

Development Management Report Addendum Report

Application ID: LA04/2018/0522/F	Date of Committee: 14 August 2018
Proposal: Remove condition 7 - LA04/2015/1102/F (Occupancy Condition)	Location: 42 Strathmore Park South Belfast BT15 5HL
Referral Route: Original Planning Permission – Committee Decision	
Recommendation:	Refuse
Applicant Name and Address: P. Stewart 42 Strathmore Park South Belfast BT15 5HL	Agent Name and Address: Arthur Acheson 56 Quarry Road Belfast BT4 2NQ

Addendum Report:

This application was previously listed for Planning Committee 17 April 2018. However, this application was not presented to the Committee as following the receipt of a submission from the applicant's legal representative, the application was withdrawn to enable full consideration of the submission, prior to the presentation of the application to Committee.

Members should read this Addendum Report in conjunction with the original Development Management Officer Report of 17 April 2018, attached below.

The applicant's legal representative withdrew two of the applicant's original reasons for requesting the removal of the occupancy condition; the first which related to the implications for a mortgage application and the second which related to the applicant's son owning the property 42a in his own right.

Instead the applicant is now arguing that condition 7 does not meet the relevant tests for the imposition of conditions and has submitted an amended case for removal of condition 7 which is set out below;

- 1. Precedent - The applicant cites other developments as a precedent** – The applicant's legal representative referred to two sites as examples of a detached dwelling being subdivided into a pair of semi-detached dwellings as similar proposals to the application under consideration. The application sites are referred to **Z/2006/2070/F – 11 Upper Malone Road & Z/2004/2834/F 7 Cleaver Avenue are not comparable:**

- They were large substantial dwellings and plots which are relatively level throughout, and therefore did not result in unacceptable overlooking issues.
- Definite boundary between the dwelling to both the front and rear of the properties could be achieved;
- These applications were granted pre the Addendum to Planning Policy Statement 7 – Safeguarding the Character of Established Residential Areas; they were DOE decisions by which the Council is not bound as set out in Planning Appeal decision 2016/A0053, in

which the Commission deemed that the Council as a separate planning authority with elected representatives is not bound by previous central government decisions.

- 2. The use of a personal permission was inappropriate as guidance states they are exceptional and should rarely be used where the building is a permanent structure and should not refer to such a wide number of beneficiaries** –The applicant refers to Circular 11/65: Use of conditions in planning permission, which applies to England and Wales but Development Management Practice Notes 20 sets out it is also applicable in Northern Ireland. This confirms that planning permission runs with the land and it is seldom desirable to do otherwise. This is because the planning system exists to protect public interest generally and ensure the orderly development of land. Those decisions can however have a substantial impact on private interests. That is why the Circular recognises that there may be exceptional grounds for imposing a personal condition for a building which would not normally be allowed because there are strong compassionate or personal grounds for doing so. Whilst the guidance states that a personal condition for a permanent structure is scarcely ever justified, it is permissible. In assessing the initial application in 2017 the Committee was faced with an unusual scenario. This was an application for retrospective planning permission for a fully constructed dwelling which was to be used by the applicant's son due to their personal circumstances.
- 3. Planning Policy Statement 7 – Policy QD 1 is entirely irrelevant to this case as it is clearly only aimed at new, multiple-property residential developments** – This is not the case, Policy QD1 is the overarching policy for all residential development regardless of the proposal being for new dwellings, change of use, sub division or residential extensions. This is also reflected in both Addendums to PPS 7 – Residential Extensions and Alterations and Safeguarding the Character of Established Residential Areas. Both documents are supplementary to and are read in conjunction with Planning Policy Statement 7 and Policy QD1 – Quality Residential Environments;

 - **Overlooking was not a concern in the initial application** – Overlooking was identified in the Addendum Report (Feb 2017) as an issue. Overlooking is considered to be a concern in this instance due to the steep topography of the rear gardens of 42 and 42a Strathmore Park South which enables those in the garden an elevated view into the bedrooms of both properties;
 - **The Committee was satisfied with the proposal as it was not persuaded by the initial recommendation to refuse** – That is not the case. The initial application was presented to Committee with a recommendation to refuse on 17 January 2017. The applicants addressed the Committee and spoke about the personal reasons why it was necessary to have their son live so close by. A decision was deferred to allow a site visit to take place, which took place on 30 January 2017. At its meeting on 14 February 2017, the Committee voted on whether to grant planning permission without a personal condition and that was defeated. It is therefore clear that the Committee was of the view that the development was unacceptable in planning policy terms. The Committee considered the development to be acceptable only where the newly constructed house was used by the applicant's son due to the personal circumstances outlined by the applicants.
- 4. Report does not mention nor give weight to there being no objections from neighbours or that the development was retrospective** – This is incorrect - Section 7 of the report registers no third party objections and one letter of support for the application. The absence of objections does not render a proposal acceptable in Planning terms and is one of a range of considerations.

Paragraph 9.2.6 of the April 2018 Report states that special consideration is given to retrospective proposals. It also states that the attachment of the occupancy condition enabled the granting of retrospective planning permission which otherwise would have been refused; the fact that a planning application is retrospective will neither advantage nor disadvantage an applicant in that the Authority will consider the proposal on its planning merits.

5. Condition 7 fails to meet the tests – Necessary, Relevant to Planning, Relevant to the Proposal, Enforceable, Precise and Reasonable – Paragraphs 9.2.4 of the attached Report sets out how the conditions meet the 6 tests for a condition, in brief, as follows:

- i) **Necessary** - The Condition is necessary to safeguard the public interest. The applicant's case does not convince the Authority that the condition is unnecessary and that it should be removed;
- ii) **& iii) Relevant to Planning & Relevant to the Development** - The Condition is relevant to planning as it is directly related to Policy requirements as set out in the SPPS, PPS7 and the Addendum to PPS7 and to the use of the building permitted; Committee accepted that the condition would provide that related individuals/ family members could live in close proximity but afforded protection to safeguard that the units could not be occupied by unrelated persons due to the impacts associated with the development;
- iv) **Enforceable** - The condition is considered to be enforceable as it is clearly set out both in terms of the principle of the use and potential breach of condition;
- v) **Precise** - The condition attached is precise and clear in its intent as it specifies that the occupancy of the new dwelling is restricted to a direct family member, being either a spouse, parent or sibling, son or daughter including any dependents of that person or a widow or a widower as that of the original dwelling house;
- vi) **Reasonable in all other respects** – The condition is considered to be reasonable. Members gave full consideration to the proposal and considered that approval with the condition attached was a reasonable alternative to refusing the proposal, which would have been considered unacceptable without the imposition of the condition.

In addition the applicant requested, in March 2017 that Council remove the condition as a non-material change, this was refused as the removal was material and that an application would be required.

Summary

In conclusion, the recommendation remains as set out in the case officer's report and this addendum.

Recommendation

Refuse – The removal of the condition would result in a form of development which would be contrary to Planning Policy in that it would result in harm to the character of the area and the living conditions of existing and prospective residents by failing to provide a quality residential environment.

It is requested that committee delegate authority to the Director of Planning and Building Control to finalise refusal reasons as set out in draft in Section 11 of the DM Officer's report.

Development Management Officer Report Committee Application

Summary	
Committee Meeting Date: 17 April 2018	
Application ID: LA04/2018/0522/F	
Proposal: Remove condition 7 - LA04/2015/1102/F (Occupancy Condition)	Location: 42 Strathmore Park South Belfast BT15 5HL
Referral Route: Original Planning Permission – Committee Decision	
Recommendation:	Refusal
Applicant Name and Address: P. Stewart 42 Strathmore Park South Belfast BT15 5HL	Agent Name and Address: Arthur Acheson 56 Quarry Road Belfast BT4 2NQ
<p>Executive Summary:</p> <p>This application seeks to remove Condition no.7 from planning permission LA04/2015/1102/F. This condition relates to the occupancy of the new dwelling unit created as a result of the subdivision of no.42, and is as outlined below;</p> <p><i>'The occupancy of dwelling No.42A as indicated on drawing No.03 shall be limited to direct family members of the occupants of dwelling No.42. A direct family member shall be a spouse, parent or sibling, son or daughter and shall include any dependents of that person or a widow or widower of such a person.</i></p> <p><i>Reason: In the interests of residential amenity.'</i></p> <p>The Key issues in the assessment of the proposed development include;</p> <ul style="list-style-type: none"> • Whether the condition no.7 meets the 6 tests for a condition; • Consideration of the applicants circumstances the applicant's case is that <ul style="list-style-type: none"> - the condition is preventing a mortgage application; - in respect of the condition preventing ownership of the dwelling by the applicant; • The implications of the removal of the condition for the residential amenity of prospective residents of the two dwellings. <p>It is recommended that this application be refused and it is requested that Committee delegate authority to the Director of Planning and Place to agree the final wording of the refusal reason(s).</p>	

Case Officer Report

Site Location Plan



Characteristics of the Site and Area	
1.0	<p>Description of Proposed Development</p> <p>The proposal is for the removal of Condition no.7 from planning permission LA04/2015/1102/F. This condition relates to the occupancy of the new unit created as a result of the sub-division of no.42, and is as outlined below;</p> <p><i>'The occupancy of dwelling No.42A as indicated on drawing No.03 shall be limited to direct family members of the occupants of dwelling No.42. A direct family member shall be a spouse, parent or sibling, son or daughter and shall include any dependents of that person or a widow or widower of such a person.'</i></p> <p><i>Reason: In the interests of residential amenity.'</i></p> <p>This application seeks to remove the occupancy condition in its entirety.</p>
2.0	<p>Description of Site</p> <p>The site is located at 42 Strathmore Park South, Belfast and contains a two storey detached building which has been sub divided into two semi-detached properties, granted retrospectively under planning permission LA04/2015/1102/F. The dwellings are finished with red brick at ground floor level, white render on the first floor and grey tiled roof. The front of the site contains a grassed and paved area bounded by a 0.5m red brick wall and vegetation, a new entrance is under construction in addition to the existing entrance. The rear of the property contains a long garden measuring approximately 35m in length, immediately to the rear of the existing dwelling is a small paved area with the garden area rising steeply from north to south. The rear of the site is bounded by dense hedging and vegetation measuring in excess of 2m high.</p> <p>The site is located within the development limits and is predominantly residential and characterised by 2 storey detached dwellings.</p>
Planning Assessment of Policy and other Material Considerations	
3.0	<p>Site History</p> <p>3.1 LA04/2015/1102/F - Proposed sub division of a dwelling to form a pair of semi-detached houses (Retrospective) - Granted</p> <p>3.2 Z/2010/0702/O – Erection of 1No. bungalow with in-curtilage parking to rear of No.42 Strathmore Park South – Permission Refused - appeal dismissed</p> <p>3.3 Z/2013/0016/F – Erection of two-storey extensions to front and two and a half storey extension to the rear of dwelling. Raising of existing ridge height of dwelling. New covered porch to front and external alterations with associated site works. Permission Granted</p>
4.0	Policy Framework
4.1	Belfast Metropolitan Area Plan 2015

4.1.1	SETT 1 – Designation of Settlements
4.1.2	SETT 2 - Development within the Metropolitan Development Limit and Settlement Development Limits
4.2	Strategic Planning Policy Statement for Northern Ireland (SPPS) Planning Policy Statement 3 'Access, Movement and Parking' Planning Policy Statement 7 'Quality Residential Environments' Planning Policy Statement 7 Addendum 'Safeguarding the Character of Established Residential Areas' Planning Policy Statement 12 'Housing in Settlements'
5.0	Statutory Consultees Responses
5.1	None
6.0	Non Statutory Consultees Responses
6.1	None
7.0	Representations
7.1	The application has been neighbour notified and advertised in the local press. One letter of support for the proposal has been received.
8.0	Other Material Considerations
8.1	Creating Places DCAN 8 'Housing in Existing Urban Areas'
9.0	Assessment
9.1	The proposal is considered contrary to the development plan.
9.2.0	The proposed removal of Condition and the case put forward for doing so is considered below.
9.2.1	Implications for Mortgage – It is noted from the previous planning approval, that one of the considerations put forward by the applicant for the sub-division of the property was to enable the family’s only son to live in close proximity to the family home. The case put forward for the removal of the condition is that it is preventing an application for a mortgage at this property. Whilst this has been claimed by the applicant, no evidence to support this assertion has been provided. It is also important to note that the house was already built at the time of the previous application so it is unclear why a mortgage would be required.
9.2.2	Preventing Ownership of the Dwelling - It is also claimed that the occupancy condition is preventing the son from ever owning the property in his own right. Again no evidence to support this has been provided, nor has evidence been provided to demonstrate if any other

pathways have been explored to allow ownership. Legal Services have advised that the condition does not prevent the applicant's son from ever owning the property in his own right.

9.2.3 **Condition no.7 fails to meet the condition tests** – The applicant has claimed that the proposal fails to meet any of the tests, stating that the condition is;

- **Reasonable** - Not reasonable within an urban area and a small family unit of 3 people. Any change in circumstances would have a very large effect on the applicants families lives;
- **Enforceable** – How can such an occupancy condition be enforceable on a young person living in today's society? ;
- **Necessary** – In what public interest is the condition necessary? Understanding that occupancy conditions for working families in countryside but not for small family in an urban area;
- **Fair** – Planning also has to be seen to be fair.

9.2.4 **Consideration of Condition no.7 and the 6 tests for Conditions:-**

- vii) **Necessary** - The Condition is necessary to safeguard the public interest. The application was recommended for refusal as the subdivision of 42 Strathmore Park South was considered to impact on the residential amenity of both dwellings by overlooking and to be out of character. Conditions were recommended in the event of approval and Planning Committee considered the condition necessary to be attached to enable the granting of planning permission as opposed to refusal of the proposal. The applicant has failed to set out any change in circumstances which would deem the condition unnecessary and warrant its removal;
- viii) **Relevant to Planning** - The Condition is relevant to planning as it is directly related to the use of the building permitted;
- ix) **Relevant to the Development** – The condition is relevant to the development, as the proposed subdivision of the original dwelling house to create two individual dwelling units on this site was considered unacceptable due to its form, untypically elongated narrow plots which are uncharacteristic of the area and the close proximity of the dwellings that would result in an adverse impact on the amenity of existing and prospective residents. Committee accepted that the condition would provide that related individuals/ family members could live in close proximity but afforded protection to safeguard that the units could not be occupied by unrelated persons due to the impacts associated with the development;
- x) **Enforceable** - The condition is considered to be enforceable both in terms of the principle of the use and breach of condition;
- xi) **Precise** - The condition attached is precise and clear in its intent as it specifies the occupancy of the new dwelling is restricted to a direct family member, being either a spouse, parent or sibling, son or daughter including any dependents of that person or a widow or a widower as that of the original dwelling house;

9.2.5	<p>xii) Reasonable in all other respects – The condition is considered to be reasonable. Members gave full consideration to the proposal and considered that approval with the condition attached was a reasonable alternative to refusing the proposal, which was considered unacceptable without the imposition of the condition.</p>
9.2.6	<p>Condition no.7 as applied on planning approval LA04/2015/1102/F is considered to meet the 6 tests as set out above.</p>
9.2.7	<p>Occupancy conditions are attached to those proposals that are granted based on need and ensure that the dwellings are retained for that need. Planning Permission granted under Section 55 of the Planning Act (NI) 2011 requires special consideration to be given to the conditions attached to retrospective applications. In this instance the attachment of the occupancy condition enabled the granting of retrospective permission which otherwise would have been refused if the occupancy condition had not been imposed. The reason for the occupancy condition clearly stated the requirement for the condition ‘In the interests of residential amenity’, as required by Article 21 of The Planning (General Development Procedure) Order (NI) 2015. This reinforces the council’s recommendation that the proposal if granted without such a condition would result in detrimental impact to the residential amenity of occupiers of both dwellings by overlooking.</p>
9.2.8	<p>Planning Permission granted under Section 55 of the Planning Act (NI) 2011 for retrospective planning applications, require special consideration to be given to the conditions attached to such permissions</p>
9.2.9	<p>Planning Committee considered the proposal and opted to approve with the above condition as opposed to refusing it. A proposal at Planning Committee on the 14th February 2017 to approve without the condition attached was voted on and lost.</p> <p>For the reasons set out above it is considered that Condition no.7, conditioning the occupancy of the new unit should remain as per the previous approval LA04/2015/1102/F.</p>
9.3	<p>Having regard to the policy context and other material considerations above, the proposal is considered unacceptable and planning permission is refused for the following reasons.</p>
10.0	<p>Summary of Recommendation: Refusal</p> <p>The proposed removal of Condition no.7 from Planning Permission LA04/2015/1102/F, the occupancy condition is considered unacceptable as if permitted would effectively grant permission for two separate dwellings, which could be occupied by unrelated persons and would detrimentally impact on the privacy and amenity of prospective residents by way of inter-overlooking between the properties into and out of the resulting houses at the rear is therefore contrary to Policy QD1 of Planning Policy statement 7- Quality Residential Environments.</p>
11.0	<p>Reasons for Refusal</p>

	<ol style="list-style-type: none"> 1. The proposal is contrary to Policy QD 1 of Planning Policy Statement 7: Quality Residential Environments and Policy LC 1 of the Addendum to Planning Policy Statement 7: Safeguarding the Character of Established Areas in that it would, if permitted, result in unacceptable damage to the local character and environmental quality of the established residential area, by reason of additional in-curtilage parking, a second new access and sub-division of the curtilage resulting in a plot size which would be out of character with the pattern of development in the area and would set an undesirable precedent. 2. The proposal is contrary to Policy QD 1 of Planning Policy Statement 7: Quality Residential Environments in that the proposed development would, if permitted, result in an adverse impact on residential amenity of prospective occupants by way of inter-overlooking between the properties into and out of the resulting houses at the rear.
<p>Notification to Department (if relevant)</p> <p>N/A</p>	
<p>Representations from Elected members:</p> <p>Cllr Mary Ellen Campbell</p>	
<p>Neighbour Notification Checked Yes</p>	

ANNEX	
Date Valid	26th February 2018
Date First Advertised	23rd March 2018
Date Last Advertised	23rd March 2018
Details of Neighbour Notification (all addresses) The Owner/Occupier, 23 Lismoyne Park,Belfast,Antrim,BT15 5HE, The Owner/Occupier, 40 Strathmore Park South,Belfast,Antrim,BT15 5HL, The Owner/Occupier, 44 Strathmore Park South,Belfast,Antrim,BT15 5HL, The Owner/Occupier, 44a ,Strathmore Park South,Belfast,Antrim,BT15 5HL, The Owner/Occupier, 45 Strathmore Park South,Belfast,Antrim,BT15 5HJ, The Owner/Occupier, 47 Strathmore Park South,Belfast,Antrim,BT15 5HJ, The Owner/Occupier, 49 Strathmore Park South,Belfast,Antrim,BT15 5HJ,	
Date of Last Neighbour Notification	16th March 2018
Date of EIA Determination	N/A
ES Requested	No