

## Committee Application

<b>Development Management Report</b>	
<b>Application ID:</b> LA04/2019/1820/DCA	<b>Date of Committee:</b> 27 <sup>th</sup> June 2022
<b>Proposal:</b> Demolition of existing detached dwelling, adjacent garage and associated hard standing to rear.	<b>Location:</b> 28 Malone Park Belfast BT9 6NJ
<b>Referral Route:</b> Demolition of dwelling in the Conservation Area	
<b>Recommendation:</b>	<b>Approval</b>
<b>Applicant Name and Address:</b> Lewis Creighton 20 Malone Park Belfast BT9 6NL	<b>Agent Name and Address:</b> Studio Vericat 66 Ardenlee Avenue Belfast BT6 0AB
<p><b>Executive Summary:</b> This application seeks conservation area consent for full demolition of the existing dwelling and garage at 28 Malone Park. An accompanying planning application for the proposed replacement dwelling (ref. LA04/2019/1819/F) is also being considered.</p> <p>The main issue to be considered is the acceptability of demolition in the Malone Park Conservation Area.</p> <p>There is a previous appeal decision for a replacement dwelling under references 2016/A0016 &amp; 2016/A0017 which is material consideration. A copy of this appeal decision is provided at <b>Appendix 1</b>.</p> <p>7 letters of objection have been received to date including 3 representations on behalf of Malone Park Residents Association. The objections are summarised below with some of the points appertaining to the proposed replacement dwelling under application LA04/2019/1819/F.</p> <ul style="list-style-type: none"> <li>• Clear policy presumption in favour of retention, no evidence provided as to why this is an exception and that the existing dwelling should be demolished;</li> <li>• Historical significance of existing dwelling;</li> <li>• Objection to intensification, design, scale, height, massing and plot coverage of the proposed dwelling;</li> <li>• Proposal contrary to PPS6, PPS7, SPPS and Malone Park Design Guide;</li> <li>• Proposal does not preserve or enhance the Conservation Area;</li> <li>• Adverse impact upon setting of listed building;</li> <li>• Destabilisation / damage to adjoining properties from excavation and construction;</li> <li>• Significant damage to important trees and landscape features;</li> <li>• Loss of privacy, light, overshadowing, dominating impact on neighbouring properties;</li> <li>• Impact on active badger sett;</li> <li>• Geology / flooding.</li> </ul> <p>These matters relating to the proposal to demolish the existing dwelling are addressed in detail in the main body of the report below.</p> <p>The Council's Conservation Officer has objected to the proposal on the basis that the existing building makes a significant positive contribution to the conservation area and its demolition is therefore unacceptable and the proposed replacement scheme is inappropriate.</p>	

However, the Commissioner in the previous appeal decision found that the Council had over-exaggerated the contribution of the existing dwelling to Malone Park Conservation Area and considered it made a slight positive contribution only.

As both the PAC (slight positive contribution) and Conservation Officer (significant positive contribution) consider that the existing building makes a material contribution to the Conservation Area, Policy BH10 and BH14 and paragraph 6.25 of PPS 6 are engaged. It is considered that greater weight should be given to the conclusions of the PAC on the extent to which the existing building contributes to the Conservation Area given its status as an independent appeals tribunal.

The Commissioner in the previous appeal decision considered that the broad criteria relating to the demolition of unlisted buildings within the Conservation Area as set out in PPS 6 had been addressed. Furthermore, they considered the proposed replacement dwelling on its own was found to be sympathetic to the Conservation Area. However, it was the lack of an accurate tree survey and acceptable landscaping proposal which resulted in the appeals being dismissed as the Commissioner was unable to conclude that the landscaping would remain dominant as otherwise required by the Malone Park Conservation Area Guide. In turn, the Commission was unable to conclude that the proposal would preserve or enhance the character and appearance of the Conservation Area and the proposed demolition was unacceptable.

In the case of the new application, the footprint of the proposed replacement dwelling has been reduced, there is greater distance to the boundaries and a new landscaping plan has been provided which shows retention of existing tree coverage, particularly the trees along the boundary with No. 30 Malone Park next door. It is considered that the landscaping would remain dominant having regard to the Malone Park and Adelaide Park Conservation Guide. Overall, the existing dwelling makes only a modest positive contribution to the character and appearance of the area and is in poor condition. It is considered that the proposed replacement dwelling is well designed. Having regard to these considerations and the previous appeal decision, it is considered that the proposal would enhance the character and appearance of Malone Park Conservation Area and the presumption in favour retaining the existing building can be set aside in this exceptional instance. It is considered that the grounds for dismissal of the previous appeal have been addressed and that the proposal complies with Policy BH10, BH12 and BH14 of PPS 6, paragraph 6.18 of the SPPS, Policy BH2 of the draft Plan Strategy and Section 104(11) of the Act.

Having regard to the Development Plan and other material considerations, including third party representations and the previous appeal decision, the proposal is considered acceptable. Approval is recommended for the reasons set out in detail in the main report.

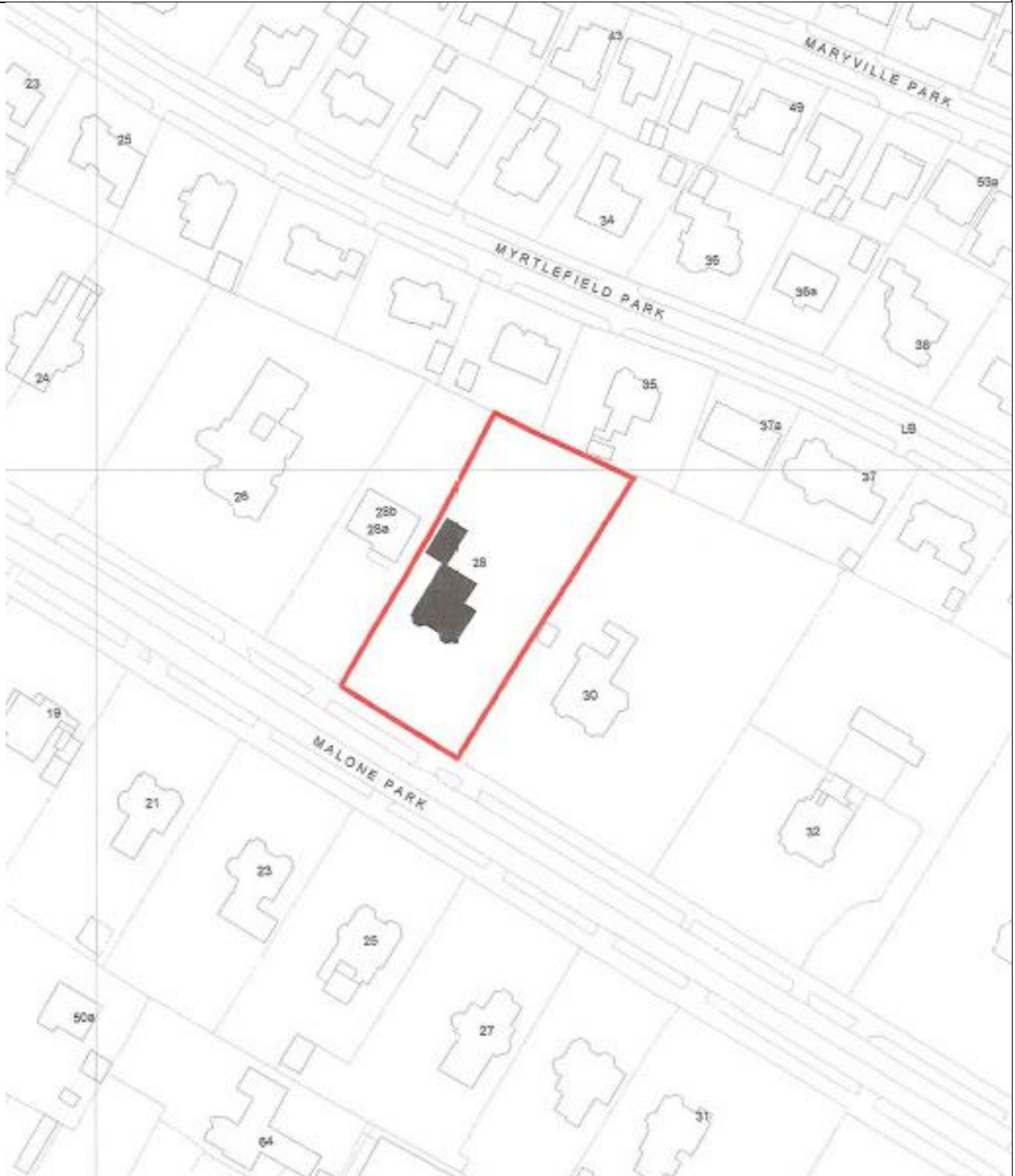
### **Recommendation**

It is recommended that the application is approved subject to conditions. It is requested that delegated authority is given to the Director of Planning and Building Control to finalise the wording of conditions.

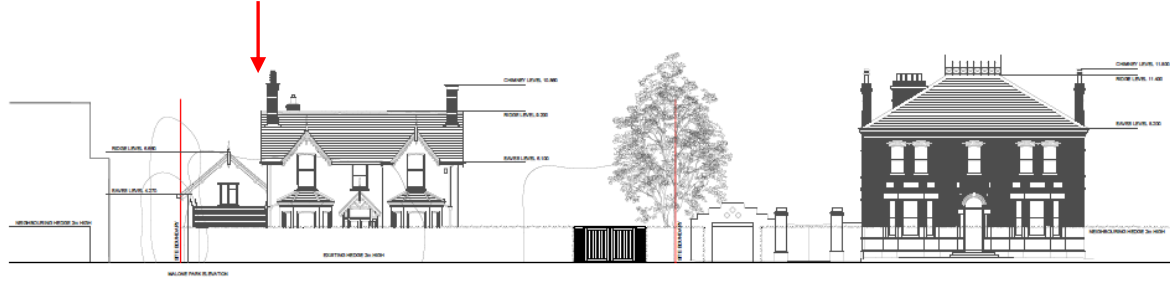
Before the decision can be issued, being an application for Conservation Area Consent, the application will need to be notified to the Department under Section 29 of the Planning Act (Northern Ireland) 2011.

## Case Officer Report

### Site Location Plan



Existing dwelling to be demolished



No. 28 A+B

No. 28

No. 30

RIDGE LEVEL 7.200

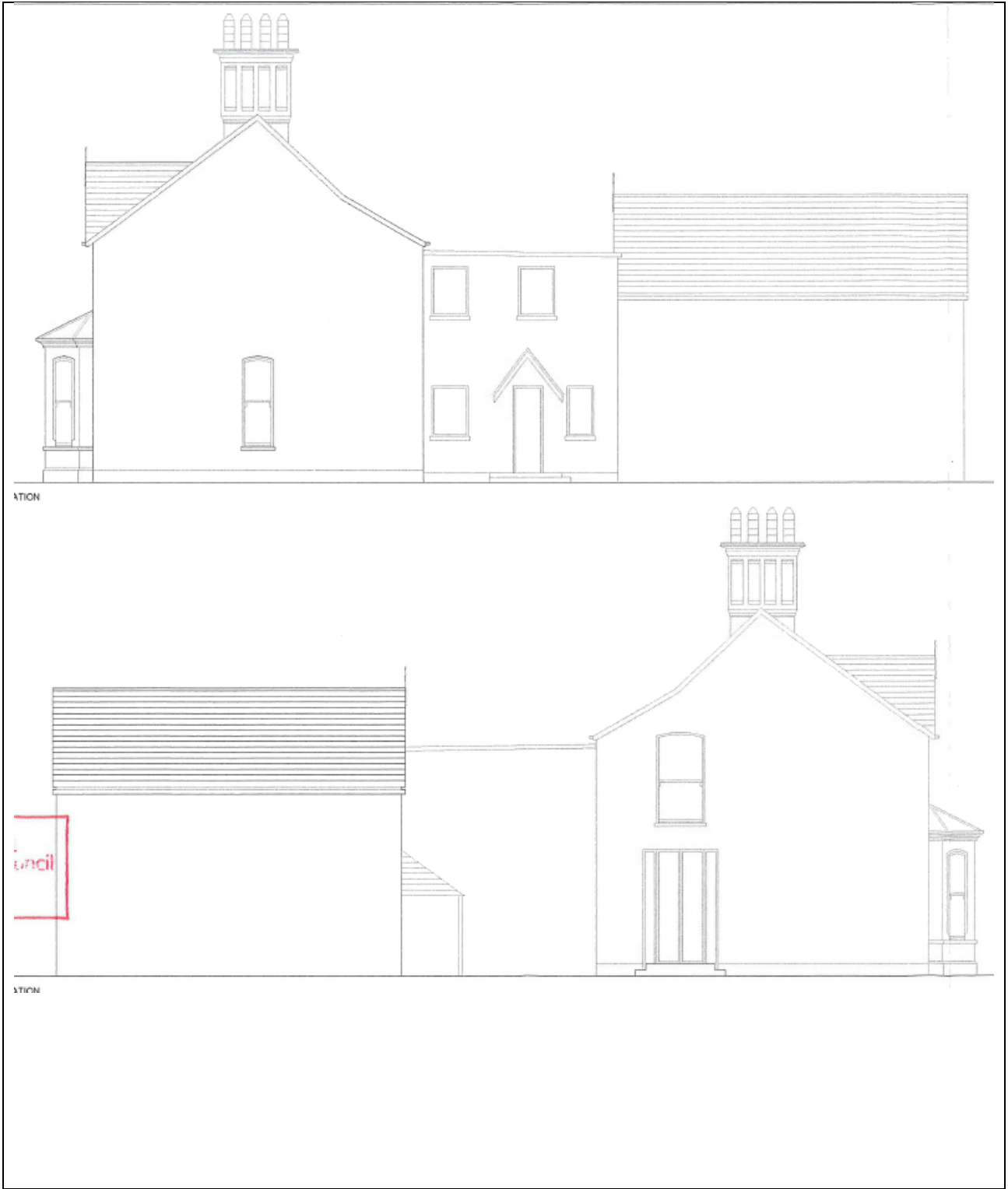
EAVES LEVEL 4.731

FRONT ELEVATION

EAVES LEVEL 5.725

EAVES LEVEL 5.625

REAR ELEVATION



<b>Characteristics of the Site and Area</b>	
<b>1.0</b>	<p><b>Description of Proposed Development</b></p> <p>This application seeks conservation area consent for the full demolition of the existing dwelling, adjacent garage and associated hard standing at 28 Malone Park.</p> <p>There is a corresponding planning application for the replacement scheme under reference LA04/2019/1819/F, which is also being considered by the Committee.</p>
<b>2.0</b>	<p><b>Description of Site and Area</b></p> <p>The site is located within the Malone Park Conservation Area and is currently in a dilapidated and overgrown state, with the front boundary boarded up and locked. The existing dwelling (originally faced in brick) is a three-bay, one and a half storey dwelling faced in roughcast render (on smooth render plinth) with pitched slated roof. Two canted bay windows to the ground floor, with hipped roofs sit symmetrically around a gabled porch. The porch gable features decorative barges and finials, complementing those to the attic gables over first floor windows. Vertical emphasis, window openings retain timber sliding sashes. Decorative barges also occur to side gables. Moulded chimneys are expressed to the ridge. To the west, at the rear, is a gabled summerhouse whose interwar era may be reflected by the veranda. Picture windows have been inserted into the western gable, and the northern elevation to which has been added a two storey, flat roofed extension. To the rear of the property are the remains of a former tennis court.</p> <p>Malone Park is a significant tree lined avenue located between the Lisburn Road and Malone Road. It contains large individually designed residential properties, set well back from the road, within mature gardens, of significant proportions. The site is surrounded by other dwellings on all sides to the north, east, west and across the road to the south.</p>
<b>Planning Assessment of Policy and other Material Considerations</b>	
<b>3.0</b>	<p><b>Site History</b></p> <p><u>Application Site</u></p> <p>LA04/2019/1819/F – Demolition of existing dwelling and erection of 3 storey (and basement) detached dwelling with garage and landscaping to front and rear (AMENDED PLANS and ADDITIONAL INFORMATION) – to be considered by the Planning Committee alongside this application.</p> <p>LA04/2018/0282/F - Hoarding at 2.5m height to front and side of site – REFUSED 3rd May 2018.</p> <p>Z/2015/0063/F (Appeal ref: 2016/A0016) - Demolition of existing dwelling and erection of 3 storey (and basement) detached dwelling with garage with landscaping to the rear– DISMISSED AT APPEAL 6<sup>th</sup> February 2017. A copy of the appeal decision is provided at <b>Appendix 1</b>.</p> <p>Z/2015/0101/DCA (Appeal ref: 2016/A0017) - Associated application for demolition of existing detached dwelling, adjacent garage – DISMISSED AT APPEAL. A copy of the joint appeal decision is provided at <b>Appendix 1</b>.</p> <p>Z/2009/0616/F - Two storey rear extension with glazed link to new two storey block and single storey attached garage/utility to dwelling – GRANTED 23<sup>rd</sup> February 2010.</p>

	Z/2009/0663/DCA - Demolition of existing rear extension to dwelling and garage – GRANTED 23 <sup>rd</sup> February 2010.
<b>4.0</b>	<b>Policy Framework</b>
4.1	Belfast Urban Area Plan 2001 (BUAP)
4.2	(Draft) Belfast Metropolitan Area Plan (BMAP) 2015 (both v2004 and v2015)  The extant Development Plan is the BUAP. Both versions of Draft BMAP carry weight and are a material consideration in the determination of planning applications. The weight to be afforded is a matter of judgement for the decision maker. Given the stage at which the Draft BMAP has reached pre-adoption through a period of independent examination, the policies within Draft BMAP 2015 (v2014) are considered to hold significant weight, save for policies relating to Sprucefield, Lisburn which remain contentious.
	Draft BMAP 2015 (v2004)
4.2.1	Policy SETT2 Development with the Metropolitan Development Limit and Settlement Development Limits
4.2.2	Designation BT001 Metropolitan Development Limit
	Draft BMAP 2015 (v2014)
4.2.3	Policy SETT 2 Development within the Metropolitan Development Limits and Settlement Development Limits.
4.3	Belfast Local Development Plan Draft Plan Strategy 2035  The Belfast Local Development Plan Draft Plan Strategy 2035 will Guide future planning application decision making to support the sustainable spatial growth of the city up to 2035. The draft Plan Strategy has been subject to examination by the Planning Appeals Commission and the Council has been provided with a copy of their Report, together with a Direction from the Department for Infrastructure in relation to additional required steps before it can be adopted. Paragraph 1.10 of the Strategic Planning Policy Statement (SPPS) states that a transitional period will operate until such times as a Council's Plan Strategy has been adopted. Accordingly, whilst the Draft Plan Strategy is now a material consideration it has limited weight until it is adopted and during this transitional period existing policies will be applied including the SPPS and relevant PPSs.
4.4	Regional Development Strategy 2035
4.5	Strategic Planning Policy Statement 2015
4.6	Planning Policy Statement 6: Planning, Archaeology and the Built Heritage
4.7	Section 104(11) of the Planning Act (Northern Ireland) 2011:  'Special regard must be had to the desirability of:  (a) preserving the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does not arise; (b) enhancing the character or appearance of that area in cases where an opportunity to do so does arise.'

<b>5.0</b>	<b>Other Material Considerations</b>
	Malone Park / Adelaide Park Design Guide Development Management Practice Note: Historic Environment
<b>6.0</b>	<b>Non-Statutory Consultees Responses</b>
6.1	BCC Conservation Officer – objection
<b>7.0</b>	<b>Representations</b>
7.1	<p>The application was advertised in the local press on the 14th August 2019.</p> <p>7 letters of objection received including 3 representations on behalf of Malone Park Residents Association. These representations are summarised below. Some of the points relate to the proposed replacement dwelling under application LA04/2019/1819/F.</p> <ul style="list-style-type: none"> <li>• Judgements in judicial reviews <b>Ulster Architectural Heritage Society’s Application [2014] NIQB 21 (7 February 2014) Ref TRE9161 &amp; Gillian &amp; Ors, Re An Application for Judicial Review [2003] NICA 10 (14 March 2003) Ref CARC3874</b> are clear where there is a policy presumption (BH14) the full weight of that presumption must be brought to bear and cannot be diluted and where any question of priority arises in relation to PPS6 and the Guide, it is the Guide that must take priority;</li> <li>• No 28 Malone Park has been assessed as making a positive material contribution to the Conservation Area by both the Council and the PAC in previous decisions, no evidence has been submitted as to why or how the existing dwelling constitutes an exception to the policy presumption in favour of retention and should be demolished;</li> <li>• Historical significance of existing dwelling;</li> <li>• No. 28 Malone Park is a listed building;</li> <li>• Not in agreement with the submitted Conservation Appraisal and Conservation Impact Statement / Rebuttal Statement – no weight should be attached to economic viability argument, reject assertion it is not fit for purpose;</li> <li>• Objection to intensification, design, the scale, height, massing and plot coverage of the proposed dwelling as its falls to accord with Malone Park Conservation Area Design Guide and Policy BH12 of PPS 6;</li> <li>• Proposal is more than 1.5 times the building coverage ratio of the original dwelling;</li> <li>• No contextual elevations submitted and lack of information on views into and out of the Conservation Area, therefore the proposal cannot be properly assessed;</li> <li>• Proposal does not preserve or enhance the character or appearance of the Conservation Area. As there is a clear opportunity to enhance, the current proposal must be refused as it is contrary to policy and published guidance;</li> <li>• The new dwelling in terms of close proximity, height, massing and style would adversely affect the setting of No 30 Malone Park, contrary to Policy BH11 of PPS 6;</li> <li>• Dominance;</li> <li>• Proposal is contrary to PPS 7;</li> <li>• Only minor amendments have been made to the scheme, this does not address the concerns at the previous appeal;</li> <li>• Sheet piling is indicted which will have a greater impact on existing vegetation than the foundations;</li> <li>• Secant Pile Wall construction will create ground instability, cause noise and disturbance to adjoining residents; basement / Sheet piling will require substantial excavation and poses a grave danger to nearby buildings;</li> <li>• Damage to Malone Park roadway during construction;</li> </ul>



	<ul style="list-style-type: none"> <li>• Proposal will significantly damage important trees and landscape features which form a critical part of Malone Park Conservation Area;</li> <li>• Landscaping plan shows a new holly hedge along the boundary with No 30 – there is an existing hedge which is within the ownership of No 30 and cannot be removed;</li> <li>• Loss of privacy, whilst the first floor and second floor windows are to be obscurely glazed, there will still be overlooking from the large ground floor window into No 30 Malone Park;</li> <li>• Loss of privacy to adjoining properties, application site sits higher than Nos 33 and 35 Myrtlefield Park;</li> <li>• PPS7 Addendum advises that the use of obscure glazing is not an acceptable solution for main rooms;</li> <li>• Loss of light and overshadowing;</li> <li>• Loss of light from planting of trees along the rear boundary;</li> <li>• Impact on active badger sett;</li> <li>• Geology/ flooding;</li> <li>• Full weight of the design Guide must be applied including one and a half times rule as directed by the High Court and Court of Appeal in Gilligan &amp; Ors [2003] NICA 10;</li> <li>• Important to note that it is ‘building coverage’ and ‘original dwelling’ and not original buildings and dwelling coverage.</li> </ul> <p>The only matter for consideration in this application is whether the proposed demolition is acceptable. All other matters are for consideration in the full planning application and are addressed in the related committee report.</p>
<b>9.0</b>	<b>Assessment</b>
9.1	<p><u>Application Background</u></p> <p>This application follows the previous appeal decision 2016/A0016 &amp; 2016/A0017 with the main differences between the appeal scheme and current scheme being:</p> <ul style="list-style-type: none"> <li>• Reduced building footprint from 388 sq. m to 334.5 sq. m.</li> <li>• Decreased width of building from 25m to 21m;</li> <li>• Decreased length of building from 20.5m to 19.9m;</li> <li>• Increased separation distances to side boundary with No 30 Malone Park from 4.6 m to 6.6 m;</li> <li>• Detailed tree survey and arboricultural assessment;</li> <li>• Construction Management Plan;</li> <li>• Landscape Design and Access Statement / Visual Assessment;</li> <li>• Detailed landscaping scheme and landscape management and maintenance plan.</li> </ul> <p>The conclusions reached by the Planning Appeals Commission (PAC) in the appeal decision are material to the consideration of this application. A copy of the appeal decision is provided at <b>Appendix 1</b>.</p>
9.2	<p>The key issue in the assessment of the proposed development is:</p> <ul style="list-style-type: none"> <li>• Acceptability of demolition within the Malone Park Conservation Area</li> </ul>
9.3	<p>There is a statutory requirement under Section 104(11) of the Planning (NI) Act 2011 to have special regard to the desirability of;</p>

	<p>(a) preserving the character or appearance of that area in cases where an opportunity for enhancing its character or appearance does not arise; or</p> <p>(b) enhancing the character or appearance of that area in cases where an opportunity to do so does arise.</p>
9.4	<p>Paragraph 6.18 of the Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS) contains a policy direction reflecting Section 104 of the 2011 Act. It states that there will be a general presumption against the grant of planning permission for development or conservation area consent for demolition of unlisted buildings where proposals would conflict with this principle. This general presumption should only be relaxed in exceptional circumstances where it is considered to be outweighed by other material considerations grounded in the public interest. A similar approach is taken in Policies BH12 and BH14 of PPS6.</p>
9.5	<p><i>Demolition</i></p> <p>Policy BH 14 of PPS 6 advises that permission will normally only be granted for the demolition of an unlisted building in a Conservation Area where the building makes no material contribution to the character and appearance of the area. It also advises that in assessing proposals for demolition of an unlisted building that makes a positive contribution, regard will be had to the same broad criteria outlined for the demolition of listed buildings set out in Policy BH 10 and paragraph 6.25 of PPS 6. These include the merits of the existing building, the building's condition, the adequacy of efforts to retain the building in use and the merits of alternative proposals. The contribution of the existing building to Malone Park Conservation Area and its resultant demolition were discussed in detail in the previous appeal decision. This is considered in detail below.</p>
9.6	<p><u><i>Merits of the existing building</i></u></p> <p>The Council's Conservation Officer is of the opinion that the existing building makes a significant contribution to the architectural and historic interest / character and appearance of the Conservation Area through, in part, its historical architectural evolution as a late Victorian/ Edwardian / interwar period residential suburb. This is a view shared in the community representations.</p>
9.7	<p>However, the Commissioner found at paragraph 21 of the appeal decision that <i>'Whilst the existing building presents an understated Victorian building it is of modest quality and it has been degraded by the application of roughcast rendering to the existing fabric of the main house and the insensitive extensions to the rear. Given this and the current condition of the building, I consider that is not of a standard of the general architectural quality of the dwellings in the Park. However, it still presents a frontage to the park and continues the existing building line filling a gap in the urban context. The existing landscaping within the site continues to contribute positively to the conservation area. In this respect, I consider that the existing building makes a slight positive contribution to the character and appearance of the Conservation Area. In my opinion, the Council have over exaggerated the contribution that the existing building makes to the conservation area.'</i></p>
9.8	<p>Both the PAC (slight positive contribution) and Conservation Officer (significant positive contribution) consider that the existing building makes a material contribution to the Conservation Area. Therefore, Policies BH10, BH14 and paragraph 6.25 of PPS 6 are engaged. It is considered that greater weight should be given to the conclusions of the PAC on the extent to which the existing building contributes to the Conservation Area given its status as an independent appeals tribunal.</p>
9.9	<p>Policy BH 14 of PPS 6 states:</p>

	<p><i>'The Department will normally only permit the demolition of an unlisted building in a conservation area where the building makes no material contribution to the character or appearance of the area. Where conservation area consent for demolition is granted this will normally be conditional on prior agreement for the redevelopment of the site and appropriate agreement for the redevelopment of the site and appropriate arrangements for recording the building before its demolition.'</i></p>
9.10	<p>The supporting text to Policy BH14 of PPS6 advises that in determining proposals for the demolition of unlisted buildings, account should be taken of the part it plays in the architectural or historic interest of the area by the building and in particular the wider effects of demolition on the Conservation Area as a whole. In this case, the Commissioner presiding over the previous appeal advised that the existing dwelling makes only a slight positive contribution to the character and appearance of the Conservation Area. The Commissioner concluded that demolition of the existing dwelling was acceptable in principle, but rejected because the replacement dwelling was not acceptable. The reasons for dismissal of the previous appeal are considered to have been addressed for the reasons set out in the report to planning application LA04/2019/1819/F.</p>
9.11	<p>A condition is recommended that prevents demolition of the existing dwelling until a valid contract has been entered into for redevelopment of the site in accordance with the planning permission for the replacement dwelling. A condition is also recommended that requires appropriate arrangements for recording the existing dwelling before its demolition. Having regard to these considerations, the proposal is therefore considered acceptable having regard to Policy BH14 of PPS 6 and paragraph 6.19 of the SPPS.</p>
9.12	<p>Paragraph 7.17 of PPS6 states that in assessing proposals for demolition of an un-listed building that makes a material contribution to the Conservation Area, regard should be had to the same broad criteria outlined for the demolition of listed buildings. Policy BH10 of PPS 6 relates to proposals to demolition of a listed building and reads:</p> <p><i>'There will be a presumption in favour of retaining listed buildings. The Department will not permit the demolition of a listed building unless there are exceptional reasons why the building cannot be retained in its original or a reasonably modified form. Where, exceptionally, listed building consent is granted for demolition this will normally be conditional on prior agreement for the redevelopment of the site and appropriate arrangements for recording the building before its demolition.'</i></p>
9.13	<p>The tests at paragraph 6.25 of PPS 6 are considered as follows.</p>
	<p><u><i>Building's condition and adequacy of efforts to retain the building</i></u></p>
9.14	<p>The Commissioner previously accepted that the existing building was beyond habitable use and that renovation and refurbishment was not economically viable and that such extensive rebuilding would be required that there would be little historic value left. The Commissioner also accepted that the existing rough cast render could not be removed back to the original brickwork. On this basis, it was considered that this addresses the broad criteria set out in PPS 6.</p>
	<p><u><i>Merits of alternative proposals for the site</i></u></p>
9.15	<p>The previous planning permission for the extensions to the existing dwelling have since lapsed. The merits of the proposed replacement dwelling are considered in detail below.</p>
9.16	<p>Having regard to these considerations and the conclusions of the Commissioner in the previous appeal decision on the issue of demolition, it is considered that there are exceptional reasons that justify demolition of the existing building in this case. But this is subject there being an appropriately designed replacement dwelling.</p>

9.17	The detailed consideration of the proposed replacement dwelling is set out in the Committee report for LA04/2019/1819/F. It is considered a well designed and detailed replacement dwelling which includes a proposed landscape design which will ensure that landscaping still remains dominant.
9.18	Overall, the existing dwelling makes only a modest positive contribution to the character and appearance of the area and is in poor condition. It is considered that the proposed replacement dwelling is well designed. Having regard to these considerations and the previous appeal decision, it is considered that the proposal would enhance the character and appearance of Malone Park Conservation Area and the presumption in favour retaining the existing building can be set aside in this exceptional instance. It is considered that the grounds for dismissal of the previous appeal have been addressed and that the proposal complies with Policy BH10, BH12 and BH14 of PPS 6, paragraph 6.18 of the SPPS, Policy BH2 of the draft Plan Strategy and Section 104(11) of the Act.
<b>10.0</b>	<b>Summary of Recommendation:</b>
10.1	Having regard to the development plan, relevant policy context and other material considerations including third party representations and the previous appeal decision, the proposal is considered acceptable.
10.2	It is recommended that the application is approved subject to conditions and it is requested that delegated authority is given to the Director of Planning and Building Control to finalise the wording of conditions.
10.3	Before the decision can be issued, being an application for Conservation Area Consent, the application will need to be notified to the Department under Section 29 of the Planning Act (Northern Ireland) 2011.
<b>11.0</b>	<p><b>DRAFT CONDITIONS</b></p> <ol style="list-style-type: none"> <li>1. The works hereby permitted shall be begun not later than the expiration of 5 years beginning with the date on which this consent is granted.  Reason: As required by Section 105 of the Planning Act (Northern Ireland) 2011.</li> <li>2. In accordance with Section 105 of the Planning Act (NI) 2011, the building shall not be demolished until a contract for the redevelopment of the site in accordance with the detailed proposals under application reference LA04/2019/1819/F has been agreed, and evidence of that contract submitted to and approved in writing by the Council.  Reason: To ensure the implementation of a satisfactory replacement scheme in the interests of Malone Park Conservation Area.</li> <li>3. No works (including demolition) shall commence on site until a full survey, including analysis, and photographic record of the dwelling and garage at 28 Malone Park has been submitted to and approved in writing by the Council.  Reason: To secure the proper recording of this unlisted building in Malone Park Conservation Area.</li> </ol>

**Notification to Department (if relevant):** Yes – referral of DCA application

<b>Representations from Elected members:</b> None
<b>Details of Neighbour Notification</b> (all addresses) N/A