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<b>Appeal References:</b>	(1)2016/A0016 and (2) 2016/A0017
<b>Appeals by:</b>	Mr Lewis Creighton
<b>Appeal against:</b>	(1) the refusal of Conservation Area Consent and (2) the refusal of full planning permission.
<b>Proposed Development:</b>	(1) Demolition of existing detached dwelling, adjacent garage and associated hardstanding to rear due to poor condition and (2) demolition of existing dwelling and erection of 3 storey (and basement) detached dwelling with garage.
<b>Location:</b>	28 Malone Park, Belfast.
<b>Planning Authority:</b>	Belfast City Council.
<b>Application Reference:</b>	(1) Z/2015/0101/DCA and (2) Z/2015/0063/F.
<b>Procedure:</b>	Informal hearing on 20 <sup>th</sup> October 2016.
<b>Decision by:</b>	Commissioner Mandy Jones, dated 6 <sup>th</sup> February 2017.

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## Decision

The appeals are dismissed.

## Reasoning

1. The main issue in both appeals is the effect of the proposed demolition and redevelopment on the character and appearance of the Malone Park Conservation Area. The appeal against the refusal of planning permission also raises the issues of impact on natural heritage and impact on neighbouring residents.
2. Section 104 (11) of the Planning (NI) Act 2011 requires that where any area is for the time being designated as a conservation area, 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.
3. Policies BH 10 and BH 14 of Planning Policy Statement 6 (PPS 6): Planning, Archaeology and Built Heritage cited by the Council in its reasons for refusal have to be considered in that context.

4. Section 6 (4) of the Planning Act 2011 states that determination under this Act must be made in accordance with the plan, unless material considerations dictate otherwise - which relates to the planning application appeal. The Belfast Metropolitan Area Plan 2015 (BMAP) identifies for information only the extent of the Malone Park Conservation Area and notes that it exhibits a number of architectural styles including Arts and Crafts and Queen Anne Revival and that this area contains large detached residential properties within mature gardens in a tree lined avenue. However, while BMAP states that development proposals within Conservation Areas will be assessed in accordance with Planning Policy Statement 6 – Planning, Archaeology and Built Heritage (PPS6), it contains no policy provisions relevant to the Conservation Area or the appeal proposals.
5. The Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS) is a material consideration. It states that until councils have adopted a new Plan Strategy any conflicts between the SPPS and the existing specified retained Planning Policy Statements are to be resolved in favour of the SPPS.
6. The SPPS contains a policy direction reflecting Section 104 of the 2011 Act. Paragraph 6.18 advises that in managing development within a designated Conservation Area the guiding principle is to afford special regard to the desirability of enhancing its character or appearance where an opportunity to do so exists, or to preserve its character or appearance where an opportunity to enhance does not arise. It goes on to say 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.
7. This SPPS policy direction requires a broadly similar approach to that set out in Policy BH 14 of PPS 6 – Demolition in a Conservation Area when read in the context of Section 104 of the Planning Act. Policy BH 14 states that 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. Paragraph 7.17 states that in assessing such proposals the Department will have regard to the same broad criteria outlined for the demolition of listed buildings and is cross referenced to paragraph 6.5 and policy BH 10. BH 10 requires exceptional reasons why the building cannot be retained in its original or a reasonably modified form. In the justification and amplification text of policy BH 10, paragraph 6.24 states that consent will not be given (for demolition) simply because the redevelopment is economically more attractive to the developer than repair and re-use of the building, or because the developer acquired the building at a price that reflected the potential for redevelopment rather than the condition and constraints of the existing historic building. Paragraph 6.25 in the justification and amplification text of policy BH 10 refers to the following factors :

- (a) The condition of the building, the cost of repairing and maintaining it in relation to its importance and to the value derived from its continued use,
  - (b) The adequacy of efforts made to retain the building in use and
  - (c) The merits of alternative proposals for the site.
8. The proposal for demolition must take into account the new build proposal, and for the statutory tests to be met the demolition and replacement should leave the character of the Conservation Area at least unharmed and where possible enhanced. The relevant test is whether the rebuilding proposal makes a contribution to the character and appearance of the Conservation area which is at least equal to and where possible greater than that of the existing building on the site.
9. The appellant argued that the provisions in Section 104 of the Planning Act do not require enhancement, even where an opportunity to achieve it arises and does not displace the longstanding South Lakeland '*no harm*' test, and does not justify the refusal of planning permission in a given case where there is an opportunity for enhancement but enhancement is not secured. All it requires is that special regard be paid to the desirability of enhancement where there is an opportunity to achieve it, which is not the same thing as requiring enhancement before a proposal is deemed acceptable. The appellant argued that the replacement will enhance the character and appearance of the CA, however they argued that if the Commission considered the appellant to be wrong, their fall back is that the proposal does not cause any harm to the CA. Appeal decision 2002/A003&A004 – 41 Malone Avenue provides a precedent although under a different statutory context.
10. The existing building which is not listed is located within Malone Park which is a significant tree lined avenue located between the Lisburn Road and Malone Road. The surrounding context is primarily residential. Malone Park contains large, individually designed properties set back from the road, within mature gardens of significant proportions and mature landscaping.
11. As PPS 6 advises, each Conservation Area has its own unique style and character, and local policies and guidance for the conservation and enhancement of the Conservation Areas are set out in the relevant designation documents and design guides. 'Malone Park / Adelaide Park Conservation Area' is the relevant designation booklet. It states that 'Malone Park and Adelaide Park remain today as examples of the late Victorian Housing environment. They contain a number of architectural styles including Arts and Crafts, Queen Anne Revival and Italianate together with a number of more recent developments. The combination of notable domestic Victorian architecture, mature landscaped gardens and tree lined avenues produces a townscape character which is worthy of designation' There is reference to some particular buildings within Malone Park but there is no reference to the existing appeal building. It goes on to say 'Generally properties are large two-storey detached residences with a uniform set back which emphasises the Parks perspective. The large gardens create their own environment which is contained by the mature planting between each property. From the street, residences are often only partially visible, nestled in their surroundings and quite

separate from each other.’ The CA guide does not attach great significance to the chronological development of Malone Park.

12. The existing building is a Victorian modest three bay, two-storey dwelling faced in roughcast render with a smooth render plinth and a pitched slated roof. It seems that the house had originally a red brick finish, with saw tooth dentil detailing, but this has been rendered over rather crudely some time ago. Two canted bay windows to the ground floor, with hipped roofs sit symmetrically to either side of a gabled porch. The porch has decorative barges and finials which are complementary to the gables over the first floor windows. Windows have a vertical emphasis and to the front elevation are sliding sash. The side gables have decorative barges. Two brickwork moulded chimneys sit on the ridge line. A garage sits to the north elevation and has a decorative timber veranda to the front elevation.
13. To the rear elevation large picture windows have been inserted and there is a substantial two storey flat roof return extension and a large red brick extension with a concrete tiled roof. It would appear that the house at some stage was divided into different units as there are a number of external doors – to the side gable, rear return and to the red brick extension. These additions to the rear are unsympathetic to the main dwelling.

#### Planning History

14. In 2010 consent was granted for the demolition of the existing rear extensions ( Z/2009/0663/DCA ) and planning permission was granted ( Z/2009/0616/F ) for a two storey rear extension with glazed link to new two storey block and a single storey attached garage / utility. The appellant argues that due to condition that if implemented the only part which would be retained is the front elevation and part of the side elevations. It would not be possible to remove the render on these elevations. The appellant argued that although facade retention is an architectural approach in this case the facade has been significantly compromised.

#### Condition of the Existing Building

15. Evidence from the appellant stated that no 28 has been unoccupied for many years and it fell into disuse because it no longer offered the quality of family residential accommodation present in Malone Park. A condition report was presented by Johnston Houston Building Surveyors dated December 2014 and a follow up report dated September 2016. This highlighted the severity of dry rot and wet rot which the writer indicated that in 28 years experience he has not witnessed such a severe breakout of dry rot. It concluded that the building is in a seriously dilapidated condition and that it is not safe for access due to the extent of decay of the structural timbers and that the building is suffering from excessive penetrating and rising dampness and severe deterioration of the external fabric and envelope. It was asserted that it would not be economically viable to refurbish and remediate the existing property which would cost £700,000 inclusive of vat, fees, full repairs and restoration. I was told that the site cost was in the order of £ 2 million. Advice presented from an estate agent is that the finished value of a refurbished house would not be greater than £ 1.3 – 1.4m –and put simply the house is not economic to repair and the end result would still be of low architectural quality. It was argued that the appellant (or anyone) would not refurbish the existing building given such a huge loss and it will be left to degrade

further. The new build on the site would be valued around £2 ¾ - £3 million. A report commissioned by Belfast City Council from DFP concludes that the house is in significant structural distress and that considerable re building would be required. Such rebuilding would result in a building retaining very little of its original form and the DFP report concludes that it is beyond economic repair.

16. In terms of its condition I have no evidence that the current owners have neglected the existing building in the hope of gaining consent to demolish as claimed by the Council and objectors.
17. From my site inspections it is evident that currently the building is beyond habitable use. The internal fabric of the building is indeed in serious disrepair. Some of the windows are boarded up and some have deteriorated badly and glass is broken. Although externally there are signs of deterioration of the external render and windows the roof slates and chimney appear to be in relatively good condition. At present, the dwelling is in a significantly worse state than it appears on the photographs dated 2009 included in the Council's statement of case.
18. Views from the frontage of the appeal site on Malone Park are restricted by the dense roadside hedgerow which is approximately 2.5m in height. Travelling through the park there are views over this hedge and through the entrance point to the existing dwelling. The extensive original plot for no 28 has been subdivided with the construction of 28a and 28b apartment building and consequently the appeal building is off set within its site and is closer to the northern boundary. To my mind, the dwelling sits uncomfortably within this reduced site. It is a modest sized plot smaller than the majority of the other plots on this side of Malone Park.
19. The Council considers that the existing building makes a significant contribution to the architectural and historic interest / character and appearance of the Conservation Area through age, style and materials. They state that it makes contribution to the historic character by contributing to the architectural evolution of the Conservation Area as the earlier buildings are at the Lisburn Road and Malone Road ends of the park. They argue that the dwelling contributes to the reading of the historical evolution of Malone Park and the variety of styles.
20. The appellant argues that setting aside the current condition of the original house it is of modest quality and has been so degraded by alterations and extensions that it now is of very low architectural merit and is not commensurate with the general quality of Malone Park and makes a negative contribution to the character and appearance of the Park. It was accepted by the Council that the rear extensions, insertion of the picture windows and the roughcast rendering to the main house was unsympathetic. However, I consider that it is the main house which is read from Malone Park and the unsympathetic rear extensions are hardly discernible from Malone Park.
21. Whilst the existing dwelling presents as an understated Victorian building it is of modest quality and it has been degraded by the application of the roughcast rendering to the external fabric of the main house and the insensitive extensions to the rear. Given this and the current condition of the building I consider that it 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 dwelling makes to the Conservation Area.

22. However, the contribution that the proposed replacement building would make to the character and appearance of the conservation area must also be considered. Given the merits of the existing building and taking into consideration the statutory requirements of Section 104 of the 2011 Act, I agree with the appellant that there is an opportunity for an appropriately designed replacement building to preserve and enhance the character and appearance of the conservation area. As the existing building makes a material contribution, albeit limited, to the conservation area regard must be had to the presumption in favour of its retention as set out in Policy BH 14, however regard must still be had to all the other material considerations presented.

#### The Proposed Building

23. The proposal is partly sited on the footprint of the existing dwelling, within the centre of the site. It maintains the set back of the existing. It is a substantial 3 storey dwelling with a mansard style roof (and accommodation within the roof) with a basement and swimming pool and large single storey flat roof extension to the rear. There is a single storey garage with a hipped roof. It is around 6000 sq ft and has a larger footprint than the existing. The symmetrical front elevation of the main house exhibits strong Georgian influences and I consider that it would have a strong and assertive presentation to Malone Park.
24. Policy BH 12 – New Buildings in Conservation Areas requires that development proposals for new buildings are to meet a number of criteria. The fundamental requirement as modified by section 104 of the Act is criterion (a) which requires that the development preserves or where possible enhances the character and appearance of the area.
25. The planning authority argue that the new build proposal is contrary to criterion (c) which requires that the scale, form, materials and detailing of the development respects the characteristics of adjoining buildings in the area. Also raised by the planning authority and objectors was criterion (f) which requires that trees and other landscape features contributing to the character or appearance of the area are protected and criterion (g) which requires that the development conforms with the guidance set out in conservation documents. Objectors also raised criterion (b) which requires that the development is in sympathy with the characteristic built form of the area and criterion (e) that important views within, into and out of the area are protected.
26. Whilst the CA booklet acknowledges the notable domestic Victorian architecture within Malone Park it does not prescribe any particular architectural style. It states that Malone Park has always been a prestigious location and still retains many of its original Victorian properties. Over the years a wide variety of architectural styles have contributed to the special quality of the area. Despite the divergence of styles, the traditional elements of scale, structure, massing and use of materials

are common and the majority of houses conform to this collective identity. The booklet states that the opportunity to accommodate new development in Malone Park is severely restricted. The Department will have to be satisfied that conversion and refurbishment of a building is not viable before redevelopment is considered. In such circumstances heights, building line and coverage should reflect those of the original dwelling on site and the design of new development should complement the existing architecture and townscape character. At pg. 24 it states that visually significant trees and vegetation should be retained.

27. In terms of scale and massing, the planning authority argue that the proposal is contextually inappropriate as traditionally domestic architecture had a gable depth of 8-9m with a 3 dimensional massing (main block addressing street frontage and smaller subservient blocks to the rear). The gable depth of the main block is 11m with single storey block to the rear which will read subservient to the main house. I agree with the appellant that whilst this figure of 8-9m may be correct for the majority of traditional domestic architecture, that is not the policy test – the policy relates to the built form in Malone Park. A simple comparison with the majority of the large Victorian houses, show that 11m gable depths are closer to the ‘norm’ in Malone Park than the 8-9m quoted. Similarly, the width of 14.3m is compatible with the majority of historic houses in Malone Park. The proposal reads as a 2 storey building with a mansard roof with dormers. The ridge height is 10.325 m to tiled ridge and 11.439m to the mansard ridge which will be read in the distance and barely discernible. The ridge height of 10.325m is comparable with the buildings on either side. No 30 has a ridge height of 10.5m and no 28a and b has a ridge height of 9.7m. I do not consider that the mansard style roof in itself to be unacceptable as raised by the objectors. There was also objections to the use of dormer windows but I note that they are used throughout the park. The objector referred to references to dormer windows within the design guide for the Malone Conservation Area however the appeal proposal is not within this conservation area. The correct design guide for Malone Park / Adelaide Park Conservation area does not rule out the use of dormers in the front roof elevation providing they are of an appropriate design and scale. Although, the proposal would be more substantial than the existing building, I consider that the bulk and general massing of the proposal is similar to the other large and substantial properties within the park. Although basements are not a typical feature of the park I would not consider them to be unacceptable – in any case providing the existing frontage boundary hedge is retained any indication of a basement level would be barely discernible and retention of this hedge could be secured by condition. The appellant claims that some of the properties in the park have basements including one recent approval for a new basement. This was unchallenged.
28. The palette of finishes include red facing brick with lime mortar with architectural masonry features (window and door surrounds, cills, string courses eaves); external hardwood painted doors; steps to front door in natural sandstone and mansard roof in Bangor Blue Penrhyn slate with sheet lead flat section. The Council had no objections to materials proposed.
29. I consider that this contemporary villa in a neo Georgian style is well balanced, detailed and well proportioned. It's set back, scale and massing and external materials and detailing are all in keeping with the overall character of the conservation area. I note that in a previous Commission decision (2015/A0014 &

2015/A0122) also in Malone Park, the Commissioner concluded that a Georgian approach was at variance with its general Victorian and Edwardian character. However, in the particular case of the appeal proposal given my positive conclusions on the design of the replacement building within its context, I was not persuaded that it was unacceptable purely due to its Georgian approach. Although the designation booklet states that Malone Park retains many of its original Victorian properties it acknowledges that over the years a wide variety of architectural styles have contributed to the special quality of the area and despite this divergence in types, traditional elements of scale, structure, massing and use of materials are common to the majority of houses and confer a collective identity. I do not find that the Council's and objectors objections to Policy BH 12 criterion (c) to be sustained. Neither do I consider that the proposal is contrary to criterion (b). I am not persuaded that that the increase in height would unacceptably affect views within, into and out of the area and accordingly I do not find the objector's concerns in relation to criterion (e) to be sustained.

30. PPS 6 Policy BH 12, criterion (f) states that trees and other landscape features contributing to the character or appearance of the area are to be protected. Malone Park is a significant tree lined avenue with large maturely landscaped gardens. The trees and landscaping are an integral part of and contribute positively to the character and appearance of the conservation area. On the appeal site the existing dwelling is approximately 13.5m from the south eastern boundary which is the boundary between the site and no 30 Malone Road. The proposed dwelling is sited much closer and is 4.620 m from the boundary with no 30. This boundary includes a band of relatively large mature trees including a yew tree and a number of non native fir and conifers. The boundary itself includes an unfinished wall and a hedge.
31. A draft site survey of the site submitted at the hearing indicates the position of the existing trees and the footprint of the proposal and the approved dwelling and edge of footpath and driveway kerbs (Z/2009/0616/F). This does not seem to be an up to date survey as the trees shown to the front of the site have since been removed. The survey shows the canopy of large trees very close to and some overlapping the footprint of the proposal. It also shows the large trees close to part of the footprint of the approved dwelling and the lines indicating the edge of footpaths and driveway kerbs underneath the tree canopies.
32. The appellant was given an opportunity to submit an updated site plan at the hearing as post hearing evidence, and the drawing submitted was basically the same as the previous site plan (Council's drawing reference 06 A) but shows the re use of the existing access – which was discussed at the hearing. This site plan is incorrect – it illustrates a number of mature trees along the boundary with apartments 28a and 28b. However, these have been removed (the Council informed me that 19 trees were removed and are now part of an enforcement case). The site plan also states to 'retain and develop existing mature hedge along this boundary' but this also has been removed. The positions and sizes of the trees along the boundary with no 30 do not correspond with the draft tree survey and from my site inspections. It indicates 2 trees to the front of the proposal and notes to remove these – however these have already been removed.



33. At the hearing, in response to the inaccuracies in the original site plan the appellant stated that the following could be secured by condition; a development plan to demonstrate measures to protect the trees during construction; a tree survey prior to and following construction; preparation of a proposed landscaping scheme and a condition requiring any tree which does not survive the building works to be replaced with a tree of the same species. It was argued by the appellant that these conditions are comparable with the conditions on the Z/2009/0616/F approval.
34. The proposed dwelling comes very close to the band of mature trees along the boundary to no 30. I note that proposals also include the construction of an extensive basement level with a pool which is within 4.620 m of the boundary with no 30. The appellant stated that a system of sheet piling could be used to minimise impact but no further details were submitted. The Council have argued that the new proposal would severely damage the root protection zones and the two trees outside the property along Malone Park.
35. Paragraph 7.13 of PPS 6 requires that detailed drawings are required to accompany all planning applications in a Conservation Area which illustrate the proposal in its context including landscaping so that a full assessment can be made of the impact of development proposals. A landscaping plan and an up to date tree survey showing the accurate positions of the trees on site, root protection areas, heights, crown spreads and a health and condition report should have been submitted. This should have included proposals for the protection of the trees on the boundary with no 30 during excavation works which appear to be within the crown spread of some trees along this boundary. I do not agree that all of this critical information on trees within a conservation area which by virtue of Section 127 of the Planning Act have protection similar to that afforded to TPO trees, could be left to conditions. I note that the Z/2009/0616/F approval did have a Proposed Landscaping Plan showing the accurate positions and sizes of existing trees to be retained. In addition the footprint was generally not as close to the boundary trees and these proposals did not include a basement level with swimming pool and did not require retaining walls close to the boundary and tree belt. The objector from no 30 also raised concerns regarding the excavations posing a risk to the stability of his garage which is 1m from the boundary however; this is not a planning matter.
36. The appellant set out in evidence that one of the design main intents was to ‘retain important existing trees, hedges, vegetation and landscaping so as to avoid any disturbance of one of the most important characteristics of the park and the substantial green boundaries between the gardens was recognised.’
37. However, this design intent has not be realised as their submission is incomplete and the required level of information has not been submitted for such a proposal within a conservation area, despite being given the opportunity to submit post hearing evidence. Consequently, I am unable to make an assessment of the potential impact of the proposed development on the existing tree cover especially the band of trees along the boundary with no 30. It has not been demonstrated that the future of these important landscape features would not be put at risk. The proposal is contrary to criterion (f) of PPS 6 Policy BH 12.

38. In considering criterion (g) the proposed building coverage would be approximately 388 sq m and would be twice the footprint of the original dwelling which is 187 sq m. This is contrary to the development guidance in the CA area booklet which states at pg 23 ' in order to allow landscape to remain dominant the established relationship between the building mass and gardens should be respected and retained where possible. In no circumstances should building coverage be more than one and a half times that of the original dwelling'. Although this is design guidance – this statement is strongly worded. It is clear that the emphasis is on restricting the building mass close to that of the existing in order to retain the dominance of the landscaping within the plots. The footprint of the proposal does fail the numerical figures set out in the design guidance and more importantly it has not been demonstrated and I have not been persuaded that the existing landscaping and trees will remain dominant. The proposal does not comply with the continual emphasis on the importance of landscaping within the park in the guidance.
39. In addition, at pg 22 it states that any future development will mainly relate to minor extensions, maintenance and improvement of existing properties. It states that all planning applications in respect of building or sites within the Conservation Area should be submitted with full details showing clearly in plan and elevation, relationships to adjoining buildings and existing and proposed landscape treatment. As I have previously referred to the omission of key information, the proposal is contrary to criterion (g) which requires the development to conform with the guidance set out in the Malone Park conservation document.
40. I consider that the proposed replacement considered on its own is a well designed and detailed building which is sympathetic to the Conservation Area. I also consider that its scale, form, materials and detailing respects the characteristics of adjoining buildings and in this respect the proposal meets criteria (b) and (c). However, I have found that it is contrary to criterion (f) and criterion (g).
41. As the existing building makes a material contribution, albeit limited, to the conservation area regard must be had to the presumption in favour of its retention as set out in Policy BH 14, however regard must still be had to all the other material considerations and the contribution of the proposed replacement to the character and appearance of the conservation area.
42. I accept that the existing building is not habitable given its current condition and the arguments that if left will deteriorate further. I also accept that the renovation and refurbishment is not economically viable and that such extensive rebuilding would be required that there would be little historic value left. I accept that the rough cast rendering could not successfully be removed back to the original brickwork. These address the broad criteria outlined for the demolition of listed buildings (cross referenced to policy BH 14). Although the merits of alternative proposals was not presented by the appellant, I note that this policy refers to listed buildings and 'broad criteria'.
43. However, as the proposal fails the policy tests set out for new development in a Conservation Area, it is not an appropriately designed replacement building which would either preserve or enhance the character and appearance of the conservation area. As such, it also fails criterion (a) of Policy BH 12 which

requires that the development preserves or enhances the character and appearance of the area. Accordingly, the Council's first and second reasons in the planning application have been sustained and also the reason for refusal in relation to demolition consent.

#### Residential Environment.

44. Planning Policy Statement 7 (PPS 7) Quality Residential Developments, Policy QD 1 Quality in New Residential Development states that planning permission will only be granted to new residential development where it is demonstrated that the proposal will create a quality and sustainable residential development. It states that all proposals for residential development will be expected to conform to a number of criteria. The Council argued that the proposal is contrary to the following criteria (a) the development respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and hard surfaced areas and (h) which requires that the design and layout will not create conflict with adjacent land uses and there is no unacceptable adverse effect on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance.
45. In terms of criterion (a) the scale, proportions, massing, and appearance of the proposal have previously been addressed and I concluded that considered on its own the proposal respects the surrounding context. However, I have also previously concluded that it is not appropriate in terms of landscaping and as such it does not respect the surrounding context. Insofar as this relates to landscaping the proposal is contrary to criterion (a).
46. In terms of criterion (h) the architectural drawings did not show the relationship of the proposal to its neighbours in plan form – particularly no 30. I would have expected a drawing showing the proposal within its context in plan form considering the close proximity of its neighbours. The only drawing which indicated the relationship of the proposal to its neighbours was a street elevation which shows a dotted line to indicate the massing of No. 30 and No. 28A and B.
47. The proposal is 4.620 from the boundary and no 30 is approximately 11m from this boundary. The side elevation addressing no 30 has a total of 7 windows and concern was raised that there would be unacceptable overlooking from the first floor (3 windows) and second floor (1 window) bedroom windows. This could be resolved with obscured glazing in these particular windows which could be secured by condition. Overlooking from the dormer windows was also raised by the objector of 35 Myrtlefield Park to the rear of the proposal. Separation distances from these windows to the rear boundary of the site are 38m. I note that these are bedroom and circulation space windows. Given this and the urban context I do not consider the level of overlooking to be unacceptable.
48. Overshadowing of no 30 would not be a concern as the proposal sits to the north of no 30. Loss of light was referred to but no evidence was advanced, however I would not consider it to be a concern due to the relationship and orientation of the proposal relative to No. 30.

49. The Council also raised the concern that due to the close proximity of the proposed dwelling to the common boundary there would be a negative impact through dominance and massing on the neighbouring no 30.
50. Although the proposal is relatively close to the property boundary - it is 15 m from the gable of no 30 and there is a driveway and garage (no 30) in between. The main gable of the proposed dwelling is in line with the gable of no 30 and the heights of the two dwellings are comparable. There is no doubt that within the driveway area in front of the garage to no 30 - as the proposal is closer to the boundary - the dominance of the proposal would be much more than the existing dwelling on the site. However, I do not consider the dominance of the proposal on the adjacent property to be unacceptable, given the particular urban context and the separation distances involved. I do not consider that the proposal will create an unacceptable adverse effect on the residents of no 30 through dominance and overlooking.
51. Accordingly, as the proposal is contrary to criterion (a) the Council's third reason for refusal has been sustained.
52. The fourth reason for refusal relates to Planning Policy Statement 2 Natural Heritage, Policy NH 5 – Habitats, Species or Features of Natural Heritage Importance. This states that planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known, other heritage features worthy of protection. Paragraph 5.12 states that 'other' natural heritage features worthy of importance are most likely to include trees and woodland which do not fall under the priority habitat or long established woodland categories but are in themselves important for local biodiversity. This policy document is concerned with biodiversity and no evidence in relation to this has been provided. The Council's reason for refusal is misdirected and accordingly has not been sustained.
53. In conclusion, the trees on the site have TPO type protection and are an important and integral part of the Conservation Area. As no accurate tree surveys have been submitted it is difficult to judge the baseline extent of trees and the impact that the proposal is likely to have on them during and post construction. In addition, accurate proposed landscaping plans were not submitted. As such, notwithstanding my views that I consider the design of the dwelling to be acceptable, I am unable to conclude that the appeal proposal would make a positive contribution to the character and appearance of this part of the Conservation Area and the Conservation Area as a whole, which would be greater than that of the existing building. Taking into consideration the appellants arguments of the 'no harm' test rather than enhancement, neither can I conclude that the proposal will not cause any significant harm to the conservation area.
54. Accordingly, in the absence of this critical information, I have not been persuaded that the proposed replacement would cause no harm or enhance the conservation area. The basis of the Council's refusal of consent for demolition within a conservation area and of planning permission for the proposed redevelopment have been sustained.

This decision relates to the following plans:

Appeal 1: 2016/A0016

**Application drawings for Demolition Consent --- Z/2015/0101/DCA**

160/P/001	Site Location Plan (PAC 1) – Dept ref: 01
160/P/002rev A	Existing Site Block Plan (PAC 2) - Dept ref: 2A
160/P/003	Existing Floor Plans (PAC 3) – Dept ref: 3
160/P/004	Existing Elevations (PAC 4) – Dept ref:4
160/P/005	Existing Elevations (PAC 5) – Dept ref: 5

Appeal 2: 2016/A0017

**Application drawings for planning application --- Z/2015/0063/F**

160/P/101rev A	Proposed Site Plan (PAC 6) – Dept ref: 6A
160/P/102	Proposed Basement Plan (PAC 7) – Dept ref: 7
160/P/103	Proposed Ground Floor Plan (PAC 8) – Dept ref: 8
160/P/104	Proposed First Floor Plan (PAC 9) – Dept ref: 9
160/P/105	Proposed Second Floor Plan (PAC 10) – Dept ref: 10
160/P/201	Proposed Front Elevation (PAC 11) – Dept ref: 11
160/P/202	Proposed Rear Elevation (PAC 12) – Dept ref: 12
160/P/203	Proposed Side Elevation 1 (PAC 13) – Dept ref: 13
160/P/204	Proposed Side Elevation 2 (PAC 14) – Dept ref: 14
160/P/207	Proposed Street Elevation (PAC 15) – Dept ref: 15
160/P/301	Proposed Sections (PAC 16) – Dept ref: 16

And the following submitted as post hearing evidence:

160/P/101	Revised Site Plan (PAC 1).
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055/P/901	Materials Sketch (PAC1).
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**COMMISSIONER MANDY JONES**

## 2016/A0016 & 2016/A0017

### List of Documents

- Planning Authority:** 'A1' Statement of Case with appendices (2016/A0016)  
'A2' Statement of Case with appendices (2016/A0017)
- 'B' Rebuttal to post hearing evidence
- Appellant:** 'C' Statement of Case with appendices
- 'D' Post hearing evidence
- Objectors:** 'E' Statement of Case (Dr B Austin, 30 Malone Park )
- 'F' Rebuttal to post hearing evidence
- 'G' Statement of Case (C & C McNeill, 35 Myrtlefield Park)
- 'H' Statement of Case and Letter (Pragma representing Malone Park Residents Association)

2015/A085 & 2015/A086

**Appearances at the Hearing**

**Planning Authority:-** Richard White, Belfast City Council  
Robert Kennedy, Belfast City Council  
Bill Coulter

**Appellant:-** William Orbinson QC.  
Dawson Stelfox, Consarc.  
Aidan McGrath, McGonigle McGrath Architects.  
Simon Brien, Estate Agent.  
Andrew Bunbery, Park Hood.  
Michael Johnston, Johnston Houston Building Surveyors

**Objectors:-** Dr Brendan Austin, 30 Malone Park  
Tony Nicholas, 32 Malone Park

2015/A0185 & 2015/A0186