club would be serving alcoholic beverages, that patrons may come on foot as they are likely to reside in the local area, that the location is highly accessible by public transport and private taxi, the presence of on-street parking along the Andersonstown Road and the lack of objection by the planning authority and DfI Roads, in this instance I am satisfied that in-curtilage

parking is not required. Concern in relation to the safety of the vehicular access arrangement was not substantiated and the planning authority and DfI Roads had no objection to this matter.

23. Given the proposed location of the relatively modest smoking area along the northern elevation of the building and its separation distance from the houses, I am not persuaded by the objectors' assertion that it would result in air pollution at the neighbouring Riverdale Park East properties. The separation distance between the proposed smoking area and the Indian restaurant should ensure that they could co-exist without there being a fire risk. Given the separation distance between the appeal building and the Riverdale Park East dwellings, lack of patron access to the rear of the property and the proposed location of the smoking area along the northern elevation, it is not accepted that the residents' enjoyment of their private amenity space would be adversely impacted by the proposal or that children would have an unacceptable outlook into a smoking area. The use by the social club would be restricted to the ground floor of the appeal building where there are no windows to cause increased overlooking of neighbouring residential properties. In terms of concern in relation to the number of public houses and clubs within proximity of the appeal site, this is to be expected in such an urban location and the proposal is for the temporary relocation of an existing club. There are no proposed changes to the existing kitchen facilities and no intention to have food catering on site. At any rate, conditioning the retention and maintenance of the kitchen extraction and odour abatement system would protect the residential amenity of neighbouring residential properties. Substantive evidence was not presented by the objectors to support the assertion that increased vermin would be attracted to the site. No new external lighting is proposed at the appeal site.
24. The objectors alluded to other, what they considered to be more suitable, premises being available within the locality. Although the appellant stated that a robust assessment had been carried out, there is no planning requirement for the appellant to demonstrate that there are no other suitable premises in the locality. Given the presence of a considerable number of commercial and leisure premises, it is not accepted that the relocation of the club to the existing parish hall would result in a change to the character of this mixed use area. No substantive evidence was presented that the proposal would cause an unacceptable depreciation of the value of neighbouring residential properties.
25. The planning authority stated that the previously proposed smaller modular building would have been of temporary construction which could be removed and had proposed differing hours of operation with no reference within technical reports to exceptional opening days. The planning authority also argued that the background sound climate was different where the modular building was proposed as the amenity of residential properties at this location was already impacted by their proximity to Casement Park and to the Andersonstown Road arterial route. However, the Riverdale Park East properties are also in close proximity to the Andersonstown Road and abut the existing hall complex as well as leisure and commercial premises. The appellant highlighted that the 2014 noise survey for the modular building proposal was conducted for a shorter duration midweek with the monitoring equipment at a more open location. The Noise Impact Assessment for the appeal proposal found that there would be no increase in the existing noise level at the Riverdale Park East properties. There also appears to

be no reasonable prospect of the previous site being available for the required duration of the anticipated redevelopment. It is accepted that the current location of the social club within the Casement Park complex could be an obstacle to its redevelopment if it is approved planning permission. It is also accepted that the club offers community benefits with its not-for-profit and charitable background and it needs to remain in the community in which it serves. The temporary permission could be limited to a duration of 3 years in order to correspond with the lower end of the estimated construction timescale and to allow the use not to exceed the potential enforcement period. A further application could be made to the planning authority should the redevelopment be delayed beyond the three year period.

26. Objectors raised a concern about the cumulative impact of noise when Casement Park and the leisure centre are operational as well as from other local entertainment establishments. Given that the social club is to be able to return to the stadium within 5 days of its practical completion, Casement Park is 200m away from the appeal building and that the hall acts as a noise barrier between the residential properties and the leisure centre, this concern is not supported. Late night disturbance from anti-social behaviour and entertainment establishments operating in the area is an existing issue and I am not persuaded that the proposal would unacceptably exacerbate the matter. In terms of a concern about precedent, the proposal is specifically for the temporary relocation of the Casement Park Social Club and once it would vacate the hall any future scheme would have to be assessed on its own merits.
27. Accordingly, the reason for refusal and the objectors concerns in relation to this matter are not sustained.
28. As the proposal would be in accordance with planning law and policy, there would be no infringement of the human rights of neighbouring residents.

Conditions

- (1) The use hereby permitted shall be carried on only by Casement Park Social Club and shall be for a limited period of three years from the date of this decision. At the end of that period, or when the appellant ceases to carry on the use, whichever shall first occur, the use shall cease.
- (2) The use hereby permitted relates to the ground floor only and the first floor shall only be used for ancillary purposes.
- (3) The hours of operation shall be between 11:00-23:00 on Mondays to Saturdays and 12:30-22:00 on Sundays except on those occasions when the premises has been granted an extension to their liquor licence to allow opening beyond these hours. The planning authority shall receive a minimum of 14 days notice of an extension having been granted.
- (4) No deliveries shall be taken or collections made by commercial vehicles outside the hours of 07:00 and 23:00 on Mondays to Fridays or at any time on Saturdays, Sundays, bank holidays or public holidays.
- (5) Smoking is only permitted within the enclosure along the front elevation of the building as shown on Drawing PAC 1 1:100 proposed ground and first floor plans and Drawing PAC 2 1:100 proposed elevations both submitted at the hearing. The consumption of alcohol is not permitted in any external area.
- (6) Prior to the commencement of the use, the applicant shall submit to and have agreed in writing within the planning authority a noise and anti-social behaviour

management plan. The plan must clearly demonstrate the proposed arrangements for the supervision of behaviour on site including on arrival and egress from the premises and when patrons access the external smoking area.

- (7) Prior to the commencement of construction, the appellant shall submit to and have agreed in writing with the planning authority the specification and sound reduction properties of the entrance doors and the doors from the members' lounge.
- (8) Prior to the commencement of construction, the appellant shall submit to and have agreed in writing with the planning authority specific arrangements for the times of use of the storage area.
- (9) Prior to the operation of the use, the appellant must submit to the planning authority a Noise Verification report which demonstrates that the rating level dB LAr from combined plant and equipment is 3dB below the existing background noise level when determined in line with British Standard 4142:2014.
- (10) A proprietary kitchen extraction and odour abatement system must be permanently retained on site to service any cooking operations. The system must be cleaned and maintained to the satisfaction of the planning authority.

This decision is based on the following drawings:-

Drawing 01 1:1250 site location plan dated received by the planning authority on 9th August 2018

Drawing 02 1:500 block plan dated received by the planning authority on 9th August 2018

Drawing PAC 1 1:100 proposed ground and first floor plans submitted at the hearing

Drawing PAC 2 1:100 proposed elevations submitted at the hearing

COMMISSIONER DIANE O'NEILL

List of Appearances

Planning Authority
(Belfast City Council):-

Ms Denise Kiley, barrister
Ms Trudy Harbinson, planner
Ms Miriam Quinn, Environmental Health
Ms Louise Coll, solicitor

Appellant:-

Mr David Scoffield, QC
Ms Gemma Jobling, JPE Planning
Mr Mervyn Keegan,
AONA Environmental Consulting
Ms Maria O'Loan, Tughans
Mr Paul Horscroft, Horscroft Design
Mr Damian Murray, Atkins

Third Parties
Objectors:-

Mr Peter Cassidy, No.29 Riverdale
Park East
Mr Gerard McLarnon, No.8 Riverdale
Park East
Ms Philomena McLarnon, No.8 Riverdale
Park East
Dr Eimear Barrett, No.12 Riverdale
Park East

List of Documents

Planning Authority
(Belfast City Council):-

Statement of Case PA 1

Appellant (JPE Planning-agent):-

Statement of Case A 1

Third Parties Objectors

Ms Una Mulgrew

(on behalf of residents of Riverdale Park East):-Statement of Case O 1