Development Management Officer Report
Committee Application

Summary	
Committee Meeting Date: Tuesday 18th August 2020	
Application ID: LA04/2020/0454/F	
Proposal: Conversion of existing residential dwelling to 4 bedroom HMO, with cycle parking to rear yard area. (No external alterations are proposed to the facade).	**Location:** 19 Balfour Avenue, Belfast, BT7 2EU.
Referral Route: Councillor referral	
Recommendation:	**Refusal**
Applicant Name and Address: Mr Martin Kerr 19 Balfour Avenue Belfast BT7 2EU	**Agent Name and Address:** Paul Jenkins 40 Mount Merrion Park Belfast BT6 0GB

ADDENDUM REPORT

This full application was previously listed for Planning Committee on 16th June 2020. Due to late items (set out below), members of the Planning Committee could not be consulted with sufficient time for some members to offer a view. Consequently, the item was deferred to a later meeting of the Planning Committee.

Members should read this Addendum Report in conjunction with the original full detailed planning report attached below.

Summary

- Three emails were sent to Democratic Services by Robert Kerr, the applicant's son.
- One objection has been received from an elected member.

On 15th June, Mr Kerr (son of the applicant) sent three emails with attachments to Democratic Services:

The first email contained the applicant's Supporting Statement & a statement to Committee Members. Democratic Services forwarded the statement to Committee to Members in June. In terms of the contents of the Supporting Statement this was submitted with the planning application and the matters raised within are dealt with in the case officer report attached.

The second email contained correspondence between the applicant's son, Robert Kerr and Planning officers. Mr Kerr raised a number of issues, relating to the processing and assessment of the application, referral to Planning Committee, consultation responses and the planning portal.

All relevant information relating to processing and assessment of the proposal is contained in this report. Mr Kerr advised that he wasn't aware of a June Planning Committee and officers had not given enough time for him to arrange for the application to be referred. As mentioned in para 8.23,

an officer emailed Mr Kerr on 1st May advising that the proposal was contrary to policy and also provided information regarding referral to the Planning Committee. In respect of consultees, all have responded and are available to view on the portal. There may have been a short delay in these being uploaded due to remote working arrangements in place due to Covid19, however, Mr Kerr was made aware of the consultee responses during the processing of the application. With regard to the planning portal, the case officer has recommended refusal, however it appears on the portal that the Authority has refused the application. This is a 'glitch' in the planning portal and the reference was reported to DFI to erase the line pending Committee (again there are delays due to Covid19). Mr Kerr was written to and assured that no decision has been made on this application.

The third email contained licensing information from the Council's HMO team. Mr Kerr has been advised that licensing data is not kept for planning purposes and the two lists can be at variance.

Objection Received In the intervening period since the June Committee, one objection to the proposal has been received from Councillor Gormley. The objection raised the following issues:

- Proposal is contrary to Policy HMO1 of the HMO Subject Plan 2015
- Council has proposed to designate the Holyland and Lower Ormeau Area (including Balfour Avenue) as a Special Action Area within which the return of properties to family dwelling would be favoured. Allowing new HMO developments runs directly contrary to that intention.
- Detrimental impact on parking.
- Detrimental impact on residential amenity, specifically noise.
- In addition to HMOs, over 40% of houses in Balfour Avenue are privately rented and only 25% are owner occupied / NIHE, thereby impacting the sense of community in the area.

No further additional information has been received following the previous Planning Committee meeting.

Recommendation

The proposal is recommended for refusal, as it is contrary to Policy HMO 1 of the Houses in Multiple Occupancy (HMOs) Subject Plan for Belfast City Council Area 2015 in that the number of HMO dwelling units already exceeds 30% of all dwelling units within the Lower Ormeau Policy Area; with delegated authority given to the Director of Planning and Building Control to finalise the wording of reasons for refusal subject to no new substantive planning issues being raised by third parties.

Committee Application

Development Management Report	
Application ID: LA04/2020/0454/F	**Date of Committee Decision**: 16 June 2020
Proposal: Conversion of existing residential dwelling to 4 bedroom HMO, with cycle parking to rear yard area. (No external alterations are proposed to the facade).	**Location:** 19 Balfour Avenue, Belfast, BT7 2EU.
Referral Route: Councillor referral	
Recommendation:	**REFUSAL**
Applicant Name and Address: Mr Martin Kerr 19 Balfour Avenue Belfast BT7 2EU	**Agent Name and Address:** Paul Jenkins 40 Mount Merrion Park Belfast BT6 0GB

Executive Summary:

The proposal is for 'Conversion of existing residential dwelling to 4 bedroom HMO, with cycle parking to rear yard area. (No external alterations are proposed to the facade)'.

The key considerations for this proposal are:

- Principle of Development
- Impact on amenity

15 neighbours were notified of the proposed development and no representations were received.

The site is located within a zoned Housing Action Area, in accordance with the BUAP. Within draft BMAP, the site is located within the proposed Lower Ormeau Area of Townscape Character (ATC) - Ref BT 060.

The HMO Subject Plan is unaffected by the quashing of BMAP and is a material consideration.

As the application site falls within a designated HMO policy area, Policy HMO 1 applies and states that within designated HMO Policy Areas, planning permission will only be granted where the number of HMO dwelling units does not as a result exceed 30% of all dwelling units within the Policy Area. Out of 370 domestic properties within the Lower Ormeau Policy Area, 122 are HMOs, equating to 32.9%.

The applicant disagrees with the Council's calculation of the number of HMOs and the number of dwellings within the Policy Area. The applicant's representative has submitted a planning statement and taken the opportunity to rebut Council calculations in this case and has sent further emails in support of the proposed development. An assessment of the issues is contained within this report.

Recommendation – Refuse
Having considered all the evidence in this case, it is recommended that planning permission be refused as the proposal fails to comply with the tests of Policy HMO 1 with delegated authority given to the Director of Planning and Building Control to finalise the wording of reasons for refusal subject to no new substantive planning issues being raised by third parties.

Characteristics of the Site and Area	
1.0	**Description of Proposed Development** The proposal is for the 'Conversion of existing residential dwelling to 4 bedroom HMO, with cycle parking'. No external changes are proposed. The proposed cycle parking is located in a small yard to the rear.
2.0	**Description of Site** The application site is located within the urban limits of Belfast. The site is a terraced dwelling, located on Balfour Avenue. The dwelling is 2 storeys in height, with a roof dormer at the front of the dwelling. The surrounding area is characterised primarily by residential development. Commercial uses are more prevalent along the nearby Ormeau Road. 

Planning Assessment of Policy and other Material Considerations

3.0	**Site History**	
3.1	No relevant site history.	
4.0	**Policy Framework**	
4.1	Belfast Urban Area Plan 2001 (BUAP)	
4.2	Draft Belfast Metropolitan Area Plan 2015 (dBMAP)	
4.3	Houses in Multiple Occupancy (HMOs) Subject Plan for Belfast City Council Area 2015 (HMO Subject Plan)	
	4.1.1	Housing Action Area
	4.2.1	Area of Townscape character
	4.3.1	HMO Policy Area – Lower Ormeau
4.4	Strategic Planning Policy Statement (SPPS) Planning Policy Statement 3: Access, Movement and Parking	

	Planning Policy Statement 6 Addendum: Areas of Townscape Character
5.0	**Statutory Consultees Responses**
5.1	DFI Roads – No objection
6.0	**Non-Statutory Consultees Responses**
6.1	BCC Environmental Health – No objection
6.2	NI Water – No objection
7.0	**Representations**
7.1	15 neighbours were notified of the proposed development, with no representation received in respect of the proposal.
8.0	**Assessment**
8.1	<u>Development Plan context</u> Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires regard to be had to the Development Plan, so far as material to the application and to any other material considerations. Section 6(4) states that where regard is to be had to the Development Plan, the determination must be made in accordance with the Plan unless material considerations indicate otherwise. The site is located within the urban area of Belfast. The adopted Belfast Metropolitan Area Plan 2015 (BMAP) has been quashed as a result of a judgement in the Court of Appeal delivered on 18th May 2017. As a consequence of this, the Belfast Urban Area Plan 2001 (BUAP) is now the statutory development plan for the area with draft BMAP remaining a material consideration.
8.2	The site is located within a zoned Housing Action Area, in accordance with the BUAP. Within draft BMAP, the site is located within the proposed Lower Ormeau Area of Townscape Character (ATC) - Ref BT 060. There was one objection to this proposed ATC designation during the BMAP public inquiry, however the PAC found that the objection was aimed at the plan process rather than this site specific designation. The PAC advised no change to the plan. It is therefore likely, if and when BMAP is lawfully adopted, a Lower Ormeau ATC designation will be included.
8.3	There are no specific policies within the BUAP regarding HMOs, however policy HOU 6 of dBMAP provides criteria for conversion of buildings for multiple occupation. Prior to the BMAP Public Inquiry, the Department published the HMO Subject Plan. The PAC recommended that Policy HOU 6 was deleted from the plan, as the issues raised in relation to HOU 6 are fully addressed in the HMO Subject Plan. The HMO Subject Plan is unaffected by the quashing of BMAP and is a material consideration.
8.4	<u>HMO Subject Plan</u> The HMO Subject Plan Strategy aims to adopt a balanced approach to HMO development, by seeking to positively influence and shape the market for HMOs, while controlling and curtailing further development in areas where such accommodation is currently concentrated.
8.5	<u>Principle of HMO Development</u> As the application site falls within a designated HMO policy area, Policy HMO 1 applies and states that within designated HMO Policy Areas, planning permission will only be granted

	where the number of HMO dwelling units does not as a result exceed 30% of all dwelling units within the Policy Area.
8.6	The Council has to calculate the number of HMOs and the total number of dwelling units within the Lower Ormeau Policy area. The methodology for this is included within the HMO Subject Plan:
8.7	The level of multiple occupation within an area, whether designated or not, will be measured by: - the number of HMOs recorded by the NIHE at November 2004; plus - the number of HMO development units subsequently approved by the Department; plus - the number of extant permissions for HMO development units. The total number of dwelling units in a Policy Area will be measured by Ordnance Survey's Pointer database. The Pointer database includes all dwellings with an address in Northern Ireland. In considering Policy HMO1 this assessment will be undertaken across the individual Policy Area and not on a street by street basis.
8.8	With regard to the number of HMOs: 1. The number of HMOs recorded by the NIHE at November 2004 was 120. 2. 7 No. Certificates of Lawful Use (CLUDS) have been approved for HMOs. However, 5 of these properties were on the 2004 Register (and are included in point 1 above), therefore 2 additional properties (18 Farnham Street & 17 Balfour Avenue) have been subsequently declared lawful HMOs. 3. No HMO planning applications have been approved. In accordance with the methodology set out in the HMO Subject Plan, the number of HMOs within the Lower Ormeau Policy Area is 122.
8.9	With regard to the total number of dwellings in the Policy Area, the number of domestic property addresses was 370 on 24/3/20, in accordance with Ordnance Survey's Pointer Database. It is noted that the number of dwellings in the policy area has reduced from 389.
8.10	In summary, out of 370 domestic properties within the Lower Ormeau Policy Area, 122 are HMOs, equating to 32.9%. Accordingly, it appears that the proposal does not comply with the Policy tests of HMO 1 in that the number of HMOs already exceeds 30% of all dwelling units within the Policy Area.
	<u>The Applicant's case</u>
8.11	The HMO Subject Plan directs that in circumstances where an applicant disagrees with Planning Service's assessment on the number of HMOs in a given area or considers that the property was already a HMO at November 2004 when the Planning (Use Classes) Order (Northern Ireland) 2004 was introduced, then the applicant will be afforded an opportunity to provide evidence and demonstrate otherwise. A planning statement has been submitted to the Council in support of the proposed development. The Council had previously wrote to the agent on two occasions, 22nd April 2020 and 1st May 2020, advising that it considered the proposal does not comply with Policy HMO 1 and setting out its calculations. On both of these occasions, the agent followed up with further detailed emails rebutting the Council's position.
8.12	The supporting planning statement argues against the use of 2004 HMO data; 'this is not a sustainable planning argument and to use figures which are now 15 years out of date is not logical'. The case went on to state that the Council's HMO Unit has advised the applicant that there are 69 licensed HMOs within the policy area. The Supporting statement advised that the Council confirmed that 3 CLUDs had been approved for HMOs, however the 3 related properties are already included within the 69 HMOs. The applicant therefore contends that the number of HMOs within the area has decreased from 120 to 69.

8.13	HMO licensing is separate from the planning process and is not maintained for the purposes of planning. In planning terms, it is possible for a property to be classified as a HMO but not be licensed as such. The applicant has identified that many of the properties on the 2004 list are not currently licensed. However, no evidence has been provided to the Council indicating that specific properties previously on the 2004 Register are no longer HMOs from a planning perspective, other than not having a HMO license. The applicant states that 53 of the HMOs identified by the Council are not registered or licensed, and suggests they do not exist as HMOs. Furthermore, the applicant requests evidence that these HMOs currently exist. It is entirely possible that a property is a HMO in planning terms, whether it is licensed as a HMO or not. As clearly stated within the Policy, the onus is on the applicant to provide evidence, not the Council.
8.14	The Subject Plan is very clear in how to measure the level of HMOs within an area. The baseline for this measurement is the number of HMOs recorded by NIHE at November 2004, however the applicant appears to disregard these figures as they are 'out of date'.
8.15	The applicant has provided comments from the Planning Appeal Commission's (PAC) Report into objections to the Houses in multiple occupation (HMOs) Subject Plans for Belfast City Council Area 2015. The PAC acknowledged that there were issues with the identification of HMOs throughout the city. The PAC conceded that the database, excepting registered properties, is a list of likely rather than known HMOs, however it also acknowledged that an underestimate of HMO numbers is more likely. Despite these shortcomings, the PAC ultimately endorsed the unit based approach to the assessment of existing HMO development. The PAC Report examined the methodology used in the formulation of the policy. As already stated, the Subject Plan has now been adopted and the proposed development is assessed against the policies contained within.
8.16	It is important to note the disparity in the figures relating to approved CLUDs for HMO use within the policy area. In total, 7 CLUDs have been approved, however the applicant submitted an Environmental Information Request (EIR) and at the time of the applicant's EIR request in relation to approved CLUDs, only 3 had been approved. In the meantime, a further 4 CLUDs have been approved. The 7 approved CLUDs relate to the properties below: - 3 Balfour Avenue (LA04/2019/2483/LDE) - 17 Balfour Avenue (LA04/2019/1969/LDE) - Not on 2004 Register. - 60 Balfour Avenue (LA04/2019/2315/LDE) - 18 Farnham Street (LA04/2018/1945/LDE) - Not on 2004 Register. - 60 Farnham Street (LA04/2019/1969/LDE) - 9 Hatfield Street (LA04/2019/2546/LDE) - 31 Hatfield Street (LA04/2019/2955/LDE)
8.17	The applicant also argues that using Ordnance Survey's Pointer Address Database, there are presently 389 dwelling units within the Policy area. This contrasts with the Council figures, which found that the number of domestic property addresses was 370 on 24/3/20. The applicant's supporting statement suggests the Council's figures are not correct, however no further evidence is submitted explaining why they are not correct.
8.18	The applicant has provided a list of the 389 identified properties, in contrast to the Council's records which identified 370 properties. In a significant number of cases, the applicant's information does not correspond with the information the Council holds. Furthermore, some of the properties identified by the applicant lie outside the Policy Area (i.e. the 15 apartments located at No. 22 and 23 Artana Street).
8.19	The applicant's supporting statement sets out that the percentage of HMOs within the Policy Area equates to 17.7%. This is based on 69 HMOs and 389 dwelling units within the area. It

	is considered that this percentage is incorrect as the number of HMOs and dwelling units provided by the applicant are not accurate, as explained to the applicant's representative and set out in this report. The applicant's representative has also sent numerous emails in respect of the Councils consideration of the information and has also requested a meeting with senior officers, it was explained that the Planning Service is always willing to facilitate meetings where it would assist to bring forward a more acceptable proposal. However, in this case, in line with the Planning Service's 10 Operating Principles, the facts were clearly set out by the Officer and Development Plan Team and no contrary convincing evidence was provided by the applicant and therefore there was no benefit to the applicant in meeting to discuss the figures as the two sets of figures are incomparable.
8.20	As stated above the Council wrote to the agent on two separate occasions advising that it does not consider the proposal complies with the policies of the HMO Subject Plan. In accordance with the HMO Subject Plan, the Council invited the agent to submit additional evidence, however the agent confirmed that all the evidence required is within the supporting statement.
	<u>Amenity</u>
8.21	The proposed HMO has only 4 bedrooms, is not wholly in the rear of the property and has access to the public street. The proposal therefore complies with the tests of Policy HMO 6. There are no concerns with residential amenity of future occupiers or existing neighbours. Furthermore, no external alterations are proposed therefore the proposal complies with the tests of PPS 6 Addendum.
	<u>Consultee Comments</u>
8.22	DFI Roads, BCC Environmental Health (EHO) and NI Water were all consulted regarding this proposal. No objections were offered from any consultees. EHO suggested an informative relating to HMO Standards and minimum requirements etc. DFI Roads stated that the provision of car parking is not a requirement of the assessment process for HMOs. Equally, existing regional policy and supplementary planning guidance do not incorporate car parking as a requirement for HMO development.
	<u>Committee Referral</u>
8.23	As per normal procedure, the Council contacted the agent on 2nd June 2020 to advise the application was recommended for refusal and would issue as such, in accordance with the Council's Scheme of Delegation. The agent responded advising that he had not been given an opportunity to ask a Councillor to refer the application to Planning Committee, despite the details being sent to him on 1st May 2020. The Council agreed to hold the application to allow the agent a further opportunity to have the application called before Committee.
9.0	**Summary of Recommendation: REFUSAL**
9.1	Out of 370 domestic properties within the Lower Ormeau Policy Area, 122 are HMOs, equating to 32.9%. Accordingly, it appears that the proposal does not comply with the Policy tests of HMO 1 in that the number of HMOs already exceeds 30% of all dwelling units within the Policy Area.
9.2	The agent has provided supporting evidence in an attempt to show that the number of HMOs does not exceed 30% of all dwelling units within the Policy Area. It is considered that the agent's assessment of both the number of HMOs and existing dwelling units within the Policy Area is incorrect for the reasons outlined above.

9.3	Accordingly, it is considered that the proposal is contrary to Policy HMO 1 of the HMO Subject Plan and is therefore recommended for refusal.
10.0	**Reasons for Refusal**
10.1	The proposed development is contrary to Policy HMO 1 of the Houses in Multiple Occupancy (HMOs) Subject Plan for Belfast City Council Area 2015 in that the number of HMO dwelling units already exceeds 30% of all dwelling units within the Lower Ormeau Policy Area.

Notification to Department (if relevant)

Representations from Elected members:

Cllr Lyons – Requested the application be presented to Committee on behalf of the applicant.
Cllr Gormley – update on status of application
Cllr Murphy – update on status of application