

## Development Management Officer Report Committee Application

<b>Summary</b>	
<b>Committee Meeting Date:</b> 17 April 2018	
<b>Application ID:</b> LA04/2018/0522/F	
<b>Proposal:</b> Remove condition 7 - LA04/2015/1102/F (Occupancy Condition)	<b>Location:</b> 42 Strathmore Park South Belfast BT15 5HL
<b>Referral Route:</b> Original Planning Permission – Committee Decision	
<b>Recommendation:</b>	<b>Refusal</b>
<b>Applicant Name and Address:</b> P. Stewart 42 Strathmore Park South Belfast BT15 5HL	<b>Agent Name and Address:</b> Arthur Acheson 56 Quarry Road Belfast BT4 2NQ
<p><b>Executive Summary:</b></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 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>The Key issues in the assessment of the proposed development include;</p> <ul style="list-style-type: none"> <li>• Whether the condition no.7 meets the 6 tests for a condition;</li> <li>• Consideration of the applicants circumstances the applicant's case is that <ul style="list-style-type: none"> <li>- the condition is preventing a mortgage application;</li> <li>- in respect of the condition preventing ownership of the dwelling by the applicant;</li> </ul> </li> <li>• The implications of the removal of the condition for the residential amenity of prospective residents of the two dwellings.</li> </ul> <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



<b>Characteristics of the Site and Area</b>	
<b>1.0</b>	<p><b>Description of Proposed Development</b></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>
<b>2.0</b>	<p><b>Description of Site</b></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>
<b>Planning Assessment of Policy and other Material Considerations</b>	
<b>3.0</b>	<p><b>Site History</b></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>
<b>4.0</b>	<b>Policy Framework</b>
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'
<b>5.0</b>	<b>Statutory Consultees Responses</b>
5.1	None
<b>6.0</b>	<b>Non Statutory Consultees Responses</b>
6.1	None
<b>7.0</b>	<b>Representations</b>
7.1	The application has been neighbour notified and advertised in the local press. One letter of support for the proposal has been received.
<b>8.0</b>	<b>Other Material Considerations</b>
8.1	Creating Places DCAN 8 'Housing in Existing Urban Areas'
<b>9.0</b>	<b>Assessment</b>
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	<b>Implications for Mortgage</b> – 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	<b>Preventing Ownership of the Dwelling</b> - 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:-**

- 1) **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;
- 2) **Relevant to Planning** - The Condition is relevant to planning as it is directly related to the use of the building permitted;
- 3) **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;
- 4) **Enforceable** - The condition is considered to be enforceable both in terms of the principle of the use and breach of condition;
- 5) **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;
- 6) **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>9.2.5</p> <p>9.2.6</p> <p>9.2.7</p> <p>9.2.8</p> <p>9.2.9</p>	<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> <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> <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> <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 14<sup>th</sup> 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>
<p>9.3</p>	<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>
<p><b>10.0</b></p>	<p><b>Summary of Recommendation:</b> 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>
<p><b>11.0</b></p>	<p><b>Reasons for Refusal</b></p> <ol style="list-style-type: none"> <li>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</li> </ol>

	<p>would be out of character with the pattern of development in the area and would set an undesirable precedent.</p> <p>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>
<b>Notification to Department (if relevant)</b>  N/A	
<b>Representations from Elected members:</b>  Cllr Mary Ellen Campbell	
<b>Neighbour Notification Checked</b>	Yes
<b>Signature(s)</b>  <b>Date:</b>	

<b>ANNEX</b>	
<b>Date Valid</b>	26th February 2018
<b>Date First Advertised</b>	23rd March 2018
<b>Date Last Advertised</b>	23rd March 2018
<b>Details of Neighbour Notification</b> (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,	
<b>Date of Last Neighbour Notification</b>	16th March 2018
<b>Date of EIA Determination</b>	N/A
<b>ES Requested</b>	No