

Development Management Addendum Report

Summary	
Application ID: LA04/2019/1833/F	Date of Committee: Tuesday 16 th March 2021
Proposal: New dwelling to replace previous dwelling on site, with connection to all existing services to the site and use of existing vehicular access into the site.	Location: 11 Ashley Park Dunmurry Belfast BT17 9EH
Referral Route: Referral to the Planning Committee under Section 3.8.1 of the Scheme of Delegation. Cllr Walsh in respect of the planning history on the site.	
Recommendation:	Refusal
Applicant Name and Address: Ms Emma Regan 44 Redwood Grove Dunmurry Belfast	Agent Name and Address: Don Sonner 26a St Jeans Cottages Cookstown BT80 8DQ
<p><u>ADDENDUM REPORT</u></p> <p>This full application was previously listed for Planning Committee on 19th January 2021. The item was deferred for a second time on the basis that Members sought legal advice in relation to the planning position of the site in respect of its current status, regarding the demolition of the previous dwelling on site and whether that constitutes wilful abandonment, a nil use or neither.</p> <p>Members should read this Addendum Report in conjunction with the original full detailed planning report and first Addendum attached below.</p> <p>Subsequent to the publication of the case officer report for the March Planning Committee, there are a number of updates which Members of the Committee should be aware of and are set out below:</p> <p><u>Summary</u></p> <ul style="list-style-type: none"> • The agent submitted a statement on 4th February 2021 which contained background information and a history of the site subject to the planning application as well as supporting information as to the lawful use of the site. • Planning committee deferred the application for a legal opinion. In this respect officers have considered the facts of the case and relevant case law and set out their consideration below. • Legal services have been consulted and agree with the officer's opinion as set out. <p>The Council remain of the view that the demolition of the original dwelling has resulted in a nil use of the land, when considered in light of previous relevant case law. DCS No 400-002-136 considered the lawful use of a site following demolition. The inspector declined to confirm that the construction of three replacement dwellings in Leicestershire would be lawful following demolition of the original dwellings and that this created a nil use on the site. The case is clear that demolition results in nil use.</p> <p>The agent has provided a detailed history of the site through points 1 to 13 of the planning statement provided, it is confirmed the previous dwelling was demolished in 2013.</p>	

In point 14 the agent states the various lengths of time in which the site would be vacant depending upon when planning permission may have been granted. It also states that the established residential use for the previous 115 years has not been taken into account. It remains that no planning permission has been granted on the site for the replacement of the dwelling and the length of time the previous dwelling stood is not a relevant factor. Once the previous dwelling was demolished the site contains a nil use.

The agent makes reference to case law in points 15-17 of the planning statement. These cases relate to establishing whether an existing use has been abandoned in circumstances where the residential building was still on the land (in various states of dilapidation) or where the use of the land for certain commercial uses had discontinued for a number of years.

None of these cases addresses the lawful use of a residential site following the demolition of the dwelling. The case of *Iddenden And Others V. Secretary of State for the Environment and Another* [1972] 1 WLR 1433 does however deal with circumstances such as these, i.e., where there has been demolition of the residence, albeit it is in the context of enforcement. In that case the Court were of the view that the established use was lost once the demolition occurred.

Planning Service are unaware of any PAC decisions in respect of this issue and the applicant's agent has not provided any either. Officers are however aware that the above approach is supported by some English planning appeal decisions (for example, Appeal Ref: APP/F2415/X/13/2194150 - Former Station Cottages, Uppingham Road, East Norton, Leicestershire, LE7 9XL).

Officers remain of the view that the application site currently has a nil use and as such there is no lawful existing access to the site. Therefore the proposed access to Ashley Park is sub-standard and will prejudice road safety.

Recommendation

The recommendation for refusal remains given the considerations both above and in the report.

With delegated authority sought for the Director of Planning and Building Control to finalise the wording of refusal reasons subject to no new substantive planning issues being raised by third parties.

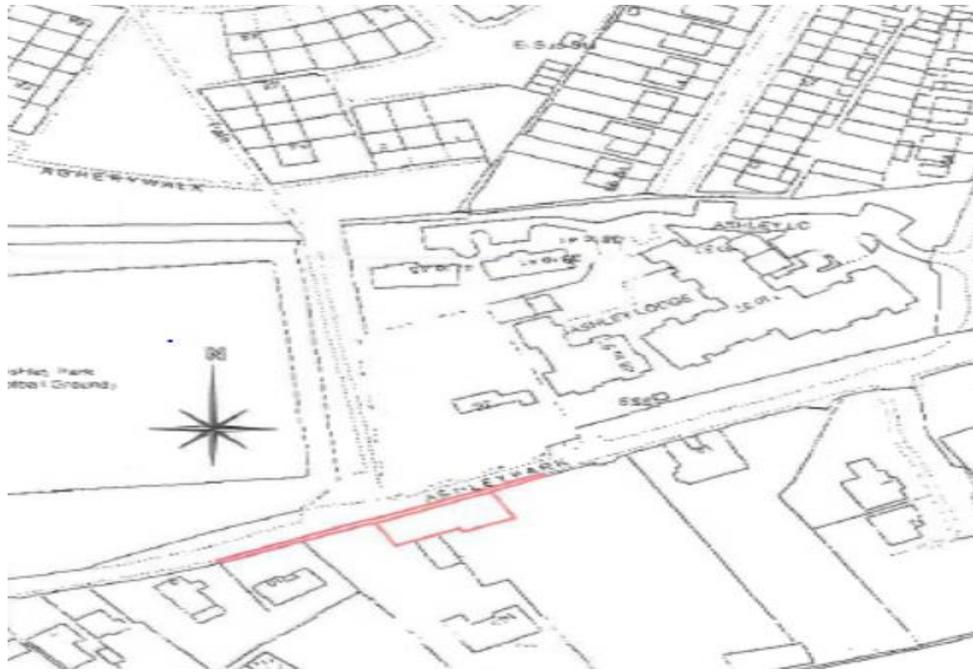
Summary

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Proposal: New dwelling to replace previous dwelling on site, with connection to all existing services to the site and use of existing vehicular access into the site.	Location: 11 Ashley Park Dunmurry Belfast BT17 9EH
Referral Route: Referral to the Planning Committee under Section 3.8.1 of the Scheme of Delegation. Cllr Walsh in respect of the planning history on the site.	
Recommendation: Refusal	
Applicant Name and Address: Ms Emma Regan 44 Redwood Grove Dunmurry Belfast	Agent Name and Address: Don Sonner 26a St Jeans Cottages Cookstown BT80 8DQ
Executive Summary: The proposal is for a new dwelling to replace the previous dwelling on site, with connection to all existing services to the site and use of existing vehicular access into the site. The site is white land within BUAP and is in the Dunmurry draft Area of Townscape Character as designated within dBMAP. The key issues to be considered are: <ul style="list-style-type: none">• Principle of a dwelling in this location• Character/Layout/Design• Private amenity/landscaping• Access/Parking• Impact on neighbouring amenity• Impact on established residential area The principle of a dwelling in this location is acceptable. The site is located in a rectangular plot measuring 0.025 ha in size. The dwelling is to be a two storey property finished in smooth render, and has an internal floor space of approximately 140sq metres and a ridge height of approximately 8.6m. The dwelling features a car port and 1 st floor balcony, the design and layout is compatible with the policies set out in PPS7 and will not impact on the character of the area or result in an unacceptable impact to neighbour amenity. DFI Roads were consulted and objected to the proposal. The proposal is considered contrary to policy AMP 2 of PPS 3 in that the proposed access will prejudice road safety. The visibility splays are deemed to be inadequate. Having had regard to the development plan, relevant planning policies, and other material considerations, it is determined that the proposal should be refused. Recommendation The application is recommended for refusal. Delegated authority is sought for the Director of Planning and Building Control to finalise the wording of refusal reasons subject to no new substantive planning issues being raised by third parties.	

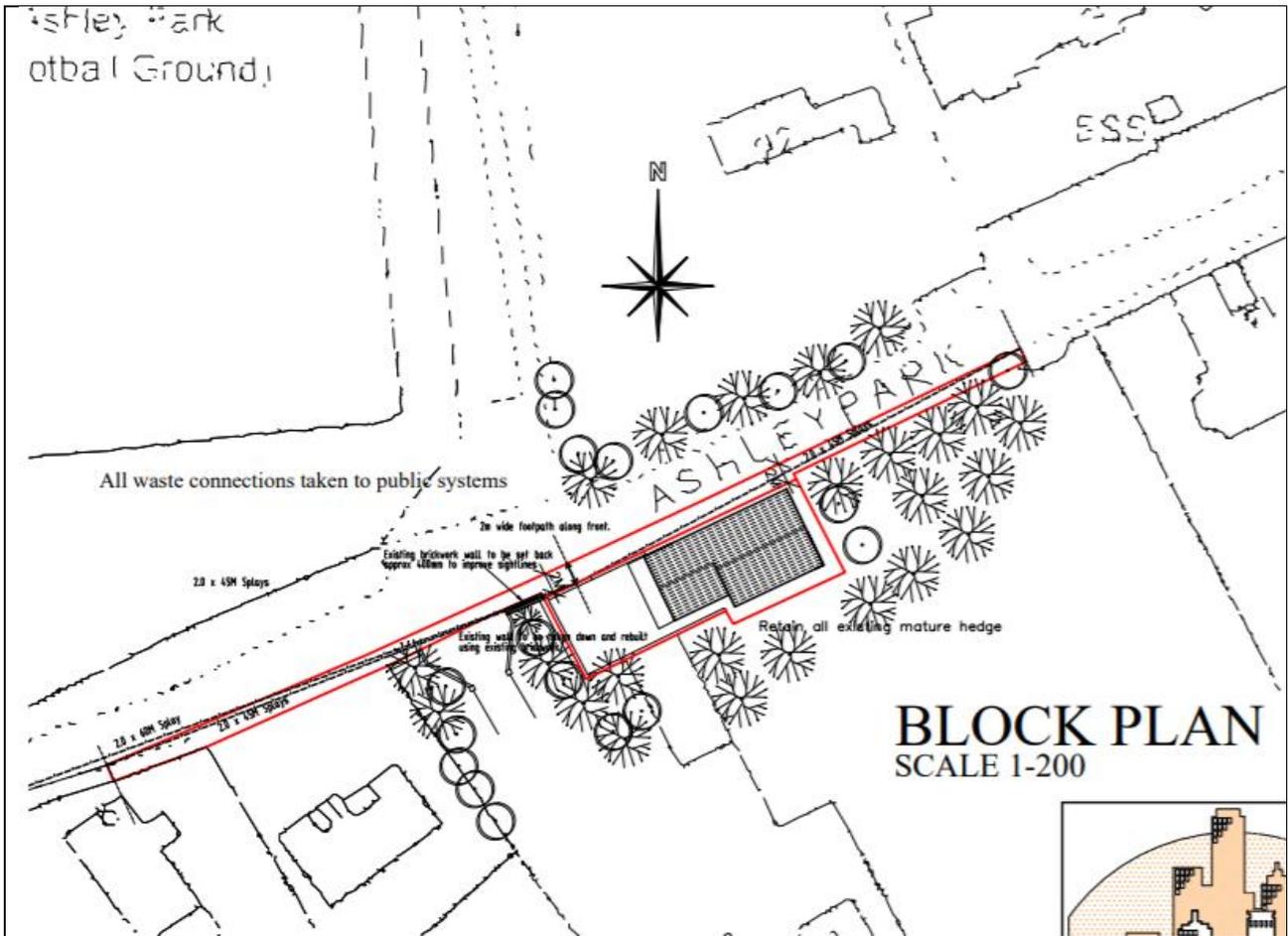
Committee Application

Case Officer Report

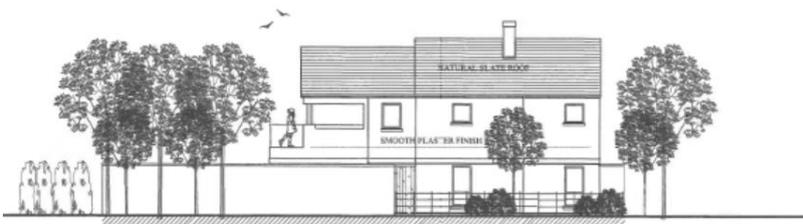
Site Location Plan



Block Plan



Elevations



REAR ELEVATION



SIDE ELEVATION

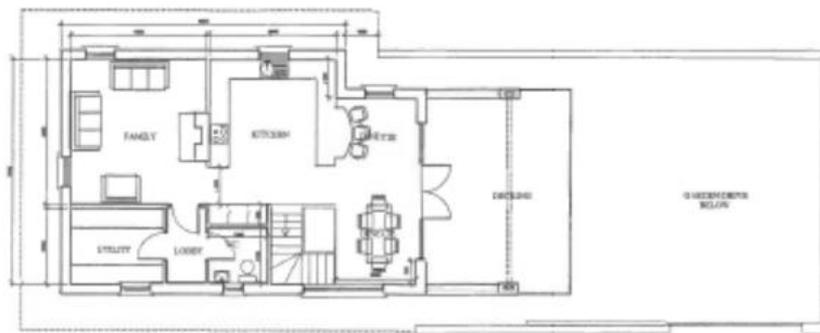


FRONT ELEVATION

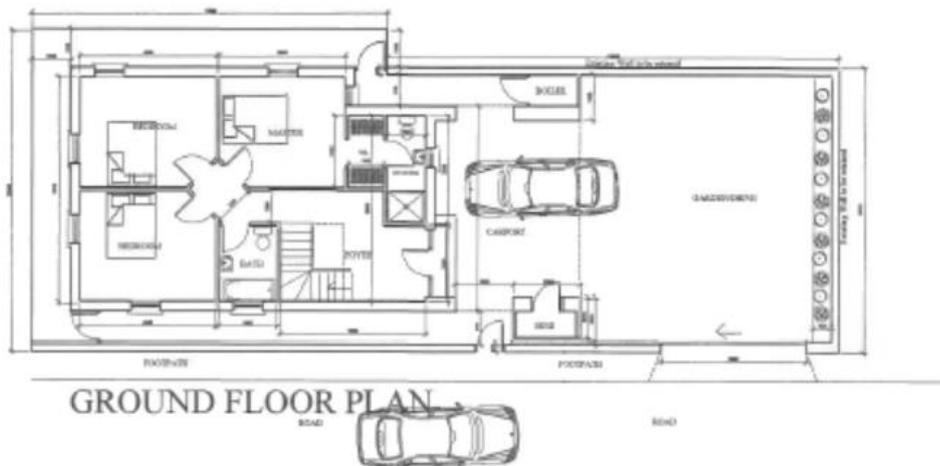


SIDE ELEVATION

Floor Plans



FIRST FLOOR PLAN



GROUND FLOOR PLAN

Characteristics of the Site and Area

1.0 Description of Proposed Development

New dwelling to replace previous dwelling on site, with connection to all existing services to the site and use of existing vehicular access into the site.

2.0 Description of Site

The site is located at 11 Ashley Park. The site is a previously developed site of 0.025 hectares in size. The site sits adjacent to the road and fronting the property at no. 10a. The site previously contained a dwelling which was demolished between 2012 and 2015. The site has since been fenced off with palisade fencing.

The surrounding area is residential comprised of detached or semi-detached dwellings of a variety of materials and form, set on sizeable plots. Opposite the site is a cricket ground. The site is white land within BUAP and is in the Dunmurry draft Area of Townscape Character as designated within dBMAP.

Planning Assessment of Policy and other Material Considerations	
3.0	Site History S/2008/0529/F, 11 Ashley Park, Dunmurry, Belfast, BT17 9EH, Demolition of existing dwelling and the erection of two dwellings (Amended Scheme), PERMISSION REFUSED, 07.11.2014
4.0	Policy Framework
4.1	Belfast Urban Area Plan
4.2	Draft Belfast Metropolitan Area Plan 2015 Following the recent Court of Appeal decision on BMAP, the extant development plan is now the BUAP. However, given the stage at which the Draft BMAP had reached pre-adoption through a period of independent examination, the policies within the Draft BMAP still carry weight and are a material consideration in the determination of planning applications. The weight to be afforded is a matter of judgement for the decision maker.
4.3	Strategic Planning Policy Statement for Northern Ireland (SPPS)
4.4	Planning Policy Statement 3: Access, movement and parking
4.5	Planning Policy Statement 6 (Addendum): Areas of Townscape Character
4.6	Planning Policy Statement 7: Quality Residential Environments
4.7	Planning Policy Statement 7 (Addendum): Safeguarding the character of established residential areas.
4.8	Development Control Advice Note 8: Housing in urban areas
4.9	Development Control Advice Note 15: Vehicular Access Standards
5.0	Statutory Consultees Responses DFI Roads- Objects NI Water- No objections
6.0	Non Statutory Consultees Responses Environmental Health- No objections
7.0	Representations
7.1	The application was neighbour notified most recently on the 17 th September 2020 and advertised in the local press most recently on the 25 th September 2020. One representation was received and is summarised below: <ul style="list-style-type: none"> Plan shows existing brickwork to be set back which is not in the applicant's ownership. Case Officer's Response: The brickwork is not within the red line and the applicant cannot carry out work without the owner's permission.
7.2	Cllr Walsh referred the application to the Planning Committee under Section 3.8.1 of the Scheme of Delegation. In respect of the planning history on the site, for two dwellings which were refused and the report stated that a sole dwelling on this site is desirable.
8.0	Other Material Considerations None

8.1	<p>Any other supplementary guidance Creating Places</p>
9.0	<p>Assessment</p>
9.1	<p>The proposal is considered to be in compliance with the development plan.</p>
9.2	<p>Assessment</p> <p>The key issues to be considered are:</p> <ul style="list-style-type: none"> • Principle of a dwelling in this location • Character/Layout/Design • Private amenity/landscaping • Access/Parking • Impact on neighbouring amenity • Impact on established residential area <p>It is considered that the proposal is not in compliance with SPPS in that the proposed development will cause demonstrable harm to interests of acknowledged importance which are considered below.</p> <p>Principle of a dwelling in this location The proposed site is located within the proposed Dunmurry Area of Townscape Character as designated within dBMAP, the site is located within whiteland in the BUAP. Given the site previously contained a dwelling which has since been demolished, the principle for a dwelling in this location is deemed to be acceptable.</p> <p>Site History S/2008/0529/F, 11 Ashley Park, Dunmurry, Belfast, BT17 9EH, Demolition of existing dwelling and the erection of two dwellings was refused in July 2014 for the following reason</p> <p>The proposal is contrary to Policy QD1 of the Department's Planning Policy Statement 7: "Quality Residential Environments" in that it would, if permitted, result in over development of the site, and would be detrimental to the character and appearance of the local area by virtue of its scale, form and massing. The development also provides inadequate private amenity space and therefore fails to create a quality and sustainable residential environment.</p> <p>Councillor Walsh has referred the application to committee in respect of the planning history on the site. In the case Officer's report for the application reference S/2008/0529/F it states that a 'single unit was the only option available'. It is noted that the entrance to the site within the previous application differs to this application and achieves the necessary visibility splays. The Council agree that the principle for one dwelling in this location is achievable, however the proposal must meet the required visibility splays.</p> <p>Character/Layout/ Design It is considered that the proposal respects the surrounding context and is appropriate to the character of the surrounding area. The proposal is for a detached dwelling to be finished in white render with a driveway provided to the side elevation directly accessed from Ashley park. The surrounding area is comprised of dwellings which are set back from the road and contain driveways to the side. The proposed dwelling is in this regard out of character. However, it is considered that the proposed dwelling is in a similar location as to the previously demolished dwelling. It is therefore considered that while the previous dwelling was demolished a number of years ago it would attributed to the character of the area. With consideration to the previous dwelling it is deemed that the proposed respects</p>

the surrounding context and is appropriate. When the designation of draft ATC was applied the previous dwelling would have been in situ. Therefore this proposal will not impact the character of the draft ATC given its similarities in location and massing to the previous dwelling. The proposal therefore complies with policy ATC 1 of the addendum to PPS 6.

The form and materials of the proposed dwelling will tie in with the surrounding area. The proposed dwelling is to be white render. There is a variety in form of the surrounding dwellings and the proposed dwelling will therefore add to this variety which as stated in creating places provides a visual variety and interest.

Private amenity/landscaping

The proposal complies with PPS 7 in that an adequate level of private space has been provided. Creating places advises a minimum of 40sq metres of amenity space. The amenity space provided with the driveway/garden and the 1st floor terrace is 45.16sq metres which is deemed sufficient.

Access/Parking

The proposal is considered contrary to policy AMP 2 of PPS 3 in that the proposed access will prejudice road safety. Paragraph 5.15 states that the department will expect applicants to have control over the land required to provide the requisite visibility splays and ensure that they are retained free of any obstruction. The proposal contains direct access from the proposed driveway to Ashley Park. DFI Roads were consulted and objected stating that the visibility splays were not adequate. The neighbouring land contains a brick wall which will obstruct visibility. A representation received from the occupants at no. 10a confirmed this was within their ownership. The previous dwelling contained a vehicular access bounded with a boundary wall and which contained a large gate. The previous dwelling and access has since been demolished, any access to the site has been removed and a palisade fence erected fronting the site. As the previous dwelling and access has been demolished the proposal is treated as a new development and therefore paragraph 5.15 applies.

The visibility splays required are 2 x 45m. The applicant can achieve this to the east of the site, however the visibility splay to the west is only 2m x 1.59m which falls considerably short of the requirement. Therefore, the visibility splays are inadequate the proposed access will prejudice road safety.

Given that the applicant has not amended the red line to include the neighbouring brick wall and subsequently not served notice on the landowner it cannot be considered that the applicant has any prospect of gaining control of the third party lands in order to carry out the works necessary to comply with the required sightlines, as the area required does not form part of this application.

Impact on residential amenity

The proposal will not have an adverse impact on existing or proposed dwellings. The proposed dwelling has a sufficient separation distance from no. 10a as to not cause any overlooking or overshadowing.

Impact on established residential area

The area in which the site is located is defined as an established residential area as defined within the addendum to PPS 7. Therefore policy LC1 applies which contains 3 further criteria the proposal must comply with.

The proposal complies with criterion (a). Given that the site is historically a residential site and contained a dwelling until the proposal was demolished between 2012 and 2015 the density is not significantly higher than the surrounding area.

	<p>The proposal complies with criterion (b) in that the pattern of development is in keeping with the overall character and environmental quality of the established residential area. As demonstrated previously the site has previously contained a dwelling and therefore a dwelling in this location and of this scale is in keeping with the pattern of development.</p> <p>The proposal meets the space standards set out in annex A and therefore complies with criterion (c).</p>
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9.3	Having regard for the policy context and the considerations above, the proposal is unacceptable.
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10.0	Summary of Recommendation: Refusal
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11.0	<p>Reasons for refusal</p> <p>1. The proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2 paragraph 5.15 in that it would, if permitted, prejudice the safety and convenience of road users since visibility splays of (2 metres x 45 metres) from the proposed access, cannot be provided in accordance with the standards contained in the Department’s Development Control Advice Note 15.</p> <p>Informatives</p> <p>1. The drawing refs referred to above correspond with those drawings submitted to the Authority in respect of this application and published to the Planning Portal NI on: 08/08/2019, drawing no. 01 and on 07/01/2020, drawing no. 02a.</p>
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<p>Notification to Department (if relevant)</p>
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<p>Representations from Elected members: Cllr Walsh</p>
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